

In The Matter Of Contempt Proceedings vs Kanwar Singh Saini on 20 July, 2009

Author: P.K.Bhasin

Bench: B.N. Chaturvedi, P.K.Bhasin

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Date of Decision: 20th July, 2009

% Contempt Case (Crl.) No. 9/2004

In the matter of Contempt Proceedings

Against

^ Kanwar Singh Saini ...Respondent/contemner
Through: Mr. Vijay Aggarwal &
Mr. Rakesh Mukhija, Advocates

Mr. Deepak Gupta, Advocate for
the complainant.

CORAM:

* HON'BLE MR. JUSTICE B.N. CHATURVEDI
* HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment?(Yes)
2. To be referred to the Reporter or not?(Yes)
3. Whether the judgment should be reported in the digest?(Yes)

ORDER

P.K.BHASIN, J:

A Reference was made to this Court by a Civil Judge for initiation of contempt proceedings against one Kanwar Singh Cont. Case (Crl.) 9/2004 1 of 33 Saini, who was the sole defendant in a Civil Suit for injunction (hereinafter referred to as „the defendant/contemner) which had been disposed of on 12/05/03. On a preliminary examination of the Reference and the records forwarded alongwith it by the learned Civil Judge on the administrative side of the High Court by a Single Judge Committee constituted for examining contempt applications/References it was found to be a case of „criminal contempt and Hon ble the Chief Justice concurring with the view of the learned Single Judge directed the Reference to be placed before a Division Bench since cognizance of „criminal contempt of a Subordinate Court could be taken only by a Division Bench as provided under Section 18 of the Contempt of Courts Act, 1971(hereinafter referred to as „the Act of 1971). Accordingly the Reference was placed before the Division Bench and the Division Bench directed issuance of show-cause to the defendant/contemner who entered appearance and filed his response to the show-cause notice.

2. After considering that reply and other material cognizance of „criminal contempt was taken. The defendant/contemner decided to contest the contempt action. The defendant- contemnor and the plaintiff thereafter led evidence by filing their Cont. Case (Crl.) 9/2004 2 of 33 respective affidavits and cross-examined each other. We now proceed to dispose of the contempt Reference.

3. The background in which these contempt proceedings came to be initiated may first be noted. On 26-04-2003 one Mohd. Yusuf(hereinafter referred to as „the plaintiff) filed a suit for permanent injunction against the defendant/contemner. That suit was filed by the plaintiff on the averments that he had purchased property No. 148, in village Khirki, Tehsil Mehrauli, New Delhi-110017 from the defendant vide registered sale deed dated 5-9-2002 and further that at the time of the execution of the sale deed the physical possession of the said property (hereinafter to be referred as „the suit property) was also handed over by the defendant to the plaintiff. The plaintiff had kept household articles there. On 24-04-2003 the defendant alongwith 5-6 unknown persons came to the suit property and started throwing the articles lying in the suit property belonging to the plaintiff and also threatened to take forcible possession of the suit property. However, because of the resistance offered by the plaintiff and his raising hue and cry several neighbours gathered at the spot and when they were shown the sale deed which the defendant had executed in respect of the suit property those neighbours intervened and the defendant could not then Cont. Case (Crl.) 9/2004 3 of 33 succeed in taking forcible possession of the suit property and went away but while leaving they extended further threats that he would come again within 2 - 3 days with full force and would take possession of the suit property forcibly. On these allegations, the plaintiff prayed for a decree of permanent injunction restraining the defendant as well as his associates, agents, servants etc. from dispossessing the plaintiff from the suit property or interfering in any manner in his peaceful possession thereof, illegally and without following due process of law and an ex-parte injunction to the same effect was also sought by filing an application under Order XXXIX Rules 1 & 2 CPC.

4. On 26-04-2003 the following order was passed in the suit:

"Present : Ld. counsel for the plaintiff.

Arguments on injunction application heard. No ground for granting ex-parte stay order at this stage, request in this regard is declined. Issue summons of the suit and notice of the interim application to the defendants on PF and RC, courier, UPC and dasti also for 29-04-2003.

Sd/-

CJ/Delhi 26-04-2003"

5. On 29-04-2003 the defendant appeared in the Court of the Civil Judge and filed his written statement wherein he took the plea that although he had executed the sale deed in question in favour of the plaintiff and had also handed over the possession of Cont. Case (Crl.) 9/2004 4 of 33 the suit property to the plaintiff but he had not threatened to take back its possession. The defendant, however, further pleaded that he had the right to take back the possession since the plaintiff had not made the payment of Rs.25,000/- despite having given the assurance to him to pay that amount. He denied that he had been left with no right or interest in the suit property. The defendant had prayed for the dismissal of the suit. Reply to the injunction application was also filed in which also the defendant took the plea that since the plaintiff had yet to pay him Rs.25,000/- he was not entitled to any interim injunction and so prayed for dismissing that application also. The learned Civil Judge after noticing the said pleas of the defendant recorded the following proceedings on 29/04/03:-

"Counsel for the plaintiff.

