

Cauvery Achayya And Ors. vs Shri Syed Mukthar on 21 September, 2001

Equivalent citations: 2001CRILJ4532, 2001 CRI. L. J. 4532, 2001 AIR - KANT. H. C. R. 2925, (2002) ILR (KANT) (1) 1570, (2002) 1 CURCC 381

Bench: P. Vishwanatha Shetty, A.M. Farooq

ORDER

1. In these petitions filed under Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"), the complainants have prayed for an order punishing the first respondent for willfully disobeying the order dated 25th March 1998 made in R.F.A. No. 830/1997 by this Court and also for violating the undertaking given by means of an affidavit undertaking to vacate the premises bearing present No. 39, Old No. 323/32, 9th Cross, Wilson Garden Extension, Corporation Division No. 36, Bangalore-27 (hereinafter referred to as the "schedule premises").

2. The facts in brief, which may be relevant for the disposal of this petition, may be stated as hereunder :

(a) The parties, in the course of this order, will be referred to as 'the complainants' and the 'respondent'.

(b) The complainants in these petitions are the children and legal heirs of one late K.K. Achayya. The respondent filed suit O.S. No. 2243/1981, against the said Achayya, on the file of the Court of City Civil Judge, Bangalore, seeking for a decree for specific performance of the terms of the agreement of sale dated 18th October 1987 and 26th June 1978 executed by the said Achayya agreeing to sell the schedule premises to the respondent by executing the necessary sale-deed after receiving the balance sale consideration; and for a decree for permanent injunction restraining the said Achayya from selling the schedule premises to any one; and further restraining him from Interfering with the respondent's possession and enjoyment of the schedule premises.

(c) The learned IV Additional City Civil Judge, by means of his judgment and decree dated 6th October 1997, decreed the respondent's claim made in the suit.

(d) Aggrieved by the said Judgment and decree, the said Achayya filed Regular First Appeal No. 830/97 before this Court. During the pendency of the said first appeal, since the said Achayya has died, the complainants in this petition were brought on record as his legal heirs. This Court, while setting aside the judgment and decree passed by the learned City Civil Judge, by means of its judgment and decree dated 25th March 1998, directed the complainants to return the sum of Rs. 60,000.00 to

the respondent which he had paid as advance to the said Achayya without interest, on the ground that the respondent was in possession of the schedule premises; and directed the respondent to hand over vacant possession of the schedule premises to the complainants. The operative portion of the judgment reads as follows :

Thus, in view of the above, the defendant's appeal is allowed. The trial Court's decree, decreeing the plaintiffs claim for decree for specific performance of contract to sell and for injunction etc., is hereby set aside and modified decree is being passed, directing the defendant-appellant to refund and return within three months the sum of Rs. 60,000.00 (Rupees sixty thousand) to the plaintiff-respondent, who shall hand over the vacant possession of the suit property in the schedule attached to the plaint, to the defendant-appellant, within three months from today.

The amount of advance money if plaintiff-respondent avoids or refuses to accept and take the same, may be deposited in the trial Court by the defendant-appellant, with a request to the trial Court to enforce and execute this Court's decree given to plaintiff, to hand over the vacant possession of land to defendant-appellant.

In terms of the operative portion of the Judgment, a decree was also drawn up by this Court.

(e) The Special Leave Petition filed against the said judgment and decree also came to be dismissed by the Hon'ble Supreme Court, by its order dated 15th July 1998.

(f) It is the case of the complainants that though they sent, a sum of Rs. 60,000.00 by means of a Demand Draft towards the refund of the advance amount received by the said Achayya, as directed by this Court on 12th June 1998, the respondent avoided to receive the same; and therefore the complainants deposited the said amount before the trial Court in Execution Petition No. 837/ 1998; and after service of notice of the execution petition, the respondent appeared before the Court and filed an affidavit seeking six months' time to hand over vacant possession of the schedule premises; and though the complainants objected for grant of six months' time, the Executing Court, by means of its order dated 24th August 1998, granted three months' time to the respondent to vacate the schedule premises; and the time granted had expired on 24th November 1998. It is the further case of the complainants that aggrieved by the time granted by the Executing Court to the respondent to vacate the schedule premises, the complainants filed C.R.P. No. 2752/1998 before this Court. This Court, by means of its order dated 5th November 1998, allowed the said revision petition taking the view that the Executing Court had no jurisdiction to extend the time beyond the period fixed by this Court in R.F.A. No. 830/97. It is useful to refer to the order made by this Court, which reads as hereunder :

Since this Court has granted 3 months time to vacate the suit schedule premises in the orders passed in RFA 830/87, the trial Court has no jurisdiction to extend the

said time. Further, since the respondent filed an affidavit in this Court stating that he has vacated the premises, he is not entitled to seek for extension of time for the said purpose. Since the learned counsel for the petitioner submits that the possession of the suit schedule premises has not been hand over to him by the respondent though he claimed to have vacated the said premises, the decree-holder are entitled to execute the decree for recovery of possession for the suit premises.

(g) In the Execution Petition filed by the complainants, one Rakesh Kumar and Rama Reddy filed an application under Section 47 read with Order 21 Rules 97 and 98, CPC, raising obstruction for execution of the decree and requesting the Court to hold an enquiry. It is the case of the complainants that though it was the case of the respondent that he was put in possession of the schedule premises pursuant to the agreement of sale executed by late K K. Achayya; and where judgment-debtor he had given an undertaking that he would voluntarily vacate and hand over vacant possession of the schedule premises if six months' time was given to him to vacate the schedule premises; and on that basis, persuaded the Executing Court to grant three months' time; the respondent has failed to comply with the direction given by this Court by means of its judgment and decree dated 25th March 1998 made in R.F.A. No. 830/87 and also the undertaking given to the Court; and further with a view to defeat the judgment and decree passed against him to hand over vacant possession of the schedule premises to the complainants in disregard of the said direction and the undertaking given, set up one Rakesh Kumar and Rama Reddy, who are the son and the father, to claim right to the schedule premises on the basis of a forged agreement of sale created by him along with the said Rakesh Kumar and Rama Reddy and, therefore, the respondent and the said Rakesh Kumar and Rama Reddy have committed contempt of Court and they are required to be punished for their said contemptuous action.

(h) Though the said Rakesh Kumar and Rama Reddy were made as accused Nos. 2 and 3 to the complaint, they came to be deleted, by means of order dated 18th February 1999 passed by this Court. After service of notice of this petition on the respondent, the respondent appeared before this Court and filed his objections. This Court, on 29th January 2001, on the basis of the materials placed before this Court, was, prima facie, satisfied that the respondent has committed contempt of the Court punishable under Section 12 of the Act and directed the matter to be listed for framing of the charge, on 7th February 2001. On 7th February 2001, the respondent had filed an affidavit tendering unconditional apology. This Court, by means of its order dated 8th February 2001, refused to accept the unconditional apology tendered by the respondent. While doing so, this Court (His Lordship Justice R.V. Raveendran and Justice B.K. Sanglad, JJ.) has observed at paragraphs 11, 12 and 13 of the order is follows :

11. Such apology at this stage, when the unauthorised persons put in possession by the respondent continue in possession, obstructing the execution, will perpetuate the

disobedience and breach of undertaking. The apology could have been accepted if it was coupled with delivery of vacant possession by the respondent to the complainants. But so long as Rakesh Kumar and Rama Reddy inducted by the respondent continue to be in possession of the premises, the apology by the respondent is only an attempt to get out of contempt proceedings and nothing more.

