

# Abdul Mueed & Ors. vs Hammad Ahmed on 8 December, 2010

**Author: Anil Kumar**

**Bench: Anil Kumar, S.L.Bhayana**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Cont. Case (Crl.) No. 0009/2009

% Date of Decision: 8.12.2010

Abdul Mueed & Ors.

.... Petitioners

Through Mr. Ravinder Sethi, Sr. Advocate with  
Mr. Simran Mehta and Ms. Shalini  
Kapoor, Advocates

Versus

Hammad Ahmed

.... Respondents

Through Mr. J.P. Sengh, Sr. Advocate with Mr.  
Bobby Lao, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE S.L.BHAYANA

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

ANIL KUMAR, J.

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1. This is an application by the petitioners under Section 2(c) 11, 12 & 15 of the Contempt of Courts Act, 1971 r/w Article 215 of the Constitution of India against Hammad Ahmed, the respondent for initiating criminal contempt proceedings on account of allegedly filing of false affidavit in an appeal being FAO No. 262 of 2005. The said appeal was filed by an ex-employee of petitioner No.4 against dismissal of his petition under section 92 of the Code of Civil Procedure.

2. The petitioners have contended that petitioner No.1 is the Chief Muttawalli of Hamdard Dawakhana (Wakf) Laboratories whereas the petitioners No. 2 & 3 are other Muttawallis. The

respondent Hammad Ahmed is also stated to be a Muttawalli.

3. The grievances of the petitioners are that an ex-employee of Hamdard Dawakhana (Waqf) Laboratories had filed a petition under Section 92 of the Civil Procedure Code to institute a suit against Hamdard Dawakhana (Waqf) Laboratories and against its Chief Muttawallis and other Muttawallis.

4. In the petition under Section 92 of the Civil Procedure Code, the respondent, Shri Hammad Ahmed had filed replies before the District Judge. The respondent filed an affidavit deposing and contending that the petitioners had disposed of the properties of Waqf without his knowledge and consent, though he is one of the Muttawali.

5. The suit filed by the ex-employee of Hamdard Dawakhana (Waqf) Laboratories under Section 92 of the Civil Procedure Code was, however, dismissed in view of Section 85 of the Waqf Act, 1995 contemplating that the jurisdiction of the Civil Court is barred under the provision of Waqf Act, 1995.

6. In the said petition filed under Section 92, the petitioners had filed an application under Section 340 of Crl. Procedure Code for allegedly filing a false affidavit. However, the application of the petitioners for taking action for filing a false affidavit by the respondent was dismissed. The trial Judge had held that it is well settled that the proceedings under section 340 of Cr.P.C should not be permitted to be utilized by a party to serve his own ends or to satisfy his own urge for revenge and it seems that was the purpose of the petitioner. The observations while dismissing the application under Section 340 of Cr. P.C by the trial Judge are as under:

"24. Perusal of the record further shows that there are several disputes between the parties and various litigation are pending between the parties and in the petition under section 92 of the CPC, all the applicants as well as the respondents were the defendants, but the petitioners in the petition under section 92 of the CPC have not afford any similar application against any of these parties. Furthermore, Further more as discussed in various judgments, as above, it is well settled law that the proceedings under section 340 Cr. P.C should not be permitted to be utilized by a party to serve his own ends court to satisfy his own urge for revenge and it seems that the same has been done by the applicants, in the present case. From the material on record, it appears that the object of filing of the present application was not so much vindicate purity of the administration of justice, but to see that the respondents, who have been contesting various litigations with the applicants, herein, before various courts, be punished under the provisions of penal law. From the record, it is clear that the applicant have filed the present application with the motive, only to gratify his feeling to revenge and to use the present proceeding as an instrument of oppression and harassment to the respondents. "

The trial court while dismissing the application did not determine whether the affidavit filed by the respondent was false or not. It was, however observed prima facie that the affidavit was not false.

Against the dismissal of their application under Section 340 of the Crl. Procedure Code, an appeal has been filed by the petitioners, which is also pending adjudication.

