

In Re: Siddharth Srivastava

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Court : Mumbai

Decided On : Apr-04-2002

Reported in : 2003(2)ARBLR115(Bom)

Judge : J.A. Patil, J.

Acts : Presidency Towns Insolvency Act, 1908 - Sections 9 and 9(2); Arbitration & [Conciliation Act, 1996](#) - Sections 36; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2(2), 2(14) and 36 - Order 21, Rule 10 - Order 23, Rule 3; ;[Contempt of Courts Act, 1971](#) - Sections 10

Appeal No. : Insolvency Petn. No. 1 of 2001

Appellant : In Re: Siddharth Srivastava

Advocate for Def. : K.R. Bulchandani, ;Subhash Jha, ;J.P. Shah and ;L.K. Bulchandani, Advs.

Advocate for Pet/Ap. : Milind Vasudeo and ;Swapnila D. Rane, Advs. i/b., Ashwin Ankhad, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

J.A. Patil, J.

1. The petitioning creditor has filed this petition under Section 9 of the Presidency Towns Insolvency Act, 1909 (for short, the Act) for adjudicating the judgment debtor as insolvent on the ground that he has committed act of insolvency. The relevant facts necessary for appreciation of the prayers in the petition are in brief as under :--

2. The petitioning creditor had invested a sum of Rs. 5 crores by way of equity investment with the Asia Television Network Ltd. (for short 'ATN') under a memorandum of agreement dated 21-3-1996. The judgment debtor was at all material times and is the Chairman and Managing Director of the said ATN. It appears that certain disputes arose between the parties in connection with the memorandum of agreement and therefore, the petitioning creditor filed an arbitration petition No. 14/1997 under Section 9 of the Arbitration and Conciliation Act, 1997 (for short the Act, 1997'). In that proceeding, the parties arrived at a settlement and filed consent terms dated 7-8-1997. Accordingly, the award in terms of the said consent terms came to be passed on 5-9-1997. According to the petitioners under the provisions of the Act, 1996, the Award has the force of the decree and hence a decree in terms of the said award came into existence. It may be pointed out that under the consent terms, the judgment debtor acknowledged his liability to pay to the petitioning creditor a sum of Rs. 6.60 crores in instalments beginning from 15-9-1997. It is stated that accordingly, the 'ATN' Initially paid a sum of Rs. 45 lakhs towards the instalment as agreed upon in the consent terms but thereafter there were no payments forthcoming from the judgment debtor. According to the petitioning creditor under the said Award/Decree, the judgment debtor was jointly and severally liable alone with the 'ATN' to pay the dues. Since the judgment debtor made defaults in payment of the instalments, the petitioning creditor filed contempt petition No. 9/98 which came to be admitted on 26-2-1998. During the pendency of the said contempt petition, the petitioning creditor also filed execution application No. 58/1998 and by warrant of attachment got attached the movable properties of the judgment debtor along with the properties of the ATN. In the said contempt petition, the parties arrived at settlement and filed their consent terms dated 9-12-1998. In view of the consent terms, the contempt petition came to be disposed of in terms of the said consent terms. By the consent terms the petitioning creditor agreed to accept a reduced amount than what was

stated in the earlier consent terms, provided the judgment debtor adhered to the payment schedule set out thereunder. The consent terms further provided that in case of any default by the judgment debtor, the petitioning creditor would be entitled to recover the full amount as stipulated in the consent terms.

3. The petitioning creditor has alleged that in the meantime, the judgment debtor started a new channel i.e. ATN, which was in contravention of the order passed by this court. The petitioning creditor, therefore, filed a second contempt petition bearing No. 119/1998 against the judgment debtor. The said petition was admitted on 24-2-1999. The petitioning creditor has further alleged that the judgment debtor once again committed breach of the consent terms dated 9-12-1998 as he failed to make payment as per schedule. The petitioning creditor, therefore, took out notice of motion No. 1798/ 1999 and applied for appointment of a Court receiver in respect of the properties of the judgment debtor as well as the ATN. The said notice of motion was made absolute in terms of the prayer Clauses (a) & (b) thereon 8-6-1999 and the Court Receiver, High Court, came to be appointed as the Receiver. It appears that the judgment debtor preferred an appeal against the said order. However, the division bench, dismissed the same on 14-9-1999 but substituted the official liquidator in place of the Court receiver. Subsequently, the Court receiver was reinstated by order dated 12-10-2000. In the meantime, pursuant to the consent terms dated 7-8-1997 and 9-12-1998, the Escrow Agent of the judgment debtor handed over to the petitioning creditor his library of 100 films belonging to the judgment debtor. The petitioning creditor gave a credit of Rs. One Crore to the judgment debtor towards the value of the said library.

