

# Mr. Rajesh Jain vs Sh. Devender Kumar Saigal on 1 June, 2012

**Author: Reva Khetrapal**

**Bench: Reva Khetrapal**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ IA Nos.2122/2007, 2906/2008 and 11879/2008  
in CS(OS) 1565/2006

MR. RAJESH JAIN ..... Plaintiff  
Through: Mr. Vijay K.Gupta, Advocate.

versus

1. SH. DEVENDER KUMAR SAIGAL

2. SH. ATUL MAHINDRU

3. MRS. ALKA MAHINDRU

4. ASHOK MAHINDRU

5. ALKA BUILDERS PVT. LTD.

6. MR. JORAWAR SINGH

7. SMT. ARVINDER KAUR ..... Defendants  
Through: Mr. Pradeep Dewan, Sr. Advocate  
with Mr. Rajiv Samaiyar, Advocate  
for the defendant/ respondent No.1.  
Mr. S.S. Mishra, Advocate for the  
respondents Nos.2 to 4.  
Mr. Ajay Bahl, Advocate for the  
respondents Nos.5 to 7

% Date of Decision : June 01, 2012

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CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. By this common order it is proposed to decide the aforementioned three applications all of which have been filed under Order XXXIX Rule 2A read with Section 151 of the Code of Civil Procedure and the provisions of the Contempt of Courts Act, 1971 for initiating contempt proceedings against the respondents for the wilful and deliberate disobedience of the orders of this Court during the pendency of the aforesaid suit.

2. Before dealing with the merits of the applications, it is proposed to delineate the background in which the aforesaid applications were filed one after the other by the plaintiff. A suit under the provisions of Order XXXVII of the Code of Civil Procedure was filed by the plaintiff on 8th August, 2006 against the defendant predicated on a promissory note allegedly executed by the defendant in favour of the plaintiff in the sum of `1,50,00,000/-, and an affidavit executed by the defendant acknowledging the aforesaid amount as due to the plaintiff and undertaking to pay the same to the plaintiff within 2 years with the further assurance that the defendant would hand over the possession of his property, viz., M/s Laxmi Cable Company situated at No.A- 6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi to the plaintiff in the event of default. In the said suit, interim orders came to be passed by this Court in IA No.8892/2006 on the very first date of hearing, that is, on 17.08.2006, which are extracted below:-

Notice to the defendant for the date fixed.

This is an application made by the plaintiff under Order 39 Rules 1 and 2 CPC seeking restraint order against the defendant from selling, transferring or parting with the property. My attention has been drawn to the order passed by this Court on 18th April, 2006 in the suit filed by the plaintiff earlier against the defendant seeking permanent injunction against the defendant from alienating this property. The defendant had appeared in that case and though had admitted his signatures on the documents which are subject matter of this suit but simultaneously stated that these signatures had been obtained under duress. Taking into consideration the totality of facts and circumstances, it is a fit case where ex parte ad interim injunction should be granted. Accordingly, the defendant shall remain restrained from selling, alienating, transferring or parting with the property bearing No.A-6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi till further orders.

Compliance of Order 39 Rule 3 be made within three days."

3. It emerges from the record that the said interim orders were served upon the defendant on the following day, that is, on 18th August, 2006.

4. On service of summons in the suit on 30.08.06, the defendant entered appearance and filed vakalatnama of his counsel, whereupon the plaintiff filed an application under Order XXXVII Rule 3(4) read with Section 151 CPC for initiating summons for judgment, being IA No.12608/2006. The said application for issuance of summons for judgment was listed before the Court on 15.11.2006.

On the said date, that is, on 15.11.2006, the suit was dismissed in default by passing the following order:-

"Despite pass over, none is present. The suit is dismissed in default."

5. The plaintiff on the very next day, that is, on 16th November, 2006 filed IA No.12805/2006 under Order IX Rule 4 read with Section 151 CPC for the setting aside of the order dated 15.11.2006 and for the restoration of the suit. The said application for restoration was taken up for hearing on 20.11.2006, on which date the suit as well as the interim orders passed in the suit were restored by passing the following order:-

"IA No. 12805/2006 in CS(OS) No. 1565/2006 This application is by the plaintiff under Order 9 Rule 4 read with Section 151 of the Code of Civil Procedure for setting aside the order dated 15.11.2006 whereby the suit of the plaintiff was dismissed in default.

For the reasons stated in the application, which is supported by the affidavit of the counsel, the same is allowed. Consequently, the order dated 15.11.2006 is set aside and the suit is restored to its original number. Interim order also stands restored. Dasti.

This application for issuance of summons for judgment.

Issue summons for judgment to the defendant in the prescribed form at the address given in the appearance application for 13.2.2007."

6. It is the case of the plaintiff that in order to defeat the purpose of the filing of the present suit and to circumvent the restraint orders passed by this Court on 17th August, 2006, the defendant, intentionally and wilfully, in utter disobedience of the orders of the Court, transacted the property in question on 16.11.2006 by an Agreement to Sell, which fact came to the knowledge of the plaintiff only on 15.02.2007 when a certified copy of the said Agreement to Sell was obtained by the plaintiff from the office of the Sub- Registrar-IVA, Seelampur, Shahdara, Delhi. A copy of the said Agreement to Sell has been placed on record to which I shall advert at a subsequent stage.

7. At this juncture, a few facts deserve to be highlighted. The first is that the application for restoration was filed on the very next day, that is, on 16.11.2006 and, on 20.11.2006 the suit as well as the interim orders earlier passed by the Court were restored. The second is that the defendant admittedly transacted the property in question with his own brother-in-law, namely, Mr. Atul Mahendru vide Agreement to Sell dated 16.11.2006 and a Power of Attorney bearing the same date. The plaintiff alleges that given the background in which the aforesaid two documents were executed, the transaction can only be termed as a camouflage and purely a collusive exercise between the defendant and his brother-in-law and was in fact a dummy transaction. The third is that the Agreement to Sell in Clause 3 specifically sets out the fact that the property is free from all sorts of encumbrances including Court injunction, and in Clause 4 states that the vendor has delivered the

vacant physical possession of the demised property unto the vendee at the time of execution of the agreement and the vendee confirms having taken possession thereof, which is not factually correct as will be evident from the subsequent narration of facts. The fourth fact which deserves to be highlighted is that the Agreement to Sell was executed between M/s. Lakshmi Cable Company, a partnership firm in which the defendant was a partner and M/s. Alka Builders Private Limited in which Shri Atul Mahendru, brother-in-law of the defendant, was a Director. By virtue of Clause 12 of the said Agreement to Sell, the vendor appointed M/s. Alka Builders Private Limited and its Director Shri Atul Mahendru as General/Special Attorney/Attorneys vide GPA/SPA dated 16th November, 2006, conferring full powers upon him of administering the property.

8. In the aforesaid circumstances, the plaintiff on 19th February, 2007 moved an application, being IA No.2122/2007 under Order XXXIX Rule 2A CPC, inter alia, for initiation of contempt proceedings against the defendant and the Directors of M/s. Alka Builders Private Limited, in particular, Mr. Atul Mahendru and for an injunction restraining the latter from in any manner dealing with the property in question in terms of the directions of the Court dated 17.08.2006.

9. The aforesaid application was dealt with by a learned Single Judge of this Court (Hon ble Mr. Justice G.S.Sistani) by passing an injunction order dated 23.02.2007 restraining the defendant and his Attorney forthwith from dealing with the property in the following terms:-

"Present: Mr. Vijay K. Gupta with Mr. M. Datta for the plaintiff/applicant IA No. 2122/2007 (u/O.39 R.2-A) in CS(OS) It is stated by learned counsel for the applicant/plaintiff that an exparte interim order was passed by this Court on 17.8.2006. Due to non-appearance of the plaintiff, the suit was dismissed in default on 15.11.2006. Taking advantage of the dismissal of the suit, the defendant in order to overreach the Order of this Court, entered into an Agreement to Sell with his brother-in-law on 16.11.2006. It is further submitted that this Court restored the suit on 20.11.2006 itself. Learned counsel relies on clause 12 of the agreement to sell, photocopy of which has been annexed with present application, to show that the defendant has in fact executed a Power of Attorney in favour of the prospective purchaser, who happens to be a close relation.

