

MARUTI UDYOG LIMITED  
v.  
MAHINDER C. MEHTA AND ORS.

OCTOBER 10, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

*Contempt of Courts Act, 1970/Arbitration and Conciliation Act, 1996/Constitution of India, 1950; Article 129:*

*Contempt—Advances obtained by respondents from customers on behalf of petitioner-car manufacturer—Amount not paid to petitioner—Invoking of arbitration agreement—Supreme Court referring the dispute to arbitrator—Arbitrator ordering respondents to furnish security—Non compliance—Contempt Petition—Held: Despite undertaking given before this Court, the alleged contemnors did not furnish any bank guarantee—Application for modification dismissed—Property in possession of Contemnor No.3 sold by them—They not only suppressed material facts but also made wrong representation regarding the value of property allegedly possessed by them—Thus, the alleged contemnors have misled this Court and have committed gross contempt of this Court—It is a fit case to invoke jurisdiction of this Court under Article 129 of the Constitution as also under provisions of 1970 Act—Contemnors directed to undergo imprisonment as indicated in the judgments except contemnor No.3 who had resigned as director of the Company.*

**Respondents were Directors of a Company. The Company obtained various advances from the customers on behalf of the petitioner, a car manufacturer. It, however, did not pay the amount to the petitioner. The petitioner filed a suit for recovery thereof. The respondents filed an application purported to be under Section 8 of the Arbitration and Conciliation Act, 1996. Single Judge of the High Court rejected the application. An appeal preferred thereagainst by the respondents before a Division Bench of the High Court was also**

A dismissed. A Special Leave Petition was filed before this Court. This Court vide its order dated 6.09.2002 referred the subject matter of the dispute to the arbitration of a former Chief Justice of this Court. The Arbitrator vide its order dated 25.03.2003 issued a direction upon the respondents to furnish certain amount of bank guarantee. An award was made on 10.04.2005 as against the Company for a sum of Rs.7.63 crores with interest at the rate of 8% in favour of the petitioner along with costs and expenses. In the meantime, the petitioner has filed the present Contempt Petition. Later, a proposal for settlement was made by Respondent No.1 before this Court relying on or on the basis of the said representation, a Division Bench of this Court formed an opinion that it is possible to settle the dues of the petitioner as also other creditors. By its order dated 9.02.2007, this Court directed that in terms of the proposal, the parties should find out ways and means to sell the property belonging to the first respondent company to settle the dues and also directed the High Court to dispose of the Writ petition on the said issue pending before it. The writ petition having been dismissed by the High Court, the appeal of the respondents and the Company preferred thereagainst was also taken up for hearing along with the Contempt Petition.

E Petitioner contended that by brazenly flouting the order of this Court dated 6.09.2002, the respondents have committed gross contempt of this Court; that the alleged contemnors were bound to comply with the orders passed by the Arbitrator in terms of this Court's order dated 6.09.2002. As they had not furnished bank guarantee pursuant thereto or in furtherance thereof and in fact the alleged contemnors have committed a contempt of this Court; and that that the contempt stands aggravated as even during pendency of this proceeding as also the arbitration proceeding before the Arbitrator, they have sold their flat situate at Bangalore.

G On behalf of respondent-contemnors it was submitted that vide additional affidavits filed by the alleged contemnors, unconditional apology has been tendered; that another affidavit filed by Respondent No. 3 stating that he had tendered his resignation as

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Director in 1997 and the Company has accepted the same; that in another counter affidavit filed by Respondent No. 2 stating that he was not a signatory to the original dealership agreement and was not involved in any of the day to day affairs of the Company; that in counter affidavit filed by Respondent No.1, he had tendered unconditional apology for his inability to raise the resources and furnish a bank guarantee in terms of the order of this Court; that Respondent No. 2 was forced to sell his personal flat at Bangalore to meet his debts and obligations and he was ready and willing to relinquish all rights with the respect to the other property situated at Secunderabad; and that as the Arbitrator has passed the award only against the Company, the interlocutory order passed by this Court having merged with the final award, no contempt of this Court has been committed.

