

Supreme Court of India

Delhi Development Authority vs Skipper Construction And Anr on 8 February, 1995

Equivalent citations: 1995 SCC (3) 507, JT 1995 (2) 391

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

DELHI DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:

SKIPPER CONSTRUCTION AND ANR.

DATE OF JUDGMENT 08/02/1995

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

MOHAN, S. (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1995 SCC (3) 507                      JT 1995 (2)      391

1995 SCALE (1) 734

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. The facts leading to contempt proceedings are as under: On 8.10.1980, an auction was held by the Delhi Development Authority (hereinafter referred to as the DDA ) of the Commercial Tower Plot, Jhandewalan, Block E, New Delhi ad measuring about 2540 sq. mtrs. The first respondent. Ws. Skipper Construction Co. (P) Ltd. (hereinafter referred to as the Skipper) was the highest bidder, its bid being Rs. 9.82 crores. As per the conditions of the auction, Skipper deposited 25% of the bid amount. The said bid was confirm the DDA on 14.10.1980. Skipper was called upon to make the balance of payment of 75% of the bid amount within 90 days as per the conditions of the auction.

2. The Government of India issued directions to the DDA to accept the request of Skipper and to grant an indulgence to it and directed the DDA to reschedule the recovery of 75% of the bid amount

with interest from the Skipper. Consequent to this, DDA called upon the Skipper to enter into fresh agreement, license agreement and furnish bank guaranties in compliance with the directions of the Central Government.

3. On 11.8.1987, Skipper entered in a license agreement, paid 50% of the original bid and secured payment of the balance 50 % of the bid and interest at the rate of 18% per annum thereon by submitting bank guarantees for Rs.9.82 crores, in terms 'of which a sum of approximately 1.944 crores was required to be paid as each instalment. A total of 5 instalments was payable every six months., the first being due on 15.9.1987 and the last on or about 15.9.1989.

4. Against the first instalment of Rs.1.944 crores falling due on 15.9.1987, DDA recovered about Rs. 88.76 lacs by encashment of the bank guarantee on 7.12.1987. Thereafter the first respondent did not pay in terms of the agreement.

5. On 4.10.1988, the Lt Governor issued a direction at the request of Skipper, deferring recovery from Skipper of the 2nd instalment as per the agreement dated 11.8.1987 till one month after the sanctioning of the building plans.

6. In August, 1987, the first respondent filed writ petition in the High Court of Delhi, being CWP No. 2371 of '1989. The principal relief sought in the writ petition related to sanctioning of building plans and permission for construction. An interim order was passed directing the Skipper to furnish fresh bank guarantee since the bank guarantee furnished earlier had lapsed. The DDA did not encash the fresh bank granite which was detective. Time and again the DDA represented to the Court that the monies were outstanding from the Skipper and no indulgence ought to be shown to them till the payments were made. The question of payment of the outstanding amount of over Rs. 8 crores under the principal sum itself was deferred from time to time.

7. On 16.2.1990, Lt. Governor revoked the order dated 4.10.1988 deferring the payment of instalments. As a result the entire sum became payable in one lump sum. However, this order of the Lt. Governor was stayed by the Court. Thus v it became necessary f or the DDA to grant conditional and provincial sanction to plans of the building subject to the payment of monies due to the DDA.

S. On 19.3.1990, an interim order was passed by the Delhi High Court by which Skipper was permitted to commence construction without first depositing the dues of the DDA. Against this order an appeal was prefer-red. The Division Bench directed tie payment of a token sum of Rs. 5 lacs which was offered by the Skipper as a gesture of goodwill within 2 days; a sum Rs. 15 lacs within 15 days and 1.944 crores within one month to the, DDA. It was further directed that the quantum of monies and the mode of payment will be decided at the time of final disposal of the writ petition.

9. Even this order was not complied with. Notwithstanding this, the Skipper approached the Court once again for exten- sion of time to make payment and for direction to construct. The Court extended the time by one month on 16.4.1990, af- fording liberty to the DDA to encash the bank guarantee. The bank guarantee could not be encashed because it was conditional. By then the entire monies had fallen due. Those amounts had not been paid. The 1990 against the interim orders dated

19.3.1990 and 16.4.1990 passed by the High Court of Delhi. By an order dated 3.5.1990 this Court stayed further construction and made it conditional upon payment of Rs. 1.944 crores.

