

THREE CHEERS ENTERTAINMENT PVT. LTD. & ORS.

v.

C.E.S.C. LTD.

(Civil Appeal No. 6156 of 2008)

OCTOBER 20, 2008

[S. B. SINHA AND CYRIAC JOSEPH, JJ.]

Contempt of Courts Act, 1970/Contempt of Courts (Calcutta High Court) Rules, 1975 – Interlocutory order of Court restraining the defendant in a defamation suit from telecasting and broadcasting a programme which allegedly defamed the plaintiff – On the date of confirmation of the order, Joint Receivers appointed ex parte – Direction to them to take possession of materials pertaining to the programme – Defendants not handing over the materials to the Joint Receivers, stating that they had already given the same to the officials of plaintiff – The fact affirmed on affidavit before Court – Trial directed to find out the correctness of the statement of the defendants – During pendency of trial, initiation of Contempt proceedings – Defendants held guilty of Contempt of Court – On appeal held: In the facts of the case, defendants not guilty of contempt – Contemnors did not violate the interim order passed by the High Court – There was no basis for appointment of Joint Receivers – Moreover, appointment of the Receives, without notice to the contemnors was not correct – Initiation of contempt proceedings without conclusion of the trial to find the correctness of the facts on the basis of which contempt was initiated was also not correct – Contempt proceedings dropped.

A programme produced by appellant-company was telecast on television, alleging some illegal acts and malpractices on the part of respondent-Calcutta Electricity Supply Company Ltd. (CESC). Respondent filed a defamation suit before High Court. It also sought interlocu-

A tory injunction restraining the appellants from publishing
by broadcasting/telecasting any defamation suit before
High Court. It also sought interlocutory injunction restrain-
ing the appellants from publishing by broadcasting/tele-
casting any defamatory programme similar to the one in
B question and to restrain them from re-telecasting and
showing a repeat telecast of the programme. Third interim
relief was sought to appoint a receiver over all the materi-
als and documents connected with the programme in
question. Single Judge of High Court on 17.5.2004 passed
C *ex-parte* ad interim order of injunction in terms of the first
two prayers. On 30.11.2005, when the matter came up for
confirmation of the *interim* order, the court in terms of the
third prayer of the application, appointed Joint/Receivers
D with a direction to take possession of all material docu-
ments, films and materials connected with the programme
in question. The Joint/Receivers, on 14.1.2008, when vis-
ited the office of the appellants and asked to hand over
the documents and the materials, appellants expressed
their inability to do so stating that such documents had
E already been handed over to the representatives of CESC
when they had come to the office of the Company on
11.1.2006. Minutes of Meeting pertaining to the visit were
submitted before the Court. Appellant No. 3 too affirmed
on affidavit as regards the events on 11.1.2006. The Court
F by its order dated 15.3.2006 directed trial on the issues
whether the CESC officials visited the office of the appel-
lants and whether the documents and materials con-
nected with the programme in question were actually
handed over to CESC officials. While the trial on the above
issues was pending before another Judge, respondents
G initiated contempt proceedings before the Judge who had
passed the order dated 30.11.2005. Each one of the con-
temners was held guilty of contempt of court for not hand-
ing over the documents and materials to the Joint Receiv-
ers. The appeal against the order was dismissed by Divi-
H sion Bench of High Court. Hence the present appeal.

During pendency of appeal before this court, appellant, in the proceedings before High Court, undertook to produce the CDs containing the programme in compliance of the interim order. The Court imposed a fine of Rs. 10,000/- on each of the contemner. On the next day of hearing, the case was further postponed for non-compliance of the order.

Allowing the appeal, the Court

HELD: 1.1 The facts and materials of the instant case, do not establish that there was any willful disobedience or contumacious conduct on the part of the appellant. Appellants are charged with commission of contempt of the High Court on two counts that : (1) they did not hand over the materials to the Joint Receivers; and (2) they affirmed a false affidavit regarding the events on 11.1.2006. The High Court failed to notice that Single Judge of the High Court passed an interim order only in terms of prayers (a) and (b) of the interlocutory application. It is not a case of the respondent that the appellants have violated the terms of the said *ex parte ad interim* order. [Para 27] [806-F-G]

1.2 There was no basis to appoint the Joint Receivers. No prayer was made therefor on the said date. No application was filed. The matter was placed before the Single Judge only for confirmation of the *ad interim* order passed and not for deciding on the prayer (c) concerned. A bare perusal of the said order would clearly indicate that even a *prima facie* finding had not been arrived at warranting appointment of receiver. No reason has been assigned in support thereof. No jurisdictional fact that it was just and proper to appoint a receiver as is required under Order XL Rule 1 CPC was recorded far less why the same was found to be necessary and emergent. In any event, a show-cause notice at the first instance should have been issued. [Para 29] [807-C-E]

