SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Govind Kaur Vs. Hardeo

Govind Kaur Vs. Hardeo

SooperKanoon Citation : sooperkanoon.com/760520

Court : Rajasthan

Decided On : Jul-06-1981

Reported in : 1981WLN323

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Civil Misc. Appeal No. 129 of 1980

Appellant : Govind Kaur

Respondent : Hardeo

Advocate for Pet/Ap. : Mr. Maloo

Judgement :

S.K. Mal Lodha, J.

1. This appeal under Section 19(1) of the Contempt of Courts Act, 1971 (for short 'the Act') is directed against the order dated December 9, 1980 of a learned single Judge of this Court by which he held the appellant guilty for contempt of court and sentenced her to one month's simple imprisonment and further to pay a fine of Rs. 500/- and costs of the application.

2. The appellant and respondent will hereinafter be referred as non-applicant and applicant respectively. The applicant instituted a suit for ejectment against the, non-applicant, in regard to shop No. 6 and certain other premises situate on

Station Road Jodhpur. The suit was decreed by the Munsif city, Jodhpur on February 5, 1972. An appeal was preferred. The appellant's suit in respect of shop No. 5 was dismissed and for other premises, the decree was maintained on August 28, 1973 by the learned Additional District Judge No. 1, Jodhpur. A second appeal was lodged by the non applicant. In the second appeal decree for eviction regarding shop No. 6 was maintained where as the decree pertaining, to the open land was set aside on March 13, 1980. Operative portion of the judgment of this Court is, as under:

In the result, the appeal No. 476 of 1973 filed by Govind Kaur, is partly allowed. The plaintiff's decree for eviction regarding shop. No. 6 is maintained, whereas the decree in respect of the open land, is set aside. The defendant No. 1 shall be liable to pay rent at the rate of Rs. 32/- per month with effect from the date possession over shop No. 6 is delivered by her to the plaintiff. The decree in respect of shop No. 5 passed-by the first Appellate Court, is maintained. Consequently, appeal No. 7 of 1974 is dismissed. In the circumstances of the case, the parties shall bear their own costs of the appeals.

When the judgment of the second appeal was pronounced learned Counsel for the non-applicant sought time to vacate it within two months. On that day, the non-applicant was present in person. She undertook to hand over the vacant possession of shop No. 6 to the applicant on or be fore the expiry of two months from that day. It will be useful to quote in extenso the order dated March 13, 1980;

Judgment pronounced. The appeal is partly allowed. In the circumstances of the case, the parties shall bear their own costs of both the appeals. (See separate judgment).

Learned Counsel for the appellant prayed for time to vacate shop. No. 6. The appellant is allowed to vacate shop No. 6 within two months. The appellant undertakes to hand over vacant possession of shop No. 6 to the respondent Hardeo on or before the expiry of two months from today.

The non-applicant preferred Special Leave Petition (Civil) No. 5093 of 1980 in the Supreme Court. The Supreme Court passed an exparte order on May 7, 1980

staying the execution of the decree of this Court dated March 13, 1980. The Special Leave Petition of the non-applicant was dismissed by the Supreme Court on October 6, 1980. On March 31, 1981, the non-applicant's adult son Richhpalsingh filed a suit against the applicant & the non-applicant for permanent injunction restraining the applicant from executing the decree. An application for issuance of temporary injunction was, also filed on October 8, 1980. The applicant-respondent, however, gave, ah undertaking that he will riot execute the decree against Richhpalsingh. The application for temporary injunction was rejected on October 22, 1980. Richhpalsingh preferred an appeal against the applicant restraining him from executing the decree against Richhpalsingh until next date. Thereafter, for continuance of the order, no separate order was passed. On November 26, 1980, an application was moved by Richhpalsingh for continuance of the order. The learned District Judge, Jodhpur passed on order to continue the ad interim order upto December 1, 1980. The order passed on December 1, 1980 was continued till December 22, 1980. The appeal preferred by Richhpalsingh was rejected by the District Judge, Jodhpur on January 17, 1981. S.B. Civil Revision Petition No. 36 of 1981 against the appellate Order dated January 17, 1981 was filed and that was dismissed on March 24, 1981. On October 13, 1980, an application was submitted by the applicant that non-applicant has committed a wilful breach of the undertaking given to the court and as such she should suitably be punished for contempt of court, On October 16, 1980, the learned Judge ordered issuance pf notice returnable within 10 days. Reply to the application was filed on behalf of non-applicant-appellant on November 6, 1980 stating, inter alia, that she has not committed any breach of undertaking given before this Court, what to say of wilful breach. A rejoinder to the reply was filed by the applicant on November 18, 1980. An additional reply was submitted on behalf of the non-applicant on December 1, 1980 reiterating that the non-applicant has hot committed any wilful breach of the undertaking given by her and orders of this Court with malafide intention. It may be stated here that on December 3, 1980, learned Counsel for the applicant filed certified copies of the Civil Misc. Petition No. 6566 of 1980 submitted in the Supreme Court and the affidavit of the non-applicant dated April 27, 1980 and the Court ordered, that the documents be placed on record. The learned Single Judge, by his order dated