7. The learned counsel has further elaborated the facts and has contended that against the order of dismissal of the suit filed by the ex- employee under Section 92 of the Code of Criminal Procedure, an appeal being FAO No. 262-264 of 2005 was filed in which another affidavit dated November, 2005 was filed deposing similar facts that though the respondent is a senior Muttawalli he was not informed of the details of the sale of properties comprising of four flats at Rishi Apartment, Farm House at Pul Peahaladpur, One Garage at Lal Kuan and property bearing No. 3636 Kara Dina Bg. Khan, Lal Kuan, Delhi.

8. The learned senior counsel for the petitioner, Mr. Sethi has contended that though correctness of the affidavit dated November, 2005 of Sh. Hammad Ahmed, son of late Sh. Hakim Haji Abdul Hameed filed in FAO No. 262/05 titled Nauman Khan & Anr. Vs. Sh. Abdul Mueed & Ors., has not been adjudicated and decided, deposing that though he is a Senior Muttawalli he was neither informed of the details of the sale of flats No. 601, 602, 603, 604, Rishi Apartment, Alakhnanda, Tara Apartment, New Delhi-19 and property at 3636, Kara Dina Bg Khan, Lal Kuan, Delhi and Farm House at Pul Peahaladpur, New Delhi nor did Abdul Mueed permit anyone to disclose the financial affairs of the defendant No.1 to the respondent.

9. To refute the allegation of the respondent and contend that the plea raised by the respondent in the affidavit is false, the petitioners have relied on the entries of the attendance register of the meeting of Majlis-e-Aiwaan of Hamdard National Foundation (India) held on 21st December, 2001 which bears respondent's signatures at item No. 2 and approval of Majlis-e-Aiwaan, Governing Body, Proposal regarding sale of four Rishi Apartment Flats, Alakhnand, New Delhi which was approved on the same date and similarly, the meeting of Majlis-e-Aiwaan of Hamdard National Foundation (India) held on 17th October, 2002 which bears the signature on the attendance register and shows the respondent's presence. Meeting on that date had approved the sale of 15 Bighas Agricultural land on Mehrauli-Badarpur Road. Though the attendance register is signed by the respondent which is also admitted by him, but the minutes of the meeting stipulating as to what transpired and what was decided does not bear the signatures of the respondent.

10. It is contended by the petitioners that in view of the documents filed by the respondent, the affidavit filed in FAO No. 262-264 on November, 2005 is false and therefore criminal contempt has been committed by the respondent. It is further pleaded by the petitioners that permission was granted under Section 15 of the Contempt of Courts Act, 1971 to file the contempt petition and in the circumstances this Court has to adjudicate that the affidavit of Sh. Hammad Ahmed is false and take action by invoking criminal contempt jurisdiction as the false affidavit filed by the respondent has prejudiced or interfered with the due course of judicial proceedings and has obstructed the administration of justice as contemplated under Section 2(c) of Contempt of Courts Act, 1971 defining criminal contempt.

11. The learned counsel has contended that under Section 17(5) of the said act since any person charged with the contempt under Section 15 can file an affidavit in support of his defense and the

Court has to determine the matter of charge either on the affidavits filed or after taking such further evidence as may be necessary, it is imperative that in order to determine the falsity of the affidavit of November, 2005 of Hammad Ahmed, respondent, the Court can take evidence and determine that the false affidavit has been filed and after determining that the affidavit filed in the appeal was filed, take action for committing contempt of Court.

12. Relying on *Welset Engineers and Anr. vs. Vikas Auto Industries & ors*, 2006 (32) PTC 190 (SC) it is contended that for determining the matter of the charge in a contempt petition, the Court may rely either on the affidavit filed or may decide after taking such evidence as deems fit and merely because disputed questions of fact are involved, it would not preclude the Court from exercising its jurisdiction under the Contempt of Courts Act, 1971. The learned senior counsel further contended that making false statements on oath may deliberately constitute criminal contempt and relied on *Murray and Company vs. Ashok Kr. Newatia & Anr.* (200) 2 SCC 367. Mr. Sethi has also relied on *Pallav Sheth vs. Custodian & Ors.*, (2001) 7 SCC 549 to contend that the decision of *Om Prakash Jaiswal vs. D.K.Mittal*, (2000) 3 SCC 171 had been over ruled by the Supreme Court in the case of *Pallav Sheth (supra)*. Mr. Sethi, learned senior counsel has also relied on *Dhananjay Sharma vs. State of Haryana*, (1995) 3 SCC 757 to contend that filing false affidavit amounts to conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings and amounts to commission of criminal contempt.

