

## **Raj Prakash vs Choudhry Plastic Works And Anr. on 23 February, 1979**

**Equivalent citations: ILR1981DELHI939**

### **JUDGMENT**

Prakash Narain, J.

(1) This application for taking proceedings for allegedly committing contempt of this court was moved by one Raj Prakash against M/s. Choudhry Plastic Works, Gali Bama, Sadar Bazar, Delhi, and Mangat Ram Choudhry who is the proprietor of M/s. Choudhry Plastic Works, by invoking Section 11 of the Contempt of Courts Act, 1971, hereinafter referred to as the Act. We issued notice of the application to the two parties mentioned above. A reply supported by an affidavit was filed by Mangat Ram Choudhry on his behalf and on behalf of M/s. Choudhry Plastic Works submitting that no contempt of court had been committed, as alleged, and setting out the circumstances in which the alleged default was committed. An unqualified apology was also tendered. Raj Prakash filed a rejoinder to this reply reiterating that Mangat Ram Choudhry had committed contempt of court and asserting that the affidavit filed was false. It was further contended that apology with a justification could not be accepted and, in any case, the apology was not bona fide. After hearing learned counsel for the parties we, on December 2, 1977, took a prima facie view that a case of committing contempt of this court by Mangat Ram Choudhry was made out. Accordingly, we issued rule nisi to him in court when he was present to show cause why he should not be held liable for committing of contempt of this court in filing false affidavits, not complying with the orders of this court to make delivery in accordance with the delivery up order in R.F.A. (O.S.) 2 of 1973 and otherwise making incorrect and misleading statements. Mangat Ram Choudhry filed a further affidavit in reply to the rule nisi issued by us. At that stage a question arose whether the proceedings were for allegedly committing civil contempt or criminal contempt. Mangat Ram Choudhry had moved C.M. 101 of 1978 to seek clarification in this behalf. By our order of February 10, 1978 we clarified that rule nisi had been issued to Mangat Ram Choudhry for proceedings in the nature of civil contempt and not criminal contempt. We also directed that Mangat Ram Choudhry should first produce his evidence and thereafter the applicant Raj Prakash would lead evidence with liberty to Mangat Ram Choudhry to lead evidence in rebuttal. Evidence was produced by Mangat Ram Choudhry. As far as Raj Prakash is concerned he only appeared himself in the witness box. After hearing arguments on the conclusions of the evidence of the parties we reserved orders and now proceed to pronounce the same.

(2) In order to appreciate the circumstances which led Raj Prakash to move the application under Section 11 of the Act it would be necessary to set out a few facts.

(3) Raj Prakash filed a suit for permanent injunction and accounts against Mangat Ram Choudhry, his firm, Choudhry Plastic Works, and another firm M/s. Chacha Baloon Store of Agra, claiming that these three parties were infringing his patent rights in producing, marketing and selling a toy, which

is a viewer using a 35 mm. medially cut positive film on which are printed one or more pictures viewed through a lens fitted in a viewer specially adapted turn use of such medially cut strips of 35 mm. positive films so as to get a virtual image of the same size as the virtual image of a normal frame in a 35 mm. film. Raj Prakash's patent, as. granted by the patent office, bore No. 111926. This suit was dismissed by a learned Single Judge of this court sitting on the original side. An appeal against that judgment came up for hearing before me sitting with S. N. Andley, C. J. We felt that the trial Court had failed to frame an important issue and so. we framed an additional issue and remanded the case back for a finding on the said issue and the disposal of the suit thereafter. The learned single Judge gave his finding on that issue and again dismissed Raj Prakash's suit. The appeal (R.F.A. (OS) 2 of 1973) came up before B. C. Misra, J. and myself. This appeal we disposed of by the judgment dated March 25, 1977. Speaking for the Bench I held that Raj Prakash's Patent No. 111926 dated August 11, 1967 was not as determined by the learned single Judge but something entirely different. Indeed, during the hearing of the appeal we had got the matter clarified and Raj Prakash had made a statement as under :

"THE patent that the appellant claims as already submitted is not in the process of exposing of a film, use of any particular type of camera or any type of technique including masking in exposing a film, in processing a film, in developing the negative film and printing the positive films. The patent that he claims as having been granted to him is in a medially cut positive 35 mm. printed film. (with one or plurality of pictures) and its use in combination with viewers specially adapted for the use of such medially cut strips, so as to get a virtual image of the same size as the virtual image of normal 35 mm. frame. The half strip thus used may also contain a plurality of pictures and that is part and parcel of appellant's patent..."

It was further held that Raj Prakash had rightly construed the scope of his patent as per claims I to 5 submitted to the patent office and that the learned Single Judge went wrong in holding that the patent lay in the process of filming by masking. Having come to this conclusion we set aside the judgment of the learned Single Judge and decreed the suit of Raj Prakash. Being of the view that the patent law was somewhat technical and Section 151 of the Patents Act, 1970 required transmission of any order made to the Controller of patents, in the judgment itself a formal order was drawn up. While decreeing Raj Prakash's suit we injuncted the respondents in the first appeal, including Mangat Ram Choudhry and M/s. Choudhry Plastic Works from in any way infringing Raj Prakash's patent. We also granted some further reliefs but it is not necessary to note all of them for the purposes of the present application. Suffice it to say that apart from the permanent injunction we made a formal delivery up order as well as an order of injunction. The said order reads as under :

"THIS court does order that R.F.A. (OS) 2 of 1973 is allowed, and the judgments of the trial Court dated December 15, 1972 and January 27, 1975 are discharged. The plaintiff having raised the question of the enforcement of his patent, the same being upheld, the defendants by themselves or through their servants and agents are restrained during the continuance of patent No. 111926 dated August 11, 1967, or any extension thereof from infringing the said patent of which the plaintiff is the owner. The patent claimed by the plaintiff and construed by this Court, is that the plaintiff

appellant is the owner of the patent which is in a medially cut positive 35 mm. printed film (with one or plurality of picture) and its use in combination with viewers specially adapted for the use of such medially cut strips, so as to get a virtual image of normal 35 mm. frame. The patent thus is also in a half cut 35mm. positive film and the viewers with such film fitted therein. It is further ordered that an enquiry be made what damages have been sustained by the plaintiff by marketing of the infringing viewers by defendant No. 3, the claim of damages and accounts against defendants 1 and 2 having been satisfied in accordance with what is stated in our judgment hereinabove; and it is further ordered that defendants 1 and 2 do within 10 days hereafter make a full and sufficient affidavit stating what infringing viewers, films, dies are in their possession, custody or power; and it is ordered that the defendants do within 10 days after filing of the said affidavit deliver up to the plaintiff the infringing viewers, films and dies in consonance with the court proceedings and orders passed on January 24, 1977. Costs of the proceedings will be borne by the parties themselves. This court hereby certifies, pursuant to Section 151 of the Patents Act, 1970, that the plaintiff has proved the particulars of breaches and defendants 1 and 2 have failed to prove their claim for revocation of the patent. And it is further ordered by this court that the agreement between the plaintiff and defendants 1 and 2 executed on January 17, 1977 has been recorded by court, copy of which is Annexure 'A' to the formal order."

I may notice some other developments prior to the pronouncement of the judgment dated March 25, 1977 in R.F.A. (O.S.) 1973.

(4) On January 11, 1977 after hearing counsel for a couple of days it transpired that there was a possibility of a settlement between the parties. We, therefore, recorded statements of the parties' counsel on that very day. Bawa Shiv Charan Singh appearing for Mangat Ram Choudhry and M/s. Choudhry Plastic Works, inter alia, stated that, "respondents 1 and 2 (Mangat Ram Choudhry and Choudhry Plastic Works) will not manufacture or produce for sale any viewers in which a 35 mm. film medially cut giving two strips, is used for the purposes of making a complete film strip viewer. They will purchase all such viewers, viz.. which use a 35 mm. film medially cut from the appellant. The price that respondents 1 and 2 will pay to the appellant for each viewer using coloured film will be Rs. 2.75 less 10 per cent and the price that respondents 1 and 2 will pay to the appellant for each such viewer using a black and white film will be Rs. 2.25 less 10 per cent..... Respondents 1 and 2 acknowledge the patent of the appellant to this extent for the duration for which it is granted to him'..... Respondents 1 and 2 will within 10 days of the date to be specified by this court in its final order deliver unto the appellant all dies in the respondents' possession which enable a 35 mm. film, medially cut to be used in a viewer. These dies may be of the entire viewer or of any component of the viewer which makes it possible for a strip medially cut out of a 35 mm. film to be used in a viewer ..."