December 9, 1980 held the non-applicant guilty of contempt of court and sentenced her to simple imprisonment for one month. He, however, directed that the imprisonment will not be carried out if the non-applicant conforms to and comply with the undertaking given to the Court and hand over vacant-possession of shop No.6 to the applicant within a week from that day. She was however, ordered to pay a fine of Rs. 500/- and the costs of the application. The learned single Judge recorded the following findings in his order:

(1) that the non-applicant gave an unconditional undertaking and committed breach of that undertaking;

(2) that possession of shop No. 6 was not delivered by the non-applicant to the applicant.

(3) that there has been wilful breach of the undertaking by the non-applicant, and, therefore, she is guilty of contempt of court.

3. Feeling aggrieved, the non-applicant has filed this appeal as aforesaid.

4. We have heard Mr. M.C. Bhoot, learned Counsel for the non-applicant (appellant) and Mr. I.C. Maloo for the applicant-respondent.

5. In the first instance, Mr. Bhoot argued that the non-applicant did not submit any undertaking to the court on March 13, 1980 in as much as the Court while allowing the time for vacating shop No. 6, did not grant any indulgence and no benefit was taken in as much as under Section 13(9) of the Rajasthan Premises (Control of Rent and Eviction) Act, (No. XVII of 1950) (for short 'the Act of 1950' hereinafter), two months' time for vacating shop No. 6 was permissible and it was merely an arrangement between the parties for vacating shop No. 6, He also submitted that even If any undertaking was given on March 13, 1980 that came to an end as soon special leave petition was filed in the Supreme Court, and the Supreme Court came to be seized of the matter. This is strongly opposed by Mr. Maloo, learned Counsel for the applicant. In these circumstances, the first question that arises for our determination is whether the non-applicant have any under taking to the Court or it was merely an arrangement by way of agreement between the

parties for vacating the shop.

6. Section 13(9) of the Act of 1980 is as under:

(9) Where any decree or order for the eviction of a tenant is made on the ground specified in Sub-section (1), the landlord shall not be entitled to obtain possession thereof before the explanation of two months from the date of the decree or order.

A perusal of Section 13(9) of the Act of 1950 shows that after the decree or order for eviction, which is made, on one or more of the grounds specified in sub Section (1) of Section 13, the landlord cannot obtain possession thereof until the explanation of two months from the date of the decree or order. This is an extra protection given to the tenant. It only creates a bar for the landlord to obtain possession on the basis of a decree or order for eviction made on the ground specified in Sub-section (1) of Section 13 of the Act of 1950 before the expiration of two months. As two months' time was granted by the Court on March 31, 1980, for vacating shop No. 6, the argument of Mr. Bhoot is that she cannot be said to have been given any benefit and when no benefit was taken or drawn by the non-applicant, there was no undertaking in the eye of law for the breach of which, the non-applicant could be punished. The learned single Judge considered Baburam Gupta v. Sudhir Bhasir and Anr. : 1979 CriLJ952 Chhaganlal Narsibhai v. Soni Chandubhai and Ors. AIR 1976 SC 1909; Nisha Kanta Roy Chowdhary v. Smt. Saroj Bashni Guha : AIR1948 Cal294 : P.K. Kriplani v. Ranabir Ram and Anr. : AIR1952 Cal452 Sukumar Mitra v. Tarasankar Ghosh : AIR1952 Cal591 and Babulal Parekh v. Lachminarayan Swelram and Ors. AIR 1964 Guj 63.

7. The decree in respect of shop No. 6 and other premises was passed by the learned Munsif on February 5, 1972. An appeal was preferred and the suit regarding shop No. 5 was dismissed and the decree in respect of shop No. 6 and others premises was maintained by the learned Additional District Judge, Jodhpur, by his judgment dated August 28, 1973. In the second appeal, the decree for eviction regarding shop No. 6 was maintained and in respect of the open land, it was set aside. From three facts, it is abundantly clear that the High Court in second appeal did not pass any decree or order for eviction of the non-applicant from shop No. 6 Under Section 13(1)(h) of the Act of 1950. The learned Munsif

had granted three month's time to the non-applicant to vacate the suit property and deliver vacant possession to the applicant. This Court merely maintained the decree for eviction in respect of shop No. 6 which was passed by the Munsif and confirmed by the Additional District Judge. In other words, no decree or order for eviction was passed by this Court. As soon as the appeal against the appellate judgment confirming the decree for eviction in respect of shop No. 6 was dismissed, the applicant was entitled to obtain possession of shop No. 6. Two months' time was prayed for on behalf of the non-applicant which was granted and she undertook to hand over vacant possession on or before the expiry of two months from the date of the judgment. In these circumstances, it is futile to contend that no benefit was taken or granted to the non-applicant as period of two months was permissible under Section 13(9) of the Act of 1950.