4. During the pendency of the contempt petition No. 119/1998, the petitioning creditor and debtor once again tried to settle the matter and accordingly, on 9-5-2000, the third consent terms were arrived at in which it was inter alia, agreed that the judgment debtor would pay a sum of Rs. 5 Crores and that in case of default, the petitioning creditor would be entitled to recover the entire decretal amount. According, to the petitioning creditor he gave advertisement for sale of the library of films in various newspapers, inviting the objections as per the consent terms and to his utter surprise he received several claims pertaining to various films. Thus according to the petitioning creditor, the judgment debtor did not have

exclusive rights in the films and that in fact the said library was worthless. The petitioning creditor by his letter dated 11-8-2000 addressed to the judgment debtor to revoke the third consent terms. According to the petitioning creditor, he is therefore, entitled to recover the entire decretal amount, less the amount paid so far by the judgment debtor and after deducting the value of the library of the films to Rs. 1 Crore. According to the petitioning creditor the amount due and payable under the Award/decreed was 6.60 crores with future Interest at the rate of 35% per annum. Out of the said sum, the petitioning creditor has received only a sum of Rs. 2.30 crores. It is contended that the judgment debtor has failed and neglected to pay the remaining amount and has committed continuous defaults. It is stated that the amount due and payable by the judgment debtor under the various consent terms as on the date of the filing of the petition i.e. 15-1-2001 is Rs. 18,56,42,992/-with future interest at the rate of 3% per month till realisation. Before filing this petition, the petitioning creditor had made an application for issue of an insolvency notice (N-21) and accordingly, this Court issued insolvency notice to the judgment debtor and it was served upon him on 19-9-2000. It is stated that the petitioning creditor does not hold any security and estate of the judgment debtor. In view of this fact, the petitioning creditor has prayed for an order of adjudication against the judgment debtor.

5. The judgment debtor has filed his affidavit in reply, wherein he has denied to have committed any act of insolvency. He has contended that no insolvency notice was ever served on him. The judgment debtor has not admitted the particulars of the claim annexed to the petition and contended that in fact it is the ATN who is entitled to counter claim against the petitioning creditor. The judgment debtor has further contended that the first and the second consent terms entered into were penal and one sided favouring the petitioning creditor. It is further stated that finally rationality and wisdom prevailed on the petitioning creditor as a result of which the third consent terms were arrived at. It is contended that the petitioning creditor has no right to revoke the third consent terms. The judgment debtor has pointed out that he has filed contempt petition No. 98/99 against the petitioning creditor and others for revoking the third consent terms and the said contempt proceedings are pending. As regards the film library, the judgment debtor has contended that it has market value of Rs. 15 crores but the petitioning creditor has arbitrary and

unilaterally estimated its value at Rs. 1 Crore only. The judgment debtor has therefore, contended that he has right to claim the said library from the petitioning creditor together with the damages and restoration of losses suffered by the judgment debtor, which would amount to Rs. 50 crores. It is pointed out that 50 lakhs shares of Rs. 10/- each worth of Rs. 5 crores of the face value are in the custody of the petitioning creditor as a security. It is contended that if the petitioning creditor insist upon revocation of the third consent terms then the petitioning creditor is bound to return to the judgment debtor and the ATN, the entire benefit of Free Commercial Time (FCT) availed of by the petitioning creditor under the consent terms. On these grounds the judgment debtor has prayed for dismissal of the petition.

6. Section 9 of the Act contemplates certain acts, the commission of which amounts to act of insolvency. Having regard to the averments made in the petition, Clause (i) of Sub-section (1) and Sub-section (2) of Section 9 of the Act are relevant for that purpose and they read as under :--

Clause '(i) if, after a creditor has served an insolvency notice on him under this Act in respect of a decree or an order for the payment of any amount due to such creditor, the execution of which is not stayed, he does not, within the period specified in the notice which shall not be less than one month, either comply with the requirements of the notice or satisfy the Court that he has a counter claim or set off which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not lawfully set up in the suit or proceeding in which the decree or order was made against him.'