#### Allowing the Contempt Petition, the Court

**HELD: 1.1.** The fact that the Arbitrator issued such a direction is not in dispute. The Arbitrator even otherwise had the jurisdiction to pass interim order in terms of Section 9 of the Arbitration & Conciliation Act. Correctness or otherwise of the said order has not been questioned. Despite undertaking given before this Court, the alleged contemnors did not furnish any bank guarantee. Admittedly, their application for modification was also dismissed. Not only, they went back from the undertaking given before this Court, they also sold away the only property which was in their possession. The property situate at Secunderabad admittedly had been claimed by the State of Andhra Pradesh. The alleged contemnors even did not disclose that the said property was an encumbered one. The same was disclosed only at a later stage. [Para 21] [946-F-H; 947-A]

1.2. If respondents were not in a position to furnish any bank guarantee or otherwise, they could have taken such an unequivocal stand before the Courts. They not only suppressed material facts, but also made a wrong representation that in the event the property at Secunderabad is sold, the price whereof is about 11 crores and, thus, from the sale proceeds the dues of the debtors would be

A satisfied. Such a claim was evidently made, as would now appear, that an application for regularization was pending before the State. The alleged contemnors did not have any subsisting right, title and interest in or over the said property. They could not have made a proposal before this Court for sale of the property only on the basis of a title which they could only derive on happening of a contingency, viz., regularization thereof by the State. A proposal for sale of the property could be made only if the respondents had any subsisting title thereto and not otherwise. Hence, the alleged contemnors have misled this Court and have committed gross contempt of this Court.

C [Paras 22 and 23] [947-A-D]

*Bank of Baroda v. Sadruddin Hasan Daya and Anr.*, [2004] 1 SCC 360 and *Babu Ram Gupta v. Sudhir Bhasin*, [1980] 3 SCC 47; *R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors.*, [2000] 4 SCC 400 and *Rama Narang v. Ramesh Narang and Anr.*, [2006] 11 SCC 114, distinguished.

D 2. Keeping in view the peculiar facts and circumstances of this case and the conduct of the alleged contemnors, this Court is of the opinion that they have committed contempt of this Court. It is eminently a fit case where jurisdiction of this Court under Article 129 of the Constitution of India as also the provisions of the Contempt of Courts Act, 1970 should be invoked. However, the fact that the alleged contemnor No. 3 has resigned, being not in dispute, no action is being taken against him. So far as, the alleged contemnor No. 1 is concerned, he being the Managing Director of the Company, is liable to be punished. He is sentenced to undergo six months imprisonment. The alleged contemnor No. 2 is also held guilty but as he was not the Managing Director, sentencing him three months imprisonment shall meet the ends of justice.

G [Paras 28 and 29] [950-A-D]

CIVIL APPELLATE JURISDICTION : Contempt Petition (Civil)  
No. 289 of 2003.

IN

H Special Leave Petition (Civil) No. 13305 of 2002.

[Under Article 129 of the Constitution of India]

A

Shyam Divan, T.K. Ganju, T. Sudhakar Reddy, S. Udaya Kumar Sagar, Bina Madhavan, Nupur (for Lawyer's Knit & Co.) Pramod Dayal, A.K. Thakur and Nikunj Dayal for the Appellant.

Gopal Subramaniam, A.S.G., Manoj Saxena, Rajnish Kumar Singh, B  
Rahul Shukla, T.V. George, Raghenth Basant, Balaji and Asheesh Jain for  
the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. This contempt petition arises in a somewhat C  
peculiar circumstance. Petitioner herein is manufacturer of cars. Alleged  
contemnors were Directors of a Company known as M/s. Mahalaxmi  
Motors Limited (Company). The Company obtained various advances  
from the customers on behalf of the petitioner. It, however, did not pay  
the amount to petitioner herein. Respondents admitted their liability of D  
the petitioner to the extent of Rs. 7.63 crores in respect of supply of vehicles  
made by it, as would appear from the minutes of the meeting dated  
5.04.1997 which is as under:

“7. MML also provided a letter No. 021/MML/97 dated 5.4.1997 E  
wherein they admitted that there was a shortfall of Rs. 7.63 Cr.”

Respondents also by an affidavit filed before the Andhra Pradesh  
High Court admitted their liability stating:

“15. In this instance also the Petitioner company had on its own F  
given the particulars of the amounts due from it to the complainant  
company by its letter dated 5th April, 1997 wherein it accepted a  
liability of Rs. 763.22 lakhs and also gave the repayment schedule.  
Prior to that it gave a list of all the pending customers at Hybderabad  
and Vijayawada. In fact vehicles have been delivered to meet of G  
these in the said list, and deliveries are still on to the remaining  
persons. The complainant company had been delivering these  
vehicles through other dealers as with the advent of this dispute with  
the Petitioner company it terminated its dealership.”