8. On March 13, 1980, when the judgment was pronounced, the non-applicant was present in person. Her counsel was also present. He made a request to the court for grant of time to vacate shop No. 6. She was granted time to vacate shop No. 6 within 2 months. She undertook to deliver vacant possession of shop No. 6 to the non-applicant on or before the expiration of two months from that day, i.e., March 13, 1980. This cannot be said to be an arrangement by way of agreement between the parties for vacating shop No. 6. It is an undertaking to the court. An undertaking is a promise, given to the Court by a party to a proceedings to do or not to do particular thing, which is enforceable as an injunction because when the Court accepts an undertaking given by a party, its order amounts in substance to an injunction. An undertaking given to the court by a person or a Corporation in pending proceedings on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and breach of the undertaking is misconduct amounting to contempt. An 'undertaking given to Court' should be distinguished from a consent order, or what is known as an order passed on a compromise petition filed by the parties in a civil proceeding. A consent order is a mere agreement between the parties, even though the Court might record it and append its order thereto and in case of the failure of a party to comply with the terms of a consent order, the injured party cannot apply for committing the defaulter for contempt; his remedy is by way of specific performance or injunction. However, when a party secures an order from the court

on giving an under taking to the Court that he will take a particular course of action or inaction such undertaking itself operates as an injunction made by the Court because the Court has made its order on the faith of the undertaking, e.g., stay of execution of the decree or order.

9. The expression 'a party undertakes' used in orders and decrees of the courts, was examined by a Division Bench of Bombay High Court, consisting of Chagla, C.J. and Gajendragadkar, J., as he then was, in Bajranglal Khemka and Anr. v. Kapurchand Ltd. : AIR1950 Bom336 , wherein, it was observed as follows:.The clause does not state to whom the undertaking and it may be that it would be possible to hold that, as the parties were setting the dispute between themselves, the undertaking was given by one party to the other; or, at the highest the only thing that could be urged would be that the expression is ambigous, and in a contempt matter, unless the Court is clearly satisfied that the undertaking was given to the Court, the Court would not proceed to commit the person in default to jail. But in our opinion, the expression 'undertake' has come to acquire through long practice, a technical meaning. In all orders and decrees of the Court whenever the expression 'a party undertakes' has been used, it has always borne the meaning that the undertaking has been to the Court. The Advocate General has also referred us to the force and orders that appear in 'Action on decrees and orders', and in these forms the expression used has always been 'a party undertakes' and never 'a party undertakes to the Court'. Therefore, in English Courts as well the expression 'a party undertakes' when used in decrees or orders has come to acquire the same technical meaning; What is more it has been held by Bhagwati, J--an opinion with which I entirely agree that it has been the long standing practice on the original side that whenever counsel wishes to give an undertaking to the Court, he never expressly uses the words 'to the Court', but merely states that the he undertakes on behalf of his client and that undertaking is always understood to be an undertaking to the Court, which could be enforced by committal proceedings. In case we find that the consent terms were signed by Mr. Raga for, Mr. Desai's clients and Mr. Amin for the plaintiffs, both counsel with very large and extensive practice on the original side. Therefore, in our opinion, looking to the surrounding circumstances, looking to the context, and also looking to the fact that the expression has come to acquire a technical meaning, we can only

construe the undertaking given by the defendants as an undertaking given to the Court and not given to the other side.

In Baijnath Prasad v. Shyam Sunder 1961 (2) Cr LJ 222, in execution of a partition decree by delivery of possession of certain premises to the petitioner by evicting the respondent offered resistance to the delivery. Thereupon, the petitioner made an application under Order XXI, Rule 98, CPC and the High Court made the following order:

Upon hearing....advocate for the said applicant and....advocate for said respondent and upon the said respondent by his said advocate undertaking to vacate the premises...,on or before the first day of October....hundred and sixty.

The respondent failed to deliver possession on or before the first day of October, 1960. In an application by the petitioner for committal of the respondent for contempt, it was contended on behalf of the respondent that the undertaking was given to the party and not to the Court and that therefore, there was no contempt. The learned Judge, after distinguishing Nisha Kanta Roy's case : AIR1952 Cal591 held that the undertaking was not between the parties inter se but was given to the High Court and there having been a clear breach of undertaking contempt of the High Court was committed.

10. In Chhaganbhai's case : [1976]3SCR786 , the appellant in previous revision proceedings before the High Court gave solemn undertaking to handover certain premises in his possession. The undertaking was on record and in view of that, the revision was dismissed. The question that arose in that case was whether there was breach of undertaking. It was held that there was nothing in the conditions of the undertaking to imply that it was merely a consent order passed upon an agreement between the parties to which the order of the court was superadded and that it was clearly a case of express undertaking to the Court incorporated in the order. The Court further held that the case being of a deliberated violation of an undertaking to the Court the effect was the same as that of breach of an injunction and hence it amounted to contempt of court.