Sub-section (2) : Without prejudice to the provisions of Sub-section (1), a debtor commits an act of insolvency, if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed) has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in Sub-section (3) and the debtor does not comply with that notice within the period specified therein'

Section '13(2) in substance states that the Court shall require proof of (a) the debt of the petitioning creditor and (b) the Act of insolvency or, if more than one Act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.'

Sub-section (5) gives a discretion to the Court to make an order of adjudication if it is satisfied with the proof of the above mentioned things.

7. Mr. Bulchandani, the learned counsel for the Judgment debtor contended before me that the Award/Decree obtained by the petitioning creditor is not a decree for the purpose of Section 9(2) of the Act and therefore, mere fact that there is an Award/Decree in favour of the petitioning creditor cannot be considered as an act of insolvency. In support of his submission Shri Bulchandani relied upon certain decisions, a reference to which is necessary. The first decision relied by Mr. Bulchandani is *Ramshai Mull More v. Joylall* : AIR1928 Cal840 , wherein the words 'in execution of decree', occurring in Section 9(e) of the Act were interpreted and it was held that attachment in execution of an Award is not attachment in execution of a decree within the meaning of Section 9(e) of the Act for the purpose of creating an act of insolvency. It was held that an Award is a decree for the purpose of enforcing that Award only. The learned Judges of the Calcutta High Court however, observed - 'It is true enough that for the purpose of enforcing an award you may treat the award as though it were a judgment and therefore, you may apply to it all the provisions of Order 21 and various other provisions. It is another thing altogether to say that something which is not a decree must be taken to be a decree with the result that a man is to commit an act of insolvency so that he is to be adjudicated upon a petition presented, it may be by some one who has no concern with the award at all'.

8. The second decision is *Ghulam Hussein Khatau v. Shahban Mohib*, AIR 1938 Sin 220 in which reliance was placed upon the decision in *Ramshai Mull More's* case (supra) and it was held that Section 9(e) of the Act must be strictly construed in favour of the debtor to whom the matter of adjudication as an insolvent under the Insolvency law is one of vital importance. Any inconvenience arising out of such a construction is for the Legislature to consider and remedy if they think proper by amendment; it is not for the Court to enlarge the meaning of the words

used by the Legislature. It was further held that an attachment in execution of an award is not an attachment in execution of the decree of a court within the meaning of Section 9(e) for the purpose of creating an act of insolvency.

9-10. The third decision is given by Calcutta High Court in *Khusal Chand Sadani v. Balkissen Mohta*, : AIR1975 Cal169 , wherein it was held. 'An order passed by the Company Court although it may involve adjudication by a Court of the matters in controversy between the parties in a civil matter, is nothing else than an order which under Section 634 of the Companies Act may only be enforced in the same manner as a decree made by the Court. It was further observed that it may have many attributes of a decree but it is not a decree.'

11. The fourth decision relied upon by Mr. Bulchandani in *Diwan Brothers v. Central Bank of India*, : AIR 1976 SC1503 , wherein the Supreme Court Interpreted the term 'decree' used in Schedule II, Article 11 of the Court Fees Act as referable to a decree as defined in Section 2(2) of the Civil P.C. In that case the facts were that the appellants had filed an application under Section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, before the Tribunal appointed under the said Act; contending that the appellants were the partnership firm and that the respondents owed to them a sum of Rs. 3,50,000/- by way of refund of security deposits and a sum of Rs. 55,000/- as commission. The Tribunal dismissed the application, against which the appellants filed appeal before the Allahabad High Court with a nominal Court fee of Rs. 5/-. But the Stamp Reporter of the High Court raised an objection that the appellants should have paid ad valorem Court fees on the total claim made by them before the Tribunal, which was disallowed. The matter was ultimately referred to the Taxing Judge. It was contended before him by the appellants that the decision of the Tribunal did not amount to a decree as contemplated by Section 2(2) of the C. P. Code and therefore, ad valorem Court fee was not payable by them. The learned Taxing Judge however, did not accept this contention and upheld the objection raised by the Stamp Reporter. In appeal the Supreme Court set aside the decision of the learned Taxing Judge and observed that a mere description of the decision of the Tribunal as a decree does not make it a decree within the meaning of the Court Fees Act. The Supreme Court referred to the definition of the term 'decree' as

contained in Section 2(2) of the C. P. Code and pointed out that there are three essential conditions : (i) that the adjudication must be given in a suit (ii) that the suit must start with a plaint and culminate in a decree ; and (iii) that the adjudication must be formal and final and must be given by a civil or revenue Court.