16. It is respectfully submitted that after the Petitioner company H

A gave the said undertaking to pay off the due about Rs. 763.22  
lakhs, there has been a change in thinking in the concerned officials  
of the complainant company had they started making exaggerated  
claims over and above the amounts actually due to it from customer  
bookings. As far as the Petitioner company is concerned it also  
B made funds available to honour its commitment to the complainant  
company and took a draft for the said amount in May 1997 itself  
which is to the knowledge of the complainant company.”

2. As the Company or its Directors did not pay even the said  
admitted amount to the petitioner, it filed a suit for recovery thereof.  
C Indisputably, there existed an arbitration agreement in the contract entered  
into by and between the parties, Clause 57 whereof reads as under:

“If the differences or disputes, except dispute pertaining to  
termination, shall arise between the parties hereto as to the  
D construction or true intent and meaning of any of the terms and  
conditions herein contained or as to any payment to be made in  
pursuance hereof or as to any other matter arising out of or  
connected with or/ incidental to these presents or as to the rights,  
duties and obligation of either party, such difference or dispute  
E whenever and so often as the same shall arise, shall be referred to  
the Indian Council of Arbitration, New Delhi under their rules for  
the time being in force and the award in pursuance thereof shall  
be binding on the parties.”

3. Relying on or on the basis of the said arbitration agreement, the  
F respondents herein filed an application purported to be under Section 8  
of the Arbitration and Conciliation Act, 1996 (for short “the Act”). A  
learned Single Judge of the Delhi High Court rejected the said application.  
An appeal was preferred thereagainst before a Division Bench which was  
also dismissed. A Special Leave Petition was filed before this Court.  
G Petitioner herein agreed for reference of the disputes and differences  
between the parties to arbitration *inter alia* on the condition that the  
respondents shall deposit the amount or furnish security and/ or comply  
with the directions of the learned Arbitrator in case such directions and/  
or interim orders are passed by the learned Arbitrator in the following  
H terms:

“4. All the parties to this S.L.P. shall by way of affidavit give undertaking to this Hon’ble Court to furnish the security and/ or comply with the directions of learned Arbitrator in case the learned Arbitrator directs any of the parties to furnish the security and/ or comply with any other interim order of the learned Arbitrator.”

The proposed term of reference was also agreed to by the respondents.

4. On the basis of the said representations, this Court by an order dated 6.09.2002 referred the subject matter of the dispute to the arbitration of Justice A.M. Ahmadi, a former Chief Justice of this Court.

5. The question as to whether the respondents should furnish bank guarantee or not came up for consideration before the learned Arbitrator and by an order dated 25.03.2003 a direction was issued upon the respondents to furnish bank guarantee for the sum of Rs. 763.22 lakhs within a period of four weeks from the said date directing:

“Since the documents relied upon by the claimant company in support of its claim for Rs. 763.22 lakhs are in dispute, I am not inclined to make an interim award under section 17 of the Act read with Order 12 Rule 6, CPC. However, I am prima facie satisfied that the claimant company has made out a prima facie case for an interim order directing the respondents to furnish a bank guarantee in the sum of Rs. 763.22 lakhs within a period of four weeks from today. Needless to state that under the Supreme Court order dated 6.9.2002 (paragraph 3) the interim order has to be complied with within four weeks from the date of the order.”

6. An interlocutory application was filed by the respondents before this Court being IA No. 2 of 2003. But, the same was withdrawn on 6.05.2003. An application was thereafter filed by them before the learned Arbitrator for modification of the said order dated 25.03.2003 by offering to furnish property security purported to have been situate at Secunderabad in the State of Andhra Pradesh instead of bank guarantee. Curiously enough, it was not disclosed that the said property was encumbered in more than one way and, as would appear from the

A discussions made hereinafter, the property was being claimed by the State of Andhra Pradesh as having vested in it. However, on or about 28.06.2003, it was disclosed that the property was encumbered. The learned Arbitrator rejected the application for modification by an order dated 2.08.2003 but extended time for furnishing bank guarantee upto 27.08.2003. In the meantime, the petitioner filed a contempt petition before this Court on 26.07.2003.