(5) Mr. Mohinder Narain, Advocate, appearing for Raj Prakash, inter alia, made the following statement :

"ONbehalf of my client I accept the above terms. By upholding the appellant's patent the suit may be decreed in terms of the compromise contained in statement of learned counsel for respondents 1 and 2....."

On January 11, 1977 the appeal again came up before B. C. Misra, J. and myself when statements of counsel were recorded. On this date Bawa Shiv Charan Siagh, Advocate for Mangat Ram Choudhry and M/s. Choudhry Plastic Works, inter alia, stated that, "As far as respondents 1 and 2 are concerned, they undertake not to manufacture or sell viewers of the type mentioned in the plaint except in accordance with the agreement which the parties will enter into....." Mr. Mohinder Narain, Advocate for Raj Prakash, according to the-corrected statement dated 25-2-77, inter alia, stated that he had heard the statement of Bawa Shiv Charan Singh and prayed that injunctions as claimed by the plaintiff appellant be issued. He further stated that his client will enter into an agreement with the defendant for the supply of patented viewers on terms mutually agreed between the parties and place a copy of the agreement on the record of the case.

(6) On January 19, 1977 an agreement between the parries was filed before us. We recorded that fact. A copy was signed by counsel and parties. We thereupon reserved judgment.

(7) On January 24, 1977 it was brought to our notice by learned counsel for the parties that there was some difficulty being experienced by the parties to implement the arrangement regarding delivery of dies by the respondents to the appellant. We, therefore, directed the matter to come up before us to explore if it was possible to find out any .working solution. After hearing the learned counsel and with their consent we directed that fhe dies that the respondents shall deliver to the appellant will be of the spools used in all the four types of viewers which were being marketed by the respondents using a medially cut 35 mm. film. The spools that were used in the viewers marked "I" and "1A" and fhe inner frame having the gate/window in the said two viewers similar-and the same two dies were used respectively for the spools and the inner frame in the two viewers. These two dies we directed to be delivered to fhe appellant. With regard to the third viewer by the name of 'Mectorama' we noticed that there were several components in it. We directed that the dies for the spools used in that particular type of viewer and the dies for the body of the viewer having a gate window would be delivered up by the respondents to the appellant. There was a fourth viewer which was subject matter of the suit and we directed delivery of the due of this viewer also. We noticed that there was spool in this viewer which was specially adapted for a 35 mm. film medially cut. These dies of this spools was also ordered to be delivered up.

(8) Thereafter the judgment in the appeal was pronounced on March 25,1977.

(9) In purported compliance of the undertaking given in court in January, 1977 the respondents' counsel, Bawa Shiv Charan Singh, Advocate, addressed a letter dated January 28, 1977 to Mr. Mohinder Narain, Counsel for Raj Prakash, that eight dies which respondents 1 and 2 had agreed to hand over to Raj Prakash were lying with him for delivery to Mr. Mohinder Narain's client. The photographs of these eight dies bearing the signatures of Mangat Ram Choudhry were enclosed with the said letter. A request was made to instruct Raj Prakash to take delivery of the said eight dies against a proper receipt. Raj Prakash is stated to have been out of Delhi at that time. Th fore, the

delivery of these eight dies was taken on January 1977 by Shri S. S. Johar, Advocate, for Raj Prakash as a receipt.

(10) By the present application Raj Prakash has contended that, inter alia, Mangat Ram Choudhry has in violation of judgment dated March 25, 1977 given in R.F.A. (OS) 2 of 1973 and in violation of the formal delivery up order made and as a consequence of that judgment not delivered up all the dies which he was bound to deliver up and has violated the injunction against manufacturing and selling Mecorama viewers using a medially half cut 35 mm. film. It has been further alleged that Mangat Ram Choudhry has not made a full and true disclosure as required by the delivery up order and he also filed false affidavit thereby willfully flouting the order permanent injunction and the order of delivery up of the infringing dies. The dies which are alleged not to have been delivered up were ultimately claimed to be at least one die which was used for fabricating the body of the Mecorama viewer with a gate suitable for use of a medially half-cut 35 mm film and spools. The affidavits which are said to contain false statements are the affidavits sworn by Mangat Ram Choudhry on April 4, 1977 and October 11, 1977.

(11) Before we proceed to examine the evidence and the contentions raised before us, inasmuch as we are of the prima facie view that Mangat Ram Choudhry had committed contempt of this court, it would be proper to set out what he has deposed in his affidavits dated April 4, 1977, October 11, 1977, January 2, 1978 and January 30, 1978.

(12) The affidavit of April 4, 1977 is by way of discovery and disclosure in compliance with the decree in R.F.A. (OS) 2 of 1973. In paragraph 3 of his affidavit it is stated :

"THAT I am not in possession of any dies capable of producing using half cut cinematographic films for use in viewers. All the parts of the viewers using half cut film strips were produced before the court. These were examined by the Court and Shri Raj Parkash. After the examination, the court decided that some of these parts were the offending parts. These parts were then separated and ordered to be kept under seal. The dies of all these parts were ordered to be handed over to Shri Raj Parkash or his counsel. The dies were handed over to Shri Raj Parkash and his counsel as per the above order and after obtaining the signatures of Raj Parkash or his counsel on the photographs of these dies. I am not in possession of any offending die."

(13) The affidavit of October 11, 1977 was in reply to the notice originally issued by us in the contempt proceedings. In this Mangat Ram Choudhry has, inter alia, stated :

"ON 24th January, 1977 the Court was pleased to direct the respondent to deliver to the Appellant the following dies :

(i) die of the spools used in all the four types of viewers which were being marketed by the Respondent using a medially cut 35 mm. film;

(II)the die for the spools which were used in viewers marked 1 and 1-A and the inner framt having a gate/window in the said two viewers;

(III)of the third viewer which was being marketed by the Respondent under the name 'Mecorama', the die for the body of the viewer having a gate/window and not the die of any other component part;

(IV)of the 4th viewer, the die of the outer casing having a gate/window.

.....The die at Serial No. (i) to (iv) were delivered. The die at Serial No. (iii) delivered on 29-1-1977, was the only die with the respondent regarding the body of Mecorama viewers using 1/2 cut 35 mm. film. ....It is incorrect to allege that the Respondent produced any viewer under the name of Mecorama using 1/2 cut 35 mm. film strip after 31-10-1976. .... He is in possession of the die of the body of the viewer marketed by him under the name Mecorama but that die cannot produce a body of the viewer using 1/2 cut 35 mm. film. Originally in January 1973 the Respondent go:: one die made from M/s. Virendra Engineering Works for producing the body of the viewer called Mecorama using 1/2 cut 35 mm. film strip, and payment for the same was made by cheque No. 716266 dated 24-1-73 on Oriental Commercial Bank, Sadar Bazar, Delhi. It was used for about 2 years. Thereafter in March, 1975 one more die for the same purpose was got made from the said die maker, and payment for the same was made by cheque No. 353373 dated 12-3-75 on the aforesaid Bank. Firstly, both the dies were used but later almost all the production was taken out from the new die. In November, 1976, the Respondent thought of using in his viewers the full 35mm. film as a single strip with perforations on one side. On 1-11-1976 the Respondent instructed S. Sardul Singh, trading under the name of S. S. Die Maker, to convert the later of these dies in such a manner as to produce a larger gate to enable the use of the full 35 mm. film strip with both the perforations out. The conversion of this die was considered more advantageous. While making the larger gate, that die got damages and become incapable of use. The die maker informed the Respondent of the damage when the Respondent went to him on 5-11-1977 to make enquiries. The Respondent after seeing the damaged die, asked him to prepare two new dies, with bigger gate, as instructed previously, and also make one die for a new roller which would take in its slot the full 35mm. film with perforations cut on both sides. The damaged die remained with the die maker. On 22-11-1976 the die maker delivered the 3 new dies to the respondent Along with his bill for Rs. 300.00 . This bill was paid vide cheque No. S. B. 913396 dated 11-12-1976 on the Oriental Bank of Commerce, Sadar Bazar, Delhi. The copy of bill No. 34, dated 22-11-76 and the counterfoil of the cheque dated 11-12-76 are filed as Annexure 'C' and 'D'. The die of the body of Mecorama viewer which was with the Respondent, was delivered on 29-1-1977. The damaged die of the body of Mecorama viewer which remained with the die maker was not delivered. The Respondent was of the bonafide belief that only the die which was with the Respondent and could be put to work had been ordered to be delivered. There was no other die with the Respondent of this viewer after 1-11-76." .....There was only one set of dies in existence on 11-1-1977 capable of producing the body of Mecorama viewer using 112 cut 35 mm. film and that set of dies was delivered on 29-1-1977. The body of the Mecorama viewer produced from the other die which had got damaged in the manner stated above. The damaged die is still with the die maker. The body produced in court is from the die which was damaged, in the manner stated above."