11. In Baburam Gupta's case : 1979 CriLJ952 , it was observed as under;

In fact, the reason why a of clear breach undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person is qua the party and not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking impliedly or expressly incorporated in the order impugned. Thus, there being no undertaking at all the question of breach of such an undertaking does not arise.

We have already held that there was no question of obtaining any benefit under Section 13(9) of the Act of 1950 after the decision of the second appeal. In the presence of the non-applicant, a prayer was made by her counsel to allow two month's time for vacating the shop. The Court allowed the period of two months for the purpose. In other words, the court granted her indulgence to vacate the shop. When time was allowed for vacating it, it necessarily follows that there could not be forcible dispossession in execution of the decree. The learned Judge, who passed the order on March 13, 1980 and the order under appeal held that two month's time was allowed for vacating shop No. 6 on the undertaking given by the non-applicant. As a result of that, the applicant could not dispossess her by levying execution within a period of two months. The Court granted her time on the promise that she would deliver vacant possession within two months from the date, i.e., March 13, 1980.

12. Keeping the principles laid down in Bajranglal's case : AIR1950 Bom336 , Baij Nath's case 1961 (2) Cr LJ 222, Baburam's case : 1979 CriLJ952 and Chhagan

Bhai case : [1976]3SCR786 and the order dated March 13, 1980 containing the prayer made by the learned Counsel for the non-applicant to the court for granting time for vacating shop No. 6 and the undertaking by the non-applicant that she will deliver the vacant possession within a period of two months, we are definitely of the opinion that it was an unconditional and unqualified undertaking to the Court. We agree with the learned single Judge when he held that it was an undertaking to the Court.

13. In this connection, the further question that arises for determination is whether that undertaking came to an end as soon as the special leave petition was filed in the Supreme Court. It is true that the special leave petition was filed in the Supreme Court and it stayed the execution of the judgment and decree and passed an exparte order on May 7, 1980. The special leave petition was dismissed by the Supreme Court on October 6, 1980. This shows that the decree of eviction passed by the Munsif and confirmed by the learned District Judge and maintained by the High Court remained intact. The applicant was entitled to obtain possession of shop No. 6 at any rate after the dismissal of the special leave petition on October 6, 1980 as the non-applicant had undertaken to deliver its vacant possession at the time of pronouncement of the judgment of the accused appeal on March 13, 1980. The non-applicant cannot be permitted to get out of the consequences flowing from the breach of the undertaking given on March 13, 1980 merely on the ground that after the pronouncement of the judgment and passing of the order on March 13, 1980, special leave petition was preferred in which an exparte order staying the execution of the decree was passed and that special leave petition was dismissed on October 6, 1980. It follows, therefore, that the non-applicant has committed breach of the undertaking.

14. Mr. Bhoot, however, contended that breach of undertaking by itself is not sufficient for, there should be 'wilful breach'. According to him, there was no intentional breach and for the reasons, which have been given by her, it cannot be said that there was wilful breach. He submitted that she could not fulfil the undertaking given by her as a suit for injunction was filed by her adult non Richhpal Singh in his own right and, therefore, the applicant could not obtain the possession and, thus, there was no wilful breach of the undertaking. He submitted

that the non-applicant was ready and willing to deliver possession but it could not be done for reasons beyond her control. It was urged that there was no allegation regarding wilful breach in the contempt petition filed by the applicant much less evidence in this regard. He pressed for our consideration that there was no obstruction created by the non-applicant in not delivering possession of shop No. 6 In this connection, learned Counsel referred to paras 8, 9 and 10 of the reply and para 6 of the additional reply. In these circumstances, another question which we are called upon to decide is whether there has been a wilful breach of the undertaking?

15. 'Contempt of Court' defined in, Section 2(a) means Civil contempt or Criminal contempt, Civil contempt' has been defined in Section 2(b) to mean a wilful disobedience to any judgment decree, direction, order, writ, or other process of a court or wilful breach of an under-taking given to a court. Wilful breach of undertaking given to a court is a civil contempt. It means that there should be a breach of undertaking and that such breach is wilful. 'Wilful' means deliberate & intentional. 'Wilful has been defined in. Shorter Oxford English Dictionary Volume II to mean done on purpose or wittingly; proposed, deliberate, intentional (Chiefly, now always, in bad sense, of a blameworthy action; fraud, implying 'perverse, obstinated'). In Webster's Third new International dictionary, Vol. III. 'wilful' has been defined as done deliberately; not accidental or without purpose, intentional, self-determined. In Venkataramiya's Law Laxicon Vol. II, it has been stated that the word 'wilfuly' when used in statutes connotes different concepts. In certain cases, 'wilful' may mean 'wantonly'. In certain other cases, it may mean 'intentionally', or 'deliberately and in other cases, it may merely mean 'consciously'.