12. The learned counsel for the complainant opposed the acceptance of the apology and we feel rightly so. Hence we are not inclined to accept the apology on the aforesaid facts.

13. The learned counsel for the Respondents seeks some more time. It is even now open to respondent to ensure that vacant possession of the premises is delivered to the complainant and redeem himself.

Subsequently, on 15th February 2001, this Court proceeded to frame the charges and since the respondent pleaded not guilty and claimed to be tried, the petition was posted for evidence on 8th March 2001.

(i) In the course of the proceedings, the 6th complainant had examined himself as P.W. 1 and produced Exhibits C1 to C15. However, documents C5 to C15 were marked by consent of the Counsel appearing for the parties. The respondent has examined himself as R.W. 1 and examined one Rama Reddy as R.W. 2. Documents Exhibits R-1 to R-4 were also marked on behalf of the respondent.

3. Learned counsel appearing for the complainants, in support of the prayer of the complainants that the respondent is liable to be punished for committing contempt of Court, made three submissions. Firstly, he submitted that since the respondent has violated the undertaking dated 24th August 1998 given by means of an affidavit before the Court of Additional City Civil Judge, Bangalore City (Exhibit C-2), undertaking to voluntarily hand over vacant possession of the schedule premises and for the said purpose, having prayed for six months time and on the basis of the said undertaking given, secured three months' time from the Court, is liable to be punished under Section 12 of the Act as he has violated the undertaking given by him. According to the learned counsel, the violation of the undertaking given by the respondent to the Court, in the facts and circumstances of the case, amounts to civil contempt within the meaning of Section 2(b) of the Act. It is his submission that the violation of the judgment and decree made in R.F.A. No. 830/1987 by this Court, also amounts to civil contempt. Elaborating the submission, the learned counsel pointed out that the material on record would clearly show that the respondent in connivance with Rakesh Kumar and Rama Reddy, with a view to frustrate the undertaking given by him, has inducted the said Rakesh Kumar and Rama Reddy to the schedule premises and instigated them to come forward with a false plea that late K.K. Achayya had agreed to sell the schedule premises in their favour by means of agreement to sell dated 22nd April 1988 executed by the said K.K. Achayya. Secondly, he submitted that the respondent also, on the basis of the materials on record, should be held as having committed criminal contempt within the meaning of Section 2(c) of the Act. It is his submission that the violation of the direction given by this Court made in R.F.A. No. 830/87 by

mens of its order dated 25th March 1998 directing the respondent to hand over possession of the schedule premises in terms of the decree made by this Court in the said appeal, putting the said Rakesh Kumar and Rama Reddy, clearly amounts to the commission of criminal contempt by the respondent. He also pointed out that the statement made by the respondent in the suit filed by him for specific performance wherein he had admitted that he was put in possession of the schedule premises towards part performance of the specific performance of the agreement entered into by him with K.K. Achayya, and the stand taken by him in the course of the evidence in the said suit and till the disposal of the special leave petition clearly establishes that it was the case of the respondent throughout that he was put in possession of the schedule premises and under these circumstances, the subsequent change of stand by him that the said Rakesh Kumar and Rama Reddy were in possession of the first floor and garage portion of the schedule premises in terms of the agreement to sell executed by late K K. Achayya and they also came into possession of the ground floor of the schedule premises as the complainants handed over possession of the same to them, is totally false and baseless; and the said case is put forward by the respondent only to defeat and obstruct the judgment passed by this Court in R.F.A. No. 830/87 directing the respondent to put the complainants in possession of the schedule premises and the said act of the respondent amounts to criminal contempt within the meaning of Section 2(c) of the Act. He further submitted that the unconditional apology filed before this Court and going back on that, clearly amounts to contemptuous act amounting to criminal contempt. Thirdly, he submitted that since the material on record clearly establishes that the respondent has committed both civil and criminal contempt, this Court should make an order directing the Executing Court to put the complainants in possession of the schedule premises overruling all the obstructions that may be raised by the respondent or any other person.

4. However, Sri Chikkanagoudar, learned counsel appearing for the respondent, strongly countered each one of the submission made by the learned counsel for the complainants. Firstly, he submitted that the pleading in the affidavit filed by the respondent before the Executing Court does not indicate that the respondent had undertaken to hand over vacant possession of the schedule premises to the complainants. Secondly, he submitted that since the undertaking given by the respondent was not acted upon and only three months' time was given, it should be held that even if the affidavit was filed by the respondent, the said undertaking was not acted upon and, therefore, there was no violation of the undertaking given, committed by the respondent. Thirdly, he submitted that since the order passed by the Executing Court was set aside by this Court in the revision petition, the undertaking stated to have been given by the respondent was not acted upon by the Court and, therefore, there was no civil contempt committed by the respondent. Fourthly, he submitted that there is no charge framed against the respondent as having committed any criminal contempt and, therefore, he cannot be punished on that ground. Elaborating this submission, Sri Chikkanagoudar pointed out that the material on record does not show that the respondent has committed either civil contempt or criminal contempt within the meaning of Section 2(b) or (c) of the Act. Fifthly, he submitted that for any reason, if this Court comes to the conclusion that the respondent has committed contempt, the provisions of the Probation of Offenders Act may be made applicable to the respondent and he may be let off. He also pleaded that since the respondent is not keeping good health, and in the light of the affidavit filed by him tendering unconditional apology at the earliest point of time, he may be dealt with sympathetically and leniently only by imposing a

nominal fine. He also submitted that the respondent has no objection for this Court giving any direction or making an order directing the Executing Court to put the complainants in possession of the schedule premises overruling all the objections raised. It is his further submission that the respondent will co-operate with the complainants in whatever manner it is required, to give effect to the judgment and decree made by this Court in R.F.A. No. 830/87. He also appealed that this stand taken by the respondent may be kept in mind by this Court while imposing punishment on him if this Court were to come to the conclusion that he has committed contempt of Court.

5. In the light of the rival submission made by the learned counsel appearing for the parties, the questions that would arise for consideration in this petition, are (1) Whether the respondent has committed civil contempt within the meaning of Section 2(b) of the Act?

(2) Whether the respondent has committed criminal contempt within the meaning of Section 2(c) of the Act?

(3) Whether there is no charge framed against the respondent alleging that he has committed criminal contempt?

(4) If the finding on questions (1) and (2) is against the respondent and he is found guilty, whether the provisions of the Probation of Offenders Act has to be applied while imposing punishment on the respondent?

(5) If the respondent has to be punished, what should be the nature or quantum of punishment?

(6) Whether a direction is required to be given to the Executing Court to put the complainants in possession of the schedule premises overruling all the obstructions that, may be put for execution of the judgment and decree dated 25th March 1998 made by this Court in R.F.A, No. 830/87?

6. Before we proceed to consider the questions, referred to above, it is useful to refer to the charges framed against the respondent. The same read as follows :

That by judgment and decree dated 25-3-1998 in R.F.A. No. 830/87, this Court directed that you shall hand over vacant possession of the suit property (premises No. 30 old No. 323/22, 9th Cross, Wilson Garden, Bangalore-27) to the complainants herein against refund of Rs. 60.000/-.

