Supreme Court of India
Tayabbhai M. Bagasarwalla & ... vs Hind Rubber Industries Private ... on 19 February, 1997
Author: B Reddy
Bench: B.P. Jeevan Reddy, Suhas C. Sen

PETITIONER:
TAYABBHAI M. BAGASARWALLA & ANOTHER

Vs.

RESPONDENT:
HIND RUBBER INDUSTRIES PRIVATE LIMITED ETC.

DATE OF JUDGMENT: 19/02/1997

BENCH:
B.P. JEEVAN REDDY, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY,J.

A question of some general importance arises in these appeals. The question is whether a person who disobeys an interim injunction made by the Civil Court can be punished under Rule 2-A of Order 39 of the Code of Civil Procedure where it is ultimately found that the Civil Court had no jurisdiction to entertain and try the suit? A learned Single Judge of the Bombay High Court has opined, following certain earlier decisions of that court, that he cannot be. The reason given is: once it is found that the Civil Court has no jurisdiction to entertain the said suit, all interim orders made therein must also be deemed to be without jurisdiction and, hence, a person flouting such interim orders cannot be punished for their violation. The correctness of the said vie is questioned in this appeal by the plaintiff-appellant.

The first defendant, Hind Rubber Industries Private Limited, is the tenant of the ground floor in the suit house. The appellant is the landlord. On August 25, 1985 the said building was destroyed by fire.

On February 11, 1991 the appellant filed a suit in the City Civil Court, Bombay (Suit No.1407 of 1991) for a perpetual injunction restraining the first defendant from carrying on any construction in the suit premises. The appellant's case was that inasmuch as the building, which was the subject-matter

of tenancy between the parties, has been destroyed by fire, the tenancy of the first defendant has come to an end. (The second respondent herein is the Managing Director of the first respondent and was impleaded as the second defendant in the suit.) The appellant applied for a temporary injunction restraining the first defendant from carrying on any construction. An ad-interim injunction was granted by the Civil Court on February 15, 1991. The first defendant applied for vacating the interim injunction but his application was dismissed on July 24, 1991.

Meanwhile, on April 11, 1991 the plaintiff moved the Civil Court for punishing the defendants under Order 39 Rule 2-A of the Civil Procedure Code for flouting the order of interim injunction. While the said application was pending, the defendants moved an application under Section 9-A of the Civil Court Procedure Code (Maharashtra Amendment) for determining the issue of jurisdiction of the Civil Court to entertain the said suit. On November 29, 1991 the Civil Court affirmed the temporary injection and also held that it did possess the jurisdiction to try the said suit.

On December 2, 1991, the Civil Court allowed the application/motion filed by the appellant-landlord against Defendants 1 and 2 under Order 39 Rule 2-A of the Civil Procedure Code. It would be appropriate to notice the finding recorded in the said order. The court found, on a consideration of the material placed before it, "that the construction is, to say the least massive. Some of the photographs show construction materials being certain iron girders, columns and beams being brought to the suit premises. The columns which are erected are shown to be dug from the ground itself right upto the first floor level..... These photographs also show massive reconstruction work in progress right from the ground floor. There can be absolutely no doubt that the suit premises as they were on the date of the injunction order and on the date of the Architect's visit to the suit premises have been altered beyond comprehension". The Civil Court also dealt with the plea of the first defendant that the said construction has not been put up by Defendants I and 2 but by other tenants and, in particular; by Defendants 3 and 4. The court rejected the said theory holding that the fourth respondent has been put forward as a proxy who has voluntarily taken the blame upon himself. The court found "the work carried out.....is after the injunction order and hence is in breach of it. The Respondent No.4 has both callously and impertinently come to the rescue of Respondent No.2". The court finally found: "it can be seen from the photographs that construction activities have been carried on undeterred by the order of injunction. In fact, it has been continued despite applications to set aside that order and despite police warnings in respect of above..... The breach of the order is more than substantiated. The disobedience of Respondent No.2 acting on behalf of the first defendant is clearly shown". Accordingly, the court committed the second defendant-respondent to imprisonment for a period of one month. The court made the following further significant direction:

> " Since the construction is clearly both unauthorized and in breach of the order of injunction and since there are no daintier orders passed in the first defendants suit No. 4597 of 1987 in the Chamber Summons the 3rd defendants shall forthwith take action under their notice dated 23.5.91. The Court Receiver has already been appointed Receiver of the property in the plaintiff's Notice of Motion No. 949 of 1991. The Court Receiver shall take possession of the suit premises and seal the same until the 3rd defendants act upon their notice dated 23.5.91. The first defendant shall pay costs of this Notice of Motion fixed at Rs.1,000/- condition precedent."