16. A perusal of the order dated November 26, 1980 shows that the non-applicant was present in person. She stated before the Court that she is prepared to deliver the possession of the premises in question. On that day at 4 O'clock, the Court appointed a Commissioner in whose presence possession may be delivered. It appears from the report of Shri Premchand Sharma, who was appointed as Commissioner that he asked the non-applicant to vacate the possession of shop No. 6, to which she replied an under:

Main to Kabza Dene ko Toyar Hoon. Mera ladka Richpalsingh IS PAR Kabiz Hai Jo Ap ke Samne Dene se Inkar kar roha hai,

Thus, the possession of the shop in question was not handed over to the applicant. The judgment was pronounced on March 13, 1980 A request was was made by the learned Counsel for the non applicant in her presence that time may be allowed for vacating the shop, When it was not within her power and control to vacate the shop, we fail to understand why such a request was made. Not only that she undertook to handover its possession to the applicant on or before the expiration of two months from the day. The undertaking was given on March 13, 1980. A special leave petition was filed in the Supreme Court against this judgment. A petition for staying of execution of the judgment dated March 13, 1980 was submitted. Para 2 of that application is as follows:

That the petitioner is in possession of the disputed shop, being shop No. 6. The petitioner is running her business of repairs of motor vehicles and motor parts in the said shop and if she is evicted therefrom she will be put to an irreparable loss, this business is the only source of livelihood of of the petitioner and her family.

This petition was supported by her affidavit. In para 3 of the affidavit, it was stated by her 'with reference to the petition for stay, that the averments made in the said petition are true to my knowledge; that I believe the legal submission to be true and that nothing has been concealed.' It maybe stated here that on the date when she filed the petition for stay of execution of the judgment of the Court dated March 13, 1980 passed in Civil Regular Second Appeal No. 467 of 1973, she asserted that she was in possession of shop No. 6 and has been carrying her business in it and that in case she is evicted, she would he put to irreparable loss as the business carried on by her in that shop is source of livelihood of her and her family. It has not been controverted that the suit was filed by her adult son Richhpalsingh on March 31, 1980. The Supreme Court dismissed the special leave petition on October 6, 1980. The application for grant of temporary injunction was filed on October 6, 1980 by Richhpalsingh. In the stay petition before the Supreme Court joint possession was not pleaded. From these facts, it is to be seen whether there has been intentional, deliberate, flagrant or purposeful breach

of undertaking by the non-applicant or not?

17. Before we do so, let us examine the decisions having bearing on on the question, which may provide guidelines for determining the aforesaid question before us.

18. The facts in Gaur Gopal Dutt and Ors. v. Smt. Shantilata Mitra and Ors. : AIR1976 Cal475 , are some what similar to the facts of the case in hand, and they have been noticed in detail by the learned single Judge add we would not like to restate them. It was observed in that case as under:

It will be a sad day for the Court if the Court allows the solemn undertaking given to this Court to be more papers signifying nothing. The parties and litigants must know and appreciate that they should not be allowed to treat the solemn undertaking given to this Hon'ble Court like a child's play. Undertaking to Court and legal rights are entirely different and separate matters.

The sanctity of the undertaking was emphasized in that case. The contemners were held guilty of contempt and a fine of Rs. 1000/- was imposed on each one of them and they were also ordered to suffer imprisonment for a fortnight each and it was also observed that such an imprisonment will nor be carried out if they conform to their undertaking to Court and vacate the promises in suit and put the applicant in possession thereof within a week. The learned single Judge has noticed in detail the facts in Salamuddin and Ors. v. Sharfuddin AIR 1980 Cal 39, but we will like to briefly notice them here also. In that case, an application for ejectment was moved by the landlord against the tenant and an order of eviction was passed on August 18, 1967. as no appeal was preferred, the order became final. The tenant died in 1968 leaving behind a widow, three sons and two daughters. The widow also died in January, 1975. One of the tenant's son and daughter, namely and Mst. A, filed objections under Sections 3 and 4 of the Delhi Rent Control (Amendment) Act, 1976, claiming to be covered by the definition of the term 'tenant' and could not be ejected in execution of the eviction order. The objections were dismissed. They preferred appeal which was also dismissed. During the pendency of the appeal, the objectors prayed for stay of execution of the eviction proceedings. The stay was granted on the applicants' furnishing