10. Suit No. 1 1875 of 1990 was filed by the Skipper for a direction that the DDA ought not to insist upon payment by cash or draft and ought to be directed to encash bank guarantee. The learned Vacation Judge issued orders directing the DDA to invoke the bank guarantee. However, the suit was ultimately dismissed.

11. On 21.12.1990, a Division Bench of the Delhi High Court dismissed C.W.P. No.2371 of 1989 directing Skipper to pay to the DDA by cash or demand draft a sum of Rs.8,12,68,789/- within 30 days; to stop construction till payment is made; and in the event of non-payment by the skipper, DDA would be entitled to enter upon the property and forfeit the monies received by the DDA.

12. On 14.1.1991, detailed reasons for its operative order come to be rendered by the Division Bench of the Delhi High Court with further direction giving effect to clause 15 of the license agreement dated 11.18.1987 that in the event of non-compliance of the payment by the Skipper the property shall stand vested in the DDA, free from all encumbrances, in addition to the forfeiture of the monies.

13. Against the dismissal of CWP No. 2371 of 1989 Skipper filed SLP (C) No. 186 of 1991 before this Court.

14. On 29.1.1991, a Division Bench on which one of us, P.B. Sawant, J., was a party). It inter alia reads as under:

"(i) That the petitioners herein shall deposit a sum of Rs.2.5. crores (Rupees two crores and fifthly lacs only) in cash/ bank draft with the Delhi Development Authority within one month from today and the petitioners will further deposit similar amount by cash/bank draft by 8th April, 1991.

(ii) That the petitioners shall be permitted to resume the construction of the building in question only after making the first deposit as stated in clause (i) above. DDA filed SLP (C) Nos, 6338-6339 of this Court passed an interim order (in

(iii) That if the petitioners fail to deposit the amounts as aforesaid, the Delhi Development Authority will be free to act. in accordance with the impugned order dated 21st December, 1990 of High Court in CWP No. 2371 of 1980.

(iv) -Mat the petitioners shall not induct any person in the building or create any right in favour of any third party.

(v) -Mat the matter be listed for further orders before this Court on 9th April, 1991."

15. On 4.2.1991, in violation of the agreement and in gross contempt of the above order, the Skipper issued advertisement in the leading newspapers seeking to create 3rd party rights.

16. On 25.1.1993, SLP(C) No. 186 of 1991 was dismissed by this Court. By virtue of the above order, the DDA on, 10.2. 1993 re-entered and took physical possession of the said property, free from all encumbrances; monies paid by the Skipper were forfeited.

17. Notwithstanding all these, Skipper filed yet another suit on the original side of the High Court of Delhi, being Suit No. 770 of 1993 for the reliefs of-

(i) permanent injunction restraining the DDA from interfering with the title and possession of the property;

(ii) for mandatory injunction directing the DDA to recompute the principal amount and interest payable by Skipper;

(iii) for a declaration that the present calculations are wrong;

(iv) for a declaration that re-entry/ re-possession and determination of the rights of Skipper are bad in law and nonest;

(v) for a declaration that all dues have, been paid by Skipper to the DDA; and (vi) a declaration that clause 15 of the License Agreement dated 11.8.1987 is non-est and bad in law.

18. On service of notice, DDA filed application, I.A. No.8500 of 1993 in Suit No. 770 of 1993, for rejection of the plaint as all the issues raised by Skipper were resjudicata and even otherwise the plaint was barred by law. The said application is pending disposal.

19. On 8.11.93, DDA issued notices for auction of the said property. The 2nd respondent sought to implead itself in the suit and on 1.12.1993 filed an application for stay of auction which was opposed by the DDA.

20. On 9.12.1993, a learned Single Judge of the Delhi High Court allowed the auction to proceed with and restrained the DDA from accepting or confirming the bid at the auction scheduled for 10.12.1993. Aggrieved by this order DDA filed SLP(C) No. 21000 of 1993 against the interim order of the Delhi High Court.

21. I.A. 3 of 1994 is an application for intervention filed on behalf of DDA. While disposing of SLP(C) No.21000 of 1993 and the said I.A. No.3 of the 1994 we issued notice on 29.11.94 by exercise of our Suo Moto powers directing Tejwant Singh and Mrs. Surinder Kaur to show cause as to why they should not be punished for contempt of court for their following acts;

"(a) Instituting suit being Suit No.770 of 1993 in the Delhi High Court in respect of the same subject matter after this Court confirmed the orders of the said High Court

dated 21.12.1990 and 14.1.1991, by its order dated 23.1.1993.