(14) The affidavit dated January 2, 1978 was filed after we issued rule nisi to Mangat Ram Choudhary. In this affidavit substantially Mangat Ram Choudhry stated what he had said in his affidavit of October 11, 1977. He further asserted :

".....The die made in 1975 of that body of Mecorama which was delivered in court was not with me. In fact no working die was in existence on 24-1-77 for manufacture of that part. The die of that part had been given by me on 11-1-77 to S. Sardul Singh of M/s. S. S. Die Makers for conversion so as to produce a bigger gate which would enable the full 35 mm. film strip, with both perforations cut, to be used in the viewer. This die (made in 1975) was damaged by the die maker during the process of conversion and became incapable of use and was mere junk. It remained with the die maker.

I had delivered the die of the body and the die of the spools of the viewer 'Mecorama' as directed by the order of the court dated 24-1-1977. This was the die made in 1973. The body of the Mecorama viewer made by use of 1975 die could not be at all brought to any use without the spools.

THE die of Mecorama viewer, made in 1973, was in Possession of Shri Raj Prakash from 29-1-1977 onwards. He never made any grievance with respect to the same till 5-5-1977.

.....The affidavit dated April 4, 1977 was sworn to by me in the absence of the copy of the judgment and in the light of what I understood, from the counsel, to be the order."

.....On 4-4-1977 I was not in possession of the die made in 1975 for making the body of the viewer called Mecorama.

....It was not after Shri Raj Prakash filed his application for contempt that I made enquiries from S. Sardul Singh on 8th October, 1977 and enquired from him whether he still had the damaged die with him. He promised to die up the heap of junk in his workshop and find if the die was still there or had been disposed by cutting it and making any die of some other item out of it or was still lying in the heap. On the morning of 10th October 1977 he told me that it was lying with him. I collected the die from him on 17-11-77 and produced it in court on 18-11-1977."

(15) The die which was produced by Mangat Ram Choudhry was with the consent of the parties marked Exhibit R. 3. This according to Mangat Ram Choudhry, was got made by him in 1975 but delivered to S. Sardul Singh in November, 1976 for being adapted to produce the body of a film strip viewer capable of using a full 35 mm. film. It was stated by S. Sardul Singh that it remained with him till the contempt proceedings started in this court and Mangat Ram Choudhry got it from him on November 17, 1977 for producing in court on the next day. It is with regard to this die that some evidence has been led which we will discuss hereafter. No evidence has been led by Mangat Ram Choudhry about other dies from which spools were fabricated.

(16) The first witness to be examined by Mangat Ram Choudhry was S. Sardul Singh. In our opinion, the testimony of this witness cannot be accepted as truthful. We shall presently comment only.

(17) S. Sardul Singh started his career as a turner in 1954. After working for some time in that capacity on a lathe he started his work as a maker of dies of plastic goods in 1965. He knew Raj Prakash and had prepared some dies for him. He even worked with Raj Prakash on the basis of sharing profits. Thereafter he left him and started his business of fabricating dies for plastic goods. Mangat Ram Choudhry first went to S. Sardul Singh some two years prior to this witness appearing in court, i.e. in 1976. He deposed that a year later Mangat Ram Choudhry had brought to him a die for rectification. The order placed was that the die be adapted for producing the case of a film strip viewer in which a broader film could be used. Sardul Singh told Mangat Ram, Choudhry that his charges would be Rs. 40.00 to Rs. 50.00 for modification and that the modified die be collected 2 to 4 days later. The modification that had to be made in the die was to make a bigger aperture so that a bigger 'gutka' could be fitted instead of the small one. According to this witness he had spoiled the die. As Mangat Ram Choudhry got upset, he told him that he would fabricate a new die for him within 10 or 15 days. Mangat Ram Choudhry then asked him to fabricate the new die in which a bigger film could be used and also asked him to fabricate a die for a roller. Mangat Ram Choudhry in fact asked him to fabricate three dies, one for a spindle, one for a body in which a bigger film could be used and yet another one in replacement of the die that had got spoiled. Drawings of the dies were given by Mangat Ram Choudhry to Sardul Singh. The charges settled were Rs. 300.00 for the two new dies, one die, the witness admits, had to be given by way of replacement. The spoiled die remained with him which he put into the scrap. These three dies were fabricated by Sardul Singh and were duly collected by Mangat Ram Choudhry. Payment was made by cheque dated December 11, 1976 against a bill. The bill was produced and marked Exhibit R. 1. The counter-foil torn from the cheque book with regard to payment was taken on record and marked Exhibit R. 2. About six or eight months later Mangat Ram Choudhry went to this witness and told him that there was some trouble about the spoilt die and asked if the witness could locate it. He told him that he would look for it. Couple of days later Mangat Ram Choudhry collected the spoilt die which the witness identified was the same as Exhibit R. 3. According to this witness since he had supplied a die by way of replacement to Mangat Ram Choudhry the spoilt die became his property. In examination-in-chief, to a specific question, the witness said, "Mangat Ram Choudhry took back the spoilt die from me 8 or 10 days after I had initially told him that it had got spoilt and Mangat Ram had said that I had caused loss to him. I did not take any money from Mangat Ram when I gave him the spoilt die." The witness asserted that the bill, Exhibit R. 1, pertained to the three dies shown to him in court. This bill had been prepared by Sardul Singh's son under instructions from him. In cross-examination the witness asserted that the central hole or aperture in Exhibit R. 3 is circular. Drawn our observation we found it was oblong. Indeed, the witness on further cross-examination had to admit this. According to this witness hole is bored in a metal plate by so fixing it on a portion of the lathe that the metal plate is secured and cannot move in any direction. The portion of the lathe to which this metal plate is secured then revolves round in a circular fashion. The bore in the metal plate is made with the help of a cutting tool which is secured and can move only forward and backward by rotating an handle. It moves in a straight line and when the metal plate revolves in a circle it comes into contact with the cutting tool and a whole is bored or cut out of the desired diameter. Thus, the operation of the lathe would be such in which a circular bole would be cut and



not an oblong aperture. This witness admitted that the hole or the aperture is made in order to enable a file of the required type to be passed through and then the aperture of the desired size and shape is obtained by filing away the excess material within delineated shape of the aperture. All this came out in cross-examination. The working of the tool post (haddi) on the bed of the lathe is by means of handles or levers, one is used for a backward and forward movement and the other for a side to side movement. When the circular handle is moved, there is only movement along the bed of the lathe from one side to the other across the line of the bed of the lathe. A demonstration of this was also given in court.

(18) From the above testimony it is clear that in order to make a bigger aperture in Exhibit R. 3 it was not at all necessary to put the die on a lathe for getting an aperture. An aperture was already there. All that was required to be done was to make it bigger and this could be done by using a file. Therefore, the story of Exhibit R. 3 having got damaged by movement while it was fixed on the lathe cannot be accepted. Furthermore, on the examination of the die, Exhibit R. 3, we find that there are some cuts in the side of the bore or aperture in the centre. This damage could not have been occasioned while Exhibit R. 3 was on the lathe and the lathe was being worked in a normal manner for making an aperture. These cuts could only be made deliberately in order to show that the die had got spoilt. Indeed, Sardul Singh admitted that the 'gutka' portion of the damaged pit of the die could be separated. The small 'gutka' is fixed in the aperture to the big 'gutka' and the gate of the view is fabricated from the big 'gutka'. He admitted that it was correct that before the big 'gutka' got spoilt, the aperture in it was a square aperture in which a small gutka shown to him used to fit. The big 'gutka' got spoilt according to him because the bore he made became slightly bigger than what was intended. He also admitted that Exhibit R. 3 had been given to him to adapt it so that a bigger 'gutka' could be fitted in the aperture where the small 'gutka' used to be fitted. He insisted that he had to bore a hole for that purpose. This is completely at variance with what he later on deposed that an aperture had to be first made and then a square aperture was made by filing. When pressed in cross-examination, this witness had to admit that the hole is made so that the file could be used through the plate to get the requisite shape of the aperture.

(19) Apart from what we have observed above, even the bill and the counter-foil of the cheque produced in evidence throw great doubt on the veracity of this witness. Exhibit R.1 is a consolidated bill of Rs. 3001- of two dies for the body and one die for the roller of a viewer. The payment is said to have been made full and the counter-foil shows part of the amount paid to Sardul Singh Die Maker on December 11, 1976. Admittedly, Sardul Singh was called to fabricate only three dies. Two dies were for the body and one for the roller in a viewer. Out of these two dies, for the body of the viewer, one die was by way of replacement for the die alleged to have been spoiled. Why in these circumstances the bill was for three dies and not for two dies has not been explained. Therefore, the whole story is a fabrication and we have no hesitation in rejecting it. Indeed, we will have occasion to comment on this aspect when we come to examine the testimony of Mangat Ram Choudhry in detail.