security for the due performance of the decree and A's father-in-law gave a surety bond. The objectors preferred a second appeal in the High Court The objectors did not press their appeal and prayed for time to vacate the premises by December 31, 1977. He gave an undertaking to this effect to the Court which was accepted. The appeal was dismissed. A direction was made that the order of the eviction will not be executed before December 31, 1977, A few days before December 31, 1977. H, another son of A filed a suit for declaration claiming that the eviction order passed against M was inexecutable against him and an interim injunction restraining the landlord from executing the eviction was sought. It was declined. An application was moved by the landlords for execution, One MS filed objections in the execution proceedings. While the objections were pending, the landlords submitted an application for taking action for contempt on February 6, 1978 against S on the basis of the undertaking given by him. A contention was raised on behalf of S that he is helpless in delivering the possession as members of the family of H, who was lodged in jail are residing in the disputed premises and they did not allow him to deliver the possession and did not vacate the same. It was observed by the learned Judge that how can it now be urged with any show to reason that S is unable to deliver the possession. On these facts, it was found that the breach was wilful and that he (S) has broken the terms of the undertaking. It was further observed that was a case of blatant breach of the undertaking given to and accepted by a Court of law. S's counsel was present on April 7, 1977. He made a statement in the same terms. The learned Judge observed that H's suit and M.S.'s objection were engineered proceedings, which seems to have been brought at the instance of Section. The observations were objected to but the learned Judge was of the view that they were not without reasonable basis. The learned Judge observed as under:

the course of proceedings and the conduct of the parties, their relationship all suggest that the suit and the objections are intended to delay delivery of possession, in any event Salamuddin is not released from his undertaking. Once a party has given an undertaking to the court he is bound by its terms. I found my decision on Salemuddin's undertaking given to the court on 7th April, 1977 and the breach of that undertaking. The terms of the undertaking and the breach are clear beyond question. Salemuddin is guilty of the breach of the undertaking. The

breach of an undertaking is liable to be visited by the some punishment as breach of an injunction. Salemuddin is, therefore, punishable in contempt. This is my conclusion.

(Emphasis added).

As regards the argument that S's helplessness on the part of the contemner, though technically there is a breach, it is not wilful, the learned Judge observed as follows:

It is a case of wilful, deliberate and flagrant breach of the undertaking given to a court of law. The entire course of proceedings right from 1976 when the objections were filed clearly shows that by one device or other the landlords have been kept out of possession. Even the undertaking before this Court has not been fulfilled. The court has been looked at with impunity. If this breach is not wilful and deliberate how else shall we characterise ii.

(Italics is ours)

The learned Judge found a guilty of contempt of court and sentenced him to simple imprisonment for six months and a fine of Rs. 2000/- under Section 12 of the Act.

19. The facts in Lajukalara v. Nrisingha : AIR1952 Cal669 are that the opposite party did not vacate the premises on or before October 31, 1951 as he had undertaken in the Court to do, both personally and through his advocate. He not only did not vacate the premises, but on November 2, 1951 made an application to the Small Causes Court for an order that a notice may be issued to show cause why execution of the decree should not be stayed till the disposal of a suit which the opposite party intended to file in the Court. The application was made under the provisions of the Presidency Small Causes Courts Act. After having made that application, the opposite party continued to sit on the premises and did not vacate them till December 4, 1951 which was after the Rule had been served upon him. Chakravarti, J, with him P.N. Mukherjee, J., agreed, observed as under:

The Court, it is true, ought not to be vindictive in matters of this kind. At the same time, the Court cannot allow itself to be trifled with. Litigants before this Court ought to understand that they will not be permitted to give undertakings to this Court and then break them with impunity; far less will they be permitted to have recourse to such dubious means as arming themselves with the orders of a subordinate court in prosecution of a scheme to flout the orders of this Court.

20. The next case that we may notice in Surntennessa Bibi v. Chintasaran Das : AIR1955 Cal182 . In that case, an appeal from an order of ejectment, pending before the High Court, a joint petition of compromise was filed by the parties whereby the tenant, while supporting the petition by an affidavit, gave to the Court an unconditional and unqualified undertaking that he will vacate the premises on a certain named date and the appeal was disposed of in terms of the petition of compromise under the provisions of Order XXXIII, Rule 3, CPC. The tenant failed to give vacant possession on the named date. It was held that he was guilty of a delibarate breach of the personal undertaking given by him to the High Court. It was observed:

It is settled law that breach of an undertaking given to a Court by a person in a pending proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt.

From the undertaking that the non-applicant gave on March 13, 1980 as well as from what she stated in her stay petition in the Supreme Court supported by her affidavit and from what she represented before the learned single Judge during the pendency of the contempt application on November 26, 1980, it is clear that she claimed herself to be in possession and at no point of time she represented that she is not in a position to deliver vacant possession.

21. We have no hesitation in holding that the non-applicant had deliberately flouted the undertaking given by her. The learned Single Judge was right when he held that there was wilful breach of the undertaking given by the non-applicant.

22. Before we examine the other contentions, raised by the learned Counsel for the non-applicant-appellant, we should like to say a few words about the

authorities relied on by him.