(b) Entering into agreement for and handing over possession of and receiving monies and creating interests in the premises in the building under construction in the suit property, viz., the Commercial Tower Plot, Jhandewalan, Block C, New Delhi, admeasuring about 2540 sq. mtrs. with constructions thereon which are already made, in defiance of the order of this Court passed on 29th January, 1991 Notice returnable on 3rd January, 1993".

22. In response to this notice, Tejwant Singh Contemner No.1, filed an affidavit expressing unconditional and unqualified apology. After so expressing, he sets out several facts to offer an explanation and not a justification for the steps which were, taken by him. According to him, the purpose of filing Suit No. 770 of 1993 in the Delhi High Court was to make payment of reasonable amount. Although the prayers give an impression that there could be no bar in filing of a suit in civil court, he would add that the intention of the deponent was not to indulge in litigation which was already concluded by the Supreme Court. 'The intention was to see that as far as the quantum of interest was concerned that can be scaled down and the DDA could be persuaded to realise reasonable interest instead of exorbitant interest.

23. The deponent, on legal advice and in order to protect the property by making the payments in instalments, instructed his counsel to file suit in the High Court of Delhi for mandatory injunctions and declarations. An application under Order 39 Rules 1 and 2 of Civil Procedure Code was also filed in the suit under the bona fide belief that the same could be filed under law in order to ensure that during the pendency of the suit also efforts should continuously be made to settle the matter amicably. The Deponent instructed the counsel to make averment that the company is ready and willing to make the payment. The counsel has categorically stated in the application that the company is ready and willing to pay the amount to DDA as demanded by them in instalments.

24. The company also wrote a letter dated 10th July, 1993 to all its valued customers apprising them about the dispute with DDA. In the letter also the company made it amply clear that the matter can be resolved amicably and for that purpose funds are required. It was requested that the valued customers shall make the payment of amounts due against them. The bank draft/cash order be sent to the company in the name of DDA. The company wanted to hand over the drafts to DDA.

25. On this explanation, it is urged that there is no intentional or deliberate flouting of the order dated 29. 1. 1991 passed by this Court.

26. The order of 29.1.1991 was passed after the counsel for Delhi Development Authority expressed an apprehension that the answering respondent would sell away or otherwise dispose of the plot to a third party and abscond. The answering respondent-deponent was personally present in the Court on 29.1.1991. On that date, permission to construct had been with them barely for less than a year (w.e.f 19.3.1990) from this Court. It was in that context that the injunction was interpreted. He did not create any third party right himself. However, he noticed that in respect of one Khosla, the papers annexed to I.A. No.3 show that his son had signed some documents evidencing induction of

Khosla. He says that there is no other case in relation to which any such impropriety has been committed.

27. Surinder Kaur, wife of Tejawant Singh, Contemner No.2, would urge that she has nothing to do with the day to day running of the company nor has she ever acted or represented anywhere in regard thereto. She has not signed any paper or document in relation to the transactions connected with the present proceedings.

28. An Additional Affidavit was filed on 27.1.1995 by Tejawant Singh, Contemner No.1. Paragraph 3 of the said additional affidavit states:

"with respect to the act of entering into agreements for and handing over possession of and receiving monies and creating interests in the premises in the building under construction in the suit property viz., the commercial Tower Plot, Jhandewalan, Block E, New Delhi, admeasuring about 2540 sq. meters with constructions thereon which are already made in defiance of the order of Hon'ble Supreme Court passed on 29.1.1991 it is respectfully necessary at this stage to explain the context in which the order dated 29.1.1991 was passed, understood and acted upon by the answering respondent. The answering respondent is explaining the collective contemporaneous understanding of both the parties and respectfully submit to this Hon'ble Court that there was no intentional or deliberate flouting of the order. The order of 29.1.1991 was passed after the counsel for Delhi Development Authority expressed an apprehension that the answering respondent would sell away or otherwise dispose of the plot to a third party and abscond. The answering respondent/ deponent was personally present in the court on 29.1.1991. On that date permission to construct had been with them barely for less than a year (w.e.f. 19.3.1990) from the Hon'ble Delhi High Court. As on 29.1.1991, the construction on the plot has barely commenced and only a part of the basement had been done. No building was in existence. To preclude the answering respondent from in any manner giving away physical possession of either the plot or the proposed building (yet to come up) the order of 29.1.1991 was passed.