Defendant in person.

He states that he is not likely to dispossess the plaintiff from the suit premises as he has already sold the same. However, he has stated that he has to take certain amount from the plaintiff towards expenses which has not been paid by the plaintiff. There is counter claim of the defendant affixing the court fee and in any case, he has legal remedy to exercise it. The defendant is ready to make the statement. Let it be recorded.

CJ/Delhi "Statement of Shri Kanwar Singh Saini, Defendant on S.A. Neither I have threatened the plaintiff nor I will dispossess him as I have already sold the suit property vide sale deed. The suit of the plaintiff may kindly be dismissed as there is no merit in the same.

R.O. & A.C. Sd/-

Cont. Case (Crl.) 9/2004
(Kanwar Singh Saini)

5 of 33

Sd/-
CJ/DELHI
29.4.2003"

"Statement of Ld. Counsel for plaintiff Shri Iqbal Ahmed without oath:

I have heard the statement of defendant and I have instruction from the plaintiff to accept the same. The suit of the plaintiff may kindly be disposed of.

R.O. & A.C. Sd/-

(Iqbal Ahmed) Sd/-

CJ/DELHI 29.4.2003"

Then on 12-5-2003 the plaintiff made the following statement in the suit:-

"I have heard the statement of defendant and I accept the same. My suit be disposed of in terms of statement of defendant.

RO&AC Sd/-

(Mohd. Yusuf)

Sd/-
C J/DELHI
12.5.2003"

Thereafter the learned Judge passed the following order:-

"12.5.2003 Present : Plaintiff in person.

Ld. Counsel for the defendant.

Statement of plaintiff is recorded on a separate sheet. Statement of defendant is already recorded. Keeping in view of the statements of parties, the suit of the plaintiff is disposed of. Parties are bound by their statements as given in the court. No orders as to costs. File be consigned to Record Room.

Sd/-

CJ/DELHI 12.5.2003"

Cont. Case (Crl.) 9/2004 6 of 33

6. It appears that sometime after the disposal of the suit of the plaintiff defendant s son Vikram Saini filed a suit for partition in respect of the suit property and for setting aside the sale deed executed by his father in favour of the plaintiff in respect of the suit property as the same had been executed by his father in collusion with the plaintiff and one Ved Prakash, who was a relative of the defendant. That suit was stated to be still pending and in that suit the plaintiff Mohd. Yusuf was also stated to be a party.

7. It also appears that after the aforesaid suit was filed by Vikram Saini, Mohd. Yusuf, the plaintiff of the suit against Kanwar Singh Saini, filed an application before this Court in September, 2003 for initiating contempt of court proceedings against the defendant/contemner for the violation of the undertaking given by him before the trial Court not to dispossess the plaintiff from the suit property. However, the Single Judge Bench before which that petition (being CCP no. 501/2003) was placed did not even issue notice to the defendant/contemner and the petition was dismissed.

Cont. Case (Crl.) 9/2004 7 of 33

8. Thereafter, the plaintiff filed an application under Order XXXIX Rule 2A CPC read with Sections 10, 11 and 12 of the Act of 1971 in the trial Court. The defendant was impleaded as respondent no. 1 in that application, his wife was impleaded as respondent no. 2 and his sons Vikram Saini and Gaurav Saini were impleaded as respondents 3 and 4 respectively. It was alleged in the said application that on 4th August, 2003 the plaintiff on visiting the site i.e. 148, village Khirki, New Delhi learnt that the respondents/contemnors had in collusion with each other and in wilful breach of the undertaking given to the Court by Kanwar Singh Saini on 29-04-2003 broken open the locks and doors of the suit property and had taken its possession and thereby they had committed grave contempt of Court.

9. The learned Civil Judge issued notice of the plaintiff s application under Order XXXIX Rule 2-A CPC to the four respondents/contemnors. Only Kanwar Singh Saini and his son Vikram Saini filed their replies to the application. The wife of defendant Kanwar Singh Saini and his other son Gaurav Saini, however, did not even enter appearance despite service of notice of contempt application. The defendant/contemner Kanwar Singh Saini filed a detailed reply to the contempt application in which he claimed that the sale deed in respect of Cont. Case (Crl.) 9/2004 8 of 33 the suit property relied upon by the plaintiff had been got executed from him by playing fraud upon him by the plaintiff and one Ved Prakash, who was his (defendant s) relative. It was claimed that the plaintiff was never given the possession of the suit property which was always with the defendant and further that the statement in the Court of the Civil Judge which he had allegedly made on 29th April, 2003 was also got made from him by playing fraud upon him by the plaintiff and Ved Prakash. He had not engaged any advocate. It was further pleaded by the defendant that there were in fact two plots one of which was plot no. 148 measuring 120 sq. yds. and the