13. The court had issued notice to the respondent pursuant to which a reply has been filed on behalf of respondent contending inter-alia that the respondent has not filed any false affidavit and the contempt petition is a device to prevail upon the respondent to dissuade him to seek remedies against the petitioners. It is asserted that the contempt petition filed by the petitioners is barred by law of limitation and is not maintainable. It has also been pleaded that the petitioners remedy under section 340 of Criminal Procedure Code is still pending and in the circumstances the petitioners cannot invoke the Criminal contempt Jurisdiction of the Court. According to respondent the petitioners have filed four contempt petitions and two applications under section 340 of Criminal Procedure Code in different courts against the answering respondent on similar allegations with a view to harass and intimidate the respondent.

14. The respondent stated that he had not signed the minute books as the minutes were not circulated nor his objections against disposing the properties were recorded. According to him he had only signed the attendance sheet. It is asserted that the minute book is separate from the attendance register. The respondent also contended that petitioner no.1 has illegally appointed Petitioner No. 3 who is his son as fifth Mutawalli of respondent no.4 in contravention of the wakf deed and he is using the funds of respondent no.4 for his personal use instead of Charitable public purpose which is the major object and purpose for which respondent no.4 wakf was created. The respondent also contended that the minutes of meeting dated 21st December 2001 does not bear his signatures nor were the minutes circulated and what is stated in the minutes was not decided in the two meetings.

15. The respondent also disclosed that the petitioners had filed a contempt petition no. 1479-1482 of 2005 which was withdrawn by order dated 20.12.2005. Thereafter another contempt petition was

filed being Cont. Case no. 64-67 of 2006 titled as Abdul Mueed & Ors. vs. Hammad Ahmed & Anr. which was vehemently pursued but when the petitioners realized that the court may dismiss the petition, it was withdrawn by the petitioners with liberty to file an appropriate legal proceeding by order dated 17.02.2009 and present contempt proceedings has been filed thereafter.

16. The learned counsel for the respondent has also relied on AIR 1975 Allahabad 366, Gulab Singh & Anr. vs. The Principal, Sri Ramji Das; 70 (1997) DLT 60, Indian Music Industry (IMI) vs. Charanajit Gupta @ Chandi & Ors.; 154 (2008) DLT 647, R.P. Malik vs. Anil Sharma & Ors. and (2000) 3 SCC 171, Om Pakash Jaiswal vs. D.K. Mittal and Anr. to contend that the contempt petition is barred by limitation and it cannot be held that the respondent has committed a criminal contempt.

17. This court had directed the petitioners to produce the relevant original attendance register and minute books. The original record directed by the court was produced by the petitioners which was perused by this court. The alleged false affidavit was filed by the respondent in November, 2005 regarding the minutes of 21st December, 2001 and 17th October, 2002. If the petitioners knew that the affidavit filed by the respondent in November, 2005 was false whether the contempt petition filed on 31st March, 2009 would be within time or not is the first question to be determined.

18. To determine whether the Criminal Contempt petition is within time or not the following dates and events would be relevant:

November, 2005: Alleged false affidavit filed by the respondent in FAO No.262-264/2005 contending that though he is senior Mutawalli, he is neither aware nor is informed of the details of the property disposed of as Abdul Mueed does not permit any one to disclose the financial affairs.

19.11.2005: Petitioners filed contempt case (C) No. 1479- 1482 of 2005 in FAO No. 262/2005. The said contempt petition was filed with respect to the affidavits contending that the respondent is not aware or informed about the details of properties sold filed in:

(i) Suit No. CS (OS) No. 326 of 2005 titled Hammad Ahmed vs. Asad Mueed and others.

(ii) C.S. (OS) No. 1149 of 2005 titled Hammad Ahmed and another Versus Abdul Mueed and others.

(iii) FAO No. 262/2005 titled Mohd.