It is most respectfully submitted that at no time during the proceedings, was any reference made or intended to prohibit or in any manner fetter the booking of space in the building or collecting money in respect thereof. The fact was that this was the common collective and colluded understanding of all the parties including the Delhi Development Authority is evident from the fact that the bookings were done before January, 1991 and after January, 1991 to the knowledge of everyone without any objection, protest and demur. Indeed in the numerous court proceedings in different courts including the Hon'ble Supreme Court after 1991 not the slightest grievance was made and no contempt petition was ever moved by Delhi Development Authority (till the present last round of proceedings). indeed, it is most respectfully submitted that had answering respondent known or remotely contemplated that even booking sought to be fettered, it would have either moved the Hon'ble Court for clarification

or would have immediately desisted."

28A. Paragraph (k) reads thus:

"After 29.1.1991 the company entered into agreement with various persons/parties. The copies of the agreements entered into with them are annexed herewith and are collectively marked as Annexures 'A' and 'B'. It is pertinent to mention that the company openly advertised in the Newspapers and the next day DDA also advertised, in the Newspapers about the Court's order dated 29.1.1991. It is only after seeing both the advertisements the speculative buyers came forward to book the flats and each and every person who entered into the agreements with the company were fully aware of the pendency of the litigation and hence no third party rights were created."

29. W. G. Ramaswamy, learned senior counsel for the contemnors submits, before filing Suit No. 770 of 1993, the contemnors took legal advice. It was opined that the Civil Writ Petition No. 2371 of 1989 filed before the High Court was not a substitute for suit. The fact that writ petition was dismissed and the SLP thereon was also dismissed will not take away the right to file an independent suit. It was only because of that the contemnors filed the suit. There was no deliberate intention to obstruct the course of justice. May be, the contemnors were misguided. Whatever might have been the conduct of the contemnors they had offered unqualified apology in both the affidavits.

30. Actually, the contemnors do not want the learned counsel to advance arguments in defence of their conduct. They were only kneeling before the court and praying for mercy.

31. As regards the alleged flouting of the order dated 29.1.1991, three questions would arise: (1) whether there is disobedience of the order dated 29.1.1991.

(2) If it is answered in the affirmative, whether the disobedience is wilful?

(3) If wilful, what is the consequence?

32. In his submission, legal advice is a factor to decide whether a disobedience is wilful or not. He is prepared to disclose even the name of the senior counsel who had given the opinion. As a matter of fact, in *Hoshier Singh v. Gurbachan Singh* AIR 1962 SC 1089 this Court found fault with the contemnors therein for not disclosing the name of the counsel who gave the legal opinion. It could never have been the intention of the contemnors to openly flout the order dated 29.10.1991. By entering into agreements contemnors were not creating rights in favour of third parties. The speculative purchasers being fully aware of the legal proceedings yet chose to purchase the property which agreements, if ultimately, did not fructify into sale, they would be entitled to only refund. Before 29.1.1991 1,000 agreements were entered into and after 29.1.1991 1,750 agreements were entered into. Out of these 1,750 agreements, the agreements in respect of 835 cases were executed while in the case of remaining 915, the agreements have not been executed. This is the factual position. Since the DDA did not take out the contempt application, the contemnors were lulled into the belief that what they were doing was right. Further, the exact scope of the order that the

contemnors should not even enter into contract was not understood by the contemnors properly. Creation of right could only mean, in the context, an obligation to refund.

33. The notice for contempt has been issued practically after nearly three years. If such a notice had been issued by the High Court he could have pleaded limitation contained under Section 20 of the Contempt of Courts Act, 1971, as a defence. However, as regards exercise of suo Moto powers of this court under Article 129 of the Constitution of India the contemnors are not raising any such plea.

34. Mr. Arun Jaitley, learned counsel for the DDA would submit that the filing of suit No. 770/93 is nothing but an abuse of process of court. The matter had reached finality by orders of this Court. Yet to say the suit was filed to protect the rights of the contemnors is ingenious. By filing a suit (No. 770 of 1993) and obstructing the course of justice after this Court dismissed SLP(C) No. 186 of 1991, is a clear case of criminal contempt as laid down in *Advocate-General, State of Bihar v. M/s-Madhya Pradesh Khair Industries* 1980 (3) SCC 311 at 315. This Court had come down heavily upon persons who indulge in obstructionist methods to defeat or delay justice as laid down in *Bloom Himmatlal Desai* 1994(6) SCC 322 at page 327.