other one was plot no. 178-A measuring 85 sq. yds. in Khirki Village, Malaviya Nagar, New Delhi and both these plots were adjoining each other and construction thereupon was also raised by the defendant joining the two plots and there was no partition wall in between the said two properties nor was there any separate entrance for the two properties and there was no separation of the constructed portion of the two plots from basement upto the top and so there was no question of selling property no.148 or handing over its possession to the plaintiff. It was further claimed that defendant was in need of money and his nephew Ved Prakash assured him that he and the plaintiff Mohd. Yusuf would arrange loan for him and so at their instance property documents in respect of the suit Cont. Case (Crl.) 9/2004 9 of 33 property were got signed from him and Ved Prakash and the plaintiff had also told him that when the loan would be sanctioned he will have to appear before the Court. After some time he received a notice from the court of Shri S.S. Malhotra, Civil Judge, Delhi and then at the request of the plaintiff and Ved Prakash he accompanied them to the Court where he was asked to make a statement as desired by them. He did sign certain papers at the instance of Mohd. Yusuf and Ved Prakash but no loan was given to him. Thereafter on 4-8-2003 Ved Prakash came to the suit property along with 4-5 persons and started keeping certain household goods in one of the rooms and when the defendant protested and asked Ved Prakash to remove the goods but he refused to do that and then police was called and only thereafter Ved Prakash had to remove the goods which he had kept in the room. Later on it was revealed that Ved Prakash had, in fact, got the sale deed of suit property executed from him in favour of Mohd. Yusuf and he had come to take possession of the suit property at the instance of Mohd. Yusuf. The defendant/ contemner pleaded that in that manner plaintiff Mohd. Yusuf and Ved Prakash had played fraud not only upon him but also on the Court.

Cont. Case (Crl.) 9/2004 10 of 33

10. Vikram Saini, respondent no. 3 in the application, in his reply to the contempt application claimed that the contempt application has been moved by the plaintiff in collusion with his father Kanwar Singh Saini and Ved Prakash. He claimed that the suit property was never in possession of his father or in the possession of the plaintiff and further that even his father was not the owner of suit property. It was further claimed by Vikram Saini that the suit property was bequeathed by his grand-father late Shri Sher Singh in favour of his two grand-sons, namely, respondents no. 3 & 4 in the application. It was further pleaded that Shri Kanwar Singh Saini in collusion with the plaintiff and Ved Prakash were guilty of obtaining frivolous decree from the Court and that already a suit had been instituted by respondent no. 3 challenging the sale deed in respect of suit property executed by his father in favour of the plaintiff.

11. The plaintiff filed separate rejoinders to the replies filed by the defendant and his son Vikram Saini reiterating the averments made in the contempt application and denied the stands taken by these two respondents in their respective replies. The plaintiff admitted the filing of suit by respondent no. 3 Vikram Saini challenging the

sale deed in respect of the suit property in favour of the plaintiff.

Cont. Case (Crl.) 9/2004 11 of 33

12. After examining the entire material the learned Civil Judge while disposing of the plaintiff's application under Order XXXIX Rule 2-A CPC and Sections 10,11 and 12 of the Act of 1971 held that, prima-facie, case of contempt of Court was made out against the defendant/contemner Kanwar Singh Saini only and accordingly made the present Reference to this Court.

13. Before proceeding further it may also be noticed here that the defendant/contemner has already filed a suit against Mohd. Yusuf and the Sub-Registrar, Mehrauli, New Delhi on 23-02-2005 for the cancellation of the Sale Deed dated 05-09-2002 executed by him in favour of Mohd. Yusuf in respect of the suit property.

14. On receipt of the Reference from the Court of Civil Judge the Division Bench, before which it was placed after it was found to be a case of criminal contempt, had given a show-cause notice to the defendant/contemner. The defendant/contemner Kanwar Singh Saini had filed his reply supported by an affidavit and in that reply he maintained the same stand which he had taken before the reference Court in response to the plaintiff's contempt application.

Cont. Case (Crl.) 9/2004 12 of 33

15. After examining the records received alongwith the reference order our predecessor Bench observed as under on 02-02-2005:-

".....It is also an admitted position in the written statement that the respondent has admitted that he had sold the suit property to the plaintiff, namely, Mohd. Yusuf by a registered sale deed.....

..... It is, however, interesting to note that a sommersault has been taken by the respondent in the said reply, inasmuch as it is stated in the said reply filed, on affidavit, that Mohd. Yusuf was never ever in possession of the suit premises and, therefore, the question of dispossessing would not and need not arise.

.....It is, therefore, crystal clear that the respondent at different stages is taking up diametrically conflicting and opposite stands in order to suit his interests. It is noted by counsel appearing for the respondent now that this matter could not have been registered as a criminal contempt.....

