

Court On Its Own Motion vs Kanwaljit S. Sareen, Dr. Dewan C. Vohra, ... on 9 February, 2007

Equivalent citations: II(2007)BC362, 2007CRILJ2339, 138(2007)DLT682

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Bench: Manmohan Sarin

JUDGMENT

Manmohan Sarin, J.

1. The present contempt proceedings have been initiated by the Court on its own motion, taking cognizance of the abuse of the legal process. Two recovery suits were filed on loan agreements by respondent/contemnor No. 1, where admittedly, the consideration in the manner as recorded in the agreements was not paid. Besides, the loan agreements were not executed on the dates recorded thereon, since the stamp paper on which they were engrossed, were of a later date. Accordingly, in exercise of powers under Article 215 of the Constitution of India, show cause notices were issued to the plaintiff Kanwaljit S. Sareen and his Advocates Dr. Dewan C Vohra and Ms. Kiran Singh, for reasons as recorded in order dated 22nd April, 2004, for abuse of the legal process in the institution and prosecution of suits based on the said agreements.

2. In these proceedings, the role of Advocates signing the plaint, containing averments, which were false to their knowledge and contrary to the specific stand taken in notice, signed by the same counsel vis-a-vis their role as officers of the Court comes up for consideration. The junior counsel, who signed the agreement as a witness, admits that the agreements were not executed and signed by the parties in her presence and that the other witness also did not sign in her presence. Yet, she signed the agreement as a witness on instructions of the senior counsel, who too, was not present at the time of signing the agreement.

3. The facts giving rise to the present proceedings may be briefly noted:

(i) Suit No. 621/1999 titled Kanwaljit S. Sareen v. National Builders Properties and Ors. was filed by the plaintiff acting through his father and attorney, Sh. S.S. Sareen for recovery of Rs. 10,05,000/-. Plaint was signed by counsel, Dr Dewan C. Vohra and Ms Kiran Singh, Advocates. Plaintiff averred that he had lent a sum of Rs. 6,00,000/- to the Defendants on 15.5.1997 at an agreed rate of interest of 3% per month and a loan agreement on a stamp paper was signed. On failure of the Defendants to pay the amount, plaintiff instituted the suit, the cause of action is claimed to have arisen on 15.5.1997, when the amount was lent to the defendants.

(ii) An application under Section 340 Cr.P.C. bearing Crl.M. No. 610/2003, was moved by the Defendants claiming that the Plaintiff had forged and fabricated loan agreement for institution of the suit. The loan agreement was dated 15.5.1997 and was notarized on the same date. However, the non judicial stamp paper on which the agreement was engrossed is dated 21.7.1997. Notice of this application was issued to the plaintiff and reply thereto was filed praying for dismissal of the application and also permission to withdraw the suit.

(iii) Plaintiff had filed another Suit bearing No. 1357/99 for recovery of Rs. 21 lakhs being the principal amount plus interest, against the Defendants. The said suit had also been filed by the Plaintiff through his father and his attorney, Sh. S.S. Sareen and signed by Advocates, Dr. Dewan C. Vohra and Ms. Kiran Singh. As per the averments in Suit No. 1357/1999, plaintiff lent a sum of Rs. 16,00,000/- to the defendants, who were known to the plaintiff's father, on 1.7.1997. A loan agreement was executed on a stamp paper between the parties, duly notarized for the loan of Rs. 16 lakhs. The defendants agreed to pay a total interest of Rs. 5 lacs by agreeing to pay the total amount of Rs. 21 lacs under four equal Installments of Rs. 5.25 lacs each. The first Installment being payable on 1.1.1998 followed by the remaining three Installments on 1.4.1998, 1.7.1998 and 1.10.1998. The agreement recorded the amount of loan as having been paid in New Delhi. Based on the above averments, a decree for recovery of Rs. 21 lakhs was sought.