(20) The next witness produced by Mangat Ram Choudhry was Ashok Kumar Jain, a Salesman employed with the firm, Babulal Gupta & Co., Sadar Bazar, Delhi. He deposed that his firm used to purchase viewers and other plastic toys from Mangat Ram Choudhry. The last consignment of

viewers which he could get from Mangat Ram Choudhry was on January 10, 1977. This was Mecorama viewer. The order was for five gross of this item but only two gross were supplied but thereafter Mangat Ram Choudhry could, not supply this type of viewer. According to this witness 'Mecorama' viewers were in great demand. Mangat Ram Choudhry could never cope with the same and used to supply two to three gross as against the requirements of five gross. From the testimony of this witness Mangat Ram Choudhry sought to prove that he never sold Mecorama viewers after January 10, 1977.

(21) The last witness produced by Mangat Ram Choudhry in support of his case was himself. He stated that the first die of Mecorama viewer that he got fabricated was in 1973 from Virendra Engineering Works. This die was for producing viewers using a half-cut film. The die was used by him for about 1-112 to 1-314 years. He then got another similar die made from the same firm. The reason to get a second die made was that the first die had become defective. From Sardul Singh, R. W.I, he got a die made for the first time in April, 1976 for fabricating small cameras. He visited Sardul Singh again in November, 1976 to get the die for fabricating viewers using halfcut films to be adapted or converted to produce viewers using a full film instead of a half-cut film. According to him Exhibit R. 3 was that die which he gave to Sardul Singh for being adapted or converted. This die was spoilt by Sardul Singh and in lieu thereof Sardul Singh gave him another die and two more dies which were freshly ordered. The spoilt die was left with Sardul Singh. The adaptation was to be made by Sardul Singh by making a bigger gate. The spoilt die was collected later by Mangat Ram Choudhary when the "present proceedings started and produced in court. On the question of not complying with the delivery up order, Mangat Ram Choudhary deposed that he was not present in court on the date when the judgment in R.F.A. (O.S.) 2 of 1973 was announced. He came to know of the judgment two days later from the office of his counsel. He then requested his counsel to apply for a certified copy of the judgment which, according to him, was received by him .subsequent to his making the affidavit required by the delivery up order. According to him the affidavit was given on the basis .of what his counsel told him as to the requirements of the affidavit postulated by the delivery up order. He admitted that though he did receive the certified copy of the judgment of April 18, 1977 he never read through it carefully. He admitted that before he gave the affidavit postulated by the delivery up order he was told by his counsel that he was required to give all the dies to the opposite 'party. In consequence he brought the dies to his counsel's office and had photographs taken and delivered up the dies of which the photographs had been taken to Shri S. S. Johar, Advocate of Raj Prakash. These photographs are Exhibits R. W. 3/1 to R. W. 318. The delivery receipt is Exhibit R. W. 319 and the copy of the letter signed by counsel is Exhibit R. W. 3/10. He further admitted that the affidavit was drafted by the counsel on his instructions and that while giving those instructions he did not tell his counsel anything about the die. Exhibit R. 3. This affidavit is dated April 4, 1977. He asserts that he did not remember anything about the die, Exhibit R. 3, as it had remained with Sardul Singh who had supplied a die by way of replacement. According to him he never produced a viewer using a half-cut film after Sardul Singh gave him a die by way of replacement of Exhibit R. 3. He asserted that he had no die in his possession from which he could manufacture a viewer or any part thereof in which half-cut film could be used. The last Stock of such viewers was sold by him to M/s. Babu Lal Gupta & Co., as deposed by A. K. Jain, R. W. 2. He produced the bill in this behalf which is Exhibit R. W. 3/12. From June, 1977 he produced viewers using full film. He reasserted payments made by cheque to Sardul Singh. Reverting to the die,

Exhibit R. 3, he stated that he could not produce a viewer from it even if it had been in his possession because it had been spoilt by Sardul Singh. Regarding rollers he said that the new die he had got prepared from Sardul Singh to fabricate rollers could not produce rollers which could be used in the body of a viewer fabricated from Exhibit R. 3. He submitted that he had no intention to disregard or disobey the orders of this court or not to comply with the delivery up orders. He apologised to this court for not having delivered up Exhibit R. 3 to Raj Prakash.

(22) In cross-examination he admitted that the bodies of the viewers produced from the two dies fabricated by Virendra Engineering Works had some difference as there was a difference in the two dies. The die fabricated in 1973 shows two inlets for the material to enter the die while there was only one inlet for the material to enter in the die manufactured in 1976. There was even difference in the base of the dies inasmuch as the product taken out from the two dies would have different imprints or patterns on the bodies of the viewers. This difference we ourselves noted on examining not only the dies but also the bodies of viewers admittedly produced from those dies. On being shown a Mecorama viewer which he had submitted in court in January, 1977 on the directions of the bench hearing the first appeal he admitted that the body of that viewer had been manufactured by a die which had only one inlet for the material to be poured in. According to him this body was manufactured from the die which he had got prepared in 1975. This body was marked by us as Exhibit A. 5. Thus, it was clear and it was admitted by Mangat Ram Choudhary that the object, Exhibit A. 5, was manufactured from the die Exhibit R. 3. On being pointed out that the object Exhibit A. 5 was submitted in court in January, 1977 and could not, according to Mangat Ram Choudhary, be thus produced from Exhibit R. 3 which had got spoilt in November, 1976, he said that Exhibit A. 5 was manufactured in or about November, 1976. He admitted that no date of manufacture was given on the object. Another object, Exhibit A.6, was then shown to Mangat Ram Choudhary and he was asked to compare it with the delivered up die which, according to him, had been got fabricated in 1973. On examining it he said that Exhibit A. 5 could not be made from the die Exhibit A. 6 (the die fabricated in 1973). He admitted that the pattern in Exhibit A. 6 was distinct from the pattern of the die Exhibit R. 3. He stated that rollers to be fitted in viewers made from die Exhibit R. 3 or die Exhibit A. 6 were to be fabricated from a common die but again said, that the rollers to be fitted in the body of the viewer manufactured from die Exhibit A.6 would be different from the roller which would be fitted in the body of the viewer manufactured from the die Exhibit R. 3. Having been pinned down to this position he admitted that he delivered up the die only for the manufacturing one set of rollers and not the other set of rollers. The previous stand taken by him that there was only one die for rollers to be fitted in viewers made either from the die Exhibit A. 6 or the die Exhibit R. 3 thus stood falsified. A further object being a viewer was then shown to him. This was Exhibit A. 7. On looking at it Mangat Ram admitted that it was correct that the body of this viewer was produced from the die Exhibit R. 3. He asserted that no part of the viewer Exhibit A. 7 could be made from the die Exhibit A. 6. On being asked whether different portions of Exhibit A. 7 could be manufactured from Exhibit A. 6 and Exhibit R. 3, Mangat Ram Choudhary took the stand that he had different dies to produce various parts of the viewer Exhibit A. 7 and that he had one die each for the black portion, the green portion and the white portion at the top of exhibit A. 7. He was then shown two objects Exhibits R. 4 and R. 5. He admitted that the objects shown to him were manufactured from two dies which, he got made from Sardul Singh in 1976. A suggestion was then made that Exhibit R. 5 could not be manufactured by the die which he had brought in court and

which, according to him he had got fabricated from Sardul Singh in 1976. Mangat Ram Choudhary maintained that it could be done. On this we asked Mangat Ram Choudhary to open the die which he had brought with him to court and demonstrate that the object Exhibit R. 5 was manufactured with that die. He tried to fit Exhibit R. 5 on the die but it could be fitted only with difficulty and cracked in the process. It cracked from the gate portion and the side. Despite the cracking of the body of the viewer it still did not quite fit the die. Next Mangat Ram Choudhary was asked to examine the pattern on Exhibit R. 5 with the base of the die he had allegedly got fabricated from Sardul Singh in 1976. Since that did not tally it was suggested that he had more than one die to fabricate viewer. Exhibit R. 5. Mangat Ram Choudhary asserted that he had only one die. He, however, admitted that from the die which he had brought to court, an article like Exhibit R. 5 having an integrated gate could not be manufactured. He admitted that from one die he could manufacture 400 pieces a day. The witness was next shown another viewer. Exhibit A. 8. The pattern on the front side of the viewer Exhibit A. 8, was different from the pattern on the back-side. According to this witness he had fabricated this view from the die which he had got made in 1977. He admitted that Exhibit A. 7 and Exhibit A. 8, except for the front cover of the viewer, were made from the same die. He further admitted that whatever he manufactured was sold and that there was great demand for the viewers being fabricated by him. Reverting to the viewer, Exhibit A. 7, the witness was asked to see whether it had a new coloured film or an old film. He first said that it had a new film and then said that it had an old film. On our observation we found that the film was bright and new.