.....A similar question as to whether or not filing of an affidavit allegedly containing false averments and statements would amount to criminal contempt, was considered by the Supreme Court in the case of M.C. Mehta Vs. Union of India & Ors.

reported in Vol. III (2003) SLT 58. In the said decision the Supreme Court has considered the said issue and held that filing of false affidavit and statement would amount to committing criminal contempt. We are, therefore, supported by the aforesaid decision of the Supreme Court in coming to the conclusion in this case that prima facie the respondent, by making a statement on solemn affirmation before the court and also in verified written statement and thereafter completely denying the said position in the pleadings supported by affidavit/verification with false contentions and statement, has committed a criminal contempt.

In the light of the aforesaid conclusions and prima facie opinion we take cognizance of the case under Section 15(2) of the Contempt of Courts Act. The respondent, therefore, shall be present in court in person on 16th February, 2005 when charge against the respondent, alleged contemnor shall be framed and a trial shall be held."

Cont. Case (Crl.) 9/2004 13 of 33

16. Thereafter on 20-05-2005 the Bench after once again taking note of the factual background observed that:-

".....The learned Civil Judge thereupon made a reference under the Contempt of Courts Act to this Court for initiating proceedings for criminal contempt..... In view of the foregoing narration, it is prima facie established that respondent-contemnor has by making false and contradictory statements and averments in the pleadings interfered with the due process of law and obstructed the course of justice.

Notice is accordingly issued to the respondent to show cause as to why he should not be punished for criminal contempt in the aforesaid facts.

Respondent-contemnor accepts notice and states that he would like to defend himself and lead evidence"

17. Thereafter evidence was adduced by the defendant/contemner as well as the plaintiff which has been examined by us for deciding the Reference. We have also heard the learned counsel for the defendant/ contemner as well as the learned counsel for the plaintiff.

18. Mr. Deepak Gupta, learned counsel for the plaintiff, submitted that on the basis of allegations made against the defendant/contemner and the evidence adduced in these proceedings it is clearly established that the defendant/ contemner by violating his own solemn undertaking given to the trial Court in the plaintiff's suit not to dispossess the plaintiff from Cont. Case (Crl.) 9/2004 14 of 33 the suit property had committed contempt of Court by dispossessing the plaintiff from the suit property. It was also contended that the defendant/contemner instead of showing any remorse even after the trial Court had issued him the show-cause notice after the filing of the contempt application by the plaintiff had in fact compounded the contempt by filing false reply supported by

his affidavit taking therein a stand regarding the ownership and possession of the suit property which was totally contradictory to the stand taken by him in his written statement in the suit as well as at the time of making statement on oath on 29/04/03 before the trial Court. Mr. Gupta contended that in these circumstances the defendant/contemner deserves to be punished appropriately by this Court and additionally he should also be directed to deliver back the possession of the suit property to the plaintiff.

19. On the other hand, Mr. Vijay Aggarwal, learned counsel for the defendant/contemner, had submitted that the submissions made by the counsel for the plaintiff that the plaintiff had been dispossessed from the suit property by the defendant/contemner in breach of his categorical undertaking given to the trial Court in the plaintiff's suit not to dispossess him cannot be gone into now in the present proceedings which have been initiated on specific Cont. Case (Crl.) 9/2004 15 of 33 allegations of filing of false affidavits in Court by the defendant/contemner. Mr. Aggarwal submitted that the violation of an undertaking given to a subordinate Court amounts to „civil contempt . It was submitted that the plaintiff himself had initially approached the High Court for taking action against the defendant/contemnor for contempt of Court on account of the alleged violation of the undertaking given by him to the trial Court but the learned Single Judge had not entertained that petition for civil contempt. Thereafter the plaintiff had moved the trial Court under Order XXXIX Rule 2A CPC and then the trial Court made a reference to this Court for criminal contempt. Mr. Aggarwal also submitted that on receipt of the Reference it was placed before the Division Bench which took cognizance of criminal contempt and so now the proceedings cannot be converted into one for „civil contempt .

20. As an alternative plea, Mr. Aggarwal had also contended that the defendant/contemner was in any case disputing even the correctness of the allegation that he had violated any undertaking given to the trial Court. Mr. Aggarwal submitted that in the statement of the defendant recorded on 29/04/03 in the plaintiff's suit, even if it is accepted to have been made by the defendant voluntarily, he had stated that the suit should be dismissed as Cont. Case (Crl.) 9/2004 16 of 33 there was no merit in it and the same thing was stated in the written statement also which is being relied upon by the plaintiff, and in addition to that plea the defendant had also claimed that he had the right to take back the possession of the suit property from the plaintiff as the plaintiff owed some money to the defendant and even the trial Court had noted that plea in his proceedings of 29th April. It was submitted that reading of the written statement and the oral statement together makes it clear that there was no unequivocal and unconditional undertaking to the Court not to dispossess the plaintiff and in fact the defendant had categorically claimed that he had the right to dispossess him.