It is true that the above observations made by the Supreme Court are in connection with the term 'decree' used in Schedule II, Article 11 of the Act but they are based on the definition of Section 2(2) of the C. P. Code. Therefore, even for the purpose of the Act, the same meaning deserves to be made applicable to the term 'decree' as defined by Section 2(2) of the C. P. Code. As stated above, the Award in favour of the petitioning creditor came to be passed on the basis of the consent terms dated 7-8-1997. No application for setting aside the said Award was made by the judgment debtor and therefore, after the expiry of the period specified in Section 34 of the Act, 1996, the Award become final and binding on the parties and it became enforceable under Section 36 of the Act, 1996 as if it were the decree of the Court. However, making of the award was not on the basis of an adjudication. The Award which has the force of decree does not fulfilled the essential conditions of the decree as contemplated by Section 2(2) of the C.P. Code. Having regard to the ratio and weight of the above mentioned decisions cited before me, it will have to be held that even though the Award dated 5-9-1997 is enforceable as if it were a decree still it is not a decree within the meaning of the term as defined in Section 2(2) of the C. P. Code and therefore, obtaining of such an Award does not fulfil the requisite conditions contemplated by Clause (i) of Section 9(1) of the Act. Consequently, on that basis the respondent cannot be said to have committed act of insolvency, either under Clause (1) of Section 9(1) or Sub-section (2) of Section 9 of the Act. The Judgment debtor has denied that he was either served with a notice of insolvency. However, at the time of the hearing it was found on checking the record of the case that such a notice had been served upon the judgment debtor. Mr. Bulchandani therefore, did not press the contention regarding non-service of the insolvency notice.

12-13. The peculiar facts of this case are that first consent terms dated 7-8-1997 on the basis of which Award came to be passed, were modified in contempt

petition No. 9/98 wherein second consent terms were filed on 9-12-1998. By the said consent terms the petitioning creditor agreed to accept the reduced amount subject to the contention that the judgment debtor would adhere to the payment schedule there under even these consent terms were not final as in contempt petition No. 119/1998, the parties again settled the matter on 9-5-2000 and filed third consent terms, whereby the judgment debtor agreed to pay a sum of Rs. 5 Crores. According to the petitioning creditor the consent terms dated 9-5-2000 have been revoked by him. I do not wish to enter into the controversy as to whether there could be a revocation of the consent terms which are filed in the court in terms of which a court has disposed of the contempt petition No. 119/1998. Assuming for a moment that the consent terms can be revoked, the fact remains that what the petitioning creditor has obtained in his favour is the order dated 21-12-1998 passed in contempt petition No. 9/1998 and the second such order is passed on the basis of the second consent terms. The question which, therefore, arises is whether obtaining of such an order by the petitioning creditor can be regarded as an act of insolvency on the part of the judgment debtor for the purpose of Clause (i) of Sub-section (1) of Section 9 and Sub-section (2) of the Act. Section 2(14) of the C. P. Code defines the term 'order' as a formal expression of any decision for a civil court which is not a decree. It will have therefore, to be considered whether the order passed by this Court under its contempt jurisdiction is an order or decision by a civil Court within the meaning of Section 2(14) (and) Section 10 of the C.P. Code.

14. In this respect, Mr. Milind Vasudev, the learned counsel for the petitioning creditor relied upon the decision of a learned single Judge of this Court in *Kilachand v. Ajodhyaprasad*, AIR 1934 Bom 452, wherein the facts were that in a suit order for appointment of receiver had been passed. Thereafter, the plaintiffs took out a notice of motion calling upon the defendants and one Shamlal to show cause as to why they should not be committed to jail for having committed contempt of this Court by interfering with the possession of the receiver and having assaulted his men. The notice of motion was opposed on various grounds. However, so far as Shamlal is concerned, he raised two grounds. One, that there is difficulty in enforcing the order which the Court may against him inasmuch as he is not a resident within the jurisdiction of that Court nor does he carry on business

within the said limits and second, that this Court has no jurisdiction to issue a notice of motion against a person who is neither a resident within its jurisdiction nor carries on business within those limits. While rejecting this ground, the learned Judge Kania J., observed that the order made on notice of motion of this kind would be an order within the meaning of Section 2(14) of the Civil Procedure Code and could, therefore, be executed under Section 36 of the C. P. Code. It was however, held that Section 36 is not limited to orders made only under the Civil P.C., but is applicable to all orders which could be included in the definition of the term 'order' as defined in Section 2(14). Mr. Milind Vasudeo, therefore, submitted that the order dated 21-12-1998 passed in contempt petition No. 9/ 1998 is an order within the meaning of the term as used in Clause (i) of Sub-section (1) of Section 9 and Sub-section (2) of the Act.

15. Mr. Bulchandani on the other hand placed reliance upon a Division Bench decision of the Allahabad High Court in *Ch. Shyam Sunder v. Daw Dayal Khanna*, : AIR1956 All79 , wherein it was held that contempt proceedings are neither civil nor criminal but sui generis. An order awarding costs to one party against the other in contempt proceedings cannot be enforced under either of the Codes and there is no other provision under which it can be enforced. It was therefore, held that in the absence of any statutory provision for its enforcement it must be enforced as a part of the inherent jurisdiction. The learned Judge further observed that the word 'order' in Section 2(14) of the C. P. Code is used in the Code not to mean any order or decision as understood by a layman; it is used to mean what is popularly known to the legal public as a formal order. It was further observed that the word is used in contradistinction to decree and must be distinguished from 'judgment' which is separately defined in the Code to mean a statement of reasons. It was pointed out that the order which is usually passed in contempt proceedings is a judgment and not an order as defined in the Code. It is not required to be followed up by a decree or an order. The learned Judge referred to the decision by Kania J in *Kilachand's case* (supra) and the decision of Majumdar J. in *Onkermulla Jalan v. Padampat Singhania* 1949 (53) CWN 310 and deferred from the opinion expressed by both the learned Judges. It was observed that the opinion expressed by Kania J. and Majumdar J. in the above mentioned two cases is by way of obiter, because the contempt proceedings were pending and the question whether

an order finally disposing of contempt proceedings is an order within the meaning of Section 2(14) of the C. P. Code did not actually arise before them.

(Adjourned to 2nd April, 2002 and then to 4th April, 2002)

4th April, 2002

16. Shri Vasudeo also relied upon the decision in *Onkermull Jalan v. Padampat Singhania and Ors.* 53 C.W.N. 310, wherein the learned single Judge of the Calcutta High Court relied upon the decision of this Court in the case *Kilachand Devchand & Co. (supra)* and held that the order of the High Court in contempt proceedings is an order within the meaning of Section 2(14) of the Civil Procedure Code and it can be executed under Section 36 of the Code. Shri Bulchandani on the other hand relied upon the decision of a single Judge of this Court in *Ashok Asandas Baherwani v. Ishwarprakash Chopra*, 1988 Mah LJ 373 : 1988 Cri LJ 1530, wherein it was held that the decision in contempt proceedings is not an order as referred in Section 36 nor it is a decree and consequently proceedings to execute such order are not maintainable, in the said case, the relevant facts, in brief, were to the effect that the revision applicant who was tenant had given an undertaking that he would pay the arrears of rent and also vacate the premises in his occupation. However, as the revision applicant failed to comply with this undertaking, an application for distress warrant was made by the respondent landlord wherein goods belonging to the revision applicant were sought to be sold. In that proceedings also, the revision applicant gave an undertaking before the Small Causes Court whereby he agreed to pay entire rent and vacate premises before stipulated date. Since the revision applicant did not abide by his undertaking, petition for taking action against him under the Contempt Courts Act came to be filed. In that petition also revision applicant-tenant gave an, undertaking that he would pay the entire, amount of rent and vacate the premises before the stipulated date. In view of this undertaking, contempt petition was disposed of. But once again revision applicant committed breach of the undertaking with the result that the respondent-landlord filed another contempt petition which was decided by the High Court who held the revision applicant guilty of contempt of Court. Feeling aggrieved thereby, revision applicant filed an appeal

which was admitted and rule on stay was however issued. Order in respect of the sentence was only stayed. The respondent landlord then filed an execution application in the Small Causes Court, Nagpur and prayed for execution of the order passed in the Contempt Petition by issue of warrant of possession. He also applied for permission to break open the lock of the premises and also sought police help. Accordingly, a warrant of possession came to be issued in execution of which the revision applicant came to be evicted from the premises who later on filed a revision application in the High Court, contending inter alia that the small causes Court should not have issued warrant of possession in the absence of any order or decree having passed by the Civil Court. The question before the learned single Judge (H.D. Patel J.) was whether the order passed by the High Court in Contempt proceedings could be deemed to be an order falling under Section 36 or a decree falling under Section 2(14) of the C. P. Code. Reliance was placed upon the decision in Kilachand's case (*supra*) to contend that the said order was an order falling under Section 36 of the C. P. Code. The learned Judge referred to the definition of the term 'Order' as given in Section 2(14) of the C. P. Code which is to the following effect:--

'In this act, unless there is anything repugnant in the subject or context: Order means formal expression of any decision of a Civil Court which is not a decree'

The learned Judge held that the aforesaid definition cannot be so extended as to include even the final orders passed in the contempt proceedings. He held that a decision in contempt proceedings cannot be regarded as a decree or order executable in the manner adopted by the Small Causes Court. It was also observed that though proceedings in the Contempt of Courts Act may be Civil proceedings, yet it cannot be regarded as a suit.

17. Shri Bulchandani also relied upon a Division Bench decision of the Calcutta High Court in Hooghly District Central Co-operative Bank Ltd. v. Anoj Kumar Roy, 1997 Cri LJ 864, wherein the facts were that in Writ Petition, the appellant was directed to pay the arrears of salaries to the respondents within a specified period. This order was challenged by the Appellant before the Division Bench. The respondent raised a preliminary objection on the ground that the order under

appeal was not appealable. Division Bench overruled the petition regarding the maintainability of the appeal and observed that the High Court in the exercise of its jurisdiction to punish for contempt cannot grant any relief to which the respondent was not entitled in terms of the order. Relying upon the decision in *Satyabrata Biswas v. Kalyan Kumar Kisku*, : [1994]1SCR413 , it was held that the High Court cannot go beyond the scope of its jurisdiction to decide the question as to whether the parties have violated the interim order and any action taken in violation of interim order would be illegal. It will thus be seen that the above mentioned two decisions in substance lay down that an order passed by the High Court in exercise of its contempt jurisdiction is neither an order within the meaning of Section 2(14) nor a decree under Section 2(2) of the C. P. Code which can be executed under Order 21 read with Section 36 of the C. P. Code.

18. In the instant case, the order passed in Contempt Petition No. 9 of 1998 of 21-12-1998 reads as under :

'(2) Consent terms duly signed by the parties and their attorney/counsel taken on record and marked X for identification. Undertakings contained in para-3, 4, and 10 of the consent terms are accepted. (3) In view of the above, contempt petition is disposed of in terms of the consent terms at 'X'.'

The question is whether such an order passed on the consent terms passed in Contempt proceedings can be regarded as an order within the meaning of term as given in Section 2(14) of the C. P. Code. Shri Bulchandani referred to the definition of the term 'Order' and pointed out that there are 3 requisites which make an order within the meaning of Section 2(14) of the C. P. Code and they are (1) It must be formal expression, (2) such expression must be of a decision and (3) it must be of civil Court. Shri Bulchandani further submitted that the High Court is not civil Court but it is a Court of record as it is constituted under the Constitution. In this respect he relied upon a decision in *State of U.P. v. Mukhtar Singh*, : AIR1957 All505 , wherein it was held that a 'final order' within the meaning of Order 45, Rule 1 must be an order as defined in Section 2(14) of the Code, i.e., it must be a formal expression of a decision of a civil Court. It was further held that whether the High Court in a writ petition passes an order quashing certain orders of the

Consolidation of Holdings Act, 5 of 1954, it is not an order of a civil Court, because High Court is a Court of record created by the Constitution, and not a civil Court. Civil Courts are inferior Courts created by the States through their local Acts. It may be noted that contempt is a matter essentially between the Court and condemner. The party filing an application seeking action against the contemner is only informant. Once the Court admits the contempt petition, then the petitioner has really no effective role to play though usually he has given an hearing in such a petition. The contempt alleged may be a contempt of civil nature but by exercising its jurisdiction to deal with the alleged contempt, the Court does not become a civil Court within the meaning of Section 2(2) and Section 2(14) of the C. P. Code. It remains as a Court exercising contempt jurisdiction. The Court either punishes the condemner or discharges him or remedies punishment of apology being made to its satisfaction. No other order is contemplated in such a proceedings. If in such a proceedings the parties file certain consent terms, they do not form the part of the final order which is contemplated in contempt proceedings. Filing of the consent terms by the parties is only a consideration which prompts the Court not to proceed further in the matter and terminate the proceedings by disposing of the petition. Therefore, it can hardly be said that the consent terms in terms of which the petition is 'disposed or form the part of the final order of the Court. The Court, in exercise of its contempt jurisdiction, does not decide any issue or question much less on merits. Therefore, in my opinion, the consent terms incorporated In the final order passed in contempt petition do not amount to a decision within the meaning of the term as used in Section 2(14) of the C. P. Code and therefore, it is not an order within the meaning of that section. Consequently, such an order cannot be said to be executable under Order 21 read with Section 36 of the C. P. Code.

19. It is true that in suits decrees are often passed in terms of consent terms filed by the parties, though the Court in such cases does not 'decide' any issue or question and yet decrees passed by the Court are executed without any objection being raised to their maintainability. A question naturally arises how such decrees become executable. The answer to this question will have however to be given in the negative. The consent terms filed in a suit and Court's order decreeing the suit in terms of such terms or consent terms without any adjudication becomes a

decree in view of the mandate given in Order 23, Rule 3 of the C. P. Code which states as under:

'Order 23, Rule 3 of C. P. Code: The Court shall order such an agreement compromise or satisfaction to be recorded and shall oppose a decree in accordance therewith.'

(Emphasis provided)

Under Section 26 of the C.P. Code, every suit has to be instituted by presentation of a plaint or any such other manner as may be prescribed. The term 'prescribed' is defined by Section 2(16) and it means the prescribed by rules. Order IV, Rule 1 states that every suit shall be Instituted by presenting the plaint to the Court. Sub-clause (2) states that every plaint shall comply with the rules contained in Orders IV and VII as far as they are applicable. Order VII, Rule 1 lays down as to what particulars plaint must contain and they include the facts constituting the cause of action and a statement of the value of subject matter of the suit for the purpose of jurisdiction and of Court fees. A petition filed under the contempt Jurisdiction of the High Court is not a plaint within the meaning of Order VII, Rule 1 of the C.P. Code and hence, the contempt proceedings cannot be regarded as a suit. Therefore, the final order which may be passed in such a proceedings is neither a decree under Section 2(2) nor an order under Section 2(14) of the C.P. Code and therefore, the same is not executable under Order 21 read with Section 36 of the C.P. Code. It is necessary that the decree or order must have been passed by a Civil Court.

20. To elaborate my point, I may give an illustration. In a criminal case, involving commission of offences which are compoundable, the parties file a compromise application/ purshis which contains certain terms resolving the property dispute which is germane to the commission of the offence. In such an event, although the case is disposed of in terms of the compromise application/purshis and accused is acquitted, the terms settling the property dispute between the parties do not form part of the final order. Such consent terms are neither a decree nor an order for the obvious reason that criminal Court does not pass any decree and that a criminal case is not the suit. Therefore, that part of the compromise application/purshis whereby parties decided their property dispute is not

executable in Civil Court. The only remedy for a party seeking its enforcement is to file a suit in civil Court of competent Jurisdiction and obtain a decree or order which can be executed under Order 21 read with Section 36 of the C.P. Code. Having regard to the provisions of Section 9(1)(i) and Sub-section (2) of the P.T.I. Act, decree or order contemplated therein are such which are executable. As pointed out above, the order disposing of a contempt petition in terms of the consent terms filed by the parties does not amount to decree or order within the meaning of Section 9 of the P.T.I. Act. Consequently, It is not possible to hold that the Judgment debtor has committed an act of insolvency. Therefore, judgment debtor cannot be adjudicated as an insolvent. In the result, the petition is dismissed.

Ordinary copy of order duly authenticated by Insolvency Registrar is allowed.

C. C. expedited.

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