(23) From the above testimony of Mangat Ram Choudhary it is apparent that he did not deliver up all the dies which he was required to under the delivery up order made in R.F.A. (O.S.) 2 of 1973, for one he did not deliver up the dies of all the rollers. Secondly, the story about Exhibit R. 3 having been spoilt by Sardul Singh cannot be accepted by us to be true. This is for several reasons. First, there is no explanation whatsoever as to why he gave the die to Sardul Singh in November, 1976 for being converted into a die to manufacture viewers using a full film when, according to him, the earlier die got made in 1973 had been spoilt. There was no occasion in November, 1976 to get the die altered. The suit filed by Raj Parkash had been dismissed by a learned Single Judge. Its appeal, R.F.A. (O.S.) 2 of 1973 had been remitted back to Single Judge in April, 1974. The second judgment of the learned Single Judge was also in favor of Mangat Ram Choudhary. Having succeeded in the trial Court there was no cogent reason for Mangat Ram Choudhary to have given the die in November, 1976 to Sardul Singh for being changed. Furthermore, for the reasons which we have given in rejecting the testimony of Sardul Singh we hold that the whole story has been later on thought out to give some explanation for the default committed. With regard to affidavits also our finding is that false affidavits have been filed inasmuch as full disclosure is not made. The delivery up order was, therefore, not complied with and, in our opinion, Mangat Ram Choudhary must be held to be a person who has deliberately flouted the orders of this court. It seems strange that whereas on the one side so much precaution is being taken by Mangat Ram Choudhary that he had photographs taken of articles delivered up to the counsel for Raj Parkash yet on the other hand he comes up with an unbelievable story that since he did not reach the full text of the judgment in R.F.A. (O.S.) 2 of 1973, he did not know the full import of the delivery up order. In our opinion, there was contumacious and deliberate default and the cover up story now put forward cannot be accepted. We, would therefore, reject the explanation given by him and hold him guilty of contempt

of this court, as postulated of sub-section (3) of Section 12 of the Contempt of Courts Act, 1971.

(24) This brings us to the question of whether the apology tendered by Mangat Ram Choudhary should be accepted and no punishment be awarded to him. Further, if the apology is not to be accepted or cannot be accepted in the circumstances of this case, what punishment is to be awarded and what is the nature of that punishment.

(25) Section 2 (a) of the Contempt of Courts Act defines the term "Contempt of Court". It means civil or criminal contempt. According to clause (b) of Section 2 'civil contempt' means willful disobedience of any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court. According to clause (c) of Section 2 '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) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

(26) The relevant portion of Section 12 of the said Act reads as under :

"12. Punishment for contempt of court..

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

PROVIDED that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

EXPLANATION. An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(27) The power to punish for contempt which is inherent in a court of record is saved by Article 215 of the Constitution which reads :

"HIGH Courts to be courts of record. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

Thus this power preserved and declared by the Constitution is an absolute power which cannot be abridged by any law. Indeed, the Supreme Court in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court*, , clarified this aspect while examining the provisions of the Contempt of Courts Act, 1926, the Contempt of Courts Act, 1952 and Sections 1(2) and 527 of the Code of Criminal Procedure, 1898 and held that so far as contempt of High Court is concerned, as distinguished from one of a subordinate court, the Constitution vests these rights in every High Court, so, no Act of a Legislature would take away that jurisdiction and confer it afresh by virtue of its own authority. The rule of law, therefore, appears to be that the power postulated by Article 215 of the Constitution cannot be abridged or controlled by any Act of a Legislature and so, no limitation as postulated by Section 12 of the Contempt of Courts Act, 1971 can be read in the exercise of that power. The Contempt of Courts Act, 1971, in that way, could only be regarded as laying down the procedure to be followed when the High Court exercises its powers saved by or derived from Article 215 of the Constitution. The present is a case of *Mangat Ram Choudhary* having committed contempt of the High Court and we will, therefore, read Section 12 in the light of the observations made above.

(28) The proceedings for contempt of court originally and traditionally were understood to be proceedings for vindication of the court's honour and prestige to ensure due respect for the rule of law. In course of time judicial decisions started distinguishing between civil contempt and criminal contempt, the former being a situation where one of the parties to a litigation was aggrieved by disobedience of a judgment, decree or order of a court and the latter being situations where generally speaking the court was scandalised or the authority or prestige of the court was lowered. The distinction so made was rather fine and generally the cases showed that where a litigant was aggrieved the authority of the court also stood lowered and vice versa. Judicial pronouncements, therefore, tended to observe that the distinction between the two types of contempt was more imaginary than real. In *Phonographic Performance Ltd. v. Amusement Caterers (Pckhem) Ltd.*, (1963) 3 All. E.R. 493 (2), this aspect was forcefully brought out by cross J. This was a case in which a notice of motion was taken out by the plaintiffs by which they asked that the property of the defendant be sequestered and the the course of events and of the proceedings, referred to Halsbury's Law of England (Volume Viii 3rd Edition) and said that where there has been willful disobedience to an order of the court and a measure of contumacy on the part of the defendants, then civil contempt, "bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the court in the public interest." The learned single Judge further went on to observe, "It is true that there are only two cases which the industry of counsel has found, in which in a case of civil contempt the court has imposed a fine instead of committing the defendants to prison. One of them is a case which is only very briefly reported in Current Law Consolidation. It appears that on June 1, 1951 Wynn Parry, J. imposed fines on two defendants who were guilty of contempt of court by disobeying an order of Roxburgh, J. instead of sending them to prison. One of them (although the judge thought that he deserved a

prison sentence) produced medical evidence that it would affect his health if he was sent to prison, and the judge thought that in the circumstances he had to treat them, both alike. The question whether he had jurisdiction to fine in a case of civil contempt may well never have been argued. The other case was the case of *Multiform Displays, Ltd. v. Whitmarley Displays, Ltd.* (formerly *Reay and Davis Ltd.*), where Lloyd-Jacob, J., imposed fines on two directors of a company against whom proceedings for contempt were being brought, instead of sending them to prison, but there again, I do not know if the point as to jurisdiction was taken. Of course, in such a case the defendants may prefer to pay what may be a small fine instead of going to prison.

(29) I cannot for myself see the logic of saying that in a case of civil contempt the court has no alternative to sending the defendants to prison. I ventured to put to counsel for the defendants an example which I think shows the ridiculous consequences no doubt that if one of these cafe proprietors had incited the directors to break the order; had told them that the order of the court was so much waste paper, he would have been guilty of criminal contempt. He therefore could have been fined. It would be very extraordinary that the case of the person against whom the order itself is made, should differ from that of the cafe proprietor, and that he can say: 'If you are not prepared to send me to prison, you cannot impose a fine on me.' I think that the court must have power, if there has been contumacious behavior, to impose the lesser penalty of a fine."

(30) In *Jennison v. Baker*, (1972) 1 All. E.R. 997 (3) Selmon, L.J. observed, "The inherent power of the judges of the High Court to commit for contempt of court has existed from time immemorial. 'Contempt of Court' is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of the judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. And solely to this end it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigant have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty, of the individual will perish. Contempt of court may take many forms. It may consist of what is somewhat archiacally called contempt in the face of the court, e.g. by disrupting the proceedings of a court in session or by improperly refusing to answer questions when giving evidence. It may, in a criminal case, consist of prejudicing a fair trial by publishing material likely to influence a jury. It may, as in the present case, consist of refusing to obey an order of the court. These are only a few of the many examples that could be given of contempt. Contempts have sometimes been classified as criminal and civil contempts. I think that, at any rate today, this is an unhelpful and almost meaningless classification."

(31) In the United States also the distinction between civil contempt and criminal contempt appears to be fast disappearing. In *Howard B. Parker v. United States of America*, 163 A.L.R. 379 (4), it has been noticed that the Supreme Court of that country has had many occasions to emphasise the importance of the distinction between a proceeding in civil contempt and one in criminal contempt. Proceedings in civil contempt are between the original parties to, and are instituted and tried as a part of, the main cause, the real purpose being purely remedial to coerce obedience to a decree passed in the complainant's favor or to compensate him for the loss occasioned by the respondent's disobedience of such a decree. On the other hand a proceeding in criminal contempt is a separate and independent proceeding at law with the public on one side and the respondent on the other. The

purpose of sentence in such a proceeding is punitive in nature to vindicate the authority of the court and to deter other like derelictions. But the remedial order does not trench upon the power of the court, in a proper case, to vindicate its own authority by punishment of an offender for a criminal contempt. Criminal and civil proceedings for contempt are not mutually exclusive. In our country, however, the distinction between civil contempt and criminal contempt is statutory, and punishment in either case is contemplated. In criminal contempt it would be in the nature of punitive action. In civil contempt it may be remedial and in appropriate cases even punitive. This is the only way in which one can reconcile the provisions of Section 12 with the power postulated by Article 215 of the Constitution as far as the contempt of the High Court is concerned.