21. Regarding the charge against the defendant/contemner of taking contradictory stands in his written statement and his affidavits filed subsequently before the Reference Court and also before this Court Mr. Aggarwal submitted that this charge is not made out at all. Mr. Aggarwal contended that the defendant/contemner was not disputing that the written statement available in the suit file was signed by him but he has been able to show in the present proceedings from his evidence that that written statement was got signed from him as a result of fraud played on him by the plaintiff and one Ved Parkash who was closely related Cont. Case (Crl.) 9/2004 17 of 33 to the

defendant/contemner and had taken undue advantage of that relationship. It was further contended that written statement purporting to be that of the defendant/contemner was in fact placed on record in the absence of the defendant/contemner and that was evident from the fact that in the proceedings recorded by the Civil Judge on 29/04/03 there is no reference of any written statement having been filed on that date. Learned counsel also submitted that the defendant /contemner had neither verified any false pleadings nor had sworn false affidavits at any stage inasmuch and in the written statement filed in the suit certain admissions were got made from him as a result of fraud played upon him. Mr. Aggarwal had contended that even if it is accepted that this is a case where the defendant had filed false affidavits or had made false verification of pleadings in Court the proper course to follow was to prosecute him for „perjury and not for „criminal contempt .

22. In the present case, as noticed already, the Division Bench had taken cognizance of „criminal contempt only against the defendant/contemner for his having taken contradictory stands in his pleadings/affidavits regarding the ownership and possession of the suit property. So, we have to examine whether the defendant/contemner has committed „criminal contempt or not. Cont. Case (Crl.) 9/2004 18 of 33 we are of the view that since no cognizance was taken of „civil contempt , by this Court that aspect cannot be gone into in the present proceedings even though strongly urged on behalf of the plaintiff. We say so because of certain provisions of the Act of 1971 as well as some judicial pronouncements. Under Section 2(a), (b) and (c) „contempt of Court , „civil contempt and „criminal contempt . We re-produce below these definition clauses:-

"2(a) "contempt of Court" means civil or criminal contempt"

"2(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court."

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

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court, or

(ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings or

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

Section 10 reads as under:

"Section 10 - Power of High Court to punish contempt of subordinate courts Every High Court shall have and exercise the same jurisdiction, powers and authority, in

accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

Cont. Case (Crl.) 9/2004 19 of 33 Section 18 also needs to be noticed. It reads as under:-

"Section 18 - Hearing of cases of criminal contempt to be by Benches (1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges. (2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner.

Section 19 provides as to where would an appeal lie against an order of a Single Judge Bench and that of a Division Bench. The relevant part of this Section for our purpose is as follows:-

"Section 19 - Appeals (1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt--

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided....."

23. From these provisions of the Act of 1971 it becomes evident that the question whether contempt of any subordinate Court is committed or not and whether the alleged contempt is civil or criminal to be decided by the High Court on the basis of facts which are brought to the notice of the High Court. Those facts can be brought to the notice of the High Court by any party to the Cont. Case (Crl.) 9/2004 20 of 33 litigation. If the High Court considers on perusal of the facts brought to its notice that contempt of a subordinate Court is made and the same is civil in nature then the matter can be entertained straightaway by a Single Judge Bench. However, if the contempt of any Court subordinate to the High Court is alleged to be „criminal contempt then the High Court would initiate action against the alleged contemner only when a Reference is made to it by the subordinate Court concerned or any of the other authorities mentioned in Section 15 of the Act of 1971. And if the High Court on receipt of the Reference from a Subordinate Court is satisfied that prima facie a case of „criminal contempt , other than the one specified in Section 14, is made out then the matter shall be heard and determined only by a Bench of not less than two Judges as is the mandate of Section 18 of the Act of 1971. Learned counsel for the plaintiff did not dispute that violation of an undertaking given to a Court, as is alleged by the plaintiff to have been committed by the defendant/contemner, is only a „civil contempt and that civil contempt matters are heard by a Single Judge Bench in this

Court and also that in the present case when earlier the plaintiff had filed the contempt application in this Court for the violation of the undertaking by the defendant/contemner given to the trial Court the Single Judge Bench had not issued even show-cause notice to the Cont. Case (Crl.) 9/2004 21 of 33 defendant/contemner. On receipt of the Reference from the Court of Civil Judge the Division Bench had also found it to be case of criminal contempt and the charge framed against the defendant/contemnor was also of criminal contempt. So, that is the reason for us for not going into the question whether the defendant/contemner had committed „civil contempt or not.