That as you failed to comply with the said judgment and decree, the complainants filed Ex. No. 837/1998, on the file of City Civil Court, Bangalore, wherein you sought six months time to vacate the premises by filing an undertaking before the Executing Court, that you will voluntarily vacate the deliver vacant possession of the premises to the complainants if time was granted, and that by considering the said undertaking the Executing Court granted three months' time by an order dated 24-8-1998;

That to defeat the judgment and decree of this Court dated 25-3-1998 in R.F.A. No. 830/1987 and in violation and breach of the undertaking given to the Executing Court in Ex. Case No. 837/1998, you have inducted one Rakesh Kumar and Rama Reddy into the said premises and claimed that you have vacated the premises and that the said Rakesh Kumar and Rama Reddy were inducted by the complainants themselves; and That by these acts you have willfully disobeyed the judgment and decree of this Court and violated the undertaking given to the Executing Court and thereby committed offences punishable under Section 12 of the Contempt of Courts Act, 1971.

Re : Question (1) ;

7. Section 2(b) of the Act defines 'civil contempt', The same reads as follows :

(b) 'Civil contempt' means wilful disobedience to any Judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court.

From the reading of the definition of 'civil contempt' provided under Section 2(b) of the Act, it is clear that 'civil contempt' means willful disobedience of any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. Therefore, to show that the respondent has committed civil contempt, the complainants will have to show that the respondent either has willfully disobeyed the judgment and decree dated 25th March 1997 or the direction given, in R.F.A. No. 830/87 or he has willfully committed breach of the undertaking given to the Court. First, we will examine whether the respondent has willfully disobeyed the undertaking given to the Court.

8. As noticed by us earlier, it is the case of the complainants that the respondent having filed an affidavit before the Executing Court on 24th August 1998 undertaking to hand over vacant possession of the schedule premises within six months; and on the basis of the undertaking given by him, had persuaded the Court to grant him three months' time to vacate the schedule premises, has willfully failed to comply with the undertaking given by him to the Court. The affidavit of the respondent dated 24th August 1998 filed before the Executing Court has been produced as Exhibit C2.

I, Syed Mukthar, aged about 45 years, S/o Sri Syed Ahmed, R/at No. 30, 5th Cross, Wilson Garden Extension, Bangalore, do hereby solemnly affirm and state as follows :

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1. I am the judgment-debtor in the above execution case. I am fully conversant with the facts of the case.

2. I state that I am voluntarily ready and willing to hand over the vacant possession of the schedule premises whichever is in my possession and for that I crave this Hon'ble Court to grant me time of six months, since my father Sri Syed Ahmed who is aged, is suffering from Paralytic and heart strokes and as such he is seriously ill and further I am making hectic efforts to search alternative premises for shifting, The learned City Civil Judge has granted three months time to the respondent to vacate the schedule premises by means of his order dated 24th August 1998, a copy of which has been produced as Annexure-P to the contempt petition, The said order reads as follows:

Affidavit of Syed Mukthar filed seeking six months time, to vacate the premises. Sri Ramesh Dabu Advocate of Decree Holder opposes for grant of six months time. However, Sri Chikkanagoudar, the learned counsel for judgment debtor leave it to the discretion of the Court. Mr. Ramesh Babu submits that the Decree Holder is in a rented premises and his landlord is pressing him to vacate the rented premises. Both the parties have genuine grounds. Under these circumstances, I grant three months time to the judgment-Debtor to vacate the premises.

The affidavit filed by the respondent, extracted above, to our mind, makes it clear that the respondent has undertaken to voluntarily hand over vacant possession of the schedule premises to the complainant within six months, if the time sought for is granted. However, the Court, in the light of the submission made by the learned counsel for the respondent Sri Chikkanagoudar that the Court may, in its discretion, fix up any time as against six months sought for by the respondent and in the light of the objections raised on behalf of the complainants for grant of any time, granted three months' time to the respondent to vacate the schedule premises. The Court granted three months' time to the respondent to vacate the schedule premises, in our view, in view of the undertaking given by the respondent to voluntarily vacate the schedule premises and hand over vacant possession of the schedule premises to the complainants. Further, the respondent, who had examined himself as R.W. 1, in his chief-examination, has also stated that he has given an undertaking to the Court undertaking to voluntarily hand over vacant possession of the schedule premises to the complainants in terms of his affidavit dated 24th August 1998 within a period of six months; and as per the undertaking, he handed over the ground floor portion of the premises, which was in his possession, to the complainants, It is useful to extract the relevant portion of the deposition of the respondent, which reads as hereunder;

...However, in August 1998 they deposited the amount in execution proceedings. Since my father was aged and old I filed an application seeking time to hand over vacant possession of the premises to the L.Rs. of Achayya. The execution Court granted me three months' time to vacate and hand over possession of the suit schedule property on my filing an undertaking, I have given an undertaking to the Court undertaking to voluntarily hand over vacant possession of the suit, schedule premises to the decree-holders as per Exhibit-C2, within a period of 6 months. As per the undertaking I handed over ground floor portion of the premises which was in

my possession to the L.Rs. of decree-Holder.

Therefore, even according to the respondent, he undertook to voluntarily hand over vacant possession of the schedule premises within six months from the date of filing of the affidavit Exhibit-C2 and as a matter of fact, according to him, he handed over the ground floor portion of the premises which was in his possession, to the complainants as per the undertaking given by him.

9. In the light of what is stated above, the only question that would arise for consideration is whether the respondent had undertaken to hand over possession of the entire schedule premises to the complainants and if not, whether he has handed over the ground floor portion of the schedule premises, which was in his possession? The averment made in the plaint in O.S. No. 2243/81 dated 17-7-1981 clearly shows that the respondent has asserted in the plaint that he was in possession of the entire schedule premises. The assertion made by the plaintiff/respondent that he was put in possession of the schedule premises on 22nd June 1978 is also admitted in the written statement. This is clear from the observation made in paragraph-2 of the judgment of this Court in R.F.A. No. 830/1987, the certified copy of which has been produced as Exhibit-C 1. It is on the basis of the assertion made by the respondent that he was put in possession of the entire schedule premises that the trial Court granted a decree for injunction restraining late Achayya from interfering with the respondent's peaceful possession of the schedule premises. At no point of time, there was any controversy or dispute either between late Achayya and the respondent or between the complainants and the respondent till the disposal of the special leave petition; and grant of three months' time by the Executing Court in Execution Case No. 837/1998 with regard to the possession of the respondent in respect of the schedule premises. Even in the affidavit Exhibit-C2, the respondent has not stated that he was not in possession of the first floor and the garage portion of the schedule premises; and he was in possession of only the ground floor excluding the garage portion. In the affidavit Exhibit C2, he has specifically stated that he would hand over possession of the schedule premises whichever is in his possession. Further, the admission made by Sri Rama Reddy in the course of his deposition given in Execution Case No. 837/1998, the certified copy of which has been marked as Exhibit C-4, clearly shows that in all proceedings instituted by him before the Court, he has shown his address as No. 668/12, Burgalmutt Road, V.V. Puram, Bangalore. In the course of the deposition in Execution Case No. 837/98, he has shown his residence as on 7-12-1999 as Premises No. 668/12, Burgalmutt Road, V.V. Puram, Bangalore. In Paragraph 13 of his deposition Exhibit C-4, he has admitted that he had obtained LPG Cooking Gas connection and while getting the connection, he has shown his address as premises No. 668, Burgalmutt Road, Vishveswarapuram, Bangalore. He has also admitted that in the Ration Card and in the application filed for obtaining LPG Gas connection and in the voters list for Basavanagudi Constituency, his address is shown as No. 668/12, Burgalmutt Road, Visweswarapuram, Bangalore. The said evidence reads as follows :

...It is true that in one ration card the name of all my said family members is mentioned. The ration card pertains to our address in .Burgalmutt Road, Vishveswarapuram, Bangalore. I have LPG Cooking gas connection. The said gas connection is since 15 years. It is true at the time of taking the gas connection I had given residential address to the dealer as House No. 668, Burgalmutt Road,

Vishveshwarapuram, Bangalore. It is true that the name of my wife is R. Chowdamma. It is true that the name of my daughter-in-law wife of my son Rakesh Kumar, is Sandhya. It is true that in the Voter's list of 1998 of Basavanagudi Constituency my name and the name of my family members is shown with address as No. 668/12, Burgalmutt Road, Vishveshwarapuram, Bangalore.

The voters list has been marked by consent as Exhibit C-13. In the voters list Exhibit C-13, the said Rama Reddy, his wife Chowdamma and his son Rakesh Kumar and his wife Sandhya are shown as residents of premises No. 668/12, Burgalmutt Road, Visweswarapuram, Bangalore. Further, Exhibits C-5 to C-12, which are marked by consent, show that R.W. 2 Rama Reddy has shown his address in all civil proceedings throughout as a resident of 668/12, Burgalmutt Road, Visweswarapuram, Bangalore. If, as a matter of fact, as claimed by the respondent and R.W. 2 Rama Reddy that the said Rama Reddy was in possession of the first floor portion along with the garage located in the ground floor, even since the date of the alleged agreement to sell dated 22nd April 1988, we are unable to appreciate as to how in all the Court proceedings, why Rama Reddy has been described as a resident of premises No. 668/12, Burgalmutt Road, Visweswarapuram, Bangalore. Further, there is no explanation as to why he has shown his address as a resident of No. 668/12, Burgalmutt Road, Visweswarapuram, Bangalore, in the Ration Card and also while obtaining the LPG Gas connection. Further, as noticed by us earlier, even in the voters list, his name is continued as a resident of Premises No. 668/12, Burgalmutt Road, Visweswarapuram, Bangalore. There is no other documentary evidence placed before us by the respondent or R.W. 2 Rama Reddy to show that at any point of time, R.W. 2 Rama Reddy and his son Rakesh Kumar were in possession and occupation of the first floor of the schedule premises. Therefore, we have no hesitation to come to the conclusion that as claimed by the respondent himself in the averment made by him in O.S. No. 2243/1981, which has ultimately resulted in passing of the judgment and decree in R.F.A. No. 830/87 (Exhibit C 1) that he continued to be in possession of the entire schedule premises; and the case put forward by him and the claim made by him that R.W. 2 Rama Reddy and his son were in occupation of the first floor and garage portion located in the ground floor of the schedule premises, is totally false, baseless and the said case is put forward by the respondent in connivance with the said Rama Reddy and his son Rakesh Kumar only in an attempt to wriggle out the undertaking given by the respondent to the Executing Court as per Exhibit-C2. Further, we are also unable to accept the statement made in his evidence that as per the undertaking given, he handed over ground floor portion of the premises which was in his possession, to complainant No. 2 and her husband. In this connection, it is useful to refer to the statement made by the respondent in his affidavit Exhibit C-3 dated 31st October 1998 filed before the Executing Court in Execution Case No. 837/1998. At paragraph 2 of the affidavit, he has stated that he has vacated the ground floor portion of the premises on 28-10-1998 in respect of which he was put in possession by late Achayya. In his affidavit, he has not stated that he has put the complainants in possession of the ground floor portion of the schedule premises. The

statement made in paragraph 3 of the affidavit Exhibit C-3 dated 31-10-1998, which was filed in Execution Case No. 837/1998, if read carefully and is appreciated in the background of the case put forward by the respondent, clearly indicates that the respondent and R.W. 2 Rama Reddy and his son Rakesh Kumar are conniving with each other. Further, even according to the case of R.W. 2 Rama Reddy, he entered into an agreement dated 22nd April 1998 with late Achayya agreeing to purchase the schedule premises when the dispute with regard to the schedule premises was pending before this Court in R.F.A. No. 883/1987. According to the evidence of R.W. 2 Rama Reddy both before this Court and before the Executing Court that he and his son Rakesh Kumar had paid in cash a sum of Rs. 10,00,000/- out of the total sale consideration of Rs. 12,00,000/- fixed for purchase of the schedule premises pursuant to the agreement to sell dated 22nd April 1988 entered into between them and late Achayya. We find it difficult to accept this version put forward by Sri Rama Reddy for reasons more than one. Firstly, the agreement to sell dated 22nd April 1988 saw the light of the day only for the first time on 17th August 1998 when they filed suit O.S. No. 6393/98 seeking decree for specific performance and other reliefs against the complainants. Secondly, when admittedly the dispute concerning the schedule premises was pending before this Court in R.F.A. No. 83087, it is not the normal human conduct on the part of any purchaser to give major portion of the sale consideration to the vendor. Thirdly, the sum of Rs. 10,00,000/- out of Rs. 12,00,000/- which is fixed as a total sale consideration, is stated to have been paid in cash. This is also against the normal human conduct. In our view, no purchaser would take the risk of paying such a huge amount as advance in cash only on the basis of the agreement to sell. Admittedly, the agreement to sell is not registered. Fourthly, admittedly there is not even a legal notice or a written letter by Rama Reddy and his son Rakesh Kumar calling upon either Achayya or the complainants to perform their part of obligation in terms of the agreement. Suit O.S. No. 6393/ 98 came to be filed on 18th August 1998 i.e., just six days prior to the undertaking given by the respondent to the Executing Court. Under these circumstances, we find that it is impossible to believe the statement made by R.W. 2 before this Court and also in Execution Case No. 837/1998 that he was put in possession of the first floor and the garage portion pursuant to the agreement dated 22nd April 1988 and he had agreed to purchase the schedule premises by virtue of the said agreement. On the basis of the materials on record and more particularly in the light of the evidence of the respondent and the evidence of R.W. 2 Rama Reddy before this Court and also before the Executing Court, we are fully satisfied that the said Rama Reddy and Rakesh Kumar are put forward to make a false claim by the respondent. The provisions contained in Section 47 and Order 21, Rules 97 and 98 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"), is intended to confer power on the Court to settle the just rights of the parties. The object of the said provision is not intended to give a handle to an unscrupulous litigant who suffers a decree before the Court, to set up third parties to frustrate the decree which he has suffered. In the justice delivery system in which we are governed, the Courts are created to adjudicate upon the valuable rights of the parties. While so adjudicating the valuable rights of the

parties, the Courts have a duty to see that the several provisions provided in the Code which intended to protect the just rights of the parties, are not misused and the process of the Court is not abused. In our view, keeping that principle in mind, the provisions are made under Section 2(b) and (c) of the Act setting out as to what a civil and criminal contempt is; and providing for imposition of punishment to persons who commit such acts of contempt. No doubt, R.W. 2 Rama Reddy and his son had filed an application under Section 47 and Order 21, Rules 97 and 98, of Code raising obstruction for execution of the decree and also filed suit O.S. No. 6393/98 seeking for a decree for specific performance of the agreement to sell dated 22nd April 1988. In our view, if we are satisfied on the basis of the evidence on record placed before this Court, that the said proceedings are initiated deliberately by R.W. 2 Rama Reddy and his son Rakesh Kumar in an attempt to circumvent, the undertaking given to this Court or willfully disobey the judgment and decree and direction given by this Court in R.F.A. No. 830/87, this Court should ignore the said proceedings and direct the Executing Court to give effect to the decree made in R.F.A. No. 830/87. In the light of the discussion of the material on record, as stated above, we are fully satisfied that throughout the respondent continued to be in possession of the entire schedule premises and he did not hand over any portion of the premises including the ground floor of the premises in respect of which he was in possession, to the complainants either on 28th October 1998 or any other date. Therefore, the obstruction sought to be put by the respondent in connivance of R.W. 2 Rama Reddy and his son Rakesh Kumar, is sufficient to establish that the respondent has willfully violated the undertaking given to this Court.

10. Now, the next question is whether the respondent has willfully disobeyed the judgment and decree and direction given by this Court in R.F.A. No. 830/1987? This Court, by means of its judgment Exhibit C-1 made in R.F.A. No. 830/1987, in the operative portion, has directed the respondent to hand over vacant possession of the schedule premises to the complainants within three months from the date of the judgment and decree i.e. 25th of March 1998, on the complainants refunding or returning a sum of Rs. 60,000/- to the respondent. According to the complainants, they have offered a sum of Rs. 60,000/- by means of a Demand Draft, to the respondent. Though this is disputed by the respondent, the respondent, in his evidence, has admitted that though the complainants did not offer Rs. 60,000/- in terms of the judgment Exhibit C-1, they have deposited the amount in the execution proceedings in the month of August 1998. His evidence extracted above shows that in view of the undertaking given, the time to vacate the schedule premises was extended by the Executing Court. In C.R.P. No. 2792/1998 disposed of on 5th November 1998, this Court took the view that the Executing Court could not have extended the time even on the basis of the undertaking given by the respondent. Therefore, the question is when the complainants have deposited the amount even in the month of August 1998, whether the respondent has complied with the direction given by this Court? In our view, the evidence on record clearly establishes that the respondent has not done so. The statement made by him in affidavit Exhibit C-3 that he has vacated the ground floor of the schedule premises on 28th October 1998 is palpably false. His case that R.W. 2 Rama Reddy and his son Rakesh Kumar were in occupation of the remaining portion of the schedule premises, clearly shows that he willfully intended to disobey

the direction given by this Court in its judgment Exhibit C-1 and the decree Exhibit C-1 A. Further, the respondent has filed objections to this petition on 27th July 1999 supported by his affidavit. In the objection statement, he has denied that he has either violated the undertaking given by him to the Court of disobeyed the direction given in the judgment and decree made by this Court, in R.F.A. No. 830/1987. He has asserted at paragraph 4 of the objection statement that he hand over possession of the ground floor to the complainants on 28th October 1998. He has further stated that after he has handed over possession of the ground floor, and the possession of the ground floor was taken by R.W. 2 Rama Reddy and Rakesh Kumar by virtue of the agreement dated 22nd April 1988 stated to have been entered into between K.K. Achayya and the said Rama Reddy and Rakesh Kumar. It is useful to refer to the said statement made in the objection statement which reads as follows :

The Respondent handed over the possession as stated in Annexure-R1 on 28-10-1988 and the complainant has acknowledged this fact before the Principal City Civil Judge, Bangalore, in the petition filed by M.C. Nanjappa, who is none other than the Power of Attorney Holder, acting on behalf of the complainants in all the proceedings, has categorically stated in a petition under Section 438 of the Criminal Procedure Code for anticipatory bail which numbered as Criminal Misc. Case No. 2384/1998 and admitted that this Respondent has vacated and handed over possession. A certified copy of the petition filed Sri Nanjappa for grant of bail is herewith produced and marked as Annexure-R3. Order passed by the Civil Court is produced as Annexure-R4. It is also relevant to mention herein that the said Nanjappa approached the Court under Section 438 because of the filing of a complaint by one Rakesh Kumar for trespassing into the very same property which is subject matter of this complaint. It seems as soon as this Respondent handed over the possession, the possession has been taken over by Rama Reddy and Rakesh Kumar by virtue of the Agreement as per Annexure-R2. Thereafter, there was a trespass by the Power of Attorney Holder of complainants hence a complaint was lodged and action was initiated by the Police. Hence, the said Nanjappa approached the Hon'ble Civil Judge, seeking anticipatory bail. This very fact clearly shows that this respondent has handed over possession as slated in his affidavit before the Hon'ble Court as per Annexure R-1 and the same has been accepted by the complainant and the said fact has been admitted in the petition filed by the Power of Attorney Holder of the complainant. In view of this, now the complainants cannot turn around and say that this respondent has not complied with the order of this Hon'ble Court. In fact, the complaint was initiated against this Respondent so also against Rakesh Kumar and Rama Reddy and on 18-2-1999 the complainants have deleted the names of Rakesh Kumar and Rama Reddy. That itself shows there was privity contract between the complainants and Rakesh Kumar and Rama Reddy, Apart from this, it is also relevant to mention herein, that the deleted Respondents 2 and 3 filed O.S. No. 63/98 on the file of the City Civil Court, Bangalore, for specific performance of the agreement. Annexure-R2 and in the suit, as injunction order has been already obtained by Rakesh Kumar and Rama Reddy and the same is still operating till today. A copy of the plaint and also the injunction order are herewith produced and marked

as Armexure-R5 and R.6. Further, it Is made clear in the complaint itself that. Rama Reddy was not in possession of the first floor and the Car garage portion as per Agreement Annexure-R2. Now, this respondent is not aware how Rama Reddy and Rakesh carne in possession of the premises occupied by this Respondent and handed over to the complainant on 28-10-1998. As per the proceedings initiated by the Power of Attorney Holder of the complainants in Criminal Misc. Case No. 2384/ 1998 and a copy of the same has been produced as Annexure-R3 and also the complaint in suit No. 6393/1998 and the order obtained in the said suit clearly establishes that there was a privity of contract between the complainants and the Rama Reddy and Rakesh Kumar. Apart from this, the possession is also clearly stated in the complaint filed by said Ramareddy and Rakesh Kumar. In view of the fact pleaded before the Civil Court and also in view of the unequivocal statement made by the Power of Attorney Holder of the complainant. It clearly establishes that this Respondent has not violated the order of this Hon'ble Court, hence he approached the Civil Court for extension of time to comply with the orders of this Hon'ble Court. If this respondent wanted to avoid the orders of this Hon'ble Court and to hand over the possession to any third party, he certainly would have done much earlier to taking of execution by the complainant against the respondent, Along with the statement of objections, the respondent has produced a copy of the agreement stated to have been entered into between Rama Reddy and his son Rakesh Kumar arid K.K. Achayya and also a copy of the plaint filed in O.S. No. 6393/98 by Rama Reddy and his son Rakesh Kumar against the respondent seeking specific performance of the agreement dated 22nd April 1988 entered into between late Achayya and Rama Reddy and Rakesh Kumar. Suit O.S. No, 6398/98 was filed by the said Rama Reddy and Rakesh Kumar on 18th August 1998 i.e. just six days prior to the date fixed before the Executing Court in Execution Case No. 837/1998. In the said suit, the said Rama Reddy and Rakesh Kumar have filed three applications. In I.A.I., they have prayed for an order of temporary injunction against the complainants and their agents from interfering with the schedule premises, pending disposal of the suit. In I.A.II, they have prayed for temporary injunction against the complainants restraining them from alienating the schedule premises. In I.A.III, they have prayed for stay of Execution Case No. 837/98. Similar prayer was also made in the said suit. Though the learned City Civil Judge made an order on I.A.II restraining alienation of the schedule premises, he directed notice on I.As.I and III. All these factors clearly establish that the respondent and the said Rama Reddy and his son Rakesh Kumar were colluding with each other and were making all efforts to frustrate the judgment and decree obtained by the complainants which has reached finality. When the respondent could not, through Rama Reddy and his son Rakesh Kumar, get an interim order as prayed for in I.As.I and III, referred to above, he filed an undertaking as per Exhibit C-2 agreeing to hand over possession of the schedule premises and seeking six months time for the said purpose. Further, when these proceedings are pending, after the charge was framed, the respondent has filed an unconditional apology by means of an affidavit before this Court on 7th February 2001. It is useful to extract the entire affidavit, which has considerable bearing on the matters in issue. The said affidavit

reads as follows :

1. I am the 1 st Respondent in the above complaints. Hence, I am fully conversant with the facts of the case.

2. I state on oath and submit that ever since 1978 I was in actual possession of the residential house consisting of ground and 1st floor which is the subject matter of the above petition and of the execution proceedings pending before Addl. City Civil Judge, Bangalore City, CCH. No. 18 in Execution Case No. 837/98.

3. I state on oath and submit that during the pendency of the execution proceedings, the Hon'ble Execution Court no doubt granted time to me to vacate and hand over the possession of the schedule premises to the Decree Holder for which on humanitarian grounds as then my late father was sick and I had to search the alternate accommodation consented for the same. Subsequently in view of obstructors viz., one Sri Rakesh Kumar and Rama Reddy having shown me the alleged agreement of sale stated to have been executed by the predecessor of the complainants herein, bona fide believing in their words and without realising the consequences arising out of my putting the said obstructor, in possession and further without realising the complaint suffering great inconvenience, I handed over the possession to the said obstructors, and on my own filed the affidavit before the Hon'ble Execution Court to that effect.

4. I state on oath and submit that now I have realised the unpardonable mistake that I have committed in the act of handing over possession of the schedule premises directly to the obstructors instead of handing over the same to the possession of the complainant herein. I regret for the inconvenience caused to the complainant and further I sincerely regret and tender my unconditional apology to this Hon'ble Court for my bona fide act which in fact has resulted in undermining the authority, dignity and respect of this Hon'ble Court, without my knowledge. I once again sincerely tender my apology to this Hon'ble Court and crave for mercy. I will co-operate in the execution proceedings with the complainants herein for smooth execution of the delivery warrant to be issued in the said proceedings and always hold the authority, dignity and respect of this Hon'ble Court and other Courts in high esteem.

5. I state on oath and submits that my apologies to the Hon'ble Court are out of my own free will and mind and without any external pressure and/or without any connivance with any body.

The said affidavit is identified by the Counsel who is appearing for the respondent in this petition. As it can be seen from the affidavit extracted above, he has stated that he was in possession of the entire schedule property and he had handed over possession of the schedule premises to the said Rama. Reddy and Rakesh Kumar. However, subsequently, in the course of his evidence before the Court, he has taken totally a contrary stand and tried to justify the stand earlier taken by him in the

statement of objections. We have no hesitation to hold, on the basis of the materials on record and sequence of events that have taken place including the date of filing of the suit by Rama Reddy and his son Rakesh Kumar and the undertaking given by the respondent in Execution Case No. 837/1998 as per Exhibit C-2 and on appreciation of evidence, that the respondent through out continued to be in possession of the schedule premises and in an attempt to circumvent the undertaking given by him to the Court and also defeat the judgment and decree made and the direction given, by this Court in R.F.A. No. 830/87, the respondent, in collusion with the said Rama Reddy and Rakesh Kumar, put them in possession of the schedule premises during the pendency of the execution proceedings and was instrumental in getting suit O.S. No. 6393/98 filed by them and also to make an application under Order 21, Rules 97 and 98 of the Code, raising objections for execution of the decree made in R.F.A. No. 830/87; and the said Rama Reddy and Rakesh Kumar being only the tools in the hands of the respondent, they do not get any right or interest in the schedule premises. On the basis of the material on record, we are inclined to accept the version set out by the respondent in the affidavit filed by him tendering unconditional apology to this Court as the true version. Further, the material on record, referred to above by us while considering the question as to whether the respondent has deliberately violated the undertaking given, clearly establishes that every attempt was made by the respondent to wilfully disobey the judgment and decree and the direction given by this Court in Exhibits C-1 and C-1A. No doubt, every disobedience of a judgment and decree or a direction given in the judgment and order will not result in civil contempt. Similarly, every breach of an undertaking given to a Court will not result in civil contempt. It is only the 'wilful disobedience' of the judgment and decree and 'willful breach' of the undertaking given to the Court which results in civil contempt. On the basis of the evidence on record, we are fully satisfied that the respondent has willfully violated the undertaking given by him by means of affidavit Exhibit C-2 to the Executing Court on 24th October 1998 and also wilfully disobeyed the judgment and decree and the direction given by this Court in R.F.A. No. 830/87. The Hon'ble Supreme Court, in the case of Noorali Babul Thanewala v. Sh. K.M.M. Shetty has observed that "breach of an injunction or a breach of an undertaking given to a Court by a person in a civil proceedings on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt; and the remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them". It is useful to refer to the observation made by the Supreme Court at paragraphs 11 and 12 of the judgment, which read as hereunder :

11. When a Court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceeding is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them. On the facts

and in the circumstances of this case in the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing the first respondent-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same.

12. In the foregoing circumstances, we find the first respondent guilty of committing contempt by wilful disobedience of the undertaking given by him in this Court and accordingly we convict him and sentence him to pay a fine of Rs. 500/- within the period of four weeks, failing which he shall suffer simple imprisonment for one month, and also direct him to deliver vacant possession of the premises forthwith to the petitioner to the extent possible by him. We further direct the District Magistrate, Thane, to evict all those who are in physical possession of the property including the 2nd respondent and his men and if necessary with police help and give vacant possession of the premises to the petitioner forthwith.