Nauman Khan and others vs. Abdul Mueed and others.

20.12.2005: The petitioners alleged that they were advised that one contempt petition in respect of false affidavits filed in different cases would not be maintainable and as such the petitioners withdrew the said contempt case No.1479-1482 of 2005 in FAO No. 262 of 2005 with liberty to file a

fresh petition.

9.01.2006: The Petitioners filed another petition for Criminal Contempt being CCP No. 64-67 of 2006 in FAO No. 262 of 2005 against the respondent for contumaciously and deliberately filing a false affidavit in Court. Though the petitioners had sought initiation of Criminal Contempt, however, permission as contemplated under law was neither applied nor taken before filing the said contempt petition.

2.11.2006: The Respondent filed a reply taking the plea that the contempt petition will not be maintainable. The contemnor still persisted with the contempt petition and rather contended that in reply the respondent has filed another false affidavit.

17.2.2009: The petitioners withdraw the said contempt petition with the liberty to take appropriate legal proceedings.

27.2.2009: The applicants applied vide their letter to the standing counsel, State of NCT of Delhi, Delhi High Court, New Delhi for approval to file the Criminal complaint.

12.3.2009: The standing counsel granted approval to file the Criminal contempt petition.

20.3.2009: The approval was received by the petitioners. 31.3.2009: Petition filed for Criminal Contempt by the petitioners under section 2 (c) read with section 11 and 12 of the Contempt of Courts Act, 1971 with an application under Section 5 read with Section 14 of the Limitation Act and 151 of CPC 22.12.2009: The respondents filed their reply to the contempt petition stating that the petitioners have filed 4 Contempt Petitions and 2 Applications u/s 340 Cr. P.C. in different courts against the answering respondent and his son on similar allegations with a view to harass and intimidate the respondent and contempt petition is barred under section 20 of the Contempt of Courts Act, 1970.

19. The Limitation for initiating contempt by the Court either on its own motion or otherwise is one year from the date on which the contempt is alleged to have been committed. This is not disputed that for the present petition, the alleged contempt was committed when the affidavit was filed by the respondent in FAO 262-264 of 2005. According to section 20 of the Contempt of Courts Act, 1970, the contempt could be initiated against the respondent till November, 2006. Admittedly the present petition is not filed by the petitioners by November, 2006. The next question is whether the petitioners are entitled for exclusion of period spent on filing other contempt petitions under section 14 of the Limitation Act, 1963 or any other provision. The petitioners have also sought condonation of delay in filing the petition under section 5 of the Limitation Act.

20. The petitioners have invoked section 5 & section 14 of the Limitation Act, 1963. Section 5 for condonation of delay and section 14 to contend that the time taken in pursuing other petitions for contempt be excluded. It has been held in; T.M.A. Abdul Hamed vs.S.Radhakrishnan, 1989 LW (CrI) 237 that delay in initiating contempt proceedings cannot be condoned. In Krishnalal Chhoteylal, (1987) 13 ALR 44, it was held that the provisions of the Limitation Act, 1963 do not apply to the

Contempt of Courts Act, 1971. No intervening event or order stops the running of time specified under section 20 of the Contempt of Courts Act, 1971 as was held in *Golcha Advertising Agency v. The State of Maharashtra*, (1990) 2 Bom CR 262 (Bom). In *V.M.Kanade vs Madhao Gadkari*, (1990) 1 Mah LR 544 (Bom), it was held initiation of any proceedings for contempt is barred after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

21. The learned counsel for the respondent has relied on AIR 1975 Allahabad 366, *Gulab Singh & Anr. vs. The Principal, Sri Ramji Das* holding that no provision stops running of the time of limitation of one year under section 20 of the Contempt of Courts Act, 1971. It was categorically held that "there is no provision under the Contempt of Courts act which in any manner stops the running of time of one year contemplated by Section 20 of the Act.... the time, within which the proceedings for contempt are to be initiated, is prescribed by the Contempt of Courts Act and not by the Limitation Act. "

In para 8 of the said judgment at page 367 it was held as under:

"8. Sri Bhattacharya, learned counsel for the petition, contended that the period during which the writ petition no. 1015 of the 1973 was pending should not be counted in computing the period of one year under section 20 of the Contempt of Courts Act. This is a hollow argument without any thoughtful content in it. There is no provision under the Contempt of Courts Act which in any manner stops the running of time of one year contemplated by Section 20 of the Act. Sri Bhattacharya then made a more hollow argument to the effect that the Indian Limitation Act applies. We fail to understand what benefit can Sri Bhattacharya derive from the provisions of the Indian Limitation Act when the time, within which the proceedings for contempt are to be initiated, is prescribed by the Contempt of Courts Act and not by the Limitation Act."