A 2.1 The Single Judge of High Court himself had noticed that the appellants were not represented on date when the order appointing Receivers was passed. In the
B aforementioned premise, it was obligatory on the part of the respondents and/or the High Court itself to communi-
C cate the said order to the appellants. The High Court appears to have proceeded on the presumption that the appellants were aware thereof despite a categorical stand taken by respondent itself that the said order had not been served. Even the High Court did not communicate the order to the appellant which course ordinarily should have been resorted to. [Paras 27 and 28] [806-G-H; 807-A-B]

D 2.2 The Court even did not bother to see that the order of the court was intimated to the appellants. Why the order dated 30.11.2005 was not made known to the appellants till 10.1.2006 is baffling and despite the same it was observed that the said order was within the specific knowledge of the appellants. [Para 33] [809-H; 810-A]

E 3.1 The proceedings started on the basis of the minutes of meeting dated 14.1.2006 presented by the Joint Receivers before the High Court. The enquiry was directed for the purpose of finding out as to whether the CECS officials had indeed visited the office of the Company on 11.1.2006 and whether the CDs and cassettes had been handed over to its officials or not. It may be a step for initiation of a contempt proceeding but such a trial was being conducted for the purpose of finding out the truth as to whether the court's order dated 30.11.2005 had, in fact, been violated or not. If the trial had begun with a view to find as to whether the statement of the appellant that he had handed over the materials to the CECS officials was correct or not, another proceeding should not have been initiated simultaneously before another Judge. [Paras 31 and 34] [807-G-H; 808-A; 810-C]

H *Mrityunjoy Das and Anr. v. Sayed Hasibur Rahman and*

Ors. 2001 (3) SCC 739; *Chhotu Ram v. Urvashi Gulati and Anr.* 2001 (7) SCC 530; *Anil Ratan Sarkar and Ors. v. HIRAK Ghosh and Ors.* 2002 (4) SCC 21; *Dr. Prodip Kumar Biswas v. Subrata Das and Ors.* 2004 (4) SCC 573; *Sushila Raje Holkar v. Anil Kak (Retd.)* 2008 (7) SCALE 484 – relied on. A

3.2 When the trial was incomplete, there was no reason to hear the contempt proceeding on affidavits. Even if that was done, reliance was sought to be placed on the depositions of the witnesses in the said enquiry, which was admittedly incomplete. Witnesses affirming affidavits before the Single Judge were not being cross-examined so as to enable the counsel for the parties to draw their attention to the earlier statement made by them in terms of Section 145 of the Evidence Act. [Para 31] [808-D-E] B C

4. The purpose and object of initiation of a proceeding under the provisions of Contempt of Courts Act is only to see that the order of the Court is complied with and not to unnecessarily proceed against persons as if they are petty criminals. [Para 33] [809-E] D

5. Imposition of Rs.10,000/- upon the appellants is also not justified. No provision in the Act or any precedent have been shown that a court may impose sentences upon the contemnors in piece meal. [Para 36] [812-G] E

6. As orders of injunctions in terms of Prayer (a) and (b) are in operation and CDs are already in possession of the Court, in exercise of jurisdiction under Article 142 of the Constitution of India it is directed that the contempt proceedings itself be dropped. The amount of fine deposited by the appellants should be refunded by the High Court forthwith. [Para 38] [813-D] F G

CASE LAW REFERENCE

2001 (3) SCC 739	Relied on.	Para 34
2001 (7) SCC 530	Relied on.	Para 34

A	2002 (4) SCC 21	Relied on.	Para 34
	2004 (4) SCC 573	Relied on.	Para 34
	2008 (7) SCALE 484	Relied on.	Para 34

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6156
of 2008

C From the final Judgment and Order dated 22.7.2008 of the High Court at Calcutta in A.P.O. No. 163 of 2008 in APOT NO. 125 of 2008 in CC No. 147 of 2006 in GA No. 1812 of 2004 in CS NO. 126 of 2004

Gourab Banerji, Saurav Agrawal, A. Krishnan, Gautam Jha, T.M. Singh and Manik Karanjawala for the Appellants.

D L.N. Rao, K.V. Viswanathan, Abhinesh Menon, Kumar Mihir and Sanjay Kumar (for M/s. Khaitan & Co.) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

E 2. Appellants are before us aggrieved by and dissatisfied with a judgment and order passed by a Division Bench of the High Court of Judicature at Calcutta dismissing their appeal under Section 19(1) of the Contempt of Courts Act, 1970 (for short, 'the Act') and holding them guilty of violation of the Court's order dated 31.11.2005 passed by a learned Single Judge of the said Court.

F 3. Three Cheers Entertainment Pvt. Ltd. (the Company) is a producer of some programmes which are telecast.