35. In this case, there is a deliberate disobedience of the order dated 29.1.1991. The agreement dated 11th August, 1987 between contemnors and DDA clearly postulates that legal possession and ownership shall remain with the licensor until full payment of the bid amount along with interest payable thereon has been made by the licensee. Therefore, the creation of rights in favour of third parties was never contemplated and there was no scope for misunderstanding the order dated 29.1.1991. During the state of C.W.P. No. 2371 of 1989 before the High Court the contemnors came forward with a plea that there were 870 buyers of flats but this figure goes on increasing from time to time.

36. Ultimately, at the stage, of Suit No. 770 of 1993 the number of buyers came to 2,700. In the agreements entered into after the order dated 29.1.1991 there is a clear recital that possession is delivered. If this cannot amount to creating rights in favour of third parties nothing else would.

37. We will now proceed to consider the merits of the above contentions.

38. The contempt proceedings in this case have been initiated under Article 129 of the Constitution of India. The said Article reads as follows:

"Supreme Court to be a court of record. The Supreme Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself"

39. This Court in *Shri. C.K. Daphary vs. Shri. O.P. Gupta* 1971 (1) SCC 626 pointed out that it cannot be disputed that in a case of contempt of Supreme Court, the Court can issue notice suo moto.

40. About the nature of power, this Court referring to the Privy Council ruling in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court* 1954 SCR at page 461, held:



"Finally, in *Parashurain Detaram v. Emperor*, AIR 1945 PC 134 at 136 the Privy Council said that "this summary power of punishing for contempt .... is a power which a court must of necessity possess."

41. In this case, as the notice dated 29.11.1994 indicates, it consists of :

(1) Civil Contempt and (2) Criminal Contempt.

Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the Court to do or abstain from doing any act is *prima facie* a civil contempt. Civil contempt arises where power of the Court is invoked and exercised to enforce obedience to orders of the court.

42. On the contrary, criminal contempts are criminal in nature. It may include out rages on the Judges in open Court, defiant disobedience to the Judges in Court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice.

43. Section 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act) posits criminal contempt to mean:

Publication (a) by words spoken or written;

(b) or written or by sings;

(c) or by visible act whatsoever which-

(d) or any other act whatsoever which-

(i) (a) scandalizes or tends to scandalise,

(b) or lowers or tends to lower the authority of any court'or

(ii) prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or

(iii) (a) interferes or tends to interfere with,

(b) or obstructs or tends to obstruct the administration of justice in any other manner.

44. It can be categorically stated that the power as a court of record to punish for contempt is beyond dispute.

45. In dealing with the scope of the said Section this Court observed in *Rachapudi Subba Rao v. advocate General Andhra Pradesh* 1981 (2) SCC 577 at 583 as follows ;

"It is noteworthy, that in the categorisation of contempt in three sub-clauses (1) to (iii) only category (ii) refers to judicial proceeding. Scandalising of court in its administrative capacity will also be covered by sub-clauses (1) and (iii). The phrase "administration of justice" in sub-clause

(iii) is far wider in scope than "course of any judicial proceedings". The last words "in any other manner" of sub-clause (iii) further extended its ambit and give it a residuary character. Although sub-clauses (1) and (iii) describe three distinct species of "criminal contempt." Interference or tendency to interfere with any judicial proceeding or administration of justice is a common element of sub-clauses (ii) and (iii). This element is not criminal contempt of the kind falling under sub-clause (i)".

is clear that on 25-1-1993, SLP (C) No. 186 of 1991 was dismissed thereby confirming the judgment of the Delhi High Court rendered in CPW No. 2371 of 1989 dated 14.1.1991 reported in Skipper Construction Co.(P) Ltd. & Anr. vs. D.A. & Ors. 43 (1991) Delhi Law Times 636. Thereafter, Suit No. 770 of 1993 was filed practically for the same relief which formed the subject matter of the earlier writ petition, CWP No. 2371 of 1989.

48. After the dismissal of SLP(C) 186 of 1991, the DDA re-entered and took physical possession of the property on 10.2.1993, free from all encumbrances, forfeiting the monies paid by the contemnors. Yet prayer No. 1 in the suit is for injunction restraining the DDA from interfering with title and possession.