7. It appears from the records that the respondents herein had given an undertaking not to alienate their assets or encumber or create third party interest in the property at Secunderabad. It is also not in dispute that despite pendency of the aforementioned contempt petition, the property belonging to company at Bangalore was disposed of. It was disclosed before the learned Arbitrator by the respondents in their reply to application under Section 17 of the Act filed by the petitioner and the same was reiterated in the affidavit affirmed by Respondent No. 1 herein on 7.07.2004.

8. On or about 23.07.2004, this Court directed the alleged contemnors to file affidavit disclosing details of their present assets as also that of the Company; pursuant whereto, an affidavit was filed by Respondent No. 1 stating:

- (i) The property of M/s. Mahalaxmi Motors Ltd. at Secunderabad was encumbered.
- (ii) He had a flat at D-1, Maya Apartment admeasuring 800 sq. ft. at Ashoka Road, Bangalore which was sold on 3.02.2004 for Rs. 8,00,700/-.
- (iii) He was the manager of Hyderabad Auto Services and drawing a salary of Rs. 15,000/- p.m.

Petitioner in its reply denied and disputed the said statement and contended that by reason of sale of property at Bangalore, a further contempt has been committed. It was urged that the affidavit of Respondent No. 1 not only amounted to suppression of facts but also perjury.

An award was made on 10.04.2005 as against the Company for a

sum of Rs. 7.63 crores with interest at the rate of 8% in favour of the petitioner along with costs and expenses. A

9. Before this Court, however, a proposal for settlement was made by Respondent No. 1 in terms of an affidavit; paragraph 13 whereof reads thus:

“13. I say that I pray this Hon’ble Court to kindly consider my pecuniary circumstances and helpless position to mobilize monies to an extent of 763.22 lakhs and I pray which inability of mere may not be termed as contempt of this Hon’ble Court. I once again reiterate and pray this Hon’ble Court to kindly consider my adverse financial circumstances and kindly accept the landed property as security which the Petitioner has accepted and consequently the orders passed by the Arbitrator was complied with and thus there is no cause of action to proceed with the present contempt case. Even otherwise I have also established a prima facie case over the title of the said land before the High Court of Andhra Pradesh before the Sole Arbitrator and before this Hon’ble Court. I am even now ready and willing to relinquish all my rights over the landed property in favour of the Petitioner. I further agree that I will execute the General Power of Attorney in favour of the petitioner for the purpose of getting clearance from the Government of Andhra Pradesh and regularization of the land in question in favour of the Mahalaxmi Motors...I will fully cooperate with the Petitioner to get the land transferred in its name or for its disposal and the Respondent unhesitatingly sign on every paper which the petitioner brings before him in the matter of the said landed property...” B C D E F

10. Relying on or on the basis of the said representation made by the respondents, a Division Bench formed an impression that it is possible to settle the dues of the petitioner as also other creditors. By an order dated 9.02.2007, therefore, it was directed: G

“(1) The parties hereto should find out ways and means to sell the property belonging to the first respondent company herein, situate at Secunderabad, jointly by the petitioner as also the Indian H

A Overseas Bank, Hyderabad. For the said purpose, the Chief  
Manager of the Indian Overseas Bank, the Collector of the  
Hyderabad District as also the Managing Director of respondent  
No. 1 Mahendra C. Mehta, who is present in Court today, shall  
meet in the office of the Collector, Hyderabad on 26th February,  
B 2007 at 11.00 a.m.

(2) As it is stated that a writ petition bearing No. 15920/2004 is  
pending before the High Court of Andhra Pradesh in regard to the  
said property, we request the Chief Justice of the High court to  
consider the desirability of placing the said writ petition before an  
C appropriate Bench for its very early disposal.”

11. In furtherance of the said order, the Collector of the Hyderabad  
District held a meeting. In the said meeting, it transpired that the property  
in question, which is in dispute, belonged to the State of Andhra Pradesh  
D and it claiming right, title and interest therein had initiated a proceeding  
against the respondents in respect thereof under the provisions of the  
Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. The said  
proceeding was decided in favour of the State of Andhra Pradesh.

12. Respondents filed a writ petition before the High Court  
E thereagainst being Writ Petition No. 15920 of 2004. The said writ petition  
having been dismissed, the appeal of the respondents and the Company  
preferred thereagainst was taken up for hearing along with this matter and  
by reason of a judgment and order of this date, we are disposing of the  
same also.