23. What was held by a learned single Judge of the Patna High Court in K.N. Sinha v. Sahdeo Jha 1977 Cr. L.J. 1174 is that the essential ingredient for a civil contempt is 'wilful disobedience' and not any and every disobedeince, due to various reasons and further that the disobedience was wilful has to be proved; the expression connotes purposeful and clear intention to flout. Wilful breach of undertaking given to Court is a civil contempt within of Section 2(h) of the Act. We have already held that for making out a case of civil contempt as envisaged by Section 2(h) of the Act, the breach should be wilful, i.e., deliberate, intentional, purposeful and with an intention to flout.

24. So far as Pushpabahan v. Naraindas Badlani : 1979 CriLJ960 is concerned, while considering Section 2(b) of the Act, their Lordships held that failure to honour undertaking given to Court on the basis of which the matter was compromised and settled, amounts to civil contempt on showing of wilful disobedience of the order of the Court. We shall also deal with this authority later on at appropriate stage. In Baburam's case : 1979 CriLJ952 , there was no undertaking at all and, therefore, the question of breach of such undertaking did not arise. On the facts, it was held that disobedience of compromise, decree or order does not amount to contempt. In this case, as stated above, the learned single Judge, in our opinion, was right in holding that the non-applicant had committed a wilful breach of the undertaking.

25. It was next argued by Mr. Bhoot that the learned single Judge was not right in awarding punishment of imprisonment to the non-applicant on the ground that she had committed breach of the undertaking given by her on March 13, 1980 and it is only in the exceptional circumstances where the Court holds that imposition of fine will not meet the ends of justice and that a sentence of imprisonment is necessary.

26. Before we proceed to examine the above argument of Mr. Bhoot, we may state as to what is the object of punishing for contempt of court.

27. It was observed in Advocate General Bihar v. M.P. Khair Industries AIR 1980 SC 966 that the Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for

contempt of court, not in order to protect the dignity of the Court against insult or injury as the expression 'contempt of Court' may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced obstructed or interfered with. Their Lordships have quoted from Effutt v. U.S. (1954) 348 US 11:

It is a mode of vindicating the Majesty of law, in its active menifestation against obstruction and outrage.

In Jannison v. Bakar 1972 (1) All ER 997 it was observed as under:

The law should not be seem to sit by limply, while those who defy it go free, and those who seeks its protection lose hope.

It is clear from Sub-section (3) of Section 12 of the Act that if in the opinion of the Court, the sentence of fine will not meet the ends of justice and that a sentence of imprisonment is necessary, then, the Court may direct for detaining the contemner in a civil prison for a period not exceeding six months. In this case as we have held above, there was wilful breach of the undertaking which the non-applicant gave on March 13, 1980. She did not deliver the vacant possession of shop No. 6 before the expiry of two months from that day. She preferred a petition for special leave before the Supreme Court on April 27, 1980 and obtained exparte stay order on May 7, 1980. The petition for special leave was dismissed on October 6, 1980. After the dismissal of the special leave petition by the Supreme Court, her adult son Richhpalsingh moved an application for grant of temporary injunction on October 8, 1980 restraining the applicant from taking possession in execution of the decree that was passed against her. In these circumstances, we are called upon to determine the correctness of the order of the learned single Judge when he directed to sentence the non-applicant to simple imprisonment of one month and also to pay a fine of Rs. 500/- and the costs of the application.

28. In this connection, considerable reliance was placed by Mr. Bhoot on Pushpabahan's case : 1979 CriLJ960 . Having regard to the facts and circumstances of that case, their Lordships held that theirs are no special reasons for sending the appellants to jail and for the sentence of imprisonment, the

appellants were instead sentenced to a fine of Rs. 1000/- each and in case of default, 15 days' simple imprisonment. That case is not of any avail and is distinguishable. Respondent No. 1 had given loan of Rs. 50000/- to the applicants on certain condition. The loan was not repaid. Respondent No. 1 filed a complaint under Section 420, IPC and during the pendency of the complaint, the parties compromised, on the basis on which, the Court passed by the following order:

The accused has given an undertaking to the court that he shall repay the sum of Rs. 50000/- to the complainant on or before July 21, 1972 with interest as mentioned on the reverse. In view of the undertaking, I permit the compromise and acquit the accused.

On violation of the appellant of the undertaking, respondent No. 1 moved the High Court which held them guilty for civil contempt and sentenced them to one month's simple imprisonment. The Supreme Court, upheld the finding that the appellants had committed wilful disobedience of the order of the court by committing a serious breach of the undertaking given to the court on the basis of which alone the appellants had been acquitted, but altered the sentence and observed as under:

Having regard to these circumstances, therefore, we are satisfied that the present case squarely falls in the first part of Section 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the appellants are sentenced to pay a fine of Rs. 1000/- each. In case of default 15 days' simple imprisonment. Four weeks' time to pay the fine.