49. Under the terms of the license deed dated 11th August, 1987 entered into between DDA (the licensor) and the contemnors (licensee), it was clearly stipulated at paragraphs 1 and 2 as under:

1. That the licensee shall have license to enter upon the plot described hereinabove for a period of two and half years from the date of execution of this licence only for purposes of starting construction of the building in accordance with the sanctioned building plans.

2. That the licensee shall not be deemed to have any right, title or interest in the said plot nor shall he have any right to grant such a right in favour of any persons. Legal possession and ownership of the said plot shall remain with the licensor until full payment of the bid amount along with interest payable thereon has been made by the licensee.

50. Of course, in this case, possession was handed over to the contemnors when they had not even cleared the first instalment. That itself has been criticised by us and relegated to an enquiry. But, in this case, after disposal of SLP(C) 186 of 1991 when DDA has taken physical possession of the plot, to file a suit and pray for injunction, as stated above, would clearly constitute criminal contempt. Similarly, the other prayers are aimed at attacking directly or indirectly the adverse finding rendered by the High Court in CWP No. 2371 of 1989. The High Court, in no uncertain terms, held at paragraph 26 of its judgment reported in 43 (1991) Delhi Law Times 636 as under:

"We, therefore, reject all submissions made on behalf of the petitioners and hold that the D.D.A. is entitled to recover the entire amount of Rs.8,12,68,789/- as on 1.7.1990 in lump sum in cash or through bank draft. The decision of the Supreme Court in Dunlop (supra) entitles the D.D.A. to insist upon cash payment and to reject the bank guarantee. Since there is a deliberate breach of the obligations under the Licence Deed and the Agreement dated 11.8.1987 by the petitioners legal consequences. as mentioned in term 15 of the Licence Deed, spring into action."

51.Yet, the prayers, above stated, are made in the suit. The only semblance of defence that is put forth is the suit came to be filed armed with the legal advice. We are afraid such a plea is worthless. As stated above, in the case of a criminal contempt, the intention or motive is irrelevant. Therefore, even assuming bona fide the contemnors thought they could file the suit because it was "legally opined" that the was not a substitute, the so-called bona fides are totally irrelevant.

52.The filing of the suit No. 770 of 1993 is nothing but a wilful action on the part of the contemnors to underline the dignity of this Court and the majesty of law. The conduct of the contemnors tends to bring the authority and administration of law into disrespect or even disregard. It equally tends to interfere with or prejudice the litigants during the litigation. Abuse of the process of court calculated to hamper the due course of judicial proceeding or the orderly administration of justice is a contempt of court. In Advocate General, State of Bihar v. Madhya Pradesh Khair Industries 1980(3) SCC 311 at page 315, this court observed;

"while we are conscious that every abuse of the process of court may not necessarily amount to contempt to court , abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of order 6, rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice."

53.Again as stated by Sir John Donaldson in Attorney General v. Newspaper Publishing Plc, C.J. Miller Contempt of court 1989 Clarendon Press, Oxford:

' "An action for contempt of court arose:

'where the conduct complained of is specifically intended to impede or prejudice the administration of justice. Such an intent cannot be expressly or admitted, but can be inferred from all the circumstances including the foreseeability of the consequences of the conduct.'

54.At this stage, it is worthwhile for us to quote Lord Hardwicke, L.C., St.James's Evening Post (1742) 2Atk.409 at P.47 1:

"There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

55. Thus, we are clearly of the opinion that the contemnors are guilty of criminal contempt as defined under Section 2(c) of the Act.

56. Now we come to other part of contempt as to whether there has been a disobedience of our order dated 29.1.91. That order in clause (iv) specifically stated (it is worthwhile repetition):

"That the petitioners shall not induct any person in the building or create any right in favour of any third party."

57. The contemnors had caused the advertisement dated 4.2.91 as follows:

"SKIPPER GROUP OF COMPANIES (ANNOUNCES) ISSUE of Commercial Flats for retired/ Retiring Personnel/Professionals/Self employed & other persons in our BAU MAKHAN SINGH HOUSE JHANDEWALAN TOWER, JHANDEWALAN EXTN.

at highly concessional rates It is once in a lifetime opportunity to own a commercial property of your own in "Bau Makhan Singh House" A Prime project in the middle of high business environment. The location of tower is as rare as the offer itself.