In July, 1992 the Defendants 1 and 2 filed appeals in the Bombay High Court against the order making the interim injunction absolute pending the suit. The High Court stayed the order punishing the defendant for contempt but did not stay the order granting injunction in favour of the plaintiffs. On July 15, 1994, the High Court appointed a commissioner to ascertain whether the construction activity was still being carried on by the defendants. On July 18, 1994 the Commissioner submitted his report stating that the construction work was still being carried on in the premises. After perusing the report of the Commissioner, the High Court passed orders on July 28, 1994 vacating the order dated July 30, 1992 (where under it had stayed the operation of the order of the Civil Court punishing the defendant for contempt). It would be relevant to notice the finding recorded in this order:

> "The Commissioner visited the site. In spite of being aware of the Order of this Court, the Appellants did not permit the Commissioner to inspect the site. The Commissioner had to again has reported that the construction work is going on. Thus it is clear that in spite of an Order which has not been stayed, the Appellants are going on with the construction. They are wilfully violating Order of a Competent Court. ..... Today neither the Appellant nor their Advocates are present. It is clear that the whole idea is to while away time. In my view, the Appellants who are continuing to commit breaches of Orders of Court, are not entitled to any stay from this court. Accordingly, Civil Appeal No.6513 of 1991 is dismissed with costs.....
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> it is clarified that now the Impugtned Order must be complied with and Court receiver must take possession. Court Receiver to act on an ordinary copy of this Order certified by Advocate for Respondents 1 and 2 as true copy."

It appears that Defendants 1 and 2 applied for setting aside the said order (dated July 28, 1994). It was dismissed by the High Court on November 7, 1994. It would be relevant to notice the contents of this order:

"Mr. Apte (counsel for the plaintiff) submitted that the appellant cannot be heard on this Civil Application. He submitted that they are in contempt of the court inasmuch as they have wilfully and blatantly violated the injunction order. He submitted that unless the contempt is first purged, the Appellants cannot be heard.

I see great substance in this contention. The Applicants were asked whether they were willing to purge the contempt and restore the premises to the state they were in 1991. The Applicants are not willing to do so. The whole attempt has been to try and confuse. The whole attempt has been to try and justify. By the ex-parte order dated 11.2.1991 as confirmed by the order dated 21.11.1991, the Applicants have been restrained from carrying out any construction work. As is set out hereafter, it is clear to court that inspite of this injunction order, construction work has been carried on almost continuously by the Appellants."

The learned Judge then referred in extenso to the elaborate material placed before him and recorded the finding that all these reports clearly indicate that there is wilful and blatant breach of order of

injunction passed by the City Civil Court. " It is clear that in breach of the injunction order, there has been construction. The breach is wilful and blatant. The extent to which the Appellants have gone is also indicated by the fact that, as stated above, inspite of knowledge of order of this Court, the Commissioner appointed by this court was initially obstructed. To Court it is very clear that here is a party who has absolutely no regard for the orders of the court. Such a party must be made to bear the consequences of their own action……To Court it is clear that the applicants have chosen to wilfully and blatantly flouted the order of injunction. It may be that the Applicants have a very good case. However, no matter how good a case a party has, in my view, it is not open to a party to flout orders of courts. If a party wilfully flouts an order of the court then such party can expect no equitable relief from the court. Such a party must be made to bear the consequences of his action. Otherwise all parties will ignore or flout orders of courts. When caught out they would then throw themselves at the mercy of the court. In my view, in cases like this, the party in default must not be allowed to enjoy the benefits of his action. To appoint Applicants as Agent of the Court Receiver would amount to giving them benefit of their wrong. In my view, the order dated 28.7.1991 must be and is sustained. The application to appoint the Applicants as agents of Court Receiver is rejected."