F 13. The Collector filed a status report *inter alia* noticing:

“10. It may be informed to this Hon’ble Court that on detailed  
enquiry by the revenue officials it is learnt that one Sri R. Praveen  
Kumar, S/o R. Vijay Kumar, claiming to be GPA holder (Un-  
G registered) of M/s Mahalakshmi Motors Ltd. is reportedly running  
Mahalaxmi Motors workshop on the suit schedule land but on  
ground a company under the name and style of M/s Hyundai  
Lakshmi is being run, involving business of buying, selling and  
servicing of vehicles. Further, there are two prominent display  
boards at the entrance showing as “Hyundai Lakshmi”. The copy  
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of the GPA furnished by Sri Praveen Kumar, is not registered and has no legal authenticity. This office has reason to believe that a third party is in illegal possession of the land and the relationship between M/s Mahalaxmi Motors and present occupant is not known. In this regard, necessary action is being initiated separately...”

It was, therefore, opined:

“11. The very fact that M/s Mahalaxmi Motors have applied for regularization proves that they are in illegal occupation of Government land. Thus, they do not have any locus standi over the suit scheduled property. Further the intention of selling of the land as proposed by the Indian Overseas Bank and Maruti Udyog Ltd. cannot be considered at this juncture as the suit property does not belong to Mahendra C. Mehta and others and the suit scheduled land is required for public purpose.”

14. Mr. T.K. Ganju, learned senior counsel appearing on behalf of the petitioner would submit that by brazenly flouting the order of this Court dated 6.09.2002, the respondents have committed gross contempt of this Court. It was submitted that the alleged contemnors were bound to comply with the orders passed by the learned Arbitrator in terms of this Court’s order dated 6.09.2002. as they had not furnished bank guarantee pursuant thereto or in furtherance thereof and in fact the alleged contemnors have committed a contempt of this Court.

It was furthermore contended that that the contempt stands aggravated as even during pendency of this proceeding as also the arbitration proceeding before the learned Arbitrator, they have sold their flat situate at Bangalore.

15. Mr. Shyam Divan, learned senior counsel appearing on behalf of the alleged contemnors, on the other hand, has drawn our attention to the additional affidavits filed by the contemnors herein tendering unconditional apology. We would refer to only one of them filed by Respondent No. 1. It was averred therein:

“1. I unconditionally apologize to this Hon’ble Court with respect

A to the contempt which is the subject matter of the Contempt  
Petition. I have highest respect for the judiciary and for the judges  
of this Hon'ble Court as well as the Ld. Arbitrator.

B 2. I was unable to arrange for Bank Guarantee of Rs. 763.22 lakhs  
since the company was not in a position to mobilize resources.  
Moreover, I did not have personal resources to raise funds and to  
ensure that the Bank Guarantee is provided.

3. I request this Hon'ble Court to accept the unconditional apology  
tendered by me."

C A further reply has also been filed by the respondents stating:

D "6. That the District Collector has needlessly and unwarrantly  
traced earlier rejection of the regularization proposals by the  
government by cryptic and non-speaking order and consequent  
filing of writ petition No. 15 of 2000 by the respondent when the  
matter was remitted back to government to pass appropriate orders  
taking into account the recommendations of the District Collector  
and the Commissioner of Land Revenue dated 22.10.1997 and  
30.9.1997 which facts are already in the record of this Honourable  
E Court. While so doing, the District Collector, Hyderabad made a  
false report that a report was submitted to the government that the  
lands are required for public purpose like establishment of  
hospitals, schools, play grounds, etc., referring to his report dated  
17.6.2003 and his report is not based on the recommendations  
F based by him and the Commissioner Land Revenue referred to  
above which is definitely an after thought and to prejudice the mind  
of this Honourable Court. Further it is not a relevant issue at this  
juncture which he never pleaded before any of the courts below.

G 7. The Respondent submits that the Collector, Hyderabad  
deliberately, wantonly and maliciously sent a misleading report to  
this Hon'ble Court. When the District Collector himself  
recommended for the regularization of the lands in question in  
favour of the Respondent collecting market rate at Rs. 1240/- per  
sq. yard in his letter No. 14-87-89/1993 dated 22.10.1994, the  
H District Collector suppressed this letter and quoted a different one.

