

KANWAR SINGH SAINI

v.

HIGH COURT OF DELHI

(Criminal Appeal No. 1798 of 2009)

SEPTEMBER 23, 2011

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**[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]**

*Code of Civil Procedure, 1908 – Order XXXIX Rule 2A and Order XXI Rule 32 – Exercise of powers under Order XXXIX Rule 2A – Scope – Decree passed in a civil suit for injunction on basis of admission/undertaking made by the defendant-appellant and the pleadings taken by him in his written statement – Alleged breach of the undertaking given to the Court – Application by decree holder under Order XXXIX Rule 2A CPC r/w ss.10, 11 and 12 of the 1971 Act – Trial court held that a prima facie case of contempt was made out and referred the matter to the High Court – High Court held the appellant guilty of criminal contempt and awarded him simple imprisonment for four months – Whether application under Order XXXIX Rule 2A CPC or under the 1971 Act could be entertained by the Civil Court and whether the matter could be referred to the High Court at all – Held: The proceedings under Order XXXIX Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit – In the instant case, the undertaking given to the court during the pendency of the suit, on the basis of which the suit itself was disposed of, became a part of the decree and breach of such undertaking was to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings – Even otherwise, it was not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same*

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*may be executed by attachment of his property or by detention in civil prison or both – The application under Order XXXIX Rule 2A CPC itself was not maintainable, hence, all subsequent proceedings remained inconsequential – Contempt of Courts Act, 1971 – s.2(b) and ss.10,11 and 12 – Maxims – Maxim “sublato fundamento cadit opus”.*

*Code of Civil Procedure, 1908 – Order X Rule 1, Order XIV, Rule 1(5) and Order XV, Rule 1 – “First hearing of the suit” – Meaning of – Held: The date of “first hearing of a suit” under CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit – The words the “first day of hearing” does not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken.*

*Contempt of Court – Contempt proceedings – Purpose of – Held: The purpose of initiation of contempt proceedings is two-fold: to ensure the compliance of the order passed by the court; and to punish the contemnor as he has the audacity to challenge the majesty of law.*

*Contempt of Court – Contempt proceedings – Nature of – Standard of proof required – Held: The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases – The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt –The case should not rest only on surmises and conjectures.*

*Contempt of Court – Civil contempt – Held: A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit.*

- A *Jurisdiction – Conferment of – Held: Conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the*  
 B *matter goes to the roots of the cause – Such an issue can be raised at any belated stage of the proceedings including in appeal or execution – The court cannot derive jurisdiction apart from the statute.*

C The appellant had purportedly executed a sale deed in favour of one 'MY' in respect of a plot of land. 'MY' filed civil suit for permanent injunction alleging that the appellant tried to dispossess him from the said premises. The Civil Court while taking the written statement of the appellant on record, also recorded his statement in  
 D person that he had neither threatened to dispossess nor he would dispossess 'MY', and accordingly disposed of the suit directing the appellant/defendant not to breach the undertaking given by him. The same culminated into a decree dated 12.5.2003.

E Subsequently, the undertaking given by the appellant to the civil court was allegedly violated. 'MY' filed application under Order XXXIX Rule 2A of CPC read with Sections 10, 11 and 12 of the Contempt of Courts Act, 1971 against the appellant, his wife and two sons. The trial court held that a *prima facie* case of contempt was  
 F made out and referred the matter to the High Court. The High Court held the appellant guilty of criminal contempt and imposed upon him simple imprisonment for four months. Hence the present appeal.

G Allowing the appeal, the Court

HELD:1. The instant case is an example where all proceedings in the suit as well as under the Contempt of Courts Act, 1971 were taken without adverting to the procedure known in law. [Para 1] [986-E]

H 2.1. Order X Rule 1 CPC provides for recording the

statement of the parties to the suit at the “first hearing of the suit” which comes after the framing of the issues and then the suit is posted for trial, i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order X, Rule 1, Order XIV, Rule 1(5), and Order XV, Rule 1, CPC. The cumulative effect of the above referred provisions of CPC comes to that the “first hearing of the suit” can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the Court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed. The date of “first hearing of a suit” under CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the “first hearing of the suit” prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words the “first day of hearing” does not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. [Para 6] [989-E-H; 990-A-B]

2.2. From the fact situation, it is evident that the suit was filed by ‘MY’ on 26.4.2003 and in response to the notice issued in that case, the appellant/defendant appeared on 29.4.2003 in person and filed his written

A statement. It was on the same day that his statement had been recorded by the court. This Court fails to understand as to what statutory provision enabled the civil court to record the statement of the appellant/defendant on the date of filing the written statement. [Paras 7] [990-D-E]

B *Ved Prakash Wadhwa v. Vishwa Mohan AIR 1982 SC 816; Sham Lal (dead) by Lrs. v. Atma Nand Jain Sabha (Regd.) Dal Bazar AIR 1987 SC 197; Siraj Ahmad Siddiqui v. Shri Prem Nath Kapoor AIR 1993 SC 2525 and M/s Mangat Singh Trilochan Singh thr. Mangat Singh (dead) by Lrs. & Ors. v. Satpal AIR 2003 SC 4300 – relied on.*

C Whether the application under Order XXXIX Rule 2A CPC or under the 1971 Act could be entertained by the Civil Court and whether the matter could be referred to the High Court at all.