On July 3, 1996 civil revision application No.888 of 1991 preferred by the defendants against the order of the Civil court (holding that it had jurisdiction to try the suit) was allowed. The High Court held that the Bombay City Civil Court had no jurisdiction to entertain the said suit in view of section 28 of the Bombay Rent Act. Disagreeing with the decision of the Kerala High Court, the Bombay Court held that the destruction of the house by fire does not put an end to the tenancy of the defendants. (The judgment of the High Court is reported in Special Land Execution Officer, Bombay & Bombay Sabarban District Municipal Corporation v. Vishanji Virji Mepani & Another [AIR 1996 Bombay 369). The plaintiff (landlord) filed a Special Leave Petition against the said order but it was dismissed by this court on September 3, 1996. While dismissing the Special Leave Petition, this Court directed that the tenant shall make construction/alteration, if any, only in accordance with law and also with the prior permission of the Bombay Municipal Corporation. [In this order, it was mentioned that the tenant is in this possession of the premises but this portion was deleted later by order dated 1.10.1996.] In the light of and on the basis of the decision of the Bombay High Court dated 3.7.96 in Vishanji Virji Mepani, the first defendant applied to the High Court for permission to occupy and carry on his business in the suit premises as before. It asked for a direction to the Court Receiver to deliver possession of the suit premises to it. By order dated 13.9.96, the High Court held that the first defendant is entitled to the relief asked for by him. After referring to the judgment of the High Court in Vishanji Virji Mepani and to the orders of this Court in the Special Leave Petition, the High Court observed: "therefore the view taken by this Court that city Civil Court has no jurisdiction to entertain this suit filed by Respondents came to be confirmed. The petitioner herein has now prayed that it may be allowed to occupy and carry on business in the premises which were occupied by it without paying any payment or royalty and security. If the City Civil Court is having no jurisdiction to decide the suit itself, all the orders passed therein come to an end and are required to be treated as non-est. The learned counsel for Respondents tried to point out that Petitioner is guilty of violating some interim or interim orders passed in the suit and contempt proceedings in that respect are pending. But that is immaterial and irrelevant for consideration of the relief prayed by Petitioner, particularly when the original orders passed were without jurisdiction. Hence, in my opinion (a) deserves to be granted which runs as follows: `(a) the Petitioner/Appellant be allowed to

occupy and to carry out business in their premises as before, without royalty and security' Civil Application granted in terms of prayer (a). The Receiver to act on the basis of the authenticated copy by the Sheristedar of this Court. The learned Counsel for Respondents prays for stay of the Order. Stay refused."

The plaintiffs questioned the aforesaid order dated 13/9/96 by way of Special Leave Petition which was entertained by this Court by its order dated October 1, 1996. Special leave was granted. This Court directed that "the respondents shall not be entitled to put in possession of the premises till the appeal is decided by the High Court. We request the High Court to dispose of the appeal or case on November 1996." [The respondents in the said quote means the defendant herein and the appeal referred to therein is the appeal preferred by the Defendants 1 and 2 against the order dated 2.12.1991 holding Defendants No. 2 guilty of violating the temporary injunction and sentencing him to one month's imprisonment under Rule 2-A of Order 39 of the Civil Procedure Code.] Pursuant to the request of this Court aforementioned, the Bombay High Court has disposed of the aforementioned appeal (Appeal from Order No.1407 of 1991) on November 1, 1996. The High Court has allowed the appeal holding that inasmuch as the Bombay City Civil Court is found to have no jurisdiction to entertain the suit, Defendant 1 and 2 cannot be punished for disobeying the interim orders made in such a suit, for the reason that the said interim orders made in such a suit, for the reason that the said interim order must equally be held to be without jurisdiction. This appeal is preferred against the said order of the High Court.

Mr. Soli Sorabjee, learned counsel for the appellant- plaintiff [landlord of the suit premises] assailed the impugned order of the High Court both on principle as well as with reference to Section 9-A of the Civil Procedure Code [Maharashtra Amendment]. Learned counsel placed reliance upon certain decisions, which we shall refer at the appropriate stage. Sri Puri, learned counsel for the defendants, however, supported the reasoning and conclusion arrived at by the High Court. The learned counsel, supported by Sri V.A.Mohta, submitted that although defendants argued before the learned Single Judge [who passed the impugned order] that the finding of fact recorded by Civil Court (that Defendant 1 and 2 have violated the order of injunction issued by the court) is not sustainable in the facts and circumstances of the case, the learned Judge has not chosen to deal with the same probably for the reason that he has allowed their appeal on the question of law. Counsel submitted that Defendants 1 and 2 have not carried out any construction in the suit premises after the grant of injunction by the Civil Court and that whatever construction was done was done earlier to the grant of injunction by the Civil court.

The first and foremost question in this appeal is whether the High Court was right in holding that since it has been found ultimately that the Civil Court had no jurisdiction to entertain the suit, the interim orders made therein are non-est and hence Defendants 1 and 2 cannot be punished for their violation even if they had flouted and disobeyed the said interim orders when they were in force. We are of the considered opinion that the High Court was not right in saying so. The landlord-plaintiff came forward with the suit alleging that by virtue of the fire resulting in the destruction of the suit house, the relationship of landlord and tenant between the parties has come to an end and, therefore, he requested the court to injunct the defendants from carrying on any construction on the suit premises without their permission and without obtaining the sanction from Municipal

Corporation. The defendants questioned the jurisdiction of the Civil Court to entertain the suit. According to them, the building was not totally destroyed and that, in any event, the relationship of landlord and tenant has not came to an end on that account. The defendants' plea was rejected by the Civil Court. It held that it did have the jurisdiction to try the said suit. On appeal, however, the High Court, disagreeing with the decision of another High court, held that relationship of landlord and tenant has not come to an end for the reason suggested by the plaintiff and that the Civil Court had no jurisdiction to entertain the suit in view of Section 28 of Bombay Rent Act. All this took about six years, i.e., from 1991 to 1996. It is not suggested nor can it be suggested that the suit was filed by the plaintiff in the City Civil Court only with a view to avoid the Rent Control Court nor can it be suggested that they approached the Civil Court knowing full well that the Civil Court had no jurisdiction to try that suit. It is evident that they approached the Civil Court bonafide, thinking that it had jurisdiction to try their suit. They were confirmed in their view by the Civil Court. It is true that ultimately the High Court found against them but even there, it must be noticed, they did so disagreeing with a decision of the Kerala High Court. It, therefore, cannot be said that the plaintiffs did not approach the Civil Court bonafide.

The next thing to be noticed is that certain interim orders were asked for and were granted by the Civil Court during this period. Would it be right to say that violation of and disobedience to the said orders of injunction is no punishable because it has been found later that the Civil Court had no jurisdiction to entertain the suit. Mr.Sorabjee suggests that saying so would be subversive of the Rule of Law and would seriously erode the majesty and dignity of the court. It would mean, suggests learned counsel, that it would be open to the defendants-respondents to decide for themselves whether the order was with or without jurisdiction and act upon that belief. This can never be, says the learned counsel. He further suggests that if any party thinks that an order made by the Civil Court is without jurisdiction or is contrary to law, the appropriate course open to him is to approach that court with the plea and ask for vacating the order. But it is no open to him to flout the said order. But it is no open to him to flout the said order assuming that the order is without jurisdiction. It is this principle which has been recognised and incorporation in Section 9-A of Civil Procedure Code (inserted by Maharashtra Amendment Act No. 65 of 1977), says Mr.Sorabjee. Section 9-A reads as follows:

> "9-A. Where by an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at hearing of the application.
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> (1) If, at the hearing of any application of granting or setting aside an order granted any interim relief, whether by way of injunction, appointment of a receiver of otherwise, made in any suit, an objection for the jurisdiction of the court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting the interim relief. Any such application shall be heard any disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

> (2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue to the jurisdiction."

According to this section if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the first instance as a preliminary issue before granted or setting aside the relief already granted. An application raising objection to the jurisdiction to the court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in sub-rule (1) does not preclude the court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith - nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earlier possible moment. This is the general principle and this is what Section 9-A reiterates. Takes this very case. The plaintiff asked for temporary injunction. An ad-interim injunction was granted. Then the defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the court. The court over-ruled the objection as to jurisdiction and made the interim injunction absolute. The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court. Ultimately, no doubt, High Court has found that the Civil Court had no jurisdiction of entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High court during this period of six years were all non-est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court [on the question of jurisdiction], on one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of rule of law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bonafide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

In Shiv Chander Kapoor v. Amar Bose [1990 (1) SCC 234], J.S.Verma, J. speaking for a 3-Judge Bench observed thus, with reference to the statement of law at pp.351-353 of Wade's Administrative Law [6th Edn.]: "`void' is meaningless in an absolute sense; and `unless the necessary proceeding are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders'. In the words of Lord Diplock, `the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue'."

To the same effect is the opinion of Jagannatha Shetty, J. in State of Punjab & Ors. v. Gurdev Singh [1991 (4) SCC 1].

> "If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does no `quash' so as to produce a new state of affairs.
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> But nonetheless the impugned dismissal order has at least defacto operation unless and until it is declared to be void or nullity by a competent body or court. In Smith v. East Elloe Rural District Council, 1956 A (736) 769: (1956) 1 All ER 855, 871) Lord Radcliffe observed: `An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quash or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' Apropos to this principle, Prof. Wade states: (See Wade:
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> Administrative Law, 6th edn. p.352)' the principle must be equally true even where the `brand' of invalidity is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: (Ibid) `The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because the does not deserve a discretionary remedy, because he has waived his rights, or fore some other legal reason. In any such case, the `void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

We may also refer to yet another decision of this Court in Ravi S.Naik v. Union of India [1994 Suppl. (2) SCC 641 at 662] S.C. Agrawal, J., speaking for the Division Bench, observed:

" In the absence of an authoritative pronouncement by this Court the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be a subject-matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is binding still it is set aside by a competent court and it cannot be ignored on the ground that the court which passed the order has no jurisdiction to pass the same.

Moreover the stay order was passed by the High Court which is superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court in entitled to determine for itself questions about its own jurisdiction. (See:

Special Reference No.1 of 1964;

(1967) 3 SCR 84.)"

The Allahabad and Madras High Courts have also taken the same view. In State of U.P. V. Ratan Shukla [AIR 1956 All. 258], the Allahabad High Court observed:

> "The fact that Shri S.M. Ifrahim had no jurisdiction to hear the appeals, however, does not mean that no contempt could be committed of him. So long as he was seized of the appeals, no contempt could be committed of him.
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> It is not the law that a court dealing with a matter which is beyond its jurisdiction can be contemned with impunity or that the liability of a person to be punished for contempt of a court depends upon whether the court was acting within its jurisdiction at the time when it is alleged to have been contemned. the opposite-party, therefore, cannot claim that he is not guilty of contempt because Shri S.M. Ifrahim had no jurisdiction to decide the appeals."
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> In Nalla Senapati Sarkarai Mandariar Pallayakottai v.

Shri Ambal Mills Pvt. Ltd. & Ors. [AIR 1966 Mad.53] similar view has been expressed - without of course deciding the question finally. Quoting Oswald on Contempt (1910 Edn. at

106), the court observed "an order irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until by a proper application, it is discharged."

In D.M. Samyulla v. Commissioner, Corporation of the City of Bangalore & Ors. [1991 Karnataka Law Journey 352], the Karnataka High Court stated the law in the following terms, with reference to the decision of the Court of Appeal in Hadkinson v. Hadkinson: "the principle laid down in the said decision is, a party who knows an order, whether it is null or valid, regular or irregular, cannot be permitted to disobey it and it would be dangerous to allow the party to decide as to whether an order was null or valid or whether it was regular or irregular".

In Hadkinson v. Hadkinson [1952 All. E.R.567] the Court of Appeal held:

> "It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C. said in Chuck v. Cremer: (1) (1 Coop. Temp. Cott.342).
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> `A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it....It would be most dangerous to hold that the suitors, or

> their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. that they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.' Such being the nature of this obligation, two consequences will in general follow from its breach.
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> The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt."

In United States of America v. John F.Shipp et al [51 L.Ed. 319], the following statement by Holmes,J. occurs:

> "It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt: Re Sawyer, 124 U.S. 200, 31 L. ed.402, 8 Sup. Ct. Rep.482; Ex Parte Fisk. 113 U.S. 713, 28 L.ed. 1117, 5 Sup. Ct. Rep. 724; Ex parte Rowland, 104 U.S. 604, 26 L. ed. 861. But even if the circuit court had no jurisdiction to entertain Johnson's petition , and if this court had no jurisdiction of the appeal, court and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, atleast, it was its duty to permit argument and to take the time required for such consideration as it might need. See Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S.379, 387, 278 L. ed. 462, 465, 4 Sup. Ct. Rep. 510. Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the State court was bound to refrain from further proceedings until the same time. Rev. Stat. 8 766; act of March 3; 1893 chap. 226, 27 Stat. at L. 751, u.s. Comp. Stat. 1901. p.597."

The decision in Shipp has been followed in several later decision of the American Supreme Court.