In fact the Hon'ble High Court directed the Government to take into consideration the same letter dated 22.10.1994 in its order dated 30.7.2001 in W.P. No. 15/2000. the District Collector, Hyderabad deliberately suppressed the said letter and gave a false and misleading report to this Hon'ble Court and this is highly reprehensible." A B

In regard to possession of the property by M/s. Lakshmi Hyundai, it was stated:

"11. The Respondent submits that it is not true to say that the land in question is under illegal occupation of third party Sri R. Praveen Kumar S/o Vijaya Kumar Rao as reported by the District Collector, Hyderabad. The fact remained is that the Managing Director of M/s Mahalaxmi Motors Ltd., and Lakshmi Hyundai had association with each other. M/s. Lakshmi Hyundai has its own showroom and workshop at Humayathnagar, Hyderabad. That company has some customers in the Secunderabad area and for the convenience of its customers the Managing Director of M/s. Hyundai Lakshmi sought the oral permission of the Managing Director of M/s. Mahalaxmi Motors to carry on servicing of the cars of its customers in the workshop of Mahalaxmi Motors Ltd. Except this there is no jural relationship between M/s. Mahalaxmi Motors Ltd., and Hyundai Lakshmi Motors. The latter has no right, claim, title or interest over the workshop of M/s. Mahalaxmi Motors Ltd., and no financial transaction took place between these two companies. M/s. Mahalaxmi Motors Ltd. ever executed any GPA either registered or unregistered in favour of anybody muchless in favour of R. Praveen Kumar S/o Vijaya Kumar Rao." C D E F

16. Our attention was drawn to an affidavit affirmed by the alleged Contemnor No. 3 wherein he stated that he was only an employee of the Company and he was made Director of the Company only because of his experience in the sale and service of automobiles. He has allegedly tendered his resignation as Director in 1997 and the Company has accepted the same. G

17. Our attention was further drawn to a counter affidavit dated

A 6.04.2004 filed by Respondent No. 2 wherein it was stated that he was not a signatory to the original dealership agreement and was not involved in any of the day to day affairs of Mahalxmi Motors Ltd.

B 18. Our attention was also drawn to a counter affidavit dated 16.2.2004, and further affidavits dated 1.08.2004, 5.08.2005 and 4.10.2005 wherein, as noticed hereinbefore, Respondent No. 1 had tendered unconditional apology for his inability to raise the resources and furnish a bank guarantee to the tune of Rs. 763.22 lakhs. Respondent No. 2 had also stated that he was forced to sell his personal flat at C Bangalore to meet his debts and obligations and he was ready and willing to relinquish all rights with the respect to the land in Secunderabad.

D 19. It was furthermore submitted that as the learned Arbitrator has passed an award only against the Company, the interlocutory order passed by this Court having merged with the final award, no contempt of this Court has been committed.

E 20. The fact of the matter, as noticed hereinbefore, clearly goes to show that the alleged contemnors not only prevaricated their stand at different stages in different proceedings, they intended to prolong the litigation one way or the other. They had accepted their liability at least to the extent of 7.63 crores. They must have invested the said amount. The parties hereto accepted that the disputes and differences pending between them should be referred to an arbitrator. It was agreed to by F the petitioner only on the representation made by the alleged contemnors that they would furnish a bank guarantee provided an order is passed in that behalf by the learned Arbitrator.

G 21. The fact that the learned Arbitrator issued such a direction is not in dispute. The learned Arbitrator even otherwise had the jurisdiction to pass interim order in terms of Section 9 of the Act. Correctness or otherwise of the said order has not been questioned. Despite undertaking given before this Court, in the aforesaid matter, the alleged contemnors did not furnish any bank guarantee. Admittedly, their application for modification was also dismissed. Not only, they went back from the H undertaking given before this Court, they also sold away the only property which was in their possession. The property situate at Secunderabad

admittedly had been claimed by the State of Andhra Pradesh. The alleged A  
contemnors even did not disclose that the said property was an  
encumbered one. The same was disclosed only at a later stage.