22. The learned counsel for the respondent has also relied on (2000) 3 SCC 171, *Om Prakash Jaiswal vs. D.K.Mittal & Ors.* to contend that Section 5 of the Limitation Act is not applicable under Section 20 of the Contempt of Courts Act, 1971. The counsel for the respondent has also relied on *Indian Music Industry (IMI) v. Charanajit Gupta @ Chandi & Ors*: 70(1997) Delhi Law Times 60 to contend that Section 20 of the Act talks of "initiation" of proceedings by a court. It is axiomatic that "initiation" of contempt proceedings would be only when the Court has applied its mind and passed some order. "Institution" of a petition for proceedings under the Act cannot be equated with "initiation" of proceedings by court. The two are distinct stages. The first is the institution, which is just filing of the petition in the court and the second is its consideration and initiation of action thereon by the Court. Thus, if an application for taking action under the Act is filed within a period of one year from the date of the alleged commission of contempt, but the Court has passed no order thereon before the expiry of one year from the said date, such application automatically fails because the Court could not apply its mind to complaint within a period of one year.

23. The learned counsel for the respondent has also relied on R.P. Malik vs. Anil Sharma and Ors., 154 (2008) DLT 647 holding that Section 5 of the Limitation Act, 1963 does not deal with the condonation of period of limitation prescribed under the Contempt of Courts Act, 1971 and therefore, the delay in initiating proceedings under Section 20 of the Contempt of Courts Act, 1971 cannot be condoned under the provisions of the Limitation Act.

24. The learned counsel for the petitioner has relied on Pallav Sheth vs Custodian and Ors., (2001) 7 SCC 549 to contend that the provisions of Limitation Act, 1963 would apply to Contempt of Courts Act, 1971 and considering that the petitioners had been filing contempt petitions which were allowed to be withdrawn with liberty to file appropriate proceedings, the present petition is within time.

25. The Allahabad High Court in Islamuddin vs. Sri Umesh Chandrara Tiwari and Anr. 2009(4) AWC 3680 had dealt with the question of power of the Court to condone and waive the delay in initiation of Contempt Proceedings under section 12 of the Contempt of Courts Act, 1971. The following issues were crystallized by the Court and answered. The issues considered by the division bench of the Allahabad High Court were as follows:

(i) Whether the decision in Pallav Sheth case :

2001CriLJ4175 , can be construed so as to apply all the principles enshrined in the provisions of the Indian Limitation Act (except Section 17 thereof) and as to whether the same can be made applicable to proceedings to be initiated under Section 12 of the Contempt of Courts Act, 1971.

(ii). Whether the High Court in exercise of its powers for initiating contempt of its Court or the contempt of its subordinate court or Tribunal, as the case may be, has the power to condone and waive the delay in initiation of contempt proceedings under Section 12 of the Courts Act. In paras 75 and 76 of the said judgment of Islamuddin (supra) the Allahabad High Court had held as under:

"75. Thus, the judgment in Pallav Sheth (supra), in our view, cannot be said to be an authority on the question as to whether the provisions of Section 5 of Act 1963 would have application where the contempt proceedings are initiated after expiry of the period of one year from the date of alleged contempt that is Section 20 of Act 1971. The above judgment is an authority for the proposition that contempt proceedings would be deemed to have been initiated by the Court when (1) an application is filed before the Court by an individual for bringing to its notice the disobedience or defiance of its order and requesting for punishing the contemnor for committing contempt of the Court; (2) in a matter of criminal contempt when an application is moved before the Advocate General or when the Court permits to move before it directly; (3) in the matter of contempt of subordinate court when reference is made by the subordinate court; and (4) in the matter of suo motu action, when the notice is issued by the Court. The Apex Court said that if the above actions are taken within one year from the date, contempt is alleged to have been committed, the application would be deemed to be within the time prescribed under Section 20 of Act, 1971. It also says where the defiance or disobedience could not come to the knowledge of the



applicant or the Court due to fraud played by the contemnor, the date of knowledge shall be treated to be the date when contempt is alleged to have been committed.