G 4. One of such programmes known as 'Khoj Khabar' was telecast by ETV (Bangla) alleging some illegal acts and malpractices on the part of the Calcutta Electricity Supply Company Ltd., (CESC) an undertaking engaged in generation and supply of Electricity in the town of Calcutta.

H 5. On or about 13.5.2004, CESC filed a defamation suit

in the original side of the Calcutta High Court claiming not only damages of 25,00,00,000/- (Rupees twenty five crores only) but also a decree for permanent injunction. Along with the said suit, an interlocutory application marked as G.A.1812 of 2004 was filed claiming, inter alia, the following reliefs :

"a. Injunction be passed restraining the respondents and each one of them by themselves or by their servants, agents or otherwise from publishing or causing to be published by broadcasting/ telecasting any defamatory programmes similar to that as telecast on March 12, 2004 and March 29, 2004 and April 30, 2004 contained in Annexure A and B hereto or otherwise in any manner whatsoever.

b. The respondents be restrained from re-telecasting and/or showing a repeat telecast of the programme 'khoj khabar' shown on March, 12, 2004 and March 29, 2004 and April 30, 2004 at 10 pm and the respondents be directed to hand over the same.

A receiver be appointed over all materials, documents, films, tapes and materials connected the said telecast 'khoj khabar' made on March 12, 2004 and March 29, 2004 and April 30, 2004 at 10 pm and the respondents be directed to hand over the same."

6. Indisputably, on or about 17.5.2004 a learned Single Judge of the High Court passed an ex parte ad interim order of injunction in terms of prayer 'a' and 'b' thereof only.

7. It is now not disputed that although some lawyer had appeared for the appellants in the said suit but no 'Vakalatnama' on their behalf was filed. It is furthermore not in dispute that the said lawyer appeared for a few days and thereafter stopped appearing in the suit or in the said interlocutory matter.

8. Notices having been served upon the appellents, the matter relating to confirmation of ad interim order of injunction

A came up before the learned Single Judge of the High Court on 30.11.2005. While noticing that the defendants in the suit had not opposed the prayers of injunction, although they were earlier represented through counsel, it was opined that apart from the order of interim injunction as prayed for in prayers 'a' and 'b' of the interlocutory application, a receiver should also be appointed, holding :

C "Having regard to the nature of the matter, I think the order of injunction will not subserve the interest of justice as there is possibility to telecast the same from programme recorded in this disc by the defendants and/or their agents and/or servants. In order to prevent further telecasting, or propagating of this slanderous statement I am inclined to pass order in terms of prayer (c) of the petition. Accordingly, Mr. Subrata Mookherjee, Advocate of bar Association, Room No.1 and Mr.Partha Pratim Chatterjee, Advocate of Bar Association, Room No.2 High Court are appointed as Joint Receivers with a direction to take possession of all material documents, films and materials connected with the said programme. "Khoj Khabar' telecast on 12th March, 2004, 29th March, 2004 and 30th April, 2004 at 10.00 pm and also copies of CD, if they are available in that office. The Receiver shall make an enquiry as to whether these cassettes have been distributed to any other person or persons and to whom and the person in charge and/or the director of the first defendant, are directed to disclose by making a statement before the Receiver whether any copy of CD has been distribtd to any other person or persons in any manner whatsoever or not. This matter is otherwise disposed of."

G 9. The learned receivers who were supposed to have taken prompt action failed and/or neglected do so. They did not visit the office of the company for taking possession of the relevant documents and the DV (wrongly stated in the order as CDs) immediately after the said order was passed. It is stated at the H Bar that the time for filing a report was extended.

10. Appellants, however, contend that on 11.1.2006 some representatives of CECS visited their office and asked them to handover all materials connected with the telecast. They were allegedly threatened that if the materials were not handed over, they would be in contempt. A

11. This stand on the part of the appellant is, however, denied and disputed by CESC. B

It now stands admitted that a copy of the said order was not served on the appellants. No copy of the order was sent to them by the respondent. Even the learned Joint Receivers did not intimate the appellant about their appointment. C

12. The Joint Receivers appointed by the High Court, however, visited the office of the appellant on 14.1.2006. They asked the appellants to hand over all the documents and CDs. As according to the appellants such documents had already been handed over to the representatives of the CESC, they expressed their inability to do so. Minutes of meeting were recorded which are to the following terms : D

"In terms of the Hon'ble Courts order, we approached Mr. Sanat Ray to handover the materials documents films connected with the said programme telecast on 12.03.2004, 29.03.2004, 30.04.2004 at 10 am and also the copies of the CDs and also enquired Mr. Ray regarding the CD whether the has or his representative has been distributed to any other person or persons in any manner. E F