It was also observed as follows

A close and careful interpretation of the extracted Section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass as entence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of

imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

In Bajranglal Khemka's case : AIR1950 Bom336 , the learned Judges dismissed the appeal with costs and confirmed the order of the learned single Judge and modified the order to the extent that as the time given by the learned Judge for carrying out the requisitions had expired, the time was extended for one month from that date. In Lajuklate's case : AIR1952 Cal669 , after holding the opposite party guilty of contempt of court directed that he be detained till the rising of the Court and to pay a fine of Rs. 50/- failing which he will be committed to civil prison for seven days. In Suretennessa Bibi's case : AIR1955 Cal182 , learned Judges convicted the opposite party for having committed an act of contempt and sentenced him to simple imprisonment for three months and to pay a fine of Rs. 1000/-.

Another feature of the case is that the appellant gave no sign of even regret at any stage not to mention an apology of any kind. Even in this Court, learned Counsel for the appellant took up the impossible position that there had been no breach of any undertaking. We agree with the High Court that this is a case of perverse and deliberate flouting of undertakings given by a litigant who, evidently, had no intention to abide by them. The undertakings seemed to have been taken very lightly by him as mere cloaks for obtaining an order which would not have been passed but for the undertakings. The High Court rightly observed that it had no option except to convict the appellant and to sentence him to three months imprisonment in civil jail.

The question regarding the contemner to civil prison was also considered in Salasmuddin's case AIR 1980 Cal 39. In that case, the learned Judge sentenced the contemner to simpk imprisonment for a six months and a fine of Rs. 2000/- under Section 12 of the Act. It was observed as under:

I have awarded the maximum punishment, Salasmuddin does not deserve a light sentence. He is contumacious. Everything that he does breathes defiance. With such cases of defiance as this one we have to grapple with hoofs of steel.

The aforesaid decisions of the Bombay and Calcutta High Courts provide useful guideline as to when sentence of simple imprisonment should be awarded to the contemner. Their Lordships of the Supreme Court in Chandubhai's case : [1976]3SCR786 upheld the conviction and sentence awarded to the contemner. The learned single Judge has given reasons after proper application of mind that sentence of imprisonment is necessary as fine will not meet the ends of justice. We have already detailed the reasons which led to the passing of a sentence of imprisonment.

30. Having regard to the facts and circumstances of the case, we are of opinion that the learned single Judge was right when he sentenced the non-applicant to one month's imprisonment and fine of Rs. 500/- and the costs of the application.

31. It was contended on behalf of non-applicant that after acceptance of rent/damages for use and occupation by the applicant after expiry of two months, it was not open to the applicant to move the application praying that the non-applicant should be punished for the wilful breach of undertaking. A decree for arrears of rent and ejectment was passed against the non-applicant. In pursuance of the decree for ejectment, until the date of delivery of the vacant possession of shop No. 6, she was required to pay rent/damages for use and occupation. The non-applicant filed a petition for special leave to the Supreme Court on April 27, 1980. An exparte stay order was granted on May 7, 1980 which lasted till December 6, 1980 when the petition for special leave was dismissed. During the currency of the stay order which was passed by the Supreme Court, there was no question for the non-applicant to vacate shop No. 6 and as she remained in possession, she was required to pay rent/damages for use and occupation. In these circumstances, the acceptance of the rent after the expiry of the period mentioned in the undertaking will not disentitle the applicant to contend that there was wilful breach of the undertaking on the part of the non-applicant, when she failed to deliver the vacant possession of shop No.6 on or before the expiry of the time mentioned in the undertaking. The argument that acceptance of the rent after the expiry of the time mentioned in the undertaking disentitles the applicant from moving the application for taking action for wilful breach of undertaking i.e., thus, rejected.

32. No other point survives for our consideration in this appeal.

33. The net result of the discussion made hereinabove is that the non-applicant gave an undertaking to the court; that there was a wilful breach of that undertaking & as such she is guilty of civil contempt & that having regard to the facts and circumstances, the sentence of imprisonment awarded by the learned single Judge is proper and just. We, however, modify the order to this extent that as the time granted by the learned single Judge for carrying out the undertaking given to the court and to handover the possession of shop No. 6 to the applicant within a week from the date of the order, has expired, we extend that time by one week from today. We uphold the direction of the learned single Judge that the sentence of imprisonment will not be carried out if the non-applicant complies with the undertaking within a week from today.

34 Except with the modification aforesaid, we dismiss the' appeal with costs and confirm the order dated December 9, 1980 of the learned single Judge.

35 Mr. Bhoot states that the appellant intends to file appeal under Section 19(1)(b) of the Contempt of Court Act and prays that the execution of punishment may be suspended.

36. We direct that the execution of punishment shall remain suspended for a period of 60 days from today.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com