(32) SUB-SECTION (1) of Section 12 of the Contempt of Courts Act, 1971 in terms deals with criminal contempt, i.e. the punitive action. This sub-section has a proviso that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. A further explanation clarifies that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide. Some argument has been advanced on the question of whether the apology by Mangat Ram Choudhary was bona fide, in the present case to which we will advert later. Suffice it to say at this stage that a conditional apology may now be accepted contrary to the trend of judicial pronouncements prior to 1971 that an apology cannot be deemed to be a proper apology if it is conditional and that it had to be unconditional and absolute. Sub-section (2) of Section 12 again refers to the proceedings postulated by sub-section (1) of Section 12 and lays down the limit of the sentence that may be imposed, by the court while punishing for criminal contempt. It is not necessary for us to dilate on whether sub-section (2) creates any fetter to the exercise of the power contemplated by Article 215 of the Constitution in the present case because the proceedings here are admittedly of civil contempt. We would only like to clarify and hold that sub-section (2) of Section 12 only controls the proceedings of sub-section (1) of Section 12 and not any other proceedings. Had it been the intention of the Parliament that the limitation imposed by sub-section (2) of Section 12 would also apply to proceedings other than proceedings contemplated by sub-section (1), there was no need for inserting the words "no court shall impose the sentence in excess of that specified in sub-section (1)" in sub-section (2) of Section 12. Sub-section (3) of Section 12 in terms deals with proceedings of civil contempt. This sub-section starts with non-obstante clause, "Notwithstanding anything contained in this section". Therefore, it must be treated as independent of sub-section (1) and sub-section (2) of Section 12 of the Act. It means, therefore, that sub-section (1) of Section 12 deals with criminal contempt while sub-section (3) of Section 12 deals with civil contempt. It has been urged, and it is true, that sub-section (1) of Section 12 does not use the term criminal contempt the same reading sub-sections (1), (2) and (3) of Section 12 together there can be no doubt that in sub-section (1) the Parliament was dealing with criminal contempt and in sub-section (3) it was dealing with civil contempt. This aspect is further clarified on a careful reading of sub-section (1) and sub-section (3) of Section 12. In sub-section (1) words that are used are like "punished" and "imprisonment". In the proviso to sub-section (1) the words used are "accused", "discharged" and "punishment awarded". These terms are normally used in criminal trials and not in civil proceedings. In sub-section (3), in contrast, the words used are "instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison." The words like "accused", "punished" and "imprisonment" do not feature in proceedings in civil contempt. We are, therefore, of the view that in our law the two proceedings are distinct and separate



types of proceedings and, therefore, neither sub-section (1) nor subsection (2) can control the proceedings under sub-section (3). If that be correct then the proviso to sub-section (1) or the explanation Under the proviso to sub-section (1) can have no play in construing the sub-section (2) of Section 12 of the Act. Therefore, neither the limitation as to the maximum fine of Rs. 2000 nor the provision regarding acceptance of apology would be attracted. Indeed, in civil contempt, which is contended arid proved, an apology or a maximum fine would be meaningless because primarily proceedings in civil contempt are remedial in nature. The remedy may even include compensating the complaining party for any loss suffered by him by willful breach or disobedience of a court's order, decree, direction etc. We may with advantage once again after to Howard B. Parker v. United Stales of America. When explaiaing the scope of the remedial nature of the proceedings in civil contempt Judge Magrudor speaking for the court observed, 'If complainant makes' a showing that respondent has disobeyed a decree in complainnant's 'favor and that damages have resulted to complainant thereby, complainant is cntitled as of right to an order in civil contempt imposing a compensatory fine. The court has no discretion to withhold the appropriate remedial order In this respect the situation is unlike that of criminal contempt where the court in its discretion may withhold punishment for the past act of disobedience." Even in Phonographic Performance Ltd. v. Amusement Caterers (Peckham) Ltd. the default was technical but compensation was awarded to the plaintiffs for having lost money and goodwill for 10 days. By an order the defendant was made to buy the plaintiffs' cost and the amount owing for license fee.

(33) Our attention was invited to M/s. Kalloo Mal Visheshwar Prasad and another v. Secretary to Government of U.P., Lucknow and others, 1974 Crl. L.J. 529 (5). A bench of the Allahabad High Court observed that under the Contempt of Courts Act, 1971, it is open to a contemner to justify his action and to tender apology at the same time. It was urged in this case in civil contempt it has been held that the explanation under the proviso to sub-section (1) of Section 12 applied to civil contempt. also. We do not find any discussion in the judgment as this aspect. Indeed, in paragraph 30 of the report action was taken under sub-section (3) of Section 12 without any particular clarification as to this scope of the two sub-sections or the effect of the non-obstante clause is sub-section (3) to which we have already adverted.

(34) We, therefore, hold that the apology given by Mangat Rant Choudhary is of no avail in the present case and the High Court cannot be held to be bound by the limitations imposed by sub-section (1) in respect of what may generally be called imposition of fine.

(35) One may look at this aspect of the apology from another angle also Although, in our opinion, the explanation under the proviso to sub-section (1) of Section 12 is not attracteed in proceedings for civil contempt, yet assuming that the legislative intent contained in the said explanation is, made to extend to proceedings in civil contempt, what one has to find out is whether in the: facts and circumstances of this case Mangat Ram Choudhary can. be said to have acted bona fide in tendering his apology to this court. In our opinion, the apology can hardly be called bona fide. .

(36) Raj Parkash's contention throughout has been that Mangat Ram Choudhary is producing viewers using half cut film in violation of the former's rights. Raj Parkash has claimed a patent in this behalf which was held as belonging to him In R.F.S. (O.S.). 2 of 1973. The effect of the decision

in that appeal was that, inter alia, Mangat Ram Choudhary was, restrained from infringing the patent of Raj Parkash. He was also required to make a full and true disclosure of all dies and material in his custody and power within the stipulated time by affidavit and deliver up the infringing dies and material. The contempt proceedings have arisen out of the contention that Mangat Ram Choudhary has defied the orders of the court. During the hearing of the first appeal on January 11, 1977 learned counsel for Mangat Ram Choudhary gave an undertaking on behalf of his client that he will not manufacture or produce for sale any viewers in which a 35 mm. film medially cut giving two strips is used for the purpose of making a complete film strip viewer. He also made a statement that Mangat Ram Choudhary acknowledges the patent of Raj Parkash to the above extent for the duration for which it is granted to him. Learned counsel further stated that within 10 days of the date to be specified by the Court in its final order Mangat Ram Choudhary will deliver unto the appellant all dies in his client's possession which enabled a 35 mm. film medially cut to be used in a viewer, whether the said dies be of the entire viewer or of any component of the viewer which make it possible for a strip medially cut out of a 35 mm. film to be used in a viewer. On behalf of Mangat Ram Choudhary, counsel asserted that he had only four reels of 35 mm. positive film having plurality of pictures taken which were capable of medially cut. Those reels were of black and white films. On January 17, 1977, again during the hearing of the appeal, learned counsel for Mangat Ram Choudhary made a categorical statement that Mangat Ram Choudhary undertakes not to manufacture or sell viewers of the type mentioned in the plaint except in accordance with the agreement which the parties will enter into. An agreement, marked 'A', was placed on record at the hearing on January 19, 1977. On January 24, 1977 the bench which heard the appeal gave certain directions in view of some difficulty experienced by the parties in implementing the arrangement regarding delivery of the dies by Mangat Ram Choudhary to Raj Parkash. These directions, inter alia, were as under :

"1.The dies that the respondents shall deliver to the appellant will be of the spools used in all the four types of viewers which were being marketed by the respondent using a medially cut 35 mm. film. The spools that were used in the viewers marked "1" and "1A" and the inner frame having the gate/window in the said two viewers are similar and the same two dies are used respectively for the spools and the inner frame in the two viewers. These two dies will be delivered up to the appellant.

2.The third viewer which was marketed by the respondents under the name 'Mecorama has several components. The dies for the spools used in this particular type of viewer and the die for the body of the viewer having a gate window will be, delivered up by the respondents to the appellant. It is clarified that in the complete viewer here is a separate attachment at the top of the outer casing which is detachable and die of that is not to be delivered.