We Joint receivers asked Mr. Ray to hand over the CDs, films and materials for the above dates. Mr. S. Ray submits that they never telecast any news through CD, they used to telecast through Cassettes (DV). G

Mr. Ray further submits that they used to show the news programme by DV Cassette only. Not by any film or CD and they did not have any films or documents or master CD or Cassettes with him nor did he hand over did he has hand over to any one. H

A All of us were taken to the Cassette Library by Mr. Ray, we
thoroughly checked each cassette and films and other
documents in the said cassette Library Rooms. In presence
of the abovenamed person we did not find any CD of the
above dates, films, documents and cassettes. We have
B collected a new sealed cassette from the rack of the
cassette Library. It has been submitted by Mr. Ray that
they used to telecast their daily programme through such
cassettes.

C We the Joint Receivers tried our best to get the CD and
Cassettes, documents and films from Khoj Khabar Office
in presence of the plaintiff and their representative but
found nothing.

D Mr. Ray further submits that on 11th January 2006 a group
of four persons who identified themselves as officers of
CESC and staff of Court came to Mr. Ray, and after showing
the Order of the Court dated 30.11.2005 took away the
Cassettes as Mr. Ray was perturbed he could not collect
the names of the persons and record their identity. This
E has been done in presence of some staf of Khoj Khabar
namely :

1. Mr. Shankar Saha who maintains the daily telecast Register.
2. Mr. Ratan Das who maintains the Car records.
- F 3. Mr. Rabi Shankar Saha, Assistant of Ratan Das, and
4. Mr. Sambhu Ghosh, Chief Cameraman.

G However, Mr. Samar Ray lastly stated that he could
recognize those aforesaid persons if he finds them."

H 13. The matter was placed before the learned Single Judge
on 18.1.2006. In view of the aforementioned minutes of meet-
ing, appellant No.3 herein (Sanat Kumar Ray) was asked to
affirm an affidavit as regards the events which purported to have
taken place on 11.1.2006. An affidavit was affirmed.

14. In view of the said affidavit, vis-a-vis, the minutes of meeting prepared by the learned receivers and the stand taken by the respondent company herein, trial was ordered on the following issues by the learned Single Judge in terms of an order dated 15.3.2006 :

"1. Whether any CECS official visited the office of Three Cheers Entertainment Pvt. Ltd. as alleged in paragraph 6 or not?"

2. Whether material documents and material connected with the programme Khoj Khabar and CDs and cassettes were handed over by the said deponent, Sanat Ray CESC officials on 11 January, 2006?"

15. It is not in dispute now that having regard to the change in determination, the trial has begun before another learned Single Judge on and from 9.6.2006 and the same is yet to be completed.

16. The contempt matter, however, keeping in view the provisions contained in Rule 5 and 6 of the Contempt of Courts (Calcutta High Court) Rules, 1975 was placed before the learned Single Judge who had passed the order dated 30.11.2005.

17. The learned Judge proceeded to hear the contempt matter on affidavits filed by the parties although the trial on the aforementioned issues was incomplete.

18. Each one of the alleged contemnors was held guilty of contempt of court on the premise that they have violated the directions issued to them to hand over the documents and DVD Cassettes and other materials to the Joint Receiver.

19. Before taking note of the findings of the learned Judge, we may notice that in the contempt proceedings, the appellants, inter alia, raised the following contentions :

"After examination and cross examination were over on the aforesaid issues the present application for contempt has been taken out on 26th of September, 2006. I am told

A that issue has not been decided nor there is fact findings
as to whereabouts of the DV (mother) cassettes. The
present application has been made for willful and
deliberate violation of the order passed by this Court on
30th November 2005 by not handing over DV (mother)
B cassettes and other materials to the joint Receivers.”

20. The plea of the appellants, therefore, was that even if
they had committed an error in handing over the material and
DV to the representative of the CESC rather than the joint re-
ceivers, it was a bona fide one. They tendered unconditional
C apology therefor.

The learned Single Judge, however, as regards the plea
of the Director of the Company held :

D “In my view he should not have left Calcutta until the order
was carried out or if he had any urgent business he should
have approached this Court and asked for time for carrying
out order. From analysis as above it no doubt establishes
his deliberate and willful violation of the order of the Court.
Therefore, I hold him guilty for committing contempt of the
E court as the DV (mother) cassettes were not handed over
to the Joint Receivers.”