(SALIENT FEATURES

- \* Ultra modern multi commercial complex (Shopping cum office complex)
- \* Ground to 3rd Floor centrally airconditioned with escalators.
- \* Excellent quality of construction,
- \* Interest free payment schedule linked with construction.
- \* Excellent investment returns.)"

58. The object of this is nothing more

than to create rights in favour of third parties. It is somewhat surprising that the contemnors' ingenuity grows by the passage of time. As rightly contended by Mr. Arun Jaitley at the time when the writ petition came to be filed before the High Court, as the High Court had noted in the above extract, the booking for only 870 flats but later it gets increased and today, that figure has swollen to 2,570.

As Mr. G. Ramaswamy admits there are agreements entered into even after the order of 29.1.91 as evidenced by the statement in sub-paragraph (k) of the additional affidavit extracted above. A curious argument was put forth that by mere entering into agreement no interest is created in the immovable property. Of course, this stems from Section 54 of the Transfer of Property Act. But, does not the agreement holder have a right to get another document, namely the sale deed? Equally, does

he not have a right to enforce the agreement and seek specific performance thereof? It is preposterous came forward to speculative purchase the property and their right is only to refund as per the terms of the agreement. For a moment, we are not on the nature of rights of the unintended purchasers. The question is whether the said clause (iv) of the order dated 29.1.91 has been flouted? This is of a case of a stray act but deliberate repetitive acts by making hard bargains by dubious methods. It is fallacious to contend that because of legal opinion the contemnors thought of entering into such agreements, would not amount to inducting any person in the building or would not amount to creation of any right in favour of any third party. This is an intentional act to cheat the public with with an evil design. As on 29.1.1991 the construction on the plot has barely commenced and only a part of the basement had been done. No building was in existence. To preclude the answering respondent from in any manner giving away physical possession of either the plot or the proposed building (yet to come), the order dated 29.1.1991 was passed.

59. It is submitted that the order passed by this Court dated 29.1.1991 was an order restraint against the deponent not to induct any personnel in the building to create any right in favour of any third party in meantime. It is submitted that the purpose of this injunction was to ensure that the deponent did not alienate the building in favour of a third person to relieve himself from the liability to make payment of the dues and vanish from the scene.

60. The above statement in the affida-

vit of the contemner No. 1, in our considered opinion, is a clear attempt to circumvent the order.

61. It is difficult to appreciate as to how the contemnors could contend that they were lulled into the belief that they could enter into the agreements as otherwise the DDA would have moved the court by way of contempt proceedings.

62. It is rather strange that as late as 25.11.92 the following letters should be written by the contemnors:

"Mrs. Anjana Khosla, 602, Hemkunt Tower, 6, Rajendra Place, New Delhi.

Respected Madam, We are pleased to handover you vacant peaceful physical possession of shops No. 3 and 4, measuring super area Jhandewalan Extension, New Delhi.

and 4 are free from all kinds of sales, encumbrances, disputes, litigations, stays and orders and you are the only rightful owner of aforesaid shops No. 3 and 4.

Thanking you.

Yours faithfully, For and on behalf of Skipper Construction Co. Pvt. Ltd.

sd/  
(Director)"

Emphasis supplied)

Mrs. Anjana Khosla      Date 25.11.92  
602, Hemkunt Tower  
6, Rajendra Place,  
NEW DELHI  
Respected Madam.

We are please to hand over you vacant peaceful physical possession of shops 3 and 4, measuring super area Jhandewalan Extension, New Delhi against total payment of Rs. 19,12,163/made by you to us as under:

Date Mode of payment Amount 07.08.87 cash 1,32,000.00 drawn on Punjab National Bank, Rajendra Place, New Delhi being the full and final payment 17,80,163.00 (Rupees Nineteen Lac Twelve Thousand One Hundred and Sixty Three) 19,12,163.00 We assure you that the aforesaid shops Nos 3 and 4 are free from all kinds of sales, encumbrances, disputes, litigations, stays, and orders and you are the only rightful owner of aforesaid shops Nos 3 and 4.

Thanking you, For and behalf of Skipper Construction Co. Pvt Ltd s/d (Director) (Emphasis Supplied)

62.However, this is sought to be over by saying Contemner No. I was not responsible but his son did it. This argument has to be stated to be rejected. The plea to support six other similar agreements, with Khosla family, as if entered into by mistake, cannot hold water.