Similar is the view expressed by the Hon'ble Supreme Court in the case of Rita Markandey v. Surjit Singh Arora . In the case of Firm Ganpat Ram Rakumar v. Kalu Ram , the Hon'ble Supreme Court has taken the view that though the contempt is a serious matter and it interferes with the right of those who are found guilty of contempt, no Court should allow any party to mislead the Court and thereby frustrate its order. The Supreme Court, at paragraph 6 of the judgment on pages 2287 and 2288, has observed as follows :

6. ... It was further held that when a person appearing before a Court files an application or affidavit giving an undertaking to the Court or when he clearly and expressly gives an oral undertaking which is incorporated by the Court in its order and fails to honour that undertaking then a wilful breach of the undertaking would amount to an offence punishable under the Act. An undertaking given by one of the parties should be carefully construed by the Court to find out the nature and extent of the undertaking given by the person concerned. It is not open to the Court to assume an implied undertaking when there was none on the record, this Court said. As mentioned hereinbefore, the facts of that decision is significantly different from the facts in this case. The parties by no conduct, overt or otherwise, herein misled this Court. Indubitably, in the instant case, the decree of eviction was passed by the learned Sr. Sub-Judge, Narnaul and upheld by the High Court of Punjab & Haryana. This Court dismissed the Special Leave Petition and granted time of six months on the plea that the petitioner firm would file an undertaking. All this could not have happened if the present plaintiffs in the Narnaul suit had not consented or allowed it to be passed or stood by. It is difficult to accept the position that they did not know. In the facts of this case, we are of the opinion that they deliberately did not object to this Court passing the order and thereby allowed the firm to mislead this Court. They are, therefore, bound to see that the order of this Court is complied with. Though, contempt is a serious matter and it interferes with the right of those who are found guilty of contempt, no Court should allow any party to mislead the Court and thereby frustrate its order. In the aforesaid view of the matter, we are of the opinion that,

though perhaps the respondents could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case, this Court should ensure compliance with its order dated 24th August, 1987 and see that vacant and peaceful possession is given to the applicant in the interest of justice. Mr. Sanghi, learned counsel for the applicant drew our attention to an order of this Court in *Thackar Hariram Motiram v. Balkrishan Chatrathu Thacker* (1988) 3 JT (SC) 18. That decision was, however, on the question of entertaining a Special Leave Petition or not. Special leave was not entertained in that case because the petitioner therein had obtained time from the High Court in respect, of decree of eviction. In this case, also the Special Leave Petition was dismissed out of consideration for the difficulties of the petitioner-firm in the said petition, this Court was induced to grant some time on certain considerations. It, appears that this Court was misled. It further appears that the respondents, all of them, were guilty of facts which led to the situation and thereby frustrate the order of this Act.

In our view, the principle laid down by the Supreme Court in the decisions, referred to above, with regard to the question whether the respondent has committed civil contempt or not, would fully apply to the facts of the present case. Therefore, we have no hesitation to hold that the respondent is guilty of having committed civil contempt within the meaning of Section 2(b) of the Act.

Re : Questions (2) and (3) :

11. We are of the view that Questions (2) and (3) can be conveniently considered together. However we will first proceed to consider whether the respondent has committed criminal contempt? Section 2(c) of the Act defines what is meant by criminal contempt. The said provision reads as follows :

(c) 'criminal contempt' means the publication whether 'by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which

(i) scandalizes or tends to scandalize, 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 proceedings, or

(iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

The Hon'ble Supreme Court, in the case of *Rita Markaridey* (supra) has taken the view that the filing of a false affidavit not only amounts to a deliberate attempt to impede the administration of justice, but it was an attempt made to delay delivery of possession of the property to the landlord in the said case. At paragraph 13 of the said judgment, the Hon'ble Supreme Court has taken the view that any

conduct of a party to the proceedings which has the tendency to interfere with the administration of justice or due course of judicial proceedings, amounts to commission of criminal contempt. It is further observed that swearing to false affidavit in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings, but has also the tendency to impede, obstruct or interfere with the administration of justice and the filing of false affidavit in judicial proceedings in any Court of justice exposes the intention of the party concerned in preventing the course of justice, and any one who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false affidavit, is itself contempt of case and renders himself liable to be dealt with in accordance with the Act. It is useful to refer to the observation made by the Supreme Court at paragraphs 13 and 14 of the judgment, which read as follows :

13. To seek an answer to the other question as to whether by making false statements before this Court in the affidavits filed, the respondent has committed criminal contempt, we may profitably refer to the judgment of this Court in *Dhananjay Sharma v. State of Haryana* , in which one of us (Justice Dr. A.S. Anand) observed P 2828 of AIR) :

Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any Court; (2) prejudice or interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act.

14. The above observations dovetail into the facts of the instant case, for there cannot be any manner of doubt that by filing false affidavits the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We, therefore, hold the respondent guilty of criminal contempt of Court.

12. Now, in the light of the law laid down by the Supreme Court, we will have to examine the question, whether the respondent has committed a criminal contempt? The discussion with reference to the material on record made above while considering Question (1) clearly shows that though the respondent through out has claimed possession of the schedule premises and on that basis, has prayed for a decree for permanent injunction restraining late Achayya and any one claiming under him from interfering with the schedule premises by the respondent and had given an undertaking to the Executing Court as per Exhibit C-3 that he will deliver and hand over vacant possession of the schedule premises to the complainants, subsequently he took a stand that he has delivered possession of the ground floor of the schedule premises to the complainants on 24th August 1998. He also took a stand that the complainants handed over possession of the said portion of the schedule premises to R.W. 2 Rama Reddy and his son-Rakesh Kumar. It is his further case that in respect of the first floor and the garage portion, R.W. 2 Ramareddy and his son Rakesh Kumar were inducted by late Achayya by means of agreement to sell dated 22nd April 1988. On examination of the evidence on record, we have found while considering question (1), that the respondent has deliberately come forward with a false case with a view to obstruct the judgment and decree made against him and the direction given by this Court in R.F.A. No. 830/ 87. We have also recorded a finding that the respondent solely with a view to obstruct the judgment and decree and the direction given by this Court, in R.F.A. No. 830/87, has come forward with a false plea that he has delivered possession of a portion of the schedule premises which was in his occupation, to the complainants and R.W. 2 Rama Reddy and his son Rakesh Kumar were inducted into that portion of the schedule premises by the complainants. We have also rejected the case put up by the respondent that Rama Reddy and Rakesh Kumar were put in possession of the first floor of the building and the garage by late Achayya. We are satisfied that the respondent has deliberately set up a false case and has given false evidence before this Court and has filed a false affidavit both before this Court and also before the Executing Court as per Exhibit C-2; and he, in collusion with R.W. 2 Rama Reddy and his son Rakesh Kumar made an attempt to interfere, tend to interfere with or obstruct or tend to obstruct the administration of justice and due course of judicial proceedings. In our view, filing of false affidavit and giving of false evidence to frustrate the judgment and decree passed by the Court, which has been affirmed by the Apex Court of the country by refusing to grant special leave, has exposed the intention of the respondent in preventing the course of justice and due process of law. While the parties to proceeding are entitled to take such defence as may be available to them in the course of the proceedings, but once a judgment and decree is made and it reaches the finality, the parties cannot be permitted to take such patently false plea which totally runs counter to the plea taken by the party in the course of the earlier proceedings and set up third parties to defeat the fruits of the judgment and decree secured by the other party to the proceedings. While the party has a remedy to get the decree executed against the judgment debtors and all others who may put obstructions for the execution of the decree, the said remedy available will not absolve a party who, by swearing to false affidavit in a judicial proceedings and who by any conduct, interferes with the administration of justice or due course of judicial proceedings, from being punished for commission of an act which amounts to criminal contempt. In this connection, it is useful to refer to the observations made by the Supreme Court in the case of Rita Markandey (supra) at paragraph 12 of the judgment, which read as here under :

12. Law is well settled that if any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof, it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of Court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the presentation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be held liable for contempt for alleged breach of the above order. As regards the contention of the petitioner that by trespassing into some other portion of the house in question during the pendency of the appeal the respondent has committed contempt of Court, we are unable to accept the same; firstly because, the respondent's claim is that he has been in occupation thereof since long and this contentious issue cannot be decided solely on the basis of affidavits and secondly because the above issue does not fall within the limited scope of our enquiry in this proceedings which centres round the order dated October 5, 1994.