D 3.1. Application under Order XXXIX Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by the court under Order XXXIX Rules 1 & 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. [Para 9] [992-H; 993-A-B]

E 3.2. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application

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under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the 1971 Act when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree. [Para 10] [993-D-H; 994-A]

3.3. The power exercised by a court under Order XXXIX Rule 2A is punitive in nature, akin to the power to punish for civil contempt under the 1971 Act. Therefore, such powers should be exercised with great caution and responsibility. Unless there has been an order under Order XXXIX Rule 1 or 2 CPC in a case, the question of entertaining an application under Order XXXIX Rule 2A does not arise. In case there is a final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order XXXIX Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit. [Para 11] [994-B-C]

3.4. The proceedings under Order XXXIX Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been

A disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both. The provision of Order XXI Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. [Para 12] [994-D-H; 995-A]

3.5. Conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Para 13] [995-B-D]

3.6. When a statute gives a right and provides a

forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act. [Para 13] [995-G-H; 996-A]

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3.7. The proceedings under Order XXXIX, Rule 2A CPC is a mode to compel the opposite party to obey the order of injunction by attaching the property and detaining the disobedient party in civil prison as a mode of punishment for being guilty of such disobedience. Breach of undertaking given to the court amounts to contempt in the same way as a breach of injunction and is liable to be awarded the same punishment for it. [Para 14] [996-D]

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3.8. It is a settled legal proposition that the executing court does not have the power to go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution. [Para 15] [986-E-F]

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3.9. In the case at hand, the decree dated 12.5.2003 was passed by the civil court on the basis of admission/undertaking made by the appellant and the pleadings taken by him in his written statement. Therefore, in a case where there was any disobedience of the said judgment and decree, the application under Order XXXIX Rule 2A CPC should not have been entertained. Such an application is maintainable in a case where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree holder-'MY' had been to file application for execution under Order XXI Rule 32 CPC. The procedure in execution of an injunction decree is same as prescribed under Order XXXIX Rule 2A i.e. attachment of property and detention of the disobedient

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A to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted. [Para 16] [996-G-H; 997-A-B]

B 3.10. The application of the decree holder had been for violation of the undertaking which at the most could be civil contempt as defined under Section 2(b) of the Act 1971 as it includes the wilful breach of an undertaking given to a court. Therefore, the Trial Court failed to make a distinction between civil contempt and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear cut case involving private rights of the parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to the High Court for initiating the proceedings for criminal contempt. [Para 17] [997-C-F]

F 3.11. The High Court failed to appreciate the nature/status of proceedings in which the alleged false affidavit had been filed. In the instant case, proceedings under Order XXXIX Rule 2A CPC were not maintainable at all. Had the complainant 'MY' filed the execution proceedings under Order XXI Rule 32 CPC, the court could have proceeded in accordance with law without going into the averments raised therein by the appellant. [Para 18] [997-H; 998-A-B]

H 3.12. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case

of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him. Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted. [Para 19] [998-D-H]

3.13. The appellant had been subjected to unfair procedure from the institution of the suit itself. The suit had been “disposed of” in great haste without following the procedure prescribed in CPC. Once the suit has been decreed, the court could not entertain the application under Order XXXIX Rule 2A CPC as the suit had already been decreed and such an application is maintainable only during the pendency of the suit in case the interim order passed by the court or undertaking given by the party is violated. In the instant case, no interim order had ever been passed and the undertaking given by the appellant/defendant not to dispossess the plaintiff ‘MY’ culminated into a final decree and thus, if any further action was required, it could be taken only in execution proceedings. There has been manifest injustice in the case and the doctrine of *ex debito justitiae* has to be applied in order to redress the grievances of the appellant/defendant. The judgment and order impugned cannot be sustained under any circumstance. [Para 21] [1000-D-G]

3.14. The courts below proceeded with criminal contempt proceedings not for disobeying any judgment

A or order but for taking inconsistent pleas in the reply filed by the appellant to the application under Order XXXIX Rule 2A CPC, accepting it to be a false affidavit. Purposes of initiation of contempt proceedings are two-fold: to ensure the compliance of the order passed by the court; and to punish the contemnor as he has the audacity to challenge the majesty of law. In the instant case, admittedly, the grievance of the complaint had been disobedience of decree/order of the civil court dated 12.5.2003. The High Court convicted the appellant and sent him to jail but did not grant any relief so far as the enforcement of the order dated 12.5.2003 is concerned. On fails to understand as under what circumstances, the High Court did not even consider it appropriate to enforce the judgment/order/decree if it had been disobeyed by the appellant. The instant case is a glaring example of non-application of mind and non-observance of procedure prescribed by law for dealing with such matters. Entire proceedings have been conducted in most casual and cavalier manner. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures. [Paras 22, 25] [1000-H; 1001-A-D; 1002-F-G]

3.15. As the application under Order XXXIX Rule 2A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim "*sublato fundamento cadit opus*" which means foundation being removed structure falls is attracