

**Abbey Dass Vs. Murli Dhar Sharma**

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**Court :** Delhi

**Decided On :** Sep-20-1982

**Reported in :** ILR1982Delhi975

**Judge :** A.B. Rohatgi, J.

**Acts :** Contempt of Court Act, 1971 - Sections 11

**Appeal No. :** Contempt Civil Petition Appeal No. 40 of 1981

**Appellant :** Abbey Dass

**Respondent :** Murli Dhar Sharma

**Advocate for Pet/Ap. :** G.S. Marwah,; R.K. Sharma and; Gopal Sharma, Advs

**Judgement :**

**Avadh Behari Rohatgi, J.**

(1) This is a petition under sections 11 and 12 of the Contempt of Courts Act, 1971. The petitioner Mahant Abbey Dass is the landlord. The respondent Murli Dhar Sharma, is the tenant. The landlord filed an application for ejection of the tenant in 1973. A decree for eviction was passed in favor of the landlord in respect of house No. 206 (old) situated in Haveli Haiderquli, Delhi. The tenant preferred an appeal to the Rent Control Tribunal. The Tribunal dismissed the appeal The tenant brought a second appeal in this court. I heard that appeal. The appeal was

compromised. The tenant made a statement on February 13, 1980 that his appeal be dismissed and that he may be granted one year's time to vacate the premises. He agreed in terms to deliver vacant and peaceful possession to the landlord on or before February 13, 1981. His undertaking was recorded. The landlord agreed to give him one year time. So in terms of the agreement I dismissed the appeal and granted time to the tenant to vacate the premises on or before February 13, 1981. The tenant's undertaking I accepted.

(2) The tenant did not vacate on 13th February, 1981. So the landlord made this application on March 13, 1981 that the respondent be committed for contempt because he had committed breach of the undertaking given by him to this court. On this application notice was given to the tenant. The tenant appeared. He filed his reply to the contempt application and pleaded that he had delivered vacant possession to the landlord on 12th February, 1981 at 6 p.m. He further pleaded that after delivery of 'the possession by him to the landlord one Mahant Ram Sarup Dass came to Delhi with his Chelas and devotees and dispossessed the landlord from the disputed premises. This was his defense.

(3) In support of his defense the tenant has produced four witnesses besides himself. The witness Krishna Nand deposes that he came to the premises in dispute on February 15, 1981 and Mahant Ram Sarup Dass took forcible possession from the landlord. The witness Prahlad Dutt deposes to the handing over of possession by the tenant to the landlord on 12th February, 1981 at 6 p.m. The witness Suresh Chand testified that Mahant Rani Sarup Dass with 'the help of other persons threw out the landlord and took forcible possession of the premises. Mahant Ram Sarup Dass has himself appeared in the witness box to depose that he is the Chief Mahant and as Chief Mahant he is supervising the Delhi Gaddi. He says in his evidence that after he had come to know that the tenant had handed over possession to the landlord he along with four other persons came to Delhi on 15th February, 1981 and found the landlord and one other man in possession of the premises. He asked the landlord to vacate the premises but he refused. He goes on to say :

'WE threw out these two persons from the premises and took over the possession. I am in possession of the disputed premises. I have put my lock there. Murli Dhar has now nothing to do with the premises in dispute.'

(4) The tenant in his evidence has narrated all that has been said by his witnesses. He was asked a very pertinent question. Did he obtain any writing from the landlord at the time of handing over the possession? His answer was,

'I did not obtain any writing from Mahant Abbey Bass at the time of handing over the possession.'

(5) The landlord has denied the case setup by the tenant. He has said in categorical terms that the tenant never delivered possession to him and the story of his dispossession by Mahant Ram Sarup Dass is a pure invention.

(6) The question to be decided in this case is : Did the tenant deliver possession to the landlord on 12th February, 1981 ' In my opinion he has utterly failed in proving his case. The important fact is that there is no evidence in writing to show that possession was handed over by the tenant to the landlord on 12th February, 1981. Only one oral witness Prahlad Dutt has been produced. He is not a trust-worthy witness. No reliance can be placed on his testimony because of litigation between him and this very landlord who has sued him for recovery of rent. His word of mouth cannot be accepted to prove the delivery of possession. It is in the evidence of Suresh Chand as well as Mahant Ram Sarup Dass that police arrived at the scene when the landlord was sought to be dispossessed by Mahant Ram Sarup Dass. No police report has been produced which would have proved the story of dispossession. The entire story is a concoction and has been spun to use it as a cover for retaining possession. Possession is being retained by the tenant and Mahant Ram Sarup Dass has been set up by him in the forefront to escape from the clutches of the law.

(7) The story set up is that Mahant Ram Sarup Dass is the supervisor of Delhi Gaddi and he had a right to remove the landlord from the disputed premises. It is in evidence that 72 persons have brought an original proceeding under section 92, Civil Procedure Code in the High Court for the removal of the landlord. Mahant

Ram Sarup Dass is one of them. This shows that by himself he was powerless to depose the landlord from the Gaddi. This is why he went to law as the religious leader of the opposition. Here he hii-- appeared in a secular contest of landlord and tenant. But with this part of the controversy I am least concerned. Mahant Ram Sarup Dass has not produced any document before me to show his title to the premises. In any case, as I have said, I have nothing to do with the dispute between those 72 persons and the landlord. I am concerned only with the question : Whether the possession of the premises was delivered by the tenant to the landlord in terms of the undertaking dated 13th February, 1980? In my view the tenant has completely failed in proving that he delivered possession to the landlord and that the landlord in turn was dispossessed by a third person, namely, Mahant Ram Sarup Dass.

(8) The evidence lead by the tenant does not carry conviction for a variety of reasons. He is a man who is adopting one substerfuge after another to evade the consequences of the solemn undertaking given to the court. In his statement he even went to the length of saying that his signatures were obtained on the undertaking without explaining it to him. He even denied the undertaking. He said :

'Idid not give any undertaking to the High Court on 13-2-80. My signatures were obtained without explaining to me that was written on the paper put to me far signatures. In the first week of January, 1981 Mr. Daya Kishan, Advocate, my counsel, told me about the undertaking that had been given by me to the court.'

This is his statement He is prepared to go to any length.

(9) When the time for vacating the premises was drawing near he went to the court of S.N. Kumar, J. and made an application on January 21, 1981 to him that the premises in dispute may be allotted to. him. Kumar J. rejected the application on February, 1981. This was another device.

(10) Then he devised another strategem. Against the permission of the Slum Authority he had filed a petition under Article 227 of the Constitution in 1972 (C.M.(M) 216172). This came up for hearing on November 3, 1980 before Kirpal J. The learned judge refused to interfere on the short ground that the tenant had

given an undertaking to the court to vacate the premises. He said :

'THEpetitioner is bound by the undertaking which he has given to this court. No one has compelled him to do so. Having solemnly undertaken to vacate the premises on 13th February, 1981 the petitioner cannot be permitted to put any obstacle in that way. I am not inclined under these circumstances to exercise my discretion in favor of the petitioner. In this view of the matter, it is not necessary for me to go into the correctness of the order of 'the competent authority.'

(11) This was the view Kirpal J. took on November 3, 1980. Who in his senses will claim a hearing of his petition against slum permission after he has burnt his boats by giving an undertaking to the court to vacate the premises. This is just another instance of the frantic efforts he the tenant, made to wriggle out of the undertaking.

(12) Even with this the tenant was not satisfied. In the reply dated 31-8-81 filed to the contempt application he set up an entirely false case. He put forward the story of delivery of possession to the landlord and his dispossession by a superior Mahant, Mahant Rani Sarup Dass. With the claim of the Mahant or the other to the Gaddi, I have nothing to do. This relationship of landlord and tenant is established between the petitioner and the respondent. The suit of ejectment and the decree passed therein establishes that relationship. The tenant gave an undertaking to the court to deliver vacant possession. Now he says that he had delivered vacant possession. To prove this he gave his own evidence, and the evidence of Prahlad Dutt. This evidence is worthless. To say the least about it. Such a shrewed and clever man will always insist on a written receipt when he is going to deliver possession. There is absolutely no writing in this case either of delivery of possession or of taking forcible possession by Mahant Ram Sarup Dass. The tenant and Mahant Ram Sarup Dass have joined hands to defeat the decree of eviction and the undertaking given to the court. This court will not allow the tenant to get out of the Undertaking given to the court. The Jaw, as Lord Brougham said in a famous speedy is not the two-edged sword of craft and oppression. It is the stall of honesty and the shield of innocence.

(13) Mr. Sharma on behalf of the tenant has referred me to Bal Kishan v. State and M.C.D. (Delhi High Court Digest, 1976 Item No. 89)(I), Union of India v.

Madan Lal Sethee (1980) S.N. 28, Syed Azimudin v. S. Masharuddin 1976 Ci i. LJ. 466, Sint. Bhagwanti Devi v. Ish Kumar (Delhi High Court Digest, 1974 Item No. 281(4) in support of his contention, that the witnesses produced by him alight to be believed because their testimony and credit have not been shaken in cross-examination, I do not agree. Onus was on the tenant to prove delivery of possession. He has failed in discharging the onus. There is nothing to show that the possession was given to the landlord except the bare testimony of Prahlad Dutt and the tenant's own statement. In the events that have happened in this case right from 1973 when the proceedings commenced between the landlord and the tenant till today it is difficult to believe that without any receipt the tenant would have delivered possession. That he set up the claim of Mahant Ram Sarup Dass and bolstered up his title to the Gaddi proves that he is taking shelter behind Mahant Ram Sarup Dass to prove that he had performed his part of the obligation. The tenant is standing behind Ram Sarup Dass. Ram Sarup Dass is the tenant in disguise. The landlord has deposed that the tenant is retaining possession and he has put up the sign board of Mahant Ram Sarup Dass at the premises as a camouflage. The introduction of Mnhant Ram Sarup Dass, it seems to me, is a lie, a deceitful phantom.

(14) I need not refer to the decisions in which it has repeatedly been held that failure to abide by the undertaking is contempt of court. I have myself decided it again and again in this court (see Kashmere Gate Charitable Trust vs. M. G. Shahni & Co. 1980 Rlr 580 (also see Central Bank of India vs. Current Transport Finance (P)Ltd. : 13(1977)DLT164 and Saleemuddin v. Sharfuddin : AIR1980 Delhi39 I took the lead. Others have followed. Undertaking is a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. We call it solemn because it is formal. It is given in earnest and not in jest. Meant to be performed. It is the duty of the court to enforce the undertaking. Otherwise the people will look at the law with contempt and the judges with impotent rage. Kirpal.J. also took this view when the matter. came before him in November 1981 though he- was not directly concerned with the question of contempt.

(15) For these reasons I hold that the tenant-respondent has not delivered possession of the premises in spite of the solemn undertaking given by him to this court and that he is guilty of committing breach of the undertaking. I hold him guilty of contempt of court.

(16) I order that the tenant Murli Dhar shall be detained in civil prison for six months and will also pay a fine of Rs. 2000. The tenant is present in court. He shall be taken in custody.

(17) The decree-holder landlord will pay the subsistence allowance for the detention of the tenant in civil prison.

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