In our view, the principle laid down by the Supreme Court fully applies to the facts of the present case. Therefore, we have no hesitation to hold that the respondent has committed criminal contempt within the meaning of Section 2(c) of the Act.

13. In so far as the contention of Sri Chikkanagoudar appearing for the respondent that in the absence of a charge framed that the respondent has committed criminal contempt, is concerned, at the outset we may point out that there is no merit in the said contention. Paragraph 2 of the charges which provides that the respondent, with a view to defeat the judgment Exhibit C1 and the decree Exhibit CIA and in violation of the breach of the undertaking, given to the Executing Court, has inducted one Rama Reddy and his son Rakesh Kumar into the schedule premises and claimed that he had vacated the premises and the said Rakesh Kumar and Rama Reddy were inducted by the respondent himself, in our view, is a charge within the meaning of Section 2(c) of the Act. Merely because it is not specifically spelt out that the said allegation amounts to criminal contempt, so long

as the substance of the allegation amounts to criminal contempt, the respondent cannot absolve himself of the liability of action being taken for criminal contempt, if it is established that he has committed such contemptuous act. Further, it is also necessary to point out that in the course of the hearing of the proceedings, every material which, in our opinion, prima facie indicated that the respondent has committed criminal contempt, was also indicated to the learned counsel for the respondent and we gave an opportunity to him to explain the circumstances available in the evidence against the respondent. Therefore, the contention of the learned counsel for the respondent that there is no charge as regards the criminal contempt framed against the respondent, is liable to be rejected; and accordingly, it is rejected.

Re : Question (4) :

14. In so far as the submission made by the learned counsel for the respondent that the benefit of the provisions of the Probation of Offenders Act may be extended to the respondent is concerned, we are of the view that the respondent is not entitled for the benefit of the said Act. This Court (Justice R.V. Raveendran and Justice B.K. Sanglad) by order dated 8th February 2001, has rejected unconditional apology tendered by the respondent by means of an affidavit. The respondent, though had tendered un-conditional apology, when this Court did not accept it, went back on the said apology tendered by him and tried to justify his acts and made an attempt to indicate that the unconditional apology filed by him was not voluntary. Therefore, we are of the view that the conduct of the respondent does not entitle him for the benefit of the provisions of the Probation of Offenders Act being extended to him.

Re : Question (5) :

15. Since we have taken the view that the respondent is not entitled for the benefit of the Probation of Offenders Act, the question that would arise for consideration is, what should be the nature or quantum of punishment? We have elaborately heard the learned Counsel appearing for the respondent on this question also. No doubt, the conduct of the respondent is highly reprehensible and he made all efforts to frustrate the judgment and decree made by this Court as per Exhibits C-1 and C-1A respectively as far back as on 25th March 1997. Though it is the case of the complainants that the respondent had refused to receive a sum of Rs. 60,000/- offered by them, even according to the respondent, the complainants deposited the said amount before the Executing Court in August 1998. Since then, the benefit of the decree obtained by the complainants from this Court, which has been affirmed by the Apex Court of the country has been denied to the complainants. Further, as noticed by us earlier, the respondent having filed an unconditional apology before this Court by means of an affidavit, he went back on that when the apology was not accepted by this Court. Therefore, we are of the view that with a view to maintain majesty of law and to convey in clear terms to the respondent and other litigants, who have the tendency to commit the acts similar to the one committed by the respondent, the respondent should be directed to undergo imprisonment and pay penalty. In our considered view, he should be directed to undergo imprisonment for a period of 7 days and to pay a fine of Rs. 2,000/-. In the event of the respondent failing to pay the fine, he should undergo simple imprisonment for a day. Accordingly, we pass a sentence directing the respondent to undergo simple imprisonment for a period of 7 days and to pay a fine of Rs. 2,000/-;

and in default, to further undergo simple imprisonment for one day.

Re : Question (6) :

16. Now, the only other question is, whether, in addition to the punishment imposed on the respondent as stated above, the contempt committed by the respondent should be purged by directing the Executing Court to put the complainants in possession of the schedule premises without any obstruction by any one if necessary by giving Police assistance. As noticed by us earlier, the Counsel for the respondent has fairly stated that he has no. objection to make an order directing the Executing Court to put the complainants in possession of the schedule premises. Since we have come to the conclusion that R.W, 3 Rama Reddy and his son Rakesh Kumar were not in possession of the schedule premises on the date of the judgment and decree made by this Court in R.F\A. No. 830/87 and also till the date of the undertaking given by the respondent as per Exhibit C-2 dated 24th August 1998, we are of the view that the obstruction placed by R.W. 2 Rama Reddy and his son Rakesh Kumar has no legs to stand. Further, the said Rama Reddy has been examined as R.W. 2 before this Court, ;As noticed by us earlier, the said Rama Reddy and his son were only set up by the respondent in his attempt to frustrate the undertaking given by him to the Executing Court and also the judgment and decree made against him. The Hon'ble. Court in the case of Rita Markandey (supra), under similar circumstances, while convicting the contemnno in the said case, had directed the Rent Controller to ensure that possession of the premises in the said proceedings was handed over to the landlord. Further, in the case of Noorali Babul Thanewala (supra), the Hon'ble Supreme Court has directed the contemnno to deliver vacant possession of the premises which was the subject matter of dispute in the said matter, to the complainant and further directed the District Magistrate to evict all those persons who were in physical possession of the property, which was the subject matter of dispute in that case. Further, the Hon'ble Supreme Court, in the case of Supreme Court Bar Association v. Union of India , while taking the view that the object of imposing punishment on a contemnno is both curative and corrective and are meant to assist an individual complainant to enforce his remedy, at paragraph 34 of the judgment, has observed thus (at page 1905 of AIR) :

34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any Court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the Court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the Court to maintain the majesty of law may direct the police force to be utilised for recovery of possession

and burden the contemner with costs, exemplary or otherwise.

In our view, the principles enunciated by the Hon'ble Supreme Court in the decisions, referred to above, would permit the Court while punishing a contemnor for the misconduct of contempt committed by him, to purge the contempt by providing remedial measures of ensuring the fruits of the decree which the complainants intended to secure. Therefore, we are of the view that having regard to the facts and circumstances of the case and the obstructions put by the respondent in denying the benefit of the decree to the complainants, it would be in the interest of justice to direct the Executing Court in Execution Case No. 837/1998 to put the complainants in possession of the schedule premises in terms of the judgment and decree made by this Court in R.F.A. No. 830/87 free from all obstructions from any one, if necessary with the police assistance, within four weeks from the date of receipt of a copy of this order. Accordingly, the Executing Court before which Execution Case No. 837/1998 is pending is directed to comply with the direction given above and report compliance to this Court.

17. The respondent is also liable to pay costs of Rs. 5,000/- to the complainants.

18. In terms stated above, this contempt petition is disposed of.

19. Office is directed to communicate a copy of this order to the Executing Court with seven days from today.