(iv) Written statement was filed by the defendants in both suits, denying the execution of the loan agreements. The defendants averred that no such loan agreements were executed or money paid there under. The loan agreements were claimed to be fabricated. The averments in the plaint were said to be contrary to the averments in the notice dated 1.4.1998 sent on behalf of plaintiff, that the money equivalent had been paid in US dollars in USA to the defendant's Agent. The stamp papers of the agreements bore the date 21.7.1997, which belied the version of the plaintiff of loan being advanced on the dates claimed as also the date of execution of agreements. Plaintiff on the other hand claims that defendants have cheated him by replacing the stamp paper which formed the first sheet of the agreement and has made detailed averments in the affidavits filed. It was alleged that the fact that signatures of parties do not appear on the stamp paper forming the first sheet of the agreement itself indicates that the defendant has replaced the original signed stamp paper with a stamp paper purchased subsequently.

(v) Suit No. 1357/99 was permitted to be withdrawn, despite objections by defendants, vide order dated 20.2.2003, in view of the plaintiff's submission that being a Non-Resident Indian, he could not pursue the suit after the death of his father, who was acting and functioning as his attorney. FAO(OS) 134/2003, challenging the order dated 20.2.2003 was dismissed on 7.4.2003, and hence finality attaches to the withdrawal of the suit.

(vi) Crl.M. No. 712/2003 under Section 340 Cr.P.C. read with Section 195 Cr.P.C., was filed by the Defendants on 10.3.2003 in Suit No. 1357/99, which had already been dismissed as withdrawn, for initiation of enquiry into the alleged forgery and fabrication of the loan agreement on which the suit was instituted.

4. The Court vide order dated 17.10.2003, noticed the contrary versions in the pleadings and documents as well as the apparent contradictions appearing on the face of agreements. Statements of the plaintiff, defendant No. 2 and the Advocate of the plaintiff, Ms. Kiran Singh were duly recorded.

Defendant No. 2 Mr. J.P. Singh denied having taken any loan from the plaintiff but admits receiving Rs. 16 lakhs and 6 lakhs towards advance for purchase of plots in sector Beta and sector 43, Noida. The purchases were made when the prices in the market were rising and thereafter there was a recession and prices fell. Payments towards the plots were made and documents registered. One plot could not be sold due to impending litigation and the second was sold at a loss. He stated that the plaintiff was seeking return of the price paid for the plots. Defendant No. 2 was only to get his commission in the transaction. Defendant No. 2 denied having taken any loan or executing the loan agreement.

5. From a perusal and consideration of the statements of the plaintiff and defendant No. 2, as recorded, on oath, in respect of the transaction of the loan agreements and that of Ms. Kiran Singh, Advocate, with regard to her signing the said agreements as a witness and the averments made in the pleadings and the documents on record, the following position emerges:

(i) Plaintiff deposed that he was working in New York and his father, Sh. S.S. Sareen as his attorney used to look after the purchase of the properties and dealt with the defendants. Most of the time money was paid in cash. Plaintiff deposed that defendant No. 2, Sh. J. P. Singh had a relation "Tony", representing his interest in USA. Defendant No. 2 desired that money for booking space at Sterling Resorts be paid to Tony in US dollars and that the latter had collected from him \$ 35,000 and it had been paid in the beginning of 1997 in three Installments. No receipt was taken from the said Tony, as the receipt was to be taken in rupees at Delhi. Plaintiff's father had asked the defendants to execute the loan agreement and they executed the loan agreement in India, showing the amount of Rs. 16 lakhs. As the transaction for Sterling Resorts had failed, defendant No. 2 had agreed to return the money.

(ii) Plaintiff deposed, on oath, on 20.10.2003, that the loan agreement was executed on 1.7.1997 and that he had signed the original stamp paper. It was the plaintiff's case that the agreement with original stamp paper, as signed, had been left with the defendants, who had undertaken to have the same attested by notary and then return the same to his father on 22.7.1997. The original stamp paper for the agreement dated 15.5.1997 for Rs. 6 lakhs was also signed. The agreements returned were on stamp papers, which were purchased on 21.7.1997. These were not signed by the plaintiff. Plaintiff's explanation is that the defendants had removed the original

stamp papers and instead replaced them with stamp papers purchased on 21.7.1997, which was not noticed by the plaintiff while instituting the two suits.