3.The fourth viewer, which was in suit, comprises of an outer casing having a gate/window. The die of this is to be delivered up. There are spools used in this viewer, which are specially adapted for a 35 mm. film medially cut. The die turn these spools is also to be delivered up. .

The components of the viewers, dies whereof the respondents have been directed to deliver up to the appellant, be kept under seal in this court so that if any die is not delivered or any wrong die is delivered, the same can be compared. The rolls of films shown to us in court are returned to counsel for the respondents for utilisation in accordance with his statement." The bench further recorded on January 24, 1977 that the learned counsel for Mangat Ram Choudhary undertakes that the dies will be delivered to Raj Prakash or his counsel against proper receipt on or before January 30, 1977. On February 25, 1977 additional statements of learned counsel for the parties were recorded by the bench. Counsel for Mangat Ram Choudhary, inter alia, gave the following undertaking :

"RESPONDENTS 1 and 2 will within 10 days of the date to be specified by this court in its final order deliver unto the appellant all dies in the respondents possession for making viewers which enable a 35 mm. film, medially cut, to be used therein. These dies may be of the entire viewers or of any component of such viewer which makes it possible for a strip medially cut out of a 35 mm. film to be used therein."

(37) WE. have set out the statement of counsel for Mangat Ram Choudhary and his undertaking in some detail because we are convinced that even at that stage Mangat Ram Choudhary was not coming out with 'the truth as has now become apparent in the contempt proceedings. We are also of the opinion that despite the delivery up order in the appeal Mangat Ram Choudhary has not made true and full disclosure nor has he delivered even till now all the dies that he was bound to deliver up. This goes to show that his apology is not bona fide. In his statement before us as his own witness in the contempt proceedings made on April 18, 1978 Mangat Ram Choudhary admitted that the rollers manufactured for viewers bodies of which were prepared from the die, Exhibit A. 6, (the die initially delivered up) were manufactured from another die distinct from the die from which rollers were made to fit bodies of viewers manufactured from the die, Exhibit R. 3 (the die which was delivered during the course of the contempt proceedings and said to have been spoilt by Sardul Singh). He also admitted that, he delivered up one die for manufacturing rollers. Although Mangat Ram Choudhary asserted that he did not have any other die to manufacture rollers his statement can only be termed as untrue in view of the fact that admittedly bodies of viewers were made from the dies Exhibit A. 6 and Exhibit R. 3 by him and so, he must have made rollers from dies to fit the two types of viewers and his contention that he had no other die in these circumstances cannot be accepted. Indeed, we must hold that (on January 24, 1977 he misled the bench hearing the first appeal by bringing only one product and not two distinct ones. Mangat Ram Choudhary had been ordered on January 24, 1977 to deliver all dies of spools but he has failed to do so even till now. Indeed, Mangat Ram Choudhary must be held to be in contempt even now in failing to deliver up the dies of the spools. We have already observed and it was admitted by Mangat Ram Choudhary that spools manufactured to fit the body of the viewer fabricated from Exhibit A. 6 would be different from spools required to fit the body of the viewer fabricated from the die, Exhibit R. 3. The conclusion is inevitable that one set of dies has still not been delivered up. The apology in these circumstances cannot be considered to be bona fide. Even the affidavit sworn on April 4, 1977, filed by Mangat Ram Choudhary in compliance of the delivery up order must be held to be false and misleading. In paragraph 3 of the said affidavit he has deposed that he is not in possession of any

dies capable of producing using half cut cinematographic films for use in viewers. He has deposed that all the part of the viewers using the halfcut film strip were produced before the court. He has misled the court in this affidavit by saying that after examination the court decided some of these parts were offending and those parts were separated and ordered to be kept under seal and dies of those parts only were ordered to be handed over to Raj Parkash or his counsel. He was, however, not in possession of any offending die. On the very face of it there is pre-variation in this deposition as is now apparent. It was clearly understood that as far as the body of the viewer is concerned the die which was in use and was capable of producing the 'Mecorama' viewer using a half cut film was to be delivered up. What was delivered up was the item marked Exhibit A. 6 which, according to Mangat Ram Choudhary had become defective somewhere in 1975 resulting in the die Exhibit R. 3 being got fabricated by him from Virendra Engineering Works. This defective die was handed over. It is not understood how Mangat Ram Choudhary continued to produce the infringing viewers even subsequent to November, 1976 if the only die in his possession was the defective die. This is apart from what we have observed about the rollers which now stands proved that at least one die of such rollers has not yet been handed over. The lack of bona fides is obvious and gets aggravated by the subsequent conduct of Mangat Ram Choudhary. In reply to C. M. 301 of 1977 Mangat Ram Choudhary filed a written reply supported by an affidavit sworn on July 11, 1977. According to this affidavit all the statements of fact made in the reply accompanying the affidavit were true to his knowledge. Paragraph 7 of the reply states that dies were collected by Shri S.S. Johar, Counsel for Raj Prakash, and no other die relating to the construction of body or spool of Mecorama was at all in existence or remained to be delivered. The deposition is obviously false. The same position is reasserted by Mangat Ram Choudhary in his reply dated October 11, 1977 to the show cause notice issued by us in the present proceedings. In this reply supported by an affidavit he has categorically affirmed that there was only one set of dies in existence on January 11, 1977 capable of producing the body of Mecorama viewer using half-cut 35 mm. film and that set of dies was delivered on January 29, 1977. In the main affidavit filed by Mangat Ram Choudhary on January 6, 1978 in the present proceedings, he has again tried to create confusion by invoking the various orders passed in the proceedings in the first appeal. He has further deposed that die made in 1975 of the body of Mecorama which was delivered in court was not with him. In fact no working die was in existence on January 24, 1977 for manufacture of that part. The die of that part had been given by him on January 1, 1977 to Sardul Singh for conversion as to produce a bigger gate which would enable the full 35 mm. film strip to be used in the viewer, during the process of conversion and became incapable of use. He asserted that the dies of the body and all the spools of the viewer Mecorama which were delivered were made in 1973. The body of the Mecorama viewer made by the use of the die made in 1975 could not be at all brought to any use for the spools. The die that was given to Raj Prakash was made in 1973. There is an obvious conflict with the stand taken in the witness box. On April 18, 1978 he deposed before us that he got the second die made from the Virender Engineering Works in 1975 because the first die made by them in 1973 was spilt, and he gave the die made in 1975 to Sardul Singh in November, 1976 for being adapted so that it would have a gate to enable a full 35 mm. film to be used in viewer. Therefore, the story that die was given to Sardul Singh in January, 1977 is belied by the statement in court and the effort to confuse the issue is obvious. Further, even where the die, Exhibit R. 3, was produced in court in the present proceedings the dies of the spools were not produced though the order of the bench hearing the regular first appeal and the delivery up order clearly directed him to do so. The further affidavit of Mangat Ram Choudhary

dated January 2, 1978 is also not a full disclosure and amounts to falsehood as the second set of dies of the spools are not disclosed which ultimately stood proved as existing when in cross-examination Mangat Ram Choudhary admitted that the two sets of spools were manufactured by two different sets of dies. We must also hold that the statement made by Mangat Ram Choudhary on March 17, 1978 before us that he could not use the die. Exhibit R. 3, even if it had been in his possession because its roller had been submitted by him in court is not a correct and truthful statement. Visually we found that both rollers, Exhibit R. 6, which had been sealed by the order of the bench hearing the appeal fit the body of the viewer, Exhibit A. 5. The fact of user of some die for continued making of the infringing viewer has been brought out in the statement of Mangat Ram Choudhary recorded on April 18, 1978. Exhibit A. 7 has a new coloured film and not a black and white old film. According to Mangat Ram Choudhary the only films which he had in his possession which could be medially cut were the four black and white reels offered to Raj Prakash. If that was true, we fail to understand how Exhibit A. 7 has a new coloured 35 mm. film medially cut. Further the viewers, Exhibits A. 7 and A. 8 have adentical back portion manufactured from the same die. The pattern of the front side of Exhibit A. 8 is different from the pattern on the back side. Mangat Ram Choudhary admitted that it was correct that all plastic parts of Exhibit A. 7 and Exhibit A. 8, except the front part of the cover of the viewer, were made from the same die. The front portions of the two viewers were manufactured from different dies which shows that Mangat Ram Choudhary continued to produce infringing viewers despite his undertaking not to do so and this court's injunction restraining him from doing so. The viewer, Exhibit A. 7, was purchased during the commission proceedings in pursuance of the decree for accounts in R. F. A. (O. S.) 2 of 1973 after January 24, 1977. The purchase was made in October, 1977. The lack of bona fides thus stands clearly established and we cannot be persuaded to accept the apology even if one can be accepted in the present proceedings.