Till the next date of hearing, the defendant is restrained from giving effect to the Agreement to Sell dated 16.11.2006. He will bring the Order of injunction passed on 17.8.2006 to the notice of his attorney forthwith, so that the property cannot change hands, and accordingly the subject matter of the suit is preserved.

List on 28.3.2007.

DASTI."

10. It is borne out from the record that the service of the copy of the aforesaid order was refused by the defendant/respondent No.1 through the process-server first on 7th March, 2007, and thereafter on 9th March, 2007. There is also on record an affidavit of service of the clerk of the plaintiff s

counsel showing dispatch of copies of the order to the defendant as well as to M/s. Alka Builders Pvt. Ltd. and to Shri Atul Mahendru vide postal receipt Nos. 235586405, 235586480, 235586326 and 235586476, all dated 24.02.2007.

11. Another significant fact which deserves to be mentioned here is that on 19.03.2007, an application bearing IA No. 3593/2007 was filed by the defendant under Order XXXVII Rule 5 CPC for leave to defend the suit, which came up before the Court on 28th March, 2007, on which date I.A. No.2122/2007 under Order XXXIX Rule 2A was also listed. In paragraph „E of the said application (IA No.3593/2007), the defendant candidly admitted that in property No.A-6, Jhilmil Industrial Area, belonging to the partnership firm "Lakshmi Cable Company" of which the defendant is one of the partners, the factory of "Lakshmi Cable Company" exists. There is a repetition of the same averment in paragraph 1 of the application, where it is stated that the defendant is engaged in the business of manufacturing wires and cables in the name and style "Lakshmi Cable Company" from its factory situated at A-6, Jhilmil Industrial Area, Shahdara, Delhi. The very same averments are repeated verbatim in the affidavit of the defendant - Shri Devender Kumar Saigal filed along with the application for leave to defend. Thus, the pleadings in IA No.3593/2007 and affidavit filed by the defendant in support thereof conclusively show that the possession of the premises was with the defendant on the date of the filing of the application for leave to defend, that is, on 19th March, 2007.

12. During the pendency of IA No.2122/2007 (being the first application under Order XXXIX Rule 2A of the Code of Civil Procedure), another application came to be filed by the plaintiff on 5th March, 2008, under Order XXXIX Rule 2A read with Section 151 CPC, being IA No.2906/2008, impleading therein Shri Devender Kumar Saigal as respondent No.1, Shri Atul Mahendru as respondent No.2, M/s. Alka Builders Private Limited through its Director Shri Atul Mahendru as respondent No.3 and one Mr. Jorawar Singh as respondent No.4, in which the plaintiff expressed his apprehension that the aforesaid contemnors were in the process of again transacting the suit property, and possession of the property was likely to be delivered to the respondent No.4 under a hidden transaction.

13. In the aforesaid application, the facts giving rise to the apprehension of the plaintiff that the property was going to change hands were set out in paragraph 11 of the application as under:-

"That in the evening of 23.02.2008, the Applicant/Plaintiff discovered that the Non-Applicant No.1/Defendant was in the process of vacating the premises in question and had almost vacated the same. It is further discovered that the Non-Applicants No.1 to 3 in collusion with other people have been in the process of conveying the property in question to Non-Applicant No.4 who is the owner of the remaining half portion of the premises A-6/1, Jhilmil Industrial Area, G.T.Road, Shahadara, Delhi. The conduct of Non-Applicants No.1 to 4 clearly shows that there was a transaction brewing in their mind or the transaction must have been done already in order to deprive the Applicant/Plaintiff to seek recovery of his legitimate dues causing thereby wrongful loss to him in spite of operation of the interim injunctions dated 17.08.2006, 20.11.2006 and 23.02.2007. Pertinently the Non-Applicant No.4

contacted the Applicant/Plaintiff and offered an amount which is less than the said amount. This clearly indicates that underlying transaction amongst Non-Applicants No.1 to 4. Non-Applicants No.2 and 3 are involved because of the alleged power of attorney executed in terms of Clause 12 of the Agreement to Sell dated 16.11.2006. Moreover the Non-Applicant No.2 is the brother-in-law of Non-Applicant No.1/Defendant who is the alleged power of attorney holder and also Director of Non-Applicant No.3."

14. In paragraph 12 of the application, the plaintiff alleged that the transaction referred to in paragraph 11 was "a fraud being played upon the Hon'ble Court being a deliberate disobedience of the orders of the Hon'ble Court". The plaintiff, inter alia, prayed that the respondent No.4 may be restrained from taking over the possession of the premises in question from the respondents No. 1 to 3 or through their representatives, agents, attorneys, assigns, etc. and the respondents Nos.1 to 4 may be punished under the Contempt of Courts Act for intentionally interfering with the administration of justice.

15. The defendant/respondent No.1, in the reply filed by him to IA No.2906/2008, emphatically denied that in the evening of 23.02.2008 he was in the process of vacating the premises in question and had almost vacated the same. He denied that he, in collusion with the others mentioned in the application, was in the process of conveying the property in question to the respondent No.4. He asserted that the application of the plaintiff was to mislead the Court by expressing his unfounded apprehension of planning by the defendant/respondent No.1 and others and claimed that the said apprehension of the plaintiff was a sheer figment of plaintiff's imagination. The said reply was supported by an affidavit dated 6th May, 2008. Thus, it is evident that the stand of the defendant/respondent No.1 on 6th May, 2008 was that he had not parted with the possession of the property in question.

16. While both the aforesaid applications under Order XXXIX Rule 2A, being IA Nos.2122/2007 and 2906/2008 were still pending, the plaintiff filed yet another application, being IA No.11879/2008 under Order XXXIX Rule 2A along with the applicable provisions of the Contempt of Courts Act, 1971. The said application was filed on 23rd September, 2008 wherein apart from the aforementioned four contemnors, (viz., Mr. Devender Kumar Saigal, Mr. Atul Mahendru, M/s. Alka Builders Private Limited and Mr. Jorawar Singh), three other persons were alleged to be contemnors, viz., Shri Ashok Mahendru, Mrs. Alka Mahendru and Smt. Arvinder Kaur.

17. The plaintiff alleged in the said application that he (the plaintiff) in apprehension of some hidden transaction contrary to the orders passed by the Court in order to know the details of the transaction, on 12.09.2008, inspected the records of the Registrar of Companies, Ministry of Corporate Affairs pertaining to M/s. Alka Builders Private Limited, (respondent No.5 in IA No. 11879/2008) and was shocked to discover that its erstwhile directors who were respondents Nos.2, 3 and 4 in the present application (Mr. Atul Mahendru, Mr. Ashok Mahendru and Mrs. Alka Mahendru) had ceased to be the directors of the respondent No.5, M/s. Alka Builders Private Limited and respondents Nos.6 and 7, viz., Mr. Jorawar Singh and Smt. Arvinder Kaur had been inducted as directors of the said Company with effect from 29.02.2008. This, despite the repeated

interim orders dated 17th August, 2006, 20th November, 2006 and 23rd February, 2007 passed by this Court. It was alleged that in the reply filed by the defendant/respondent No.1 to the earlier contempt petition, the resignation of the respondents Nos.2, 3 and 4 as Directors of M/s. Alka Builders Private Limited had been suppressed as also the introduction of respondents Nos.6 and 7 on the Board of Directors of the said Company. The withholding of the aforesaid facts, it was alleged by the plaintiff, tantamounted to fraud played by the respondents/contemnors on the Court of such a nature as had lowered the authority of the Court and the majesty of Law.

18. In order to buttress his contentions, the plaintiff placed on record copies of the public record regarding resignation of respondents Nos.2, 3 and 4 and the appointment of new Directors of respondent No.5 Company, being respondents Nos.6 and 7. A bare glance at the said record shows that the following facts are beyond cavil:-

(i) Form No.32 filed with the Registrar of Companies showing that with effect from 15.02.2008, Ms. Alka Mahendru ceased to be a Director of M/s. Alka Builders Private Limited.

(ii) On 29.02.2008, contemnor No.6 Jorawar Singh and respondent No.7 Arvinder Kaur were inducted into the company as Directors of M/s. Alka Builders Private Limited.

(iii) Form No.32 filed with the Registrar of Companies showing that with effect from 29.02.2008, respondent No.6 Mr. Jorawar Singh and respondent No.7 Arvinder Kaur became Additional Directors of the said Company.

(iv) Form No.18 filed with the Registrar of Companies showing that the registered office of the respondent No.5 Company was shifted from 511/2/1, Village Rajokari, New Delhi to A-6, Jhilmil Industrial Area, Delhi, with effect from 24th March, 2008.

(v) Form No.32 filed with the Registrar of Companies showing that with effect from 25.03.2008, Mr. Atul Mahendru and Mr. Ashok Mahendru ceased to be the Directors of M/s. Alka Builders Private Limited.

19. The defendant/respondent No.1 in his reply to IA No.11879/2008 denied that he had violated any of the orders passed by the Court and submitted that in the absence of any interim order after the dismissal of the suit till at least its restoration, any action taken by him could not be said to be in breach of any order.

20. In the reply filed by respondents Nos.2 to 4, it was submitted that the restraint order in the suit dated 17.08.2006 had been passed only against the defendant in the suit. The application seeking initiation of contempt proceedings against persons who are not bound by the interim orders of the Court, not being parties to the proceedings, was not maintainable under law. Therefore, the allegation against them that they had deliberately and wilfully committed disobedience of the orders of this Court was denied in toto. It was submitted that the property in question, which was

transferred on 16.11.2006 in the name of M/s. Alka Builders Private Limited still stands in the same name. However, the composition of the company in terms of the shareholding had been changed which did not constitute any contempt because at no point of time, the Court restrained M/s. Alka Builders Private Limited from changing the composition of the company in terms of its shareholding. It was submitted that the company is a juristic person and mere changing of composition in terms of change of shareholding does not amount to transfer of the property. Thus, the allegations contained in the application were misplaced and devoid of merit.

21. In the reply filed by the respondents Nos.5 to 7, it was submitted that the said respondents had no knowledge of the Court orders and the same were never communicated to them at any point of time. It was admitted that presently respondents Nos.6 and 7 are the Directors of M/s. Alka Builders Private Limited, but denied that sale/transfer of the shareholding of said Company was prohibited by any of the orders passed by this Court, including the orders dated 17.08.2006, 20.11.2006 and 23.02.2007. It was stated that the respondents Nos.6 and 7 were total strangers to the present proceedings and had only taken over the company from its earlier Directors. It was denied that the occupation of the property in question was in any manner contumacious.

22. On 2nd March, 2009, the following order was passed by another learned Single Judge of this Court (Hon ble Mr. Justice Anil Kumar):-

"IA No. 2122/2007, 2906/2008 and 11879/2008 in CS(OS) No. 1565/2006 The plaintiff had filed the above-noted suit for recovery under Order XXXVII of the Code of Civil Procedure along with an application for interim injunction. By order dated 17th August, 2006, the defendant, Shri Devender Kumar Saigal, was restrained from selling, alienating, transferring or parting with the property bearing No. A-6/1, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi.

The suit of the plaintiff was dismissed in default on 15th November, 2006. It is contended that the defendant executed an agreement to sell dated 16th November, 2006 in favour of M/s. Alka Builders Pvt. Ltd. which is stated to be the company of Mr. Atul Mahendru, non applicant, brother-in-law (sic. of) defendant, Shri Devender Kumar Saigal.

The suit which was dismissed in default was restored on 20th November, 2006 and the interim order dated 17th August, 2006 in favor of plaintiff was also restored.

The company, M/s. Alka Builders Pvt.

Ltd./non-applicant No.3 has been allegedly taken over by Mr. Jorawar Singh.

The applicant/plaintiff has also contended that the possession of the property was not handed over on 16th November, 2006 when Shri Devender Kumar Saigal had executed an agreement to sell in favour of M/s.

Alka builders Pvt. Ltd., a company of his brother-in-law, rather the possession has been transferred to Mr. Jorawar Singh and Smt. Arvinder Kaur by the other non applicants after coming to know of



order dated 20th November, 2007 whereby the interim order dated 17th August, 2006 passed against Shri Devender Kumar Saigal not to sell, alienate, transfer or part with the property bearing No. A-6/1, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi, was restored.

By an agreement to sell dated 16th November, 2006 some rights were created in favour of M/s Alka Builders Pvt. Ltd. However, the said company has not become the absolute owner of the property in dispute.

Consequently, the defendant, Shri Devender Kumar Saigal, cannot execute a conveyance in favour of M/s. Alka Builders Pvt. Ltd., a company which is alleged to have been taken over by Shri Jorawar Singh and Smt. Arvinder Kaur by purchasing the equities of the company as has been alleged by the counsel.

Learned counsel for the non-applicants have also contended that the property in respect of which an agreement to sell has been executed is A-6, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi and not A-6/1.

This is not disputed that the defendant does not have rights in the property No.A-6/1 as alleged by the other non-applicants.

Therefore, the order by which the defendant was restrained from selling or parting with the property of the defendant was in respect of the property of the defendant which is A-6, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi.

Therefore, the other non-applicants cannot take shelter under the plea that the interim order is not in respect of the property in respect of which an agreement to sell has been executed by the defendant on 16th November, 2006 in favour of M/s. Alka Builders Pvt. Ltd.

Therefore, in the facts and circumstances, the non-applicants are directed to maintain status quo in respect of rights and possession of the property bearing No. A-6, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi, till further orders. The presence of the non-applicants/contemnors is dispensed with till further orders."

23. Modification of the aforesaid order was sought by M/s. Alka Builders Private Limited through Mr. Jorawar Singh (respondent No.6 in IA No.11879/2008) by moving an application on 16th November, 2009 under Section 151 CPC, being IA No.14921/2009 on the ground that he was neither a party to the suit nor had anything to do with either the plaintiff or the defendant. Reply to the aforesaid application was filed by the plaintiff strongly opposing the prayer for modification of the order dated 02.03.2009 on the ground that the respondents Nos.6 and 7, who were in control of the Board of Directors of M/s. Alka Builders Private Limited, were in the process of transacting a deal in respect of the said property to the prejudice of the plaintiff. In rejoinder to the said reply filed by M/s. Alka Builders Private Limited, it was submitted that the applicant Jorawar Singh was a bonafide purchaser of the property to the extent of share of M/s. Alka Builders Private Limited without any knowledge/intimation of the orders passed by this Court.

24. Yet another application was filed by the respondents Nos.5 to 7 under Section 151 CPC, being IA No.1076/2012, which though subsequently withdrawn on January 18, 2012 contains the following significant admissions:-

"6. That the defendant No.1 admittedly transferred this property when there is no restraint order against the defendant No.1 and the defendant No.1 transferred the said property bearing No.A-6/1, Jhilmil Industrial Area, G.T.Road, Shahdara, Delhi in favour of the defendants No.2 to 4, which property subsequently came in the hands of the defendants No.5 to 7 and to that effect, the detailed submissions have already been made in the applications."

25. In view of the fact that the aforesaid application, being IA No.1076/2012, was withdrawn by the counsel for the respondents Nos.5 to 7 after some hearing on becoming aware of the mistake committed by them, the respondents Nos.5 to 7 moved yet another application, being IA No.1518/2012 under Section 151 of the Code of Civil Procedure on 24th January, 2012 (after the withdrawal of the earlier application being IA No.1076/2012), inter alia, praying for bringing on record the fact that a mistake had been committed in making the aforesaid assertions in paragraph 6 of the previous application. Para 10 of this application is significant, which reads as under:-

"That while tendering un-conditional apology for any mistake that have crept in inadvertently, however, without admitting any guilt, it is submitted that when the application under Section 151 of the Code of Civil Procedure dated 10.01.2012 was drafted, the draft application came to the counsel for the applicants/defendants No.5 to 7 for making the necessary correction, if any, in the said application and while taking (sic. checking) the draft, the counsel for the applicants/defendants No.5 to 7 made some correction in para 6 and elsewhere of the said application and handed over the same to his clerk for getting the re- print with correction from the Stenographer, who sits far away from the office of the counsel.

The clerk was made to understand as to that he has to get the re-print after incorporating the necessary correction made in pencil in the said draft application and after understanding the same, the clerk went to the Stenographer but for the reasons either due to communication gap between the clerk and the Stenographer or due to mistake on the part of Stenographer, para 6 of the application was not corrected or the re-print with correction of para 6 was not issued by the Stenographer and he handed over the copy and both the clerk and the counsel for the defendants No.5 to 7/applicants as well as the applicants remained under the impression that entire correction made by the counsel in hand has been duly incorporated and thus without verifying the same as there was urgency for filing the same and hence after putting the signatures and attestation, the application was got filed in hurry as the time was short. It is submitted that para 6 which bears in the application was in fact like this:-

"6. That as per the case of plaintiff, the defendant No.1 transferred this property when there is restrain order against the defendant No.1 and the defendant No.1 had transferred the said property bearing No.A-6/1, Jhilmil Industrial Area, G.T.Road, Shahdara, Delhi in favor of the defendants No.2 to 4, which property subsequently came in the hands of the defendants No.5 to 7.

It is submitted that the order passed by this Hon ble Court was never been communicated to the replying defendants by the plaintiff to the present suit. The applicants/defendants take under bonafide oath that he had not entered into the agreement to sell and has been unnecessarily harassed by the plaintiff and the defendant No.1, who are black- mailing the answering defendants without any fault on their part. Admittedly, the answering defendants are running their own business in part of the premises. Accordingly, after coming to know, admittedly the applicants/ defendants No.5 to 7 filed an application for vacation of the order in respect of the property bearing No.A-6/1, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi vide I.A. No.14921/2009."

26. In the backdrop of the aforesaid facts, Mr. Vijay Kumar Gupta, the learned counsel for the petitioner/plaintiff, submitted that the three applications filed by him (facts of which have been delineated above) amply bear out the contumacious conduct of all the persons concerned, who in utter disregard of the restraint orders passed by this Court on 17th August, 2006, 20th November, 2006, 23rd February, 2007 and 2nd March, 2009 are prepared to go to any length to dispose of the suit property. He emphasized that in the first instance, the defendant/respondent No.1 had flouted the orders of this Court by entering into the Agreement to Sell dated 16.11.2006 and executing a Power of Attorney of the same date in favour of his brother-in-law Atul Mahendru, Managing Director of M/s. Alka Builders Private Limited, of which the other two Directors were Mrs. Alka Mahendru, (wife of Mr. Atul Mahendru) and Mr. Ashok Mahendru, (brother of Mr. Atul Mahendru). Thereafter, even after this Court had injuncted the defendant and his Power of Attorney holder Mr. Atul Mahendru from further dealing with the property by order dated 23.02.2007, the defendant and Mr. Atul Mahendru did not hesitate to flout the aforesaid order by selling the property to Jorawar Singh and his wife Smt. Arvinder Kaur through the modus operandi of transferring the shares of the Mahendru family in M/s. Alka Builders Private Limited to the Jorawar Singh Group, that is, Jorawar Singh and his wife (respondents Nos.6 and 7). Thus, there was wilful disobedience of the orders of this Court not once but three times. The respondents Nos.6 and 7 though claim themselves to be bonafide purchasers of the property in question have not brought on record a single document to show the bonafide nature of the transaction entered into by them. Rather, it was left to the plaintiff to inspect the records of the Registrar of Companies to bring to the notice of the Court the surreptitious manner in which the property had been transacted.

27. Mr. Gupta emphasized that by its order dated 23.02.2007, this Court clearly stated that the Agreement to Sell will not be given effect to. In such circumstances, the handing over of the possession of the property to M/s. Alka Builders Private Limited by the defendant/respondent No.1 on 28.03.2008 was in itself contumacious. Mr. Gupta further submitted that the Agreement to Sell dated 16.11.2006 was not a conveyance and only in the nature of a promise to sell by the vendor to

the vendee. It did not create any vested right in the property in question, when the sale was not complete. The balance payment (assuming that any money was paid) was yet to be paid. The possession admittedly had not been transferred. Yet, the defendant/respondent No.1 is not saying anywhere that he continues to be the owner. This despite the fact that no sale deed has been executed by him till date.

28. In order to rebut the aforesaid contentions of the petitioner's counsel, Mr. Pradeep Dewan, the senior counsel for the defendant/respondent No.1 urged that no case for contempt was made out by the petitioner/plaintiff. He has drawn my attention to the order passed by a learned Single Judge of this Court (Hon'ble Mr. Justice Sanjay Kishan Kaul) in a previous suit filed by the plaintiff, being CS(OS) No.426/2006 dated 18th April, 2006, which for the sake of ready reference is reproduced hereunder:-

"CS(OS) No.426/2006 & IA No.2766/2006 Learned counsel for the defendant has entered appearance.

The suit has been filed for injunction seeking restraint order against the defendant in respect of the property bearing No.A-6/1, Jhilmil Industrial Area, G.T.Road, Shahdara, Delhi.

The plaintiff claims that the defendant owes him a sum of Rs. 1.5 crores along with interest for which acknowledgment was given on 27.03.2004. Learned counsel for the defendant states that he has obtained instructions that the defendant does not dispute his signatures but claims that certain blank documents were got signed under duress though no steps have been taken by the defendant to lodge an F.I.R. or seek cancellation of any document. The suit was filed simplicitor for injunction originally since the cause of action for seeking recovery of the amount had not arisen as the amount was to become due only on 27.03.2006. The cause of action for that has now arisen.

In view of the aforesaid, it is agreed that the suit and the application be disposed of with the direction that the defendant shall not sell, alienate, transfer, mortgage or part with possession of the property bearing No.A-6/1, Jhilmil Industrial Area, G.T.Road, Shahdara, Delhi for a period of four months from today during which period of time, it will be open to the plaintiff to file the suit for recovery in accordance with law and seek any interim relief including in respect of the suit property. However, the orders passed today by consent of parties would not in any manner influence the adjudication of any such interim application to be filed in the suit for recovery. The suit and the application stand disposed of.

Dasti to learned counsel for the parties."

29. The learned counsel contended that it was on the basis of the aforesaid order that the ex parte order dated 17th August, 2006 was passed against the defendant. The suit was, however, dismissed

in default on 15.11.2006 and on 16.11.2006, the date on which the defendant/respondent No.1 entered into the Agreement to Sell with his brother-in-law, there was no injunction order in operation. This being so, he contends that there was no question of the defendant committing wilful disobedience of the orders of the Court. Reliance was placed by him upon the judgment of a learned Single Judge of the Allahabad High Court [Hon ble Mr. Justice Markandeya Katju (as His Lordship then was)] rendered in Jagdhari and Others vs. Vth Addl. Distt. Judge, Azamgarh and Anr., AIR 1992 Allahabad 368, to contend that once the suit is dismissed, whether for default or otherwise, all interim orders come to an end. Unless the suit is then restored, there is no question of grant of any interim injunction.

30. The learned counsel also relied upon a Division Bench decision of this Court in the case of Shri Krishan Lal vs. Delhi Development Authority reported in 117 (2005) DLT 636 (DB), wherein it was held that when a suit is dismissed for the non-prosecution, all the proceedings arising out of the suit filed including any application for interim relief would automatically stand terminated till such time as the suit is restored. Reference in particular was made to paragraphs 9 to 11 of the said judgment, which are reproduced hereunder:-

"9. It is stated today in Court by the learned Counsel for the appellant that the application for restoration of the suit was subsequently allowed but at the relevant stage of admission, was still pending consideration. In our considered view, when a suit is dismissed for non-prosecution, all the proceedings arising out of the Suit filed including any application for interim relief would automatically stand terminated till such time as the Suit is restored. It is not necessary for us to enter into the controversy whether the interim orders would automatically stand revived or not as there may be change of circumstances which were required to be taken into consideration by the court of the competent jurisdiction while granting the prayer for restoration.

10. The appellant herein was fully aware that the Suit was dismissed for non-prosecution. The interim orders passed by the High Court on 19.12.2003 in CM (M) 1013/2003 were limited till the disposal of the application in the Suit under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908. In view of the conditional nature of the order passed, the order would automatically come to an end with the dismissal of the application under Order 39 Rules 1 and 2. This application was dismissed as the proceedings came to an end on dismissal of the suit for non-prosecution on 8.7.2004.

11. Learned counsel submitted that the order made by the learned Single Judge in CM (M) 1013/2003 staying the demolition till the disposal of the application under Order 39 Rule 1 and 2 would continue to apply even after dismissal of the suit for non-prosecution, since the application was not decided. It is further contended that this order was made by the High Court and only High Court can set aside or modify that order. When the order is conditional, we fail to appreciate this argument. If the litigant is not vigilant about the proceedings, he could only blame himself for the

consequences of the termination of the proceedings by default. The High Court had only protected the appellant for a limited period which was till the disposal of the application. Therefore, with the dismissal of the suit, automatically the application also stands dismissed and the order would not survive and order cannot continue in vacuum."

31. With regard to the violation of the order dated 23rd February, 2007, Mr. Dewan on behalf of the defendant/respondent No.1 submitted that by the said order the defendant/respondent No.1 was restrained from giving effect to the Agreement to Sell dated 16.11.2006 till the next date of hearing. Thus, the said order was in force only till the next date of hearing fixed for 28.03.2007 and was not extended thereafter. The alleged transaction of transfer of shares which is the subject matter of IA No.2906/2008 and IA No.11879/2008 took place after 28.03.2007. He sought to rely upon the judgment delivered by the Supreme Court in the case of Ashok Kumar and Ors. vs. State of Haryana and Anr. reported in (2007) 3 SCC 470, and in particular on the observations made in paragraph 18 of the said judgment, which are, for the sake of facility, reproduced hereunder:-

"18. There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise; the same would continue to operate."

32. Reliance was also placed on the judgment of this Court in Aarti Sabharwal vs. Jitender Singh Chopra and Ors., 162 (2009) DLT 38. In the said case, the interim order which was continued till a particular date was not continued thereafter. When the case was listed on the adjourned date, a Sale Deed in respect of the suit property to which the interim order related had been executed. A learned Single Judge of this Court relying upon the judgment of the Supreme Court in Ashok Kumar's case (supra) held that it was not possible to accept the submission of the defendants that the execution of the Sale Deed was in violation of the interim order passed by the Court.

33. Mr. Dewan submitted that even as per the documentary evidence placed on record by the petitioner/plaintiff, respondents Nos.6 and 7, viz., Jorawar Singh and Arvinder Kaur became the shareholders of M/s. Alka Builders Pvt. Ltd. with effect from 29.02.2008. The documentary evidence on record further shows that the said persons also became Directors of M/s. Alka Builders Pvt. Ltd. with effect from the same date, i.e., 29th February, 2008. There is also documentary evidence on record to show that Shri Atul Mahindru and Shri Ashok Mahindru (respondents No.2 and 3) ceased to be Directors of M/s. Alka Builders Pvt. Ltd. with effect from 25 th March, 2008. Thus, as on the date of the appointment of respondents Nos.6 and 7 as Directors and the cessation of Atul Mahindru and Ashok Mahindru as Directors of the said Company, there was no order of injunction in force. He pointed out that the plaintiff had along with his application under Order XXXIX Rule 2A [IA No.11879/2008] filed documents, according to which the notice of change of registered office of M/s. Alka Builders Pvt. Ltd. from Naraina to Village Rajokari was given with effect from 10th April, 2007 and from Village Rajokari to Shahdara with effect from 24th March, 2008. On none of the aforesaid dates, the order dated 23rd February, 2007 was in force, as the order dated 23rd February, 2007 was not extended beyond 28.03.2007.

34. The learned senior counsel also emphasized that as per orders dated 23.02.2007, the defendant was required to communicate the said order to his Attorney, namely, his brother-in-law Atul Mahindru, which was not communicated by him by an oversight. He further submitted that after 23rd February, 2007, the only occasion when an injunction order was passed was on 2nd March, 2009 when this Court directed the respondents "to maintain status quo in respect of the rights and possession of the property bearing No.A-6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi till further orders." He submitted that it is nobody's case that the order dated 02.03.2009 has in any manner been violated. He relied upon the order dated 02.03.2009 to contend that in view of the findings given by this Court that M/s. Alka Builders Pvt. Ltd. cannot be said to have become the absolute owner of the property in question, no contempt can be said to have been made out merely by transfer of shares. The following portion of the order in particular was relied upon :-

"By an agreement to sell dated 16th November, 2006 some rights were created in favour of M/s. Alka Builders Pvt. Ltd. However, the said company has not become the absolute owner of the property in dispute. Consequently, the defendant, Shri Devender Kumar Saigal, cannot execute a conveyance in favour of M/s. Alka Builders Pvt. Ltd. a company which is alleged to have been taken over by Shri Jorawar Singh and Smt. Arvinder Kaur by purchasing the equities of the company as has been alleged by the counsel."

35. The next contention of the learned senior counsel for the defendant/respondent No.1 was that the present application cannot be treated as an application under the Contempt of Courts Act in view of the provisions of Section 20 of the said Act, which provide for a period of limitation of one year for taking cognizance of the offence from the date on which the Court applies its mind. It was so held in the case of Om Prakash Jaiswal vs. D.K. Mittal and Anr., (2000) 3 SCC 171 in the following terms:-

".....Such initiation of proceedings for contempt based on application of mind by the Court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. ...."

36. Finally, he submitted that in addition to his aforesaid submissions, he relied upon the following decisions of the Hon'ble Supreme Court to urge that the consistent view of the Supreme Court has been that in any proceedings under the Contempt of Courts Act, the breach shall have to be established beyond all reasonable doubt:-

(i) Chhotu Ram vs. Urvashi Gulati and Anr., (2001) 7 SCC 530.

(ii) Mrityunjay Das & Anr. vs. Syed Hasibur Rahaman & Ors., (2001) 3 SCC 739.

(iii) Anil Ratan Sarkar & Ors. vs. Hirak Ghosh and Ors., (2002) 4 SCC 21.

37. Mr. S.S. Mishra, the counsel for the respondents Nos.2 to 4 echoed the contentions of Mr. Dewan apart from submitting that the respondents Nos.2 to 4 were not parties to the lis between the plaintiff and the defendant and had been unnecessarily dragged to Court. They had no knowledge of the orders dated 17.08.2006 and 23.02.2007 and hence could not be hauled up for contempt. Reliance was placed by him upon a Division Bench judgment of the Allahabad High Court in C.M.W.P. No.13556/2003 titled as "International Hospital (P) Ltd. vs. State of U.P. and Anr.", to urge that what was transferred by the respondents Nos.2 to 4 was the share holding of M/s. Alka Builders Private Limited and a Company being distinct from its shareholders and directors, if it transfers its shares to someone, there is no transfer of the land because the owner of the land remains the Company. My attention was invited by Mr. Mishra to paragraph 20 of the said judgment, which reads as follows:-

"20. In our opinion, the last sentence in Clause 11 to Annexure-D (quoted above) makes the position clear. Charges are imposed on transfer of land but no charges can be imposed merely because of change of directors, shareholders or management control unless there is also change in the legal entity. In the present case, there is no transfer of land at all, as already mentioned above. What was transferred was shares, but the legal entity remained the same. As already stated above, a company is distinct from its share holders and directors. Hence, if the company is owner of the land and if it transfers its shares to some one, then there is no transfer of the land because the owner of the land remains the same company."

38. Mr. Mishra also relied upon the judgment of the five Judge Bench of the Supreme Court in the case of Electronics Corporation of India Ltd. and Others vs. Secretary, Revenue Department, Govt. of Andhra Pradesh and Others, (1999) 4 SCC 458, and in particular referred to paragraph Nos.15 and 16 of the said judgment, wherein the law has been enunciated thus:-

"15. A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

16. In Western Coalfields Ltd. v. Special Area Development Authority (1982) 1 SCC 125, this Court reviewed earlier judgments on the point. It held that even though the entire share capital of the appellant before it had been subscribed by the Government of India, it could not be predicated that the appellant itself was owned by the Government of India. Companies, it was said, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and the buildings in question in that matter were vested in and owned by the appellant. The Government of India only owned the share capital."

39. Somewhat similar contentions were raised by Mr. Ajay Bahl, Advocate on behalf of the respondents Nos.5 to 7, adopting the submissions made by Mr. Mishra on behalf of the respondents



Nos.2 to 4.

40. The Court has carefully considered the contentions raised at the bar and after doing so has arrived at the following conclusions.

41. The argument of senior counsel Mr. Pradeep Dewan that if no interim order is in force, there can be no disobedience of the same, whether wilful or not, undeniably is a forceful one and as pointed out by senior counsel has been the subject matter of various decisions of this Court and of the Hon ble Supreme Court. The pertinent question, however, is did the respondents flout an existing order of the Court which was in force on the date when the alleged defiance took place? Thus viewed, the defendant/respondent No.1 cannot be said to have fallen foul of the order dated 17th August, 2006 as the said order was undeniably not in existence on 16th November, 2006 when the Agreement to Sell was executed, the suit having been dismissed for default of appearance a day prior thereto, i.e., on 15th November, 2006 and eventually having been restored on 20th November, 2006. The respondent No.1, there is reason to presume was fully aware of the fact that the suit and interim orders would be restored, yet chose to transact the property immediately and in fact on the very next day of the dismissal of the suit, taking advantage of its dismissal. Technically speaking, however, no contempt was committed by the defendant/respondent No.1 thus far, but from here onwards the saga of the contumacious conduct of the defendant/respondent No.1 is clearly evident from the record itself.

42. The respondent No.1 was fully aware of the fact that by order dated 17th August, 2006 he had been restrained from "selling, alienating, transferring or parting with the property bearing No.A-6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi till further orders." The order of 17th August, 2006 was admittedly served upon the respondent No.1, who had entered appearance in the suit on 18th August, 2006, the suit being a suit under Order XXXVII of the Code. The said suit, however, came to be dismissed in default on 15.11.2006 - the date on which the plaintiff's application for summons for judgment was listed - on account of non-appearance of his counsel and the interim order dated 17th August, 2006 automatically ceased to be in force. The suit was, however, restored on 20th November, 2006 and with the restoration of the suit, the interim order dated 17th August, 2006 was also restored by this Court in full force on 20th November, 2006. A bare glance at the order dated 20th November, 2006 shows that the restoration of the interim orders was not hedged in or confined by any date. The relevant part of the order merely states:-

"Interim order also stands restored."

Needless to emphasize that the orders which were restored were till further orders.

43. The record shows that despite the fact that the interim orders dated 17.08.2006 were restored by the Court, the defendant/respondent No.1 did not desist from dealing with the property in question. But before adverting to the subsequent conduct of the respondent No.1, it deserves to be noted at this juncture that in the intervening period, that is, the period between 20.11.2006 when interim orders were restored and the date on which the defendant/respondent No.1 again transacted the property in March, 2008, this Court (Hon ble Mr. Justice G.S. Sistani) had passed interim orders

dated 23.02.2007 restraining the defendant/respondent No.1 from giving effect to the Agreement to Sell dated 16.11.2006 with the following mandate:-

"He will bring the order of injunction passed on 17.08.2006 to the notice of his attorney forthwith, so that the property cannot change hands, and accordingly the subject matter of the suit is preserved."

44. Admittedly, no steps were taken by the respondent No.1 to bring the aforesaid order of injunction passed on 17.08.2006 to the notice of his Attorney forthwith or at all. In the note of arguments filed on his behalf, this disobedience of the order was sought to be explained away by casually stating that the said order "was not communicated by him by an oversight". The respondent No.1 and his Attorney were brothers-in-law. Thus, there is every reason to suppose that the plea of non-communication of the order is a blatant falsehood and the so-called oversight was a deliberate act on the part of the respondent No.1 and his Attorney/brother-in-law to flout the order of the Court.

45. Equally untenable is the plea raised by the respondent No.1 that the order dated 23.02.2007 had a limited lifespan till the next date of hearing. A conjoint reading of the order shows that the court was appalled by the fact that the property had been transacted the day after the suit was dismissed and intended that the property should not be transacted any further and the order dated 17.08.2006 be adhered to by the parties. The Court observed that "taking advantage of the dismissal of the suit, the defendant in order to overreach the order of this Court, entered into an Agreement to Sell with his brother-in-law on 16.11.2006." The Court then called upon the respondent No.1 to bring the order of injunction passed on 17.08.2006 to the notice of his Attorney forthwith, so that the property cannot change hands, and accordingly the subject matter of the suit is preserved.

46. In any event, the order dated 23.02.2007 neither modifies nor purports to modify the order dated 17.08.2006 and the respondent No.1 cannot be allowed to capitalize on the fact that inadvertently the words "Till the next date of hearing" appear in the said order. The order must be read as a whole and in the context of the previous orders.

47. Apart from the above, it is clear from the record that the respondent No.1 on the date of the filing of his application for leave to defend, i.e., on or around 19th March, 2007 was in physical possession of the property in question. It is so stated in his application for leave to defend, being IA No. 3593/2007, and reiterated in the affidavit filed in support of his application for leave to defend. It is also clear from the record that it was during the pendency of IA No.2122/2007 and IA No.2906/2008 (under Order XXXIX Rule 2A of the CPC) that the respondent No.1 once again transacted the suit property, whereby vacant physical possession of the suit premises was delivered to M/s. Alka Builders Pvt. Ltd., of which Mr. Jorawar Singh and Smt. Arvinder Kaur were the major shareholders. [To be noted at this juncture that Mr. Jorawar Singh was already the owner of half portion of the property bearing No.A- 6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi.] The aforesaid transaction is borne out by the records of the Registrar of Companies, which show that the registered office of the Company was with effect from 24th March, 2008 shifted from 511/2/1, Village Rajokari, New Delhi to A-6, Jhilmil Industrial Area, Delhi. It is reiterated at the risk of

repetition that the respondent No.1 had been restrained vide order dated 17th August, 2006 from selling, alienating, transferring or parting with the property in question till further orders. It is the matter of record that the said orders were not varied or modified at any point of time and remain operative throughout. The property was thus transferred from the physical possession of the respondent No.1 to the physical possession of the Company M/s. Alka Builders Pvt. Ltd. in clear defiance of the orders of the Court. The respondent No.1 was thus guilty of wilful disobedience of the orders of the Court.

48. Insofar as the respondents Nos.2 to 7 are concerned, though are not parties to the present suit, it is more than clear that they have aided and abetted the contumacious acts of the respondent No.1. The Court cannot help but observe that the Company, M/s. Alka Builders Pvt. Ltd. and the other respondents were being used as a cloak to hide the contumacious acts of the respondent No.1. This apart, the respondents Atul Mahindru and Jorawar Singh went to the extent of filing false affidavits in this Court in line with the false affidavits filed by the respondent No.1, which it is well-settled is contempt of the Court. This is evident from a perusal of the replies filed to IA No.2906/2008 by the respondent No.1 and by Atul Mahendru (the respondent No.2 in the said application) and Jorawar Singh (the respondent No.4 in the said application). In paragraph 11 of the said application, the plaintiff/petitioner averred that the defendant/respondent No.1 was in the process of vacating the premises in question and conveying the property in question to the respondent No.4 (Mr. Jorawar Singh). He asserted that the alleged transaction was a fraud being played upon the Court being a deliberate disobedience of the orders of the Court. In the reply filed by him, the defendant/respondent No.1 categorically denied the averments of the plaintiff/petitioner that the respondent No.1 in collusion with others was in the process of conveying the property in question to the respondent No.4. He submitted that the plaintiff was trying to mislead the Court by expressing his "unfounded apprehension" and the assertions made by the plaintiff were a "sheer figment of imagination of the plaintiff". The respondent Nos.2 and 4 Mr. Atul Mahendru and Mr. Jorawar Singh filed a similar reply. The reply of the respondent No.1 was filed on 6th May, 2008, whereas the reply of the respondents Nos.2 and 4 was filed on 27th November, 2008, i.e., much after the date on which the physical possession of the registered office of the Company was transferred by the respondent No.1 to the respondent No.4, which, as stated above, was transferred on 24th March, 2008 (as per Form 18 from the record of the Registrar of Companies). This came to light only when the plaintiff inspected the records of the Registrar of Companies and moved IA No.11879/2008 also under Order XXXIX Rule 2A of the Code of Civil Procedure, along with documents relating to transfer of shareholding, etc. For the sake of ready reference, paragraphs 11 and 12 of IA No.2906/2008 and the respective replies of the respondent No.1 and the respondent Nos.2 and 4, who filed a joint reply, are set out hereunder:-

"11. That in the evening of 23.2.2008, the Applicant/Plaintiff discovered that the Non- Applicant No.1/Defendant was in the process of vacating the premises in question and had almost vacated the same. It is further discovered that the Non-Applicants No.1 to 3 in collusion with other people have been in the process of conveying the property in question to Non-Applicant No.4 who is the owner of the remaining half portion of the premises A-6/1, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi. The conduct of Non-Applicants No.1 to 4 clearly shows that there

was a transaction brewing in their mind or the transaction must have been done already in order to deprive the Applicant/Plaintiff to seek recovery of his legitimate dues causing thereby wrongful loss to him inspite of operation of the interim injunctions dated 17.8.2006, 20.11.2006 and 23.2.2007. Pertinently the Non-Applicant No.4 contacted the Applicant/Plaintiff and offered an amount which is less than the said amount. This clearly indicates that underlying Non-Applicants No.2 and 3 are involved because of the alleged power of attorney executed in terms of Clause 12 of the Agreement to Sell dated 16.11.2006. Moreover the Non-Applicant No.2 is the brother-in-law of Non-Applicant No.1/Defendant who is the alleged power of attorney holder and also Director of Non-Applicant No.3.

12. That the Applicant/Plaintiff apprehend that the Non-Applicants No.1 to 4 are carrying out or planning to carry out an act which is a willful and deliberate disobedience of the orders of the Hon ble Court passed in the aforesaid suit on 17.8.2006, 20.11.2006 and 23.2.2007. The said alleged transaction is a fraud being played upon the Hon ble Court being a deliberate disobedience of the orders of the Hon ble Court. The aim of Non-Applicants No.1 to 4 is clearly fraudulent, wrongful, dishonest apart from being contemptuous in nature. It is submitted that the Non-Applicants are obstructing the cause of administration of justice by committing a wrongful contemptuous act contrary to the interim orders. It is reasonably evident that the Non-Applicants No.1 to 4 have no regard to the majesty of law and are bent upon to take law in their own hands in order to gain unlawfully by selling the property illegally."

Reply of Defendant/Respondent No.1 "11. That the contents of para 11 of the application are wrong and denied. It is denied that in the evening of 23.2.2008, the answering respondent was in the process of vacating the premises in question and had almost vacated the same. It is denied that the answering respondent in collusion with others have been in the process of conveying the property in question to the respondent No.4. It is submitted that the answering respondent is not aware of the respondent No.4 having contacted the applicant/plaintiff and offered any amount.

12. That the contents of para 12 of the application are wrong and denied. In fact the application of the Plaintiff as alleged in the para under reply is misplaced. In fact the Plaintiff has tried to mislead the Hon ble Court by expressing his unfounded apprehension of planning to carry out an act by the answering respondent and others or carrying out an act which is willful and deliberate disobedience of the orders of the Hon ble Court passed in the suit on various dates is a sheer figment of imagination of the Plaintiff and the same cannot be permitted to make basis under Order 39(2A) to proceed against the answering respondent. The Plaintiff has not given any cogent and any justified reasons or facts to make the application under reply simple apprehension of the Plaintiff of any action on the part of the answering respondent and others in violation of orders passed by this Hon ble Court is neither contemptuous nor violative of the orders passed by this Hon ble Court. It is denied that the aim of the answering respondent is clearly fraudulent, wrongful, dishonest apart from being contemptuous in nature. It is denied that the answering respondent is obstructing in the cause of administration of justice."

"11-12. In the entire application the para under reply is only relevant qua the non-applicants as certain allegations are made against them. The statements made under paras under reply are vehemently denied. It is denied that the sole defendant in the suit has anything to do with the present non-applicants. At no point of time any restraint order of any kind was ever passed against the non-applicants and the order alleged to have been violated too was not against the non-applicants nor the said order was ever communicated to them. So far as the agreement to sell dated 16.11.2006 is concerned it is matter of record that on that particular day when the document was executed there was no order operating against either the sole defendant or against the non-applicants. Apart from the said documentation there is no change of ownership of the suit property and the character of the suit property is not changed. The entire application is moved only with a sheer apprehension on the part of the plaintiff. On the basis of sheer apprehension the plaintiff is seeking injunction orders against the non-applicants by moving the present application. Therefore, the application is misconceived and motivated with ulterior design and as such the same is liable to be dismissed with heavy cost."

49. It is amply clear from the above replies filed on affidavit that the respondent No.1 along with respondent No.2 and respondent No.4 was bent upon misleading the Court and circumventing the course of justice by taking the false plea that nothing had transpired after the execution of the Agreement to Sell dated 16.11.2006, and that the application of the plaintiff was only an expression of his "unfounded apprehensions" and "a sheer figment of his imagination". This tendency of filing false affidavits in Court whether by a party or otherwise has been deprecated time and again on the ground that false affidavits have the tendency to interfere with the administration of justice which must be allowed to flow unhindered and unharmed otherwise, the majesty and dignity of the Court will suffer. If recourse to falsehood is taken with oblique motive as in the instant case, it becomes a matter of serious concern as the same would definitely prevent the Courts from discharging their legal duties as they are supposed to do. A Division Bench of this Court in *Rajeev Malhotra vs. Union of India and Ors.*, 93 (2001) DLT 532 (DB) made the following apposite observations:-

"19. It has become a tendency to file false affidavits to seek a favorable order or to score an edge over the opposite party in litigation. Such a tendency needs to be curbed. A time has come where action must be taken against an affiant who makes a false or misleading assertion, averment, statement in an affidavit filed before a Court of Law. Any indulgence shown in such a matter is bound to adversely affect the administration of justice and will erode the confidence and faith of the society in the judicial system and the Courts of Law."

50. In *Chandra Shashi vs. Anil Kumar Verma*, (1995) 1 SCC 421, the Supreme Court in the context of false affidavits made the following apposite observations:-

"To enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to

administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that "SATYAMEV JAITE" (truth alone triumphs) is an achievable aim there; or "YATO DHARMASTOO JAI" (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of Courts.

The aforesaid thoughts received due support from the definition of criminal contempt as given in Section 2(c) of the Act, according to which an act would about be so if , inter alia, the same interferes or tends to interfere, or obstructs or tends to interfere, or obstructs or tends to obstruct the administration of justice. The word „interfere , means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at p. 255 of Words and Phrases (Permanent Edn.), Vol. 22. As per what has been stated in the aforesaid work at p. 147 of Vol. 29 obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the Courts from performing their legal duties as they are supposed to do."

51. In *Murray & Co. vs. Ashok Kr. Newatia and Anr.*, (2000) 2 SCC 367, the Supreme Court held as follows:-

".....It is not a mere denial of fact but a positive assertion and as such made with the definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a court should always be deprecated and we do hereby record the same. The fact that the deponent has in fact affirmed a false affidavit before this Court is rather serious in nature and he thereby rendered himself guilty of contempt of this Court as noticed hereinbefore....."

52. In *Uttar Pradesh Resident Employees Cooperative House Building Society and Ors. vs. New Okhla Industrial Development Authority and Anr.*, (2007) 15 SCC 515, the Supreme Court while relying upon its earlier decision in *Hiralal Chawla vs. State of U.P.*, (1990) 2 SCC 149, held that by making false statement on affidavit with the intention of inducing the Court not to pass any adverse order, the deponent had committed contempt of Court.

53. In the celebrated case of *M.C. Mehta vs. Union of India and Ors.*, (2003) 5 SCC 376, the Supreme Court again reiterated the legal position that an affidavit containing a false statement deserve to be dealt with a heavy hand. In paragraph 20, the Supreme Court observed as follows:-

"20. In the background of the facts, as noticed above, the statement of the contemner in para 6 of the affidavit is false to the knowledge of the contemner. Filing false affidavit/statement has been held to be criminal contempt. [See: *Murray & Co. v. Ashok Kr. Newatia*, (2000) 2 SCC 367, *Bank of India v. Vijay Transport*, (2000) 8

SCC 512 and Dhananjay Sharma v.

State of Haryana, (1995) 3 SCC 757].

54. In the facts and circumstances as adumbrated above, it is apparent that the respondent No.1 along with Mr. Atul Mahendru and Mr. Jorawar Singh (the respondents Nos.2 and 4 in IA No.2906/2008) was deliberately and with oblique motive circumventing the Court's orders feigning ignorance of the same. The whole course of conduct of the aforesaid persons shows the scant regard with which they viewed the orders of the Court. It is felt that if such kind of contumacious conduct is not appropriately punished, the repercussions on the justice delivery system could be of a serious nature. A wrong signal would be sent to the public at large that orders of the Court are not worth the paper on which they are written, that it is easy to throw dust in the eyes of the Court and no serious consequence ensues by flagrantly disobeying interim orders of the Court and overreaching the Court by various modus operandi including filing of false affidavits.

55. In the instant case, the Court is constrained to observe that the respondent No.1, the respondent No.2 and the respondent No.4 have by all possible means attempted to lower the dignity and majesty of law, time and again, sometimes by making false statements and filing false affidavits, and at other times by deviously transacting the property in such a manner that it is whisked away from beneath the gaze of the Court in such a manner as to make it irretrievable for the purpose of any decree which may be passed in the present suit, and by making a mockery of the judicial process. The Court, therefore, is of the opinion that this is a fit case where the contumacious conduct of the aforesaid persons should be dealt with in such a manner that it sends a message that no one can be permitted to interfere with the administration of justice.

56. In view of the foregoing, the respondent No.1 Mr. Devender Kumar Saigal, the respondent No.2 Mr. Atul Mahendru and the respondent No.4 Mr. Jorawar Singh (respondent No.6 in IA No.11879/2008) are held guilty of committing contempt of Court. The question, therefore, which now requires consideration is as to what action is required to be taken against them.

57. Indubitably, the conduct of the aforesaid persons, as delineated above, is not of such a nature as may be termed condonable. An apology was tendered, if at all it can be termed an apology, by the respondent No.1 along with the written synopsis filed by him after the conclusion of arguments in the case. The manner in which the apology has been literally smuggled into the file and the intent of making the apology is to say the least highly reprehensible. It can by no stretch be said to be a product of remorse or contrition. It is a settled principle of contempt jurisprudence that an apology must be tendered at the earliest and must have a ring of sincerity in order to enable the Court to hold that the guilt of the contemnor stands purged. An apology tendered at a belated stage with the sole object of somehow warding off punishment when Court has concluded the hearing has been rightly held by Courts of Law to be an act of a cringing coward. The apology in the present case has quite apparently been made at a belated stage with a view to escape punishment and, therefore, does not deserve to be accepted by the Court being neither genuine nor bonafide.

58. The Supreme Court has, time and again, held that the compliance of the order disobeyed by the contemnors may be secured through the contempt power. A five Judge Bench of the Supreme Court in the case of Supreme Court Bar Association Vs. Union of India and Another (1998) 4 SCC 409 made the following apposite observations:-

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

59. It is equally well settled that where third party rights have been created in respect of the disputed property in violation of the orders of the Court, any such third party rights are of no consequence and liable to be set aside. The Supreme Court in the case of C. Elumalai and Others Vs. A.G.L. Irudayaraj and Another (2009) 4 SCC 213, where there was continuous violation of the order of the Court dated 19.03.2007, as in the instant case, apart from imposing exemplary costs of ` 2,00,000/- on each of the contemnors, directed that any third party right created after the order dated 19.03.2007 was of no consequence and stood set aside.

60. In view of the aforesaid dicta laid down by the Hon ble Supreme Court, it is directed that the contemnors, Mr. Devender Kumar Saigal, Mr. Atul Mahendru and Mr. Jorawar Singh are sentenced to pay costs of ` 1 lac each, which shall be deposited with the Registrar General, Delhi High Court, New Delhi. The costs shall be paid within a period of six weeks, failing which the aforesaid contemnors shall undergo simple imprisonment for a period of 15 days each on that count. On such deposit being made, the amount shall be transferred to the Delhi Legal Services Authority. It is further directed that third party rights created after 17th August, 2006 shall be of no consequence and are hereby set aside. Physical possession of the property shall be restored by the contemnors No.2 and 6 (contemnors No.2 and 4 in IA No.2906/2008) to the defendant/contemnor No.1, Mr. Devender Kumar Saigal, who is restrained from, in any manner, dealing with the property till the disposal of the suit.

61. IA Nos.2122/2007, 2906/2008 and 11879/2008 stand disposed of in the above terms.



62. An extra copy of this order be given to learned counsel for the respondent No.1 and to the counsel for the respondents Nos.2 and 4 under the signature of the Court Master.

REVA KHETRAPAL JUDGE June 01, 2012 km