6. Assuming the above version of replacement of the original stamp papers was to be believed, the following wrong statements and contradictions still stare at us:

(i) Plaintiff in the statement recorded, on oath, on 20.10.2003 gave the date of execution of agreements as 1.7.1997. In the statement recorded on 22.10.2003, plaintiff deposed that he was not in India during 14.5.1997 to 16.5.1997 as well as during 30.5.1997 to 2.7.1997 and he did not sign the agreement dated 15.5.1997 on 15.5.1997. He had signed the agreement at the end of March, 1997/1.4.1997. It was stated that the stamp paper page of agreement, was followed by two typed papers, while agreement actually has only the stamp paper and one page. The second agreement dated 1.7.1997, he deposed, was signed at the end of March, 1997 or 1.4.1997. Plaintiff also admitted that no amount was paid when these agreements were signed. The amount stood paid in 1996 when \$ 35,000 was paid by him in USA. The amount had been withdrawn from his bank and paid in three Installments.

(ii) Plaintiff also deposed that the affidavit filed on 17.9.2003, pursuant to the order dated 18.9.2003, when discrepancies in the agreement and the dates had already been brought out, was prepared by his counsel and E-mailed to him in US and he signed the same. In the said affidavit, while giving his version of events of transactions as far as present agreements are concerned, the plaintiff averred that the first loan agreement for a sum of Rs. 6 lakhs was signed on 15.5.1997 which inter alia said that "the Second Party has requested the First Party to grant him a loan amount of Rs. 6,00,000/- @ 3% interest thereon". The agreement was drafted, signed and got witnessed but the defendants kept the original with the promise that they will get the same attested and after keeping a photocopy give the original to the deponent/plaintiff. However, the agreement was never honoured and even the original document remained with the defendants. The second loan agreement was signed and executed at NOIDA for a sum of Rs. 21,00,000/- on 1.7.1997.

7. It would be seen that even on 17.5.2003, in the affidavit being sworn, it was claimed that the agreements were executed on 15.5.1997 and 1.7.1997, which stands contradicted by the statements recorded on oath.

8. It is significant that the Counsel for the plaintiff, Dr. D. C. Vohra had himself given a notice dated 1.4.1998, wherein he had averred that plaintiff had entered into a transaction with defendants on 30.1.1997 and paid to defendant's agent in United States, the dollars equivalent of the sum of Rs. 16 lakhs, asked as an advance against the purchase of 500 sq. mtrs from the Sterling Holiday Resorts (I) Ltd. in the Greater Noida Complex at the rate of Rs. 7500/- per Sq.mtr., whereas the suits are based on loan agreements purportedly executed in India.

9. Counsel for the plaintiff also referred to a receipt of Rs. 16 lakhs executed on 30.1.1997 for the said amount. Plaintiff has admitted that the suits filed on the basis of loan agreements were in respect of recovery of the amounts advanced, as aforesaid in USA.

10. It would be seen from the foregoing that apart from the false deposition with regard to the dates on which the loan agreements were executed, plaintiff's counsel, Dr. D. C. Vohra, who had himself served a notice dated 1.4.1998, regarding payment of the amount equivalent to Rs. 16 lakhs in US dollars in America, filed a suit based on the loan agreement dated 1.7.1997 and 15.5.1997, wherein it was alleged that the sum of Rs. 16 lakhs was paid on 1.7.1997 and that the amount was paid at New Delhi. The said averments were obviously false to the knowledge of the plaintiff and his counsel, as they claimed that the money had been paid in USA. Similar is the position with regard to the agreement dated 15.5.1997.

11. Coming to the signing of the agreement as a witness by Ms. Kiran Singh, who has also signed the plaint as an Advocate, she deposed that she was not involved in the drafting of the agreements and since her senior had asked her, she signed the same. She deposed that the agreement was not signed in her presence. She did not remember that the plaintiff was present or not. She deposed that the neither the second witness had signed in her presence nor any notary was present. She deposed that she had signed the agreement on 15.5.1997 and not on 21.7.1997. She could not say why the parties had not signed the first page of the agreement. She deposed that though Dr. D. C. Vohra was not present, she had signed the agreement on his asking. She admitted that the parties had not signed the agreement in her presence. This raises the question of responsibility, vulnerability and culpability of counsel signing the agreement as a witness, when the agreements are not executed in her presence. The other witness also did not sign in her presence as admitted by her.

12. The suits instituted by the plaintiff and signed through counsel, Dr. D. C. Vohra and Ms. Kiran Singh are on the basis of loans advanced under agreements dated 15.5.1997 and 1.7.1997 not being repaid. The stamp papers bear the date 21.7.1997, which belie the dates given on the agreement. The consideration under the agreement, as admitted by the plaintiff, \$ 35,000, was paid in USA to the representative of the defendant. The agreements did not disclose any such thing, rather money was claimed to be paid under the agreements in Delhi. The notice issued by the counsel runs contrary to the averments in the plaint.

13. One of the suits (Suit No. 1357/1999) has already been permitted to be withdrawn vide order dated 20.2.2003, while prayer for withdrawal, in the second Suit (S. No. 621/1999) has been made by the plaintiff in the reply to the application under Section 340 Cr.P.C., which is pending. During the advanced stage of hearing of contempt proceedings, the plaintiff and the defendants both desired a quietus to be applied to the matter.

14. Mr. Neeraj Kishan Kaul, Senior Advocate who had been appointed amicus Curiae, succinctly brought forth the facts from the averments in the pleadings, statements and documents on record, which form the basis for proceeding for contempt as also in relation to the applications moved under Section 340 Cr.P.C. In essence, he submitted that a matured and experienced advocate with decades of experience has instituted suits based on averments, which run contrary to the notice given by

him. The suits were instituted on the basis of loan agreements whereunder monies were not paid and the said loan agreements were not executed on the dates thereof. A junior advocate of the plaintiff has signed the agreement as witness without the agreements having been executed in her presence.

15. As regards the defendant, Mr. A.S. Chandhiok, learned Senior Advocate and President of High Court Bar Association, who was also acting as an amicus Curiae, at one stage urged that grounds exist for issuance of notice of contempt to defendant No. 2, Mr. J.P. Singh. The gist of the submissions was that Mr. J.P. Singh by his own conduct had interfered with the due course of judicial proceedings and orderly administration of justice by first denying the execution of the agreements and the transactions and later, substantially watered down his stand by accepting that monies paid by the plaintiff were invested in properties as an Agent by the defendant, who was only to be paid his commission. However, subsequently Mr. A.S. Chandhiok, learned amicus Curiae, who was arguing for applying a *quid pro quo* in the matter, by accepting the apology of the plaintiff, did not press the plea for issuance of contempt notices to the defendants and the matter was dropped there.

16. Before considering the legal position on these issues, it would be appropriate to consider the defense and explanation tendered by Dr. Dewan C. Vohra, Advocate for himself and on behalf of the plaintiff as also the explanation tendered by Ms. Kiran Singh, the junior advocate of the plaintiff. Dr. Vohra, in the reply, submitted that defendants had altered or patently maneuvered the documents inasmuch as the original stamp papers were substituted by stamp papers of a later date, which was not noticed by the plaintiff and his counsel. He submitted that the loan agreement containing the original stamp paper had been signed by the plaintiff and sent to the defendants. The documents returned were with the substituted stamp paper of a later date, which did not bear plaintiff's signatures. Plaintiff had inadvertently sued on the basis of the said agreement without noticing that it was a stamp paper of a later date. The defendants had, by this, deprived the plaintiff of his right to pursue legal remedies and recover monies as advanced. The tenor of the reply was that the plaintiff was the aggrieved party on account of the fraud practiced by the defendants. He submits that receipt of the amounts advanced has not been denied by the defendant. He submitted that after discovering the defects in the documents, he advised the plaintiff to withdraw the suits. Relying on the decision of the Supreme Court in "Advocate General, State of Bihar v. Madhya Pradesh Khair Industries and Anr. reported at , he submitted that every abuse of the process may not amount to contempt of Court. It was only abuse of the process, which was calculated to hamper the due course of judicial proceedings or the orderly administration of justice, which would amount to contempt of Court. Remedy for frivolous and vexatious proceedings and other minor abuses was striking out of pleadings or staying of the proceedings etc. Dr. Vohra in his affidavit submitted that he is a law abiding officer of the Court and has a blemish-less career of decades as a counsel and had never fallen foul of law. He sought discharge of the notice of contempt based on the above submissions. He submitted that if despite the above submissions, the Court was of the view that there was a lapse on his part as a counsel, he be permitted to tender unconditional and unqualified apology.

17. During the course of hearing, attention of Dr. Dewan C. Vohra had been drawn to the fact that assuming for purposes of arguments that the original stamp paper of earlier dates had been substituted, the same would at best be an explanation of the stamp papers being of a later date than

the date of the agreements. Besides, the respondents had denied the factum of execution of the agreements themselves. Moreover, under the hand of Dr. Vohra, a notice had been sent to the defendants for return of the monies purportedly paid by the plaintiff to the defendant's agent in USA, i.e., a sum of USD 35,000. The notice itself negated the very substratum of monies having been lent under the loan agreements based on which the suits had been instituted. In these circumstances, Dr. Dewan C. Vohra filed another affidavit dated 10.9.2004, the relevant extract from which is reproduced:

02. That the deponent has separately submitted a detailed affidavit citing the facts as known to him and in conclusion had tendered his unconditional and unqualified apology for the lapses which have prima facie been construed by this Hon'ble Court as contempt in as much as the lapses that have occurred in pleadings interfere in the course of the administration of justice; the said affidavit is a matter of record before this Hon'ble Court.

03. That the contradictions in pleadings have occurred due to an oversight by the deponent who sincerely regrets the lapses that have occurred and hereby sincerely tenders his unconditional and unqualified apology before this Hon'ble Court.

18. Let us now notice the explanation tendered by Ms. Kiran Singh in response to the show cause notice. Ms. Kiran Singh in her affidavit dated 19.8.2004 tendered her unconditional and unqualified apology and submitted that she could not comprehend the possible consequences of signing the agreements as a witness, without the same being executed by the parties in her presence. Being a young member of the Bar without much experience, she followed what was instructed to her by her senior. She submits that she was not paid any fee or charges for signing the agreements as a witness, which would show that the act complained of was not done for any consideration. She claims she signed the agreements in good faith on the instructions of the senior on the belief that the parties being clients of her senior, would duly sign the same. Relevant extract from her affidavit dated 9.11.2004 is reproduced below:

That this incident has been a humbling experience and I am grateful to this Hon'ble Court for having condemned my negligence and making me recognize that as an Advocate I am also an officer of this Hon'ble Court and thus it is my foremost obligation to ascertain the veracity of the documents filed under my signatures in the Hon'ble Court. I undertake to carry out my responsibility as an advocate with extra conscientiousness in future.

....

That I once again offer a humble and an unconditional as well as unqualified apology before this Hon'ble Court.

19. On behalf of plaintiff Kanwaljit S. Sareen, it was additionally submitted that following the demise of his father, he was handicapped and did not have full knowledge of the case/records and was in

fact not aware of all the facts and events since his father had been managing all the property and financial transactions. He tendered his apology for lapses that might have occurred on his part. He submits that he was acting on the advice of the counsel for institution of proceedings or for withdrawal of the suits. The proceedings before the National Consumer Disputes Resolution Commission claiming damages to the tune of Rs. 32,42,000/- for deficiency in service had also been filed through the counsel. After the demise of his father, it was not possible for him to have pursued the suits. On account of the lapses committed in institution of the suits, he had already lost his money and the legal remedy for recovery also stood extinguished. It was submitted that plaintiff was the aggrieved party at the hands of the defendants, who had lost the consideration paid and was left high and dry. In these circumstances, clemency was sought praying for discharge of the contempt notice.

20. Having noticed the explanations tendered and apology offered, let us notice the legal position in this regard. It is now fairly well settled that a party taking recourse to fraud deflects the course of judicial proceedings and the same constitutes interference in the administration of justice. Making of a false statement on oath deliberately also constitutes criminal contempt. Reference may be made to *Murray & Company v. Ashok Kumar Newatia and Anr.* Reported at .

The responsibility of the members of the Bar for keeping the stream of justice pure and unsullied is far greater than that of the litigants. Reference may usefully be made to the decision of the Supreme Court in *Chandra Shashi v. Anil Kumar Verma* reported at :

The stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of the Judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment, so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

21. Coming to the role of advocates and counsel vis-a-vis the courts and administration of justice, it may be observed that the Judge and counsel are two wheels of the chariot of justice. While the direction of the movement is controlled by the Judge holding the reins, the movement itself is facilitated by the counsel and litigants, without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between the Bench and the Bar smoothen the movement of the chariot. As responsible officers of the court, the counsel have an overall obligation of assisting the courts in a just and proper manner, in the just and proper administration of justice. The Supreme Court in *State of U.P. and Ors. v. U.P. State Law Officers Association* emphasized upon the role of counsel:

The relationship between the Lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reason. He is under no obligation to give reasons for withdrawing the brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not supposed to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyers discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouth piece of his client.

22. Having noticed the legal position regarding deliberately making false statements on oath, practicing fraud and making of averments which were false to the knowledge of counsel in the plaint, witnessing agreements which were either not executed on the dates mentioned thereon or were not executed at all, apart from being gross violations of the code of conduct or professional ethics, in the present state of circumstances would also amount to obstructing the due course of administration of justice and interfering with the same and thus constitutes criminal contempt.

23. The explanation of Dr. Dewan C. Vohra that the defendants had substituted the stamp papers by stamp papers of a later date which was not noticed by him, misleading the plaintiff into institution of the suits on the basis of stamp paper bearing the date 21.7.1997, cannot explain the institution of the suits based on the agreements for loan, the consideration for which, as admitted by the plaintiff of USD 35,000, was paid in the USA to the agent of the defendants. The agreements did not disclose any such thing rather money was claimed to be paid under the agreements in Delhi. The notice issued by the counsel runs contrary to the averments in the plaint. Such conduct on the part of the counsel cannot be condoned or simply excused or washed away. As noticed by this Court, the responsibility of the members of the Bar for keeping the stream of justice pure and unsullied is far greater. Dr. Vohra initially sought to urge that these were lapses falling short of contempt which could be corrected by striking out the pleadings, this Court is unable to appreciate this submission and rejects the same.

24. Considering that even at the outset Dr. Vohra had, while making the submission, prayed that if the Court was not inclined to accept the same, he should be permitted to tender unconditional apology, this Court is inclined to consider the apology as tendered. Vide his affidavit of 10.9.200,4 while calling his act lapses, he has tendered his unconditional apology and has prayed for its acceptance. I am of the view that the act of instituting suits on loan agreements knowing fully well that a legal notice of demand has been sent asking for return of consideration, claiming it to have been paid in USA, would not be filed by a counsel deliberately. It can only be filed by a counsel either on account of his total forgetfulness with regard to notice sent or his being blissfully ignorant of the legal provisions and consequences thereof. It could not be a deliberate or intentional act. Dr. Dewan C. Vohra is a counsel with decades of experience. He submits that he and the plaintiff have

suffered for their lapses. The plaintiff though having lent the money, has lost the right to recover the same on account of the manipulation of the documents by the defendants. Dr. Vohra during the course of oral submissions, after expressing his regrets and apology, leaves himself to the clemency of the Court and submits that he would abide by any direction that may be given by the Court for him to make amends and recompense for the injury caused to the legal process, institution and administration of justice.

25. In these circumstances, considering that this could not have been a deliberate or intentional act, as discussed herein before, but one actuated either by extreme forgetfulness or blissful ignorance of the provisions of law, as also the age of the counsel and his blemish less track record so far, the apology tendered by him is accepted. However, he is directed to pay a sum of Rs. 15,000/- within two weeks from today, as costs to the Advocates Welfare Fund. He shall also render pro bono service for a period of six months for at least two hours, twice a week, at any of the Delhi Legal Service Centres under the supervision and direction of the Member Secretary, Delhi Legal Services Authority or such other suitable work as may be assigned by the Member Secretary.

26. As regards Kiran Singh, she is a young budding advocate and she has faced this ordeal at the beginning of her profession itself. She was inexperienced and claims to have signed the agreements as witness on the asking of the senior counsel for his clients. She has recognized that this is a humbling experience and she would exercise extreme care in future and discharge her functions with responsibility. It appears that the experience for her has indeed been a humbling one. Her apology, which was tendered at the outset, is a bona fide one and is accepted. She is directed to do pro bono work and render services under the supervision of the Member Secretary, Delhi High Court Legal Services Authority for a period of six months, for two hours, twice a week.