As regards, Shri Sanat Ray, it was opined :

F “While examining the stand taken by the respondent No.4,
I found that he is an over smart person and he has made
all possible effort to outwit the officers of the Court if not
Court itself. He is literate and English knowing person and
having complete understanding of the purport of the order.
In spite of that he had taken a stand at first that he allegedly
G handed over DV cassettes to CESC officials being
accompanied by the Court officials, before Receiver and
then in his affidavit filed in the contempt proceedings as
well as the affidavit filed earlier point of time after the visit
of the Receivers on 14th of January, 2006, he stated that
H he handed over the same to CESC officials. This version

is unacceptable as none of the persons namely (1) Mr. Shankar Saha (2) Mr. Rattan Das (3) Mr. Rabi Shankar Saha and (4) Mr. Sambhu Ghosh, has come toward to corroborate testifying in Court that on 11th January 2006 CESC officials visited the office of the first respondent and respondent No.4 handed over the DV (mother) cassettes to them. The CESC officials have denied the fact of the visit on 11th January, 2006 which was a holiday. Thus, CESC officials have also stated on oath in the trial on evidence they did not visit on that date nor did they have any occasion to visit on that date the office of the respondent No.1 as they were enjoying holidays. It is stranger no suggestions was put to them by the learned counsel for Mr. Sanat Kumar Ray that they did visit on that date and DV (mother) cassettes were handed over to the CESC officials. Therefore, it is clear that a concocted story has been made out to justify their so called mistake in handing over."

So far as the anchor, Krishna Kumar Mukherjee, is concerned, it was held:

"As far as the respondent No.3 Krishna Kishore Mukherjee is concerned, I am of the view that he was also responsible to see that the materials are handed over in terms of prayer (c) to the Joint Receivers as the direction was also binding upon him. Had he had any difficulty he could have said this by filing affidavit that he is not connected with the affairs of the respondent No.1. He was the anchor of telecasting this programme so he had responsibility and should have taken at least some measure to help the Receivers to take possession of the DV (mother) cassettes remaining present before the Receiver. So his act and conduct amounts to aiding and abetting commission of contempt of Court. I hold him also guilty for committing contempt of this Court."

21. An appeal in terms of Section 19(1) of the Act was preferred by the appellants before the Division Bench, urging :

- A 1. Appellants became aware of the order of the Court
dated 30.11.2005 whereby the joint receivers were
appointed only on 10.1.2006 as the said order had
admittedly never been communicated to the
B appellants, and thus, the question of any deliberate
or willful violation thereof did not arise.
2. The learned Trial Judge failed to appreciate that the
respondents had admitted that they had not served
any copy of the order to the appellant prior to
C 10.1.2006.
3. The findings of the learned Single that appellant No.3,
Sanat Roy, was over smart, literate and English
knowing was uncalled for as he has only deposed
before another Judge and, therefore, the learned
D Judge had no occasion to note his demeanour.
4. The learned Trial Judge furthermore committed an error
in opining that none of the four persons who were
allegedly present had come forward to corroborate his
E testimony, as the trial itself is incomplete.
5. The finding that no suggestion was put to them by
the learned counsel of Mr. Sanat Ray that some
personnels had visited their office on that date and
F DV Cassettes were handed over to the CESC
officials is incorrect and such suggestions, in fact,
had been given.

22. The Division Bench of the High Court entered into the
question as to whether the purported contempt committed by
the appellant was a civil contempt or criminal contempt, which
G was not necessary.

While affirming the judgment and order of the learned
Single Judge, however, the Division Bench opined :

"It is well-known fact that the proceeding is only a form of
H execution and it appears to us that on the given facts,

* there is no criminality in the disobedience and the contempt, such as it is, is not criminal but the contemnors, in our opinion, excepting the appellant in APOT No.126 of 2008, Krishna Kishore Mukhopadhyay, we hold that the Hon'ble First Court correctly assessed the facts of the case and held that they have committed contempt of court. A B

Hence, we do not find that there is any reason to interfere with the order so passed by the Court and after analyzing the decisions cited before us, we have not been able to find out any clear distinction between 'civil' and 'criminal' contempt and the contempt committed by the contemnors on the given facts cannot be broadly classified as criminal contempt. C

Hence, we uphold the said order and dismiss these appeal, save and except, in our considered opinion, on the facts of the case and the materials on record as placed before us, we hold that a contempt in respect of the Krishna Kishore Mukhopadhyay cannot be proceeded with, since on the given facts, with utmost respect to His Lordship we come to the conclusion that the said Krishna Kishore Mukhopadhyay, being the appellant in the other matter (APOT No.126 of 2008), cannot be said to be responsible to hand over the materials to the Joint Receivers. Since we are of the opinion that he had acted only on the date of presentation of the said news telecasted on the said date and, therefore, on the date of visit of the Joint Receivers at the said premises to collect the mother cassette, no role had to play by him to handover the said cassette to the Joint Receivers." D E F

* 23. Before advertng to consider the rival submissions of the learned counsel for the parties, we may notice some subsequent events after this special leave petition was filed. G