A contrary opinion has, however, been expressed in two decision of the Bombay High Court. The first decision is of a learned Single Judge in Dwarkadas Mulji v. Shadilal Laxmidas (1980 MLJ 404). It was held by the learned Judge that where the court has no jurisdiction to try a suit, no person can be punished for flouting the interim orders made in such a suit. It is significant that no reference was made to Section 9-A of the Civil Procedure Code in the said decision. In support of his view, the learned Judge relied upon certain United States' decisions and the statement of law in Corpus Juris Secondum, Vol.XVII, Para 19. Sri Sorabjee says that the United States' decisions cited do not support the proposition of the learned Judge. We do not, however, wish to go into the said controversy in view of Section 9-A of the Civil Procedure Code and the correct principle of law, as we

understand it. The above decision has been distinguished by another learned Single Judge in Kapil v. S.Anthony [1984 (2) Bombay Case Reporter 199] precisely on this ground, viz., with reference to Section 9-A Civil Procedure Code. The learned Judge has opined that by virtue of Section 9-A, the court does possess the jurisdiction to pass interim orders and they have to be obeyed by the person concerned even though ultimately it may be found that the court had no jurisdiction to entertain the said suit. The other decision of the Bombay High Court, which is also strongly relied upon in the order under appeal, is of the Division Bench in Vivekanand Atmaram Chitale and another v. Vidyavardhini Sabha and others [1984 MLJ 520]. That was a case where the Revenue Tribunal had no jurisdiction to pass any interim order in an appeal preferred under Section 71 of the Bombay Public Trust Act, 1950. The Tribunal, however, passed an interim order restraining the holding of a meeting. The persons, against whom the order was issued, knowingly and deliberately disobeyed the order stating that the order against them was without jurisdiction. They were proceeded against for contempt. The Division Bench affirmed the general principle with reference to this Court's decision in Kiran Singh v. Chaman Paswan [A.I.R. 1954 S.C. 340] that a decree passed by a court without jurisdiction is a nullity and that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon-even at the stage of execution and even in collateral proceedings and then relaying upon the decision of the learned Single Judge in Dwarka Dass Mulji v,. Shadilal Laxmidas, the Bench held thus:

> "In Dwarkadas Mulji and others v. Shantilal Laxmidas and another Sawant J. elaborately considered the question whether the breach of an undertaking given by a party in a proceeding, which is ab initio void for lack of jurisdiction, amounts to contempt. While answering the question in the negative, the learned Judge rightly distinguished the decision of the Allahabad High Court in State of U.P. v. Ratan Shukla [A.I.R. 1956 All. 258] and placed reliance upon the decision of the Punjab High Court in Narayan Singh v. S.
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> Hardayal Singh [A.I.R. 1958 Punj.180]. He also quoted American law on the subject as found in Corpus Juris Secondum Vol. XVII para 19. The relevant quotation is as follows:-
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> "Disobedience of, or resistance to, a void mandate, order, judgment or decree or one issued by a Court without jurisdiction of the subject matter and parties litigant, is no contempt and where the Court has no waiver can cut off the rights of the party to attack its validity." In support of the proposition, which the learned Judge laid down he also placed reliance on the decisions of the Supreme Court of the United States in Ex Parte Rowland [1881 U.S.S.C.R. 26 L Ed.
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> 604], Ex Parte Fisk [1884 U.S.S.C.R. 28 L Ed. 117], Ex Parte Sawyer [1887 U.S.S.C.R. 32 L Ed. 2001], United States of America v. United Mine Workers of America [1946 U.S.S.C.R. 91 L Ed.884] and Joseph F. Maggio v. Raymond Zeitz [1947 U.S.S.C.R. 92 L Ed.476], in which unanimous view was taken that there is no contempt when breach is of the order passed in the proceedings, which are ab initio void for lack of jurisdiction from their very inception."

It is necessary to point out that the order violated in Vivekanand Atmaram was an order of the Revenue Tribunal and not of a civil court. Probably, for that reason, the Bench has not referred to Section 9-A of the Civil Procedure Code. Be that as it may, for the reasons given by us hereinbefore and in the light of the law laid down in the decisions of this Court referred to above, it must be held that the decision of the Bombay High Court in Dwarkadas Mulji was wrongly decided and that the decision in Vivekanand Atmaram Chitale must be held to be in applicable to the orders of a civil court.