76. We, therefore, answer both the questions referred by the Hon'ble Single Judge in negative and hold that for the purpose of Section 20 of Act 1971, the Act 1963 and its provisions (except-Section 17) have no application whatsoever. The law laid down by the Apex Court in Pallav Sheth (supra) does not make Section 5 of Act 1963 applicable and would not confer power upon the Court to condone or waive delay where proceedings of contempt are sought to be initiated under Act 1971 after one year from the date when the contempt is alleged to have been committed."

26. A Division Bench of the Orissa High Court in Sri. Jayadev Swin v. Vatsal Raghu and another, 2005 (1), OLR 699, rather relying on Badra Kanta Mishra v. Gatika Rusha Mishra AIR 1997 4 SC 2255; Pallav Seth (Supra), and Om Prakash Jaiswal (Supra), had held that even the jurisdiction of the High Court under Article 215 of the Constitution is restricted by Section 20 of the Contempt of Courts Act, 1971 and the Court cannot punish a person for contempt beyond the period of limitation i.e. after one year from the date of cause of action and Section 5 of the Limitation Act has no manner of application to proceeding under the Contempt of Courts Act, 1971. On similar analogy, Section 14 of the Limitation Act, 1963 will not be applicable and the petitioners shall not be entitled for exclusion of time in proceedings undertaken allegedly bona fide in the Court which did not have jurisdiction.

27. Even on the facts, it is difficult to infer that the petitioners continued the proceedings bona fide being CCP Nos.64-67 of 2006, which was filed on 9th January, 2006 pursuant to withdrawal of another contempt petition being No.1479-1482 of 2005 which was withdrawn on 20th December, 2005. The criminal contempt petition being No.64-67 of 2006 was filed without obtaining the approval of the Standing Counsel. Though, the petitioners deemed to have known that the criminal contempt petition could not be filed without the approval of Standing Counsel yet from 9th January, 2006 till 12th March, 2009 no steps were taken for obtaining the permission of the Standing Counsel for initiating the Criminal contempt. Even in the petition and the application filed by the petitioners, no reasons have been given for not applying for permission from the Standing Counsel. Though, the petitioners were permitted to withdraw the CCP Nos.64-67 of 2006 on 17th February, 2009 with liberty to take appropriate legal proceedings, however, in the facts and circumstances, it is difficult to infer that the petitioners were pursuing the said petition bona fide so as to seek exclusion of the time from 9th January, 2006 up till 17th February, 2009. This is without prejudice the findings of this Court that if Section 5 of the Limitation Act, 1963 is not applicable to the Contempt of Courts Act, 1971, a fortiori, Section 14 of the Limitation Act will also not be applicable.

28. For the foregoing reasons, the inevitable conclusion in the facts and circumstances is that the above noted Criminal Contempt petition is barred by time, as the alleged contempt was committed in November, 2005 and the petitioner had come to know about the alleged contempt in November, 2009. The petitioners had applied for consent of the Standing Counsel of State of NCT of Delhi on 27th February, 2009 and the approval was granted on 12th March, 2009, which was allegedly received by the petitioners on 20th March, 2009 where after, the petition for contempt of Court

along with an application under Sections 5 & 14 of the Limitation Act was filed on 31st March, 2009. The inevitable inference in the facts and circumstances is that taking it from any angle, the above noted Criminal Contempt Petition is barred by time.

29. Though, this court has held that the petition is barred by time, however, the merits of the case are also considered in the facts and circumstances. According to the petitioners, the affidavit filed in November, 2005 by the respondent, Sh. Hammad Ahmad, deposing that being a Senior Mutwalli, he was not aware, nor informed of the details of the properties of the Waqf being sold, nor had he consented to the sale of the properties more so because the petitioners especially Sh. Abdul Mueed had not permitted anyone to disclose the financial affairs to the respondent. In order to establish that affidavit is false, the reliance has been placed on the minutes of the meetings of Majlis-e-Aiwaan dated 21st December, 2001 and 17th October, 2002.