Appellants appeared before the learned Single Judge on 22.8.2008 when a fine of Rs.10,000/- was imposed on each of them *for the time being*. Appellants undertook to produce the H

A CDs containing the programme in compliance of the order dated 14.3.2008. The learned Single Judge, in his order dated 29.8.2008, opined that the order dated 22.8.2008 has not sufficiently been complied with and posted the matter for hearing on 5.9.2008, stating :

B “They have also brought a compact disk of the offending programme. According to me, this is not the material which was asked to be handed over to the Receiver. So this is not accepted by the Court. At least a pretended attempt has been made to carry out the order of the Court. But I have not got any materials to come to a conclusion that the same has been collected from Akash Bangla Channel. Perhaps this can be copied from the programme already telecast subsequent to passing of the order dated 22nd August, 2008. I refuse to accept the same as being the materials which were asked to be produced in terms of the earlier order. For this purpose, I adjourn this matter till 5th September, 2008. the contemnors will reappear again on the next date at 3.00 p.m. once again.

E I make it clear deposit of fine will be an ad hoc arrangement and after having found that the order has been carried out fully this Court will pass appropriate order.

F After passing of the above order, it is submitted for the first time on behalf of the contemnors that the name of the contemnor No.2, in whose name the Rule has been issued, is not debojyoti Basu but it should be read as Dibyojyoti Basu. I have checked the Permanent Account Number Card of the contemnor No.2 and also the photograph appearing in the said card. I find similarity between the contemnor No.2 and the photograph and the name appears in the said card is Dibyojyoti Basu. In view of the revelation of the above fact I direct the learned Advocate-on-record of the contemnor No.2 to produce the papers used before the Appeal Court. I also direct the Department to produce the original affidavit-in-opposition used in the

H

contempt application by the aforesaid contemnor No.2 on the next date of hearing.” A

24. Mr. Gaurab Banerjee, learned senior counsel appearing on behalf of the appellants, submitted :

- (1) That as trial on the issues framed by the learned Single Judge himself in terms of order dated 15.3.2006 is admittedly incomplete, punishment for alleged contempt of court could not have been imposed without waiting for a finding of fact thereupon. B C
- (2) In view of the terms of the order dated 30.11.2005 as CDs, materials and documents were to be handed over to the Joint Receivers, only if they were available with them and as they were not available on 14.1.2006, appellants cannot be said to have committed contempt of the order of the learned Single Judge dated 30.11.2005. D
- (3) The purpose and object of the order passed by the High Court, as would appear from the Orders dated 17.5.2004 and 30.11.2004 being to restrain the broadcast of the programme ‘Khoj Khabar’ and in view of the admitted fact that there has been no subsequent telecast of the programme and, thus, the order of injunction having been complied with, the judgment of conviction passed against the appellants is wholly unsustainable, particularly when the said order dated 30.11.2005 was not even known to the appellant prior to 10.1.2006. E F
- (4) The Joint Receivers made a surprise visit only on 14.1.2006 and having regard to the fact that nothing had been suppressed from the High Court or the Joint Receivers, a case for initiating a proceeding under the Act was not made out. In any event, as the trial is incomplete wherein the four witnesses are yet H

A to depose with regard to the events which took place on 11.1.2006, the High Court committed an illegality in passing the impugned judgment.

B 25. Mr. L.N. Rao, learned senior counsel appearing on behalf of the respondents would, however, support the impugned judgment. It was contended that although the categorical stand taken by the contemnors-respondents before the learned Single Judge was that no DV Cassettes were available with them when the Joint Receiver visited their office on 14.1.2006, they purported to produce the same before the learned Single Judge on 29.8.2008, which were not the original CDs, it has rightly been found that misrepresentations had been made at all levels by the alleged contemnors and, thus, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

D 26. Civil contempt has been defined in Section 2(a) of the Act to mean :

E "b) 'civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"

F 27. Herein appellants are charged with commission of contempt of the High Court on two counts that : (1) they did not hand over the materials to the Joint Receiver; and (2) they affirmed a false affidavit regarding the events on 11.1.2006.

G The High Court failed to notice that a learned Single Judge of the High Court passed an interim order only in terms of prayers 'a' and 'b'. It is not a case of the respondent that the appellants have violated the terms of the said ex parte ad interim order. Assuming that some lawyer had appeared on behalf of the respondents on earlier dates, the learned Judge himself had noticed that the appellants were not represented on date when the order appointing Receiver was passed.