(38) This brings us to the consideration of what punishment generally speaking, is to be awarded.

(39) SUB-SECTION (3) of Section 12 lays down that the court may impose a fine but in appropriate cases if it considers that imposition of fine would not be sufficient it may also order the detention of the contemner in civil prison for a period not exceeding six months. This provision brings out two things very clearly. First, that as a general rule in civil contempt only fine may be imposed, Why the legislature did this is because, in our opinion, proceedings in civil contempt are essentially in the nature of getting due compliance of a court's order, direction, decree or a party's undertaking for the benefit of the opposite party and to compensate the opposite party for any loss that may have been occasioned. Civil contempt, as noticed earlier, is distinct from criminal contempt inasmuch as the former is a list between two parties whereas in the latter it is a question of vindication of the authority of the court and upholding the administration of justice. The latter proceedings are criminal or quasi criminal in nature while former proceedings are more in the nature of civil proceedings and if we may borrow with respect from the view of the courts in the United States almost a continuation of the original proceedings. But as we have said earlier, there is a certain amount of vindication of the authority of the court also involved in proceedings of civil contempt. It is in that context that the legislature has provided for detention in civil prison. This may be ordered where there is contumacious and continued default. In this case we are of the view that Mangat Ram Choudhary has not only misled the court but prevaricated even in the face of the court. He continues

to be in contempt and a defaulter vis-a-vis compliance with the orders and directions of this court. A mere fine, therefore, would not be sufficient. As to the quantum of fine, we shall comment hereafter. We, therefore, hold that in addition to the fine that we shall hereafter specify, Mangat Ram Choudhary is also liable to be detained in civil prison.

(40) Coming now to the question of quantum of fine, the contention on behalf of Raj Parkash is that admittedly Mangat Ram Choudhary could produce 400 offending viewers from the dies not delivered up and no part of what he produced remained unsold. Therefore, calculating on the basis of profit of 400 viewers per day a fine should be imposed to the extent of the viewers that he could have produced or may have produced up to the date when he delivered Exhibit R. 3 in court from the date of the delivery up order, in R.F.A. (O. S.) 2 of 1973. As against this it has been submitted that both the parties were doing the same business and it is not the case of Raj Parkash that he has suffered any loss. Indeed, there is no evidence of any loss suffered by him. So, if not loss is suffered is suffered by Raj Parkash then the profits, if any, made by Mangat Ram Choudhary are immaterial. Reliance is placed for this proposition on *The United Horse Shoe and Nail Company Limited v. Stewart and Company*, 5 R.P.C. 260 (6). This was a case in which an action was brought by transferee of a patent for damages for infringement and the question was what was to be the measure of damages and what were the principles of assessment where articles complained of are made by machinery, part only of which is an infringement. The House of Lords observed that when a patentee elects to claim the profits made by the unauthorised use of his machinery, it becomes material to ascertain how much of his invention was actually appropriated, in order to determine what proportion of the net profits realised by the infringer was attributable to its use. It would be unreasonable to give the patentee profits which were not earned by the use of his invention but the case is altogether different when the patentee of machinery who does not grant licenses claims damages from an infringing manufacturer who competes with him by selling the same class of goods in the same market. In that case the profit made by the infringer is a matter of no consequence. However large his gains he is only liable in nominal damages so long as his illegal sales do not injure the trade of the patentee; and however great his loss, he cannot escape from liability to make full compensation for the injury which his competition may have occasioned. It is further submitted on behalf of Mangat Ram Choudhary that in the compromise arrived at in the first appeal the parties agreed that Rs. 10,000 was assessment of loss in eight years. This is so mentioned in the agreement marked 'A'. So, turn a period of few months the damages can only be nominal. Reliance, was placed on the account books of Mangat Ram Choudhary that after the sale to the firm of R. W. 2, A. K. Jain, no further sales were made by him. Raj Parkash has not produced his account books to show what loss if any he had suffered. It is submitted that if the patentee does not produce an article he cannot be said to have suffered any damages. Reliance was placed on *Meters Ltd. v. Metropolitan Gas Meters Ltd.*, 28 R.P.C. 157 (7). In this case the Court of Appeal in England was concerned with finding out damage, if any, suffered by infringement of a patent. It was observed by Buckley, B. J., "The matter to be ascertained is the pecuniary equivalent of the injury which the Plaintiffs have sustained by the wrongful acts done by the Defendants. In ascertaining that, we are not to include every injury, however remote : we have to find the pecuniary equivalent of the injury resulting as the natural consequence of the acts done by the Defendants. In order to answer that inquiry the proper mode is, I think, to ascertain, as far upon the evidence as it is possible to judge, the extent to which the trade of the Plaintiffs has been interfered with by the acts of the Defendants what number

of meters did they sell less by reason of the acts of the Defendants. Then having ascertained the number, find out what then you have a multiplication sum, and you arrive at a result."

(41) Reference was also made to *The American Braided Wire Company v. Thomson and Co.*, 7 R.P.C. 152(8). The principle enunciated by the Court of Appeal is a principle which, with respect, gives a very clear cut guideline. Cotton, L.J. in his speech said that the rule to guide is to find out the natural and direct consequence of the respondent's act, was the complainant prevented by acts of the respondents from selling his wares. It is submitted that there is no evidence in this behalf.

(42) One other aspect which should be kept in view in assessing damages in such a case is to draw a distinction between pecuniary damages suffered and damage to reputation, if any. This principle comes in because there are two aspects which have to be taken into consideration in assessing damages. One is the actual loss suffered by the complaining party and the other is the principle of royalty being applied in favor of a patentee. To quote from the speech of Lloyd-Jacob, J. in *re. Patchett's Patent*, 1967 R.P.C. 77(9) at page 90, "It is well settled that in the estimation of damages for acts of infringement of letters patent the principle which should underlie it is the principle of restoration, that is the assessment "by the exercise of a sound imagination and the practice of the broad axe" of the loss suffered by the patentee by the acts of piracy committed by the infringer with the intent that the patentee will be placed in the condition he would have been in had the infringer acted properly instead of improperly. (See the speech of Lord Shaw in *Watson Laidlaw & Company, Limited v. Pott, Cassels and Williamson* (1914) 31 R.P.C. 104(10) at 116 to 120). Even in such cases, however, as Lord Shaw explains, if the facts show that the infringing sales would not have been possible for the patentee, the correct and full measure of the damages for these sales is ascertainable on a royalty basis; and he expressly approved the judgment of Lord Moulton in *Meters Ltd. v. Metropolitan Gas Meters Ltd.* (1911) 28 R.P.C. 157 at 164 wherein it is stated :

"In the assessment of damages every instrument that is manufactured or sold, which infringes the rights of the patentee is a wrong to him. You may estimate the damage by taking the whole of the infringing articles, and making an allowance in respect of each one, or you may consider how many he (i.e. the patentee) would have sold, and make a full allowance in regard to those. They are both in proper cases reasonable methods of ascertaining what he has lost. The latter is certainly only a rough practical method which in some cases may be efficient. It rests on no theoretical basis, because in the eye of the law each article is a wrong."

(43) In the case before us there is no evidence by Raj Parkash of the loss suffered by him. There is only evidence of what Mangat Ram Choudhary was capable of producing. The evidence regarding volume of sales is available in the suit out of which R.F.A. (O.S.) 2 of 1973 arose. It is also the admitted case of the parties that the infringement or the piracy is comprised in the use of 35 mm. film strip medially cut in a viewer and not in anything else. This manner of using the film in a viewer is only possible by producing a particular part of a film strip viewer having specific type of spools. Therefore, the production of the entire viewer does not carry us far. It is, however, admitted by Mangat Ram Choudhary that given the appropriate dies he could and did produce 400 viewers a day using 35 mm. film medially cut and no part of his produce remained unsold. The quantum of profit

of each of this viewer is not very clear on evidence. A certain amount of guesswork has, therefore, to be indulged in. In our opinion, looking at the circumstances of the case and applying the principle of royalty adverted to earlier, tempered by the principle that Raj Parkash is not entitled to more than what he actually suffered, we fix the fine at Rs. 8000.00 . This figure we have arrived at by keeping Re. 1.00 as profit for part of. one viewer at the production rate of 400 viewers in about 20 days.

(44) We, accordingly, hold Mangat Ram Choudhary guilty of civil contempt of this court and order him to pay to Raj Parkash a sum of Rs. 8000/- by way of fine. Inasmuch as we are of the view that mere fine would not meet the ends of justice because of his contumacious conduct, we further order that in the circumstances Mangat Ram Choudhary be detained in civil prison for a period of four months. He is ordered to be taken into custody.