24. Now, we will refer to some of the judicial pronouncements wherein the point for consideration was regarding the jurisdiction of Single Judge Bench and Division Bench of High Court in matters of contempt of Court and those decisions also strengthen our conclusion that we cannot go into the question now whether the defendant/contemner had committed „civil contempt or not. First of all we may refer to a decision of the Supreme Court in "J.K.Gupta vs D.G., Investigation and Registration & others", 2005 Crl.J. 678. This was a case of contempt of Monopolies and Restrictive Trade Practices Commission which is also empowered to punish for its contempt and for that purpose it is to follow the provisions of the Contempt of Courts Act. However, in this case for „criminal contempt the alleged contemner was punished by the Chairman of the Commission sitting singly. The contemner filed an appeal under Section 19 of the Act of 1971 in the Supreme Court and took the plea that his conviction for the contempt of the Cont. Case (Crl.) 9/2004 22 of 33 Commission was illegal since criminal contempt matter could not have been heard and decided by a Single Member Bench of the Commission in view of the provisions of Section 18 of the Act of 1971. The Supreme Court accepted that plea and set aside the order of the Chairman of the Commission and remanded back the matter to the Commission to be decided afresh by a Bench of two members of the Commission. This is how the matter was dealt with and decided by the Supreme Court in para no.6 of its judgment:-

"From a conspectus of the aforesaid provisions, it would be clear that by virtue of Section 13B of the M.R.T.P. Act, the Commission has been empowered to exercise all the powers to punish for contempt which have been conferred upon a High Court and the same have to be exercised in the manner prescribed under the Act. Section 2(c) of the Act defines 'criminal contempt'. Under Section 15 of the Act, action for criminal contempt, other than a contempt referred to in Section 14 of the Act, can be taken. Under Section 14, action can be taken if the contempt has been committed in the presence of or hearing of the court. Section 18 lays down that every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges which would obviously show that in the case of the Commission, a proceeding for criminal contempt has to be heard and determined by a Bench of not less than two members. Commission to be established under Section 5 of the M.R.T.P. Act shall comprise a Chairman and not less than two and not more than eight members to be appointed by the Central Government which shows that the Commission would consist of a Chairman and at least two members. Language of Section 18 of the Act that "criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges" is very clear and unequivocal and in case of criminal contempt, the contempt proceeding has to be heard and

determined by a Bench of not less than two Judges. As the Commission consists of Chairman and at least two members, the contempt proceeding for punishing the appellant for criminal contempt ought to have been heard by the Chairman along with another member or the Chairman could have assigned the matter for hearing to any two members of the Commission but he alone was not justified in hearing and determining the proceeding which was in violation of the provisions of Section 18 of the Act. Therefore, Cont. Case (Crl.) 9/2004 23 of 33 the impugned order passed by the Chairman is liable to be set aside on this ground alone and the matter has to be remitted to the Commission for disposal of the contempt proceeding in terms of Section 15 of the Act.

7. Accordingly, Criminal Appeal No. 664 of 1997 is allowed, impugned order is set aside and the matter is remanded to the Commission to dispose of the contempt proceeding in accordance with law. In view of the aforesaid order, Criminal Appeal No. 1184 of 1997 has been rendered infructuous and the same is, accordingly, dismissed. "

25. Same view was taken by a Division Bench of this Court way back in the year 1982 in " Dr. Bimal Chandra Sen vs Mrs. Kamla Mathur and another", 1983 Crl.L.J. 495. In that case wife, who was the sole defendant in a suit filed against her for injunction restraining her from raising any construction in the suit property which was given to her on licence by the plaintiff, was sought to be prosecuted for civil contempt for having violated an ad interim injunction passed by a subordinate Court on an application under Order 39 Rules 1 and 2 CPC. Her husband, who was not a party to the suit, was sought to be prosecuted for criminal contempt for having aided and abetted his wife in committing violation of the injunction order of the Court as he was allegedly supervising the fresh construction in the suit property which his wife was restrained from carrying out. The contempt application was initially taken up by a learned Single Judge who however ordered the same to be placed before a Division Bench since criminal contempt of subordinate Court was being alleged Cont. Case (Crl.) 9/2004 24 of 33 and criminal contempt matter could be taken up by a Division Bench only. One of the reasons given for not entertaining the contempt application is to be found in para no.41 of the judgement of the Division Bench and the same is reproduced below:-

"41. There is another absurdity. If we try the wife for civil contempt under the Act a single Judge will do it. But the husband will have to be tried by two Judges for criminal contempt. This will also result in appeals being taken to different courts. For my part, I refuse to give the statute a meaning which leads to such an impractical and ridiculous result unless compelled to do so by the language of the statute itself or by a clear authority which is binding on this court. I can find nothing in the Act or the Constitution which supports the argument on behalf of the plaintiff."