22. If they were not in a position to furnish any bank guarantee or B  
otherwise, they could have taken such an unequivocal stand before the  
courts. They not only suppressed material facts, but also made a wrong  
representation that in the event the property at Secunderabad is sold, the C  
price whereof is about 11 crores and, thus, from the sale proceeds the  
dues of the debtors would be satisfied. Such a claim was evidently made,  
as would now appear, that an application for regularization was pending D  
before the State. The alleged contemnors did not have any subsisting right,  
title and interest in or over the said property. They could not have made  
a proposal before this Court for sale of the property only on the basis of  
a title which they could only derive on happening of a contingency, viz.,  
regularization thereof by the State. A proposal for sale of the property  
could be made only if the respondents had any subsisting title thereto and  
not otherwise.

23. We, therefore, are of the opinion that the alleged contemnors  
have misled this Court and have committed gross contempt of this Court.

24. In *Bank of Baroda v. Sadruddin Hasan Daya and Anr.*, [2004] E  
1 SCC 360, even in relation to a consent order, this Court held:

“10. A legal plea taken by a party that a decree passed by a court  
(including Supreme Court) is without jurisdiction and therefore a  
nullity, will not normally amount to a contemptuous statement. F  
However, the written submission made by the respondents before  
the Debts Recovery Tribunal, wherein they said that the Supreme  
Court had no jurisdiction to pass the decree dated 28-7-1999 and  
the decree had no validity and is a nullity, has to be seen in the  
factual background of the case. It may be noted that the decree G  
had been passed on the basis of consent terms. It is not the case  
of the respondents that any fraud was played upon them by any  
party when they entered into a settlement and signed the minutes  
of the decree. It appears that the respondents from the very  
inception had no intention of paying the amount, but they agreed H

A for a settlement and consent terms only for the purpose of gaining  
time whereunder instalments were fixed. They adopted the same  
B procedure in the suit instituted by Oman International Bank,  
SAOD, wherein they offered the same property to remain under  
attachment till the decree was satisfied. Placing the same property  
under attachment is bound to create problems for the decree-  
holders of either of the suits as no one wants to buy such property  
C in court auction which may land him in further litigation. The  
respondents intentionally and deliberately adopted such a course  
of action so that further hurdles may come in the way of execution  
of the decree and therefore it is clearly a case of wilful breach of  
an undertaking given to the Court.”

25. This Court in *Babu Ram Gupta v. Sudhir Bhasin*, [1980] 3  
SCC 47 held:

D “10...Indeed, if we were to hold that non-compliance of a  
compromise decree or consent order amounts to contempt of  
court, the provisions of the Code of Civil Procedure relating to  
E execution of decrees may not be resorted to at all. In fact, the  
reason why a breach of clear 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  
F 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 concerned is qua the party not qua the court, and, therefore,  
G 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  
H 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 undertaking does not arise.” A

26. Mr. Divan, however, relied upon a decision of this Court in *R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors.*, [2000] 4 SCC 400 wherein it has been held: B

“7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court’s dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court...” C

This Court in *R.N. Dey* (supra) has categorically held that the contempt is a matter between the court and the contemnor. Unlike *R.N. Dey* (supra), here in the respondents are not disputing their liability to pay the awarded amount. Therein no undertaking had been given. D

27. In *Rama Narang v. Ramesh Narang and Anr.*, [2006] 11 SCC 114 whereupon reliance has been placed by Mr. Divan, the question revolved round the alleged violation of certain clauses of the consent terms. In that case the consent order did not contain an undertaking. It, on that premise, opined: E

“24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the court’s jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.” F  
G

A This Court in *Rama Narang* (supra), thus, clearly laid down the proposition of law that when an undertaking has been recorded in accordance with law, a contempt proceeding would be maintainable.

B 28. We, therefore, keeping in view the peculiar facts and circumstances of this case and the conduct of the alleged contemnors, are of the opinion that they have committed contempt of this Court. We are clearly of the opinion that it is eminently a fit case where jurisdiction of this Court under Article 129 of the Constitution of India as also the provisions of the Contempt of Courts Act, 1970 should be invoked.

C 29. However, the fact that the alleged contemnor No. 3 has resigned, being not in dispute, no action is being taken against him. So far as, the alleged contemnor No. 1 is concerned, we are of the opinion that he being the Managing Director of the Company, is liable to be punished. He is sentenced to undergo six months imprisonment. The alleged contemnor  
D No. 2 is also held guilty but as he was not the Managing Director, we are of the view that sentencing him three months imprisonment shall meet the ends of justice.

E 30. The contempt petition is allowed with the aforementioned directions.

S.K.S.

Contempt Petition allowed.