27. As regards the plaintiff, even though the entire litigation property and financial matters were being handled by his father who is no more and to some extent he may have been handicapped for want of full knowledge with regard to the transaction and the records, he has tendered his apology for his conduct. It may be noticed that in the replies filed and the affidavit, the initial plea taken was of justifying and defending the actions. He has been changing his stand as given in the replies filed and statement recorded. However, the plaintiff cannot be fully absolved of his responsibility on the ground that he signed the replies and affidavits as received from the counsel. The plaintiff states that he has already lost his money and the legal remedy of recovery also stands virtually extinguished and he is the sufferer and acting on the advice of the counsel did not help his cause. The plaintiff has instituted suits which were based on agreements which were not executed on the dates specified and consideration admittedly not paid there under while contrary was claimed. These have resulted in abuse of the legal process and interference with the administration of justice. He had also prayed in his reply to the application under Section 340 Cr.PC for being permitted to withdraw Suit No. 612/1999. In the facts as outlined, the apology tendered by the plaintiff for the abuse of the process is accepted. He is burdened with costs of Rs. 30,000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre. The amount be deposited within a month from today.

The suo motu contempt petition stands disposed of in the above terms.

2. S. No. 621/99 and Crl.M. No. 610/2003 in S. No. 621/99 and

3. Crl.M.712/03 in S. No. 1357/1999

1. Crl.M. No. 712/03 in OS No. 1357/1999 and Crl.M. No. 610/03 in OS No. 621/1999 are applications under Section 340 Criminal Procedure Code, filed by the defendant. The defendant seeks initiation of proceedings under Section 340 Cr.PC against the plaintiffs on the ground that the suits instituted on the basis of the loan agreements are based on fabricated documents. The stamp paper of the loan agreement is of a date later than the date of execution of the agreements which belies their execution on the dates stated. Besides consideration claimed under the loan agreement was not paid as would be evident from the notice issued by the plaintiff's counsel that money was allegedly paid to the defendant's Agent in U.S.A. amounting to USD 35,000.

2. It is not necessary to set out the facts in detail or the defense of the plaintiff as the same has been recapitulated and considered at length while dealing with the suo motu contempt notices and recorded hereinbefore. The course of initiating an inquiry under Section 340 Cr.PC is adopted only if the interest of justice so requires, and not in every case. Court is not bound to make a complaint regarding commission of an offence under Section 195(1)(b). The following observations of the Supreme Court in *Iqbal Singh Marwah v. Meenakshi Marwah* reported at are relevant:

In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b) CrPC. This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. The broad view of Clause (b)(ii) i.e. extending it to cases where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any court would render the victim of such forgery or forged document remediless in cases where the court may not consider it expedient in the interests of justice to make a complaint. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

2. Again in *Phiroze Dinshaw Lam and Ors. v. Union of India and Ors.* reported at , the Supreme Court set aside the direction for prosecution and instead directed payment of penal interest at the rate of 20% p.a. on all the amounts which were withheld by it. Also in *B.K. Gupta v. Damodar H Bajaj* the Supreme Court observed that there are two conditions on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court.

Firstly, that a person has given a false affidavit in a proceeding before the Court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. It was observed as follows:

In the present case the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. But there is no material on record to show that the Court applied its mind regarding the second condition as to whether it was expedient in the interest of justice to make an enquiry into the false evidence given by the appellant and a complaint was to be filed. In the absence of application of mind in that regard, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.

3. In the facts and circumstances of the present case as set out in detail while deciding the suo motu contempt notice, enquiry under Section 340 Cr.P.C. would not sub serve any useful purpose nor be in the interest of justice. In view of the above position of law, as suo moto notice of contempt has been initiated and determined, initiation of proceedings under Section 340 Cr.PC would not be in the interest of justice. Besides, parties themselves requested for quietus to be applied to the matter. In view of the foregoing discussion, applications under Section 340 Cr.P.C are dismissed. Suit No. 621/99 is also dismissed as withdrawn.

The Court places on record its appreciation for the assistance rendered by Mr. Amarjit Singh Chandhiok and Mr. Neeraj Kishan Kaul, Senior Advocates as Amici Curiae.