H 28. In the aforementioned premise, it was obligatory on

* the part of the respondents and/or the High Court itself to communicate the said order to the appellants. The High Court appears to have proceeded on the presumption that the appellants were aware thereof despite a categorical stand taken by respondent itself that the said order had not been served. We do not find from the judgment of the learned Single Judge that even the High Court communicated the order to the appellant which course ordinarily should have been resorted to. A

29. We fail to understand as to on what basis, the Joint Receivers were appointed. No prayer was made therefor on the said date. No application was filed. The matter was placed before the learned Single Judge only for confirmation of the ad interim order passed and not for deciding on the prayer (c) concerned. A bare perusal of the said order would clearly indicate that even a prima facie finding had not been arrived at warranting appointment of receiver. No reason has been assigned in support thereof. No jurisdictional fact that it was just and proper to appoint a receiver as is required under Order XL Rule 1 of the Code of Civil Procedure was recorded far less why the same was found to be necessary and emergent. In any event, a show-cause notice at the first instance should have been issued. B C D E

30. When the receivers were appointed, no question arose to issue any direction upon the appellants. In fact, no such direction had been issued asking them to hand over all documents, papers and CDs. F

* 31. Mr. Rao, on a query made by us contended that the issues were framed on 15.3.2006 in the main suit. The said contention does not appear to be correct. The proceedings started only on the basis of the minutes of meeting dated 14.1.2006 presented by the Joint Receivers before the High Court. The enquiry was directed for the purpose of finding out as to whether the CECS officials had indeed visited the office of the company on 11.1.2006 and whether the CDs and cassettes had been handed over by the said Shri Sanat Ray to its officials or not. It may be a step for initiation of a contempt pro- G H

A ceeding but such a trial was being conducted for the purpose of
finding out the truth as to whether the court's order dated
30.11.2005 had, in fact, been violated or not. If a finding of fact
was necessary to be arrived as for ascertaining as to whether
the contemnors-respondents have violated the order of the court,
B it is difficult to comprehend why the trial was not allowed to be
completed.

Indisputably, the majesty of the Court is required to be up-
held. The Court must see that its orders are complied with. But
for the said purpose, a roving enquiry is not permissible.

C Several proceedings which seek to achieve the same
purpose are unknown to the process of law. If the trial was to be
held on the issues framed by the learned Single Judge, it should
have been allowed to be brought to its logical conclusion. When
D the trial was incomplete, we fail to see any reason why the con-
tempt proceeding was heard on affidavits. Even if that was done,
reliance was sought to be placed on the depositions of the wit-
nesses in the said enquiry, which was admittedly incomplete.
E Witnesses affirming affidavits before the learned Single Judge
were not being cross-examined so as to enable the counsel for
the parties to draw their attention to the earlier statement made
by them in terms of Section 145 of the Evidence Act.

32. On what basis comments against Sanat Rai were
made that he was 'over smart person' although he did not ex-
amine himself before the learned Single Judge is not known. It
will bear repetition to state that on the one hand the witnesses
in support of the said statement of the said Shri Sanat Ray was
yet to be examined in the trial and on the other hand the learned
Judge commented that his testimony remained uncorroborated.
G Attention of the learned Judge furthermore was not drawn to the
Question No.25 which was put to Shri Aditya Goswami who ex-
amined himself on behalf of CECS and Question No.20 put to
Shri Anil Chatterjee, which are as under :

H "25. As regards incident dated 11.1.2006 when it has been
said by the defendant that CESC personnel took away

the cassettes from their office – what is your comment about the same? A

Actually, I am the dealing officer, I was entrusted with this case. I know that I am the only one who is entrusted so I know the fact, except myself nobody would possibly visit the office of the Three Cheers Entertainment Pvt. Ltd. and furthermore on 11.1.2006 it was the holiday under the NI Act on account of Id-ul-Juha. CESC office was closed on that date. B

XXX

XXX

XXX C

20. Can you say on authority that on 11th January, 2006 none from the CESC office went to the office of the defendant?

I can say upto where my knowledge goes nothing beyond that.” D

33. The Division Bench of the High Court, unfortunately, did not bestow its consideration on these vital aspects of the matter.

No sufficient or cogent reason has been assigned therein. The purpose and object of initiation of a proceeding under the provisions of the said Act is only to see that the order of the Court is complied with and not to unnecessarily proceed against persons as if they are petty criminals. We are pained to notice that even the Director of the company who was not in town was hauled up for contempt opining that he should not have left Calcutta until the order was carried out or if he had any urgent business, he should have approached the court and asked for time for carrying out the order. We have noticed hereinbefore that the learned Judge proceeded on the basis that the appellants were directed to hand over the materials, documents, film scripts and materials connected with the telecast 'Khoj Khabar';, it was not so. We have furthermore noticed hereinbefore that the Court even did not bother to see that the order of the court was intimated to the appellants. Why the order dated 30.11.2005 E
F
G
H

A was not made known to the appellants till 10.1.2006 is baffling
and despite the same it was observed that the said order was
within the specific knowledge of the appellants. In our opinion,
the facts and materials placed before us do not establish that
there was any willful disobedience or contumacious conduct on
B the part of the appellant.