30. From the photocopies of the minutes of the meetings of Majlis-e- Aiwan dated 21st December, 2001 and 17th October, 2002, it was contended that the minutes were signed by respondent No.2 as he was present on those days. In the circumstances, this Court had directed the petitioners to produce the original minutes. On perusal of the registers which were produced by the petitioners, it became apparent that the attendances of the Mutwallis and others who had attended the meetings were on separate pages than on the pages where the minutes were pasted. The attendance sheet in the register stipulated as to who all had attended the meeting. The registers did not have the agenda for those meetings and the minutes of the meetings were typed on a separate page and cut and pasted on a separate page than the page on which the respondents and another had signed indicating that the meetings of Majlis-e-Aiwaan were attended by them. From the registers which were produced before this Court, it could not be inferred as to what was the agenda of meetings held on 21st December, 2001 and 17th October, 2002. Nothing has been produced by the petitioners to show that the minutes of the meeting were typed in presence of those who had attended the meetings and had been pasted on a separate page in the register nor any thing has been produced to show that the copies of the minutes were sent by post to the respondent. During the course of the arguments, though it was contended that the respondents had known the minutes of the meetings, however, nothing could be produced by the petitioners on the basis of which, it could be inferred that the respondents would have known the minutes of the meetings.

31. The respondent has also categorically contended that the properties of the Waqf were sold without the consent of the respondent and that the petitioner Abdul Mueed has not permitted anyone to disclose the financial affairs of the Waqf to the respondent. If the consent of the respondents was required and if the allegation of the petitioners is that the consent was taken then there should have been some writings executed or got executed from the respondent conveying his consent to the sale of properties of the Waqf. The case of the petitioners is also not that the oral consent was given by the respondent. Merely because the meeting of the Majlis-e-Aiwaan dated 21st December, 2001 and 17th October, 2002 were attended by the respondent, it cannot be inferred that he was informed about the decision taken for sale of the properties and he had consented for the same. In the circumstances, it cannot be held prima facie that the respondent's affidavit filed in November, 2005 in FAO Nos.262-264 of 2005, titled as „Mohd.Nauman Khan and another v. Abdul Mueed and another is false and that the respondent has committed Criminal Contempt of Court so

as to be punished under the provision of the this Act.

32. Learned counsel for the petitioners has relied on Dhananjay Sharma (Supra), to contend that whether the affidavit filed by the respondent is false or not be determined by this Court by taking appropriate evidence and come to the conclusion that the affidavit filed by the respondent is false. The judgment relied on by the petitioners is however, distinguishable as that was a petition for Habeas Corpus where there was a complaint of detention of a citizen and it was contended on behalf of the Police Authorities that the person was not detained by them and an affidavit to the effect was filed. The Supreme Court had directed the Central Bureau of Investigation to make an enquiry and to ascertain whether the affidavit filed was correct or not and whether the person in respect of whom Habeas Corpus Petition was filed was detained or not. The investigating agency after enquiring, submitted a report that affidavit filed by the police authorities was false and consequently, for filing a false affidavit the action was taken by the Supreme Court. Apparently the case of the respondent is distinguishable as in the case of respondent there is no conclusive finding that the affidavit filed by the respondent is false except for the bald allegations of the petitioners. Ex-facie the deposition of the respondent cannot be termed to be false and it cannot be held that he had consented to the sale of the properties of the wakf. This is not the case of the petitioners that the properties were sold by a majority decision in the meeting of Majlis-e Aiwaan rather the specific allegation of the petitioners is that the respondent had consented for the sale of the properties.