63. When our order dated 29.1.91 is clear and unambiguous, to support these agreements on the so called "collective contemporaneous understanding of both the parties", is mischievous. Thus, we have no doubt in our mind that there is a wilful disobedience of our order dated 29.1.91.

64. In considering whether the action of the contemnors amounted to contempt of court we take into account the entire course of conduct of the contemnors. As our order dated 25.1.95 would disclose, the contemnors have indulged in judicial adventurism by raiding one court or the other. Each of such raids is a clear abuse of process of court calculated to obstruct the due course of judicial proceeding and the administration of justice. Thus, we conclude that the contemnors are guilty of contempt of court. No doubt, the contemnors have tendered apology. This apology is coming forth after sensing that the adventures have turned out to be misadventures, realising that the contemnors have ended up in a cul-de-sac. An apology is not a weapon of defence forged to purge the guilt of the offences nor is it intended to operate as a universal panacea. It is intended to be evidence of real contritenses, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong- doer's power." We do not find the apology to be so in this case. The conduct of contemnors is highly reprehensive. The question now is what sentence we should impose on the contemnors. Here, it is necessary to bear in mind that the second respondent is the wife of the first respondent. She does not seem to have played any active role in all these transactions and events. As an Indian wife, dutiful and obedient, she seems to have only followed the dictations and desires of her husband. In the process she has done no more than lending her name both as a Director to the Skipper as well as to the various acts done by him in the name of the

company. It will be unrealistic to ignore this fact against our social background. We must therefore take a pragmatic view of the matter and distinguish her case from that of her husband as far as the punishment to be imposed on them is concerned. Such a distinction will in no way minimise the gravity of the contempt that she has committed.

65. We therefore, invoke our power under Article 129 read with Article 142 of the Constitution and order as follows:

We sentence contemner- respondent No. 1, Tejwant Singh to undergo simple imprisonment for six months and to pay a fine of Rs. 50,000/- (Rupees fifty thousand only.) We further sentence contemner respondent No.2, Surinder Kaur to undergo simple imprisonment for a period of one month and to pay a fine of 50,000/- (Rupees fifty Thousand only) In default of payment of fine the contemnors shall further undergo, simple imprisonment for one month. The payment of fine shall be made within one month from today.

66. All the properties and the bank accounts standing in the names of the contemnors and the Directors of M/S Skipper Construction Co. (Pvt.) Ltd, and their wives, sons and unmarried daughters will stand attached.

67. Before parting with this case, we may add: Judiciary is the bed rock and hand maid of orderly life and civilised society. If the people would lose faith in justice imparted by the highest court of the land woe to be to orderly life. The fragment of civilised society would get broken up and crumble down.

68. At the request of Shri G. Ramaswamy, the learned counsel appearing for the contemnors, we defer the sentence of imprisonment imposed on both the contemnors subject to the conditions and till the time stated below:- (1)The contemnors shall furnish bank guarantee in favour of the Registrar General of this Court in the amount of Rs. 11 crores (Rupees eleven crores only) on or before 31st March, 1995. The guarantee will be of a nationalised bank or any foreign bank operating in India. The bank guarantee will be given for a period of one year from the date of furnishing the bank guarantee.

(2)The contemnors shall deposit the entire amount of Rs. 11 crores by a bank Draft in the Registry of this Court on or before 30th November, 1995. If they fail to do so, the bank guarantee will become encashable and will be encashed forthwith after 30th November, 1995, (3 ) If the contemnors fail to give the bank guarantee by 31st March, 1995 as aforesaid, the sentence of imprisonment will become enforceable at once.

(4)No application for extension of time either to furnish the bank guarantee or to make the payment as aforesaid, will be entertained by this Court.

(5)The contemnors shall not leave the country without the express permission of this Court.

(6)List of properties given by the contemnners is taken on record. The contemnners will also file a list of properties held by their sons and unmarried daughters within one week from to-day.

(7)If and when any property that is attached under this Order is sought to be alienated or encumbered to raise money to pay the liability of Rs. 11 crores stated above, the contemnners will be at liberty to approach the Court for permission to do so.

(8)The attachment of the properties and the bank accounts shall stand raised on the contemnners furnishing the bank guarantee as aforesaid.

(9)The order with regard to the disbursal of the amount deposited will be passed after the amounts are deposited as aforesaid.

69. The contempt petition is ordered in the above terms.