34. Mr. Rao, when asked, failed to satisfy us that the rules
framed by the High Court had been complied with. If the trial
had begun with a view to find as to whether the statement of the
appellant that he had handed over the materials to the CECS
C officials was correct or not, why another proceeding should be
initiated simultaneously before another learned Judge is be-
yond anybody's comprehension.

Contempt of court is a matter which deserves to be dealt
D with all seriousness.

In *Mrityunjoy Das & Anr. v. Sayed Hasibur Rahman &*
Ors. [(2001) 3 SCC 739], this Court held :

E "13. Before however, proceeding with the matter any
further, be it noted that exercise of powers under the
Contempt of Courts Act shall have to be rather cautious
and use of it rather sparingly after addressing itself to the
true effect of the contemptuous conduct. The court must
otherwise come to a conclusion that the conduct
complained of tantamounts to obstruction of justice which
F if allowed, would even permeate in our society (vide
Murray & Co. v. Ashok Kr. Newatia). This is a special
jurisdiction conferred on to the law courts to punish an
offender for his contemptuous conduct or obstruction the
majesty of law."

G In *Chhotu Ram v. Urvashi Gulati & Anr.* [(2001) 7 SCC
530], this Court held that a contempt of court proceeding being
quasi criminal in nature, the burden to prove would be upon the
person who made such an allegation. A person cannot be sen-
H tenced on mere probability. Willful disobedience and contuma-

X
cious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on ipse dixit of the court. It must be arrived at on the materials brought on record by the parties. A

Yet again in *Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors.* [(2002) (4) SCC 21], it was opined : B

X
"15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a 'civil contempt' within the meaning of Section 2(b) of the Act of 1971 – the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation – the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise." C D

In *Dr. Prodip Kumar Biswas v. Subrata Das & Ors.* [(2004) (4) SCC 573], after noticing various provisions of the Calcutta High Court Rules held : E

X
"The Court may, however, in a contempt proceeding take such evidence as may be considered necessary. Admittedly, rule nisi was not drawn up. In fact, it seems that neither was any notice of contempt issued to the appellant nor any hearing took place except what has been noticed hereinbefore. F

The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The G H

A purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. (See *Supreme Court Bar Assn. v. Union of India*).

Recently in *Sushila Raje Holkar v. Anil Kak (Retd.)* [2008 (7) SCALE 484], this Court held :

B "It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable."

C It was furthermore opined that the effect and purport of the order should be taken into consideration and the same must be read in its entirety.

D 35. The Division Bench of the High Court, with great respect, did not advert to any of the aforementioned contentions of the appellant.

36. Although, it was not necessary for us to advert to the subsequent events, Mr. Rao himself has sought to draw inspirations from the subsequent conduct of the parties impelling us to refer the same.

E If Appellants have been found to be guilty of commission of contempt, they should have been punished on the same day. Why the extra ordinary procedure of asking them to appear on another day for hearing on quantum of sentence was adopted is not understood. They had not been asked to purge their contempt. They made a voluntary statement that they would produce the CDs which should have been taken at its face value or should have been rejected.

G We also do not appreciate that a fine of Rs.10,000/- was imposed upon the appellants by an order dated 22.8.2008 'for the time being'. We have not been shown any provision in the Act or any precedent that a court may impose sentences upon the contemnors in piece meal.

H So far as the submission of Mr. Rao that original cassettes have not been produced is concerned, we must notice that what

was produced by the appellants was the CDs taken from (ETV A
Bangla). What has been produced before the learned Single
Judge on 29th August were not the DV Cassettes which Sanat
Rai stated to have been parted with on 11.1.2006.

37. For the reasons aforementioned, the impugned judg- B
ment cannot be sustained. It is set aside. Consequently, the or-
ders dated 30.11.2005 and 22.8.2008 are also set aside.

The High Court, in our opinion, would be well advised to C
take up hearing of the suit as expeditiously as possible. If no-
tice of suit has not been served upon the company, it may be
done forthwith. The company may file its written statement, if
not already done, within three weeks from the date.

38. As orders of injunctions in terms of Prayer 'a' and 'b' D
are in operation and CDs are already in possession of the court,
we in exercise of our jurisdiction under Article 142 of the Con-
stitution of India direct that the contempt proceedings itself be
dropped. The amount of fine deposited by the appellants should
be refunded by the High Court forthwith.

39. The appeal is allowed with the aforementioned direc- E
tions with costs payable by Respondent No.1 to the West Ben-
gal State Legal Services Authority, Calcutta. Counsel's fee as-
sessed at Rs.1,00,000/-.

K.K.T.

Appeal allowed