33. Another case relied by the learned counsel for the petitioners Murre and Company (Supra) is also distinguishable as in the case relied by the petitioners, a statement was made on an affidavit that the property in dispute had not been sold in compliance with the order of injunction issued by the High Court. The categorical assertion of fact deliberately made before the Supreme Court was found to be false and it was also inferred that the false fact was deposed with a view to gain advantage. Though, later on an unqualified apology was tendered and thus, it was admitted by the deponent that he had deposed the facts falsely. The Supreme Court had held that there was no dispute on the factum of the false and fabricated statement finding its place in the affidavit and subsequent unconditional apology was not accepted and the deponent of false affidavit was punished for committing the Criminal Contempt of Court. The case relied on by the petitioner is distinguishable as the respondent has not admitted that the statement regarding consent being not given by him for the sale of the properties of Waqf is false nor it can be termed to be false in any manner in the present facts and circumstance.

34. Reliance has also been placed by the petitioner on Welset Engineers and others v. Vikas Auto Industries and others, 2006 (32) PTC, 190 to contend that for determining the matter of the charge in a contempt petition, the court may either rely on the fact file or may decide for taking such evidence as it deems fit, and therefore, merely because the disputed questions of fact are involved, it would not preclude the Court from exercising its jurisdiction under the Contempt of Courts Act, 1971. In this case, a petition was filed for the contempt of Court for violation of an interim order passed by the High Court. The petition for contempt was dismissed on the grounds that there were disputed questions of fact where it would be necessary to give sufficient opportunity to the parties to lead evidence and to cross-examine the witnesses in order to come to a definite conclusion whether the interim order had in fact been violated and the order 39 Rule 2A was a specific provision to meet

the contingency of the breach of injunction order and when such remedies were available the person complaining of the breach of the injunction order should not be allowed to take a proceeding of contempt of court and that injunction order was passed at an interim stage and the rights of the parties were still to be adjudicated finally. The Supreme Court noticing Chapter LVII of the Bombay High Court (Original Side) Rules containing the Contempt of Court (9 Supreme Court) Rules 1994 which pertains to proceedings for contempt under Article 215 of the Constitution of India as well as the Contempt of Courts Act, 1971 laying down the specific procedure for dealing with the cases under the Contempt of Courts Act, had remanded the matter to the High Court for determining the matter on merits. Even on the basis of ratio of this case, this Court in the present facts and circumstances does not have to direct the parties to adduce evidence and thereafter come to a conclusion whether the respondent had consented to the sale of properties of Waqf or not or whether he had knowledge about the same. This is not disputed that the similar affidavits have been filed by the respondents in other suits pending between the parties being Suit Nos.CS(OS) 326 of 2005, titled as „Hammad Ahmad v. Abdul Mueed and others, CS(OS) 1149 of 2005, titled as „Hammad Ahmad and another v. Abdul Mueed and another . In fact, the first contempt petition being Contempt petition Nos.1479- 1482 of 2005 was filed by the petitioners for contempt on account of allegedly deposing similar false facts in these above noted suits as has been deposed in an affidavit filed in FAO Nos.262-264 of 2005, titled as „Mohd. Nauman Khan and another v. Abdul Mueed and another . The said contempt petition was later on withdrawn by the petitioners. In the circumstances, the petitioners are not entitled to invoke the Criminal contempt jurisdiction of this Court against the respondent and it will be appropriate for determination of these facts in the suits pending between the parties and prima facie it cannot be held that the affidavit filed by the respondent is false.

35. It is also no more res integra that exercise of power within the meaning of Contempt of Courts Act, 1971, is comparably a rarity and is to be used sparingly and in the larger interest of society and for proper administration of justice. Element of willingness and intention is indispensable requirement to take action. The Supreme Court in case of Prospectus Publication Pvt. Ltd. v. State of Maharashtra, AIR 1971, SC 221 has observed at page 230 as under:-

"The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice." (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN

148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).

36. Having carefully considered the allegations made in the contempt petition, we are of the opinion that the petitioners cannot be allowed to invoke the jurisdiction of this Court under the Contempt of Courts Act, 1971 for initiating criminal contempt against the respondent in the facts and circumstances. In any case this Court has already held that their petition is barred under section 20 of the Contempt of Courts Act, 1971. Therefore, for the foregoing reasons as have been detailed hereinbefore, the contempt petition is dismissed.

ANIL KUMAR, J.

S.L. BHAYANA, J.

DECEMBER 8, 2010 „rs/vk