26. Same view was taken by the Orissa High Court also in "Pitabash Sabhoo vs G.R.Mohanty and another", 1995 Crl.L.J. 2578. This is how the question of hearing of civil and criminal contempt matters was considered and answered by the Orissa High Court:-

"2. Shri Rath submitted that the present being a civil contempt, as defined in Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') is to be heard and determined by a single Judge and if it would be heard and disposed of by a Division Bench, the aggrieved party would be deprived of the right of appeal to a Division Bench as provided in Section 19(1)(a) of the Act. We find sufficient force in this submission. Section 18 of the Act provides that a case of criminal contempt (criminal contempt is defined in Section 2(c) shall be heard and determined by a Bench of not less than two Judges. Section 19(1) provides that an appeal shall lie as of right from the order or decision of a single Judge to a Bench of not less than two Judges of the Court and where the order or decision is that of a Bench, to the Supreme Court. A combined reading of the provisions of Sections 18(1) and 19(1) would show that the case of criminal contempt is to be heard and determined by a Division Bench whose order or decision is appealable in the Supreme Court. Cont. Case (Crl.) 9/2004 25 of 33 and there is no specific mention as to who is to hear a case of civil contempt. If a case of civil contempt is heard and determined by a Division Bench an aggrieved party would be deprived of the right of appeal to a Division Bench of the Court which would be contrary to the scheme of Section 19(1)(a) which provides that an appeal shall lie as of right from the order or decision of a single Judge to a Division Bench. The right conferred under Section 19(1)(a) of appeal to a Division Bench of the Court is a substantive and vested right and in order to give effect to the said provision a case of civil contempt is to be heard and determined by a single Judge."

27. In "Chaganlal Mittal vs Mohan Lal Mittal", 1982 Crl.L.J. 2199 a point was raised before a Division Bench of the Calcutta High Court on behalf of the appellant-contemner that the order of the Single Judge holding him guilty of „criminal contempt was wholly without jurisdiction and a nullity. The Division Bench had accepted that argument and set aside the order of the Single Judge on the ground that since the allegations against the contemner constituted criminal contempt the Single Judge did not have the jurisdiction to entertain the petition for criminal contempt and the same could be entertained only by a Division Bench in view of the provisions of Section 18 of the Act of 1971. It was also observed that the point of jurisdiction of the Bench was of substance and could not be ignored since the provisions of the Act of 1971 are bound to be strictly complied with. Similarly a Single Judge of Allahabad High Court in " In re: R.K.Chaudhary, Collector, Custom and Central Excise", 1985 Crl.L.J. 961 Single Judge Bench had refused to entertain a petition which was Cont. Case (Crl.) 9/2004 26 of 33 placed before it by the Registry as a petition for civil contempt on the ground that there was no averment in the petition that there was any disobedience of any order or direction of any Court or wilful breach of any undertaking given to a Court. The learned Single Judge also refused to express any expression as to whether any criminal contempt was made out or not since that was a matter for consideration of a Division Bench and thus simply rejected the petition holding that it did not make out a case of civil contempt.

28. Thus, as per the scheme of the Act of 1971 and these judicial pronouncements cases of „civil contempt can be heard and decided by a Single Judge Bench only and „criminal contempt petitions are to be heard and decided only by a Bench of not less than two Judges. So, it is not that if

a Division Bench while hearing a case of criminal contempt finds the case to be of civil contempt it can proceed to hold the contemner guilty of civil contempt. That would be depriving the contemner of his right of an appeal before the Division Bench which he would have availed of if he had been guilty by Single Judge Bench. If a matter is decided by a Division Bench holding someone guilty of criminal contempt appeal would lie as a matter of right to Supreme Court while an appeal against an order of Single Judge holding someone guilty Cont. Case (Crl.) 9/2004 27 of 33 of civil contempt would lie before a Division Bench and if that appeal is dismissed the party found guilty of civil contempt can still approach the Supreme Court for leave to appeal under Article 136 of the Constitution of India and there have been cases where leave has been granted. One such case is reported as "Three Cheers Entertainment Pvt. Ltd. Vs C.E.S.C.Ltd.", AIR 2009 SC 735. So, for all these reasons we refuse to go into the question whether civil contempt is also made out or not against the defendant/contemnor.

29. Now, we proceed to examine if the defendant/contemner has committed criminal contempt or not. Although Section 2(c) does not specifically provide that filing of false affidavits or pleadings which are duly verified in judicial proceedings amounts to „criminal contempt but it has now been held by various pronouncements of the Supreme Court that filing of false affidavits/statements in judicial proceedings by any party tends to interfere with or obstructs or tends to obstruct the administration of justice and so that act amounts to criminal contempt. Some of those decisions of the Supreme Court are reported as "Murray & Co. vs. Ashok Kr. Newatia and Another", (2000) 2 SCC 367, " Rita Markandey vs Surjit Singh Arora", (1996)6 SCC 14 and "Dhananjay Sharma vs. State of Cont. Case (Crl.) 9/2004 28 of 33 Haryana and Others", (1995) 3 SCC 757. And even the learned counsel for the defendant/contemnor did not dispute this proposition.