The learned counsel for the Defendants 1 and 2 submitted that this is not a proceeding for contempt but a proceeding under Rule 2-A of Order 39 of the Civil Procedure Code. Learned counsel submitted that proceedings under Order 39 Rule 2-A are a part of the coercive process to secure obedience to its injunction and that once it is found that the Court has no jurisdiction, question of securing obedience to its orders any further does not arise. Learned counsel also submitted that enforcing the interim order after it is found that the Court had no jurisdiction to try the said suit would not only be unjust and illegal but would also reflect adversely upon the dignity and authority of the Court. It is also suggested that the plaintiff had instituted the present suit in the Civil Court knowing full well that it had no jurisdiction to try it . It is not possible to agree with any of these submission not only on principle but also in the light of the specific provision contained in Section 9-A of Code of Civil Procedure (Maharashtra Amendment). In the light of the said provision, it would not be right to say that the Civil Court had no jurisdiction to pass interim order or interim injunction, as the case may be, pending decision on the question of jurisdiction. The orders made were within the jurisdiction of the Court and once this is so, they have to be obeyed and implemented. It is not as if the defendants are being sought to be punished for violations committed after the decision of the High Court on the question of jurisdiction of the Civil Court. Here the defendants are sought to be punished for the disobedience and violation of the order of injunction committed before the decision of the High Court in Vishanji Virji Mepani. According to Section 9-A, the Civil Court- and the High Court - did have the power to pass interim orders until that decision. If they had that power they must also have the power to enforce them. In the light of the said provision, it cannot also be held that those orders could be enforced only till the said decision but not thereafter. The said decision does not render them (the interim orders passed meanwhile) either non-est or without jurisdiction. Punishing the defendants for violation of the said order committed before the said decision (Vishanji Virji Mepani) does not amount, in any event, to enforcing them after the said decision. Only the orders are being passed now. The violations are those committed before the said decision.

The correct principle, therefore, is the one recognised and reiterated in Section 9-A - to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. the interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders

undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situation, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the court should, while holding that it has no jurisdiction to entertain the suit, must put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in foce, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the court on the question of Jurisdiction.

The learned counsel for Defendants 1 and 2 then argued that Defendants 1 and 2 are not guilty of disobeying and violating the order of injunction and that they did not carry on any construction activity after the grant of interim injunction by the Civil Court. The judgment under appeal does not refer to any such contention being advanced by Defendants 1 and 2 before the High Court. the impugned judgment under appeal deals only with the question of law. It is true that this factual submission was urged before the Civil Court. the contention was that the construction complained of was not carried on by Defendants 1 and 2 but by other defendants and in particular by defendant No.4. The Civil Court has dealt with this plea elaborately and has rejected it . The Civil Court has observed that the 4th defendant has come forward gratuitously to take the blame upon himself, with a view to save the second defendant and that his plea is totally unacceptable. Moreover, the orders of the High Court, referred to above, which are based upon the reports of the Court Receiver, Police and Municipal records do clearly show that it was the second defendant who, acting on behalf of the first defendant, had carried out the construction complained of and had even refused to purge himself of the contempt when given an opportunity to do so in the High Court. In the face of the consistent and repeated findings of the Civil Court and the High Court- which we have referred to in extenso hereinabove - and in the absence of any indication from the impugned judgment that this factual question was urged by Defendants 1 and 2 before it - we are not inclined to accede to their plea that the matter should be remitted to the High Court for deciding the factual issue viz., whether Defendant 1 and 2 have in fact violated the other of injunction or not. In our opinion, it would be an unnecessary and empty formality.

Accordingly, we allow the appeals and set aside the judgment of the High Court dated November 1, 1996 in A.O.No.1407 of 1991.

It is brought to our notice that respondents 4 and 5 in these appeals (Ashok Temkar and Kiran Patil) also claimed to be tenants of certain portions in the said building. Their claims have not been investigated by the High Court, probably in view of the finding on the aforesaid question of law. the matters shall go back to the High Court to the extent of the said respondents (i.e. other than Defendants 1 and 2) to determine whether any or both of them are guilty of violating the injunction order.

Insofar as Defendant No. 2 (Sri K.S. Jhunjhunwala) is concerned, the order of the Civil Court holding him guilty of contempt and sentencing him to one month's imprisonment is affirmed.

The appeals are allowed in the above terms. No costs.