30. In the present case, the defendant/contemner had filed a written statement in the suit of the plaintiff and had also had made a statement on oath before the trial Court on 29/04/03 admitting that he had sold the suit property to the plaintiff and had also handed over its possession to him. In his statement on oath also which admittedly was made by him before the learned Civil Judge in the suit on 29-04-2003 he had admitted that he had already sold the suit property to the plaintiff and so he will not dispossess him. However, subsequently when the plaintiff filed contempt application the contemnor in his reply to that contempt application filed before the Reference Court, which was supported by his affidavit wherein he affirmed the correctness of the assertions made by him in his reply, he took a somersault and took the plea that neither he had sold the suit property to the plaintiff nor had he handed over its possession to him. Even before this Court the defendant/contemner filed an affidavit in response to the show-cause notice and claimed that neither he had sold the suit property to the plaintiff nor was he given its possession. The admissions made in the written statement and in Cont. Case (Crl.) 9/2004 29 of 33 the statement made before the trial Court, however, according to the defendant/contemner, were not made by him voluntarily but were as a result of fraud played upon him by the plaintiff and one Ved Parkash. Learned counsel for the plaintiff did not dispute that if any party to a suit has made any admission of fact either in the pleadings or by way of statement on oath that party is not precluded from showing that that admission was got made by the opposite party by indulging in fraud and it is shown that any fraud was played upon the party making any admission of some important fact in dispute then that party would not be bound by that admission. However, learned counsel submitted, in the present case the

defendant/contemner had failed miserably to show that any kind of fraud was played upon him by the plaintiff in collusion with any other person.

31. To establish that whatever he had stated in the written statement filed in the trial Court and in his statement on 20/04/03 was a result of fraud the defendant/contemner in the present proceedings filed only his own affidavit to be read as his examination-in chief. In that affidavit while maintaining his stand taken regarding the written statement etc. the defendant/ contemner also tendered unconditional apology and prayed for pardon stating that whatever he did was under misrepresentation Cont. Case (Crl.) 9/2004 30 of 33 and ill advice given by the plaintiff and his relative Shri Ved Prakash and that he had no intention to cause any harm to anyone or to take any benefit. In that affidavit it was also claimed by the defendant/contemner that the sale deed in question was got executed from him by these people representing to him that it would be required for getting loan from him from Saini Co- operative Thrift and Credit Society Ltd. Thus, even in the present proceedings the defendnant/contemner is admitting having executed the sale deed dated 5-9-2002. If actually that sale deed had been executed from him on any misrepresentation by the plaintiff or his relative Ved Prakash that they would get loan for him he would have protested when no loan was admittedly got sanctioned for him from anywhere. The defendndnat/contemner is also admitting that he had appeared in the Court of Shri S.S. Malhotra, Civil Judge on 29-04-2003 and had a statement on oath that he had sold the property in question to the plaintiff and had also handed over its possession to him. That shows that even till 29th April, 2003 the defendant/contemner had no grievance against the execution of the sale deed in respect of property in question in favour of the plaintiff on 05-09-2002. Not only that, even thereafter he did not raise any issue in that regard and it was only when the contempt application was moved that defendant/contemner came out for the first time with the stand Cont. Case (Crl.) 9/2004 31 of 33 that fraud had been played upon him. In our view, the ipsi dixit of the defendant/contemner that he had made the admissions regarding sale of property in question to the plaintiff and also handing over of its possession to him were as a result of fraud having been played upon him is difficult to be accepted. Fraud has to be established by adducing cogent evidence and in our view and as was contended even by the learned counsel for the plaintiff the defendant/contemner has failed to establish the same at least in the present proceedings. There is no doubt that civil litigation in respect of the same subject matter is pending between the parties wherein the sale deed in question as well as the dispute about possession of the suit property on 05-09-2002 and it would be open for the parties to establish their respective pleas in those proceedings. However, as far as the present contempt proceedings are concerned, we have no manner of doubt that the defendant/contemner had filed a false affidavit firstly before the trial Court in support of his reply to the contempt application and then before this Court also in response to the show cause notice issued by this Court. Consequently, he did commit criminal contempt for which he deserves to be punished. The stage at which he has tendered an apology shows that he was really not apologetic at all since at no earlier point of time he tendered apology. He has been categorically claiming Cont. Case (Crl.) 9/2004 32 of 33 that whatever he has stated in his affidavits before the trial Court and also before this Court was correct. We are, therefore, not inclined to accept the so called apology tendered by the defendant/contemner for the first time while giving evidence in these proceedings.

32. While holding the defendant/contemner guilty of criminal contempt we straightaway proceed to punish him also in view of the observations of the Hon ble Supreme Court in para no.36 of its judgment in "Three Cheers Entertainment Pvt. Ltd. and Ors. vs. C.E.S.C. Ltd." AIR 2009 SC 735. We impose upon the contemner punishment of simple imprisonment for four months.

P.K. BHASIN, J

B.N. CHATURVEDI, J

July 20, 2009
sh

Cont. Case (Crl.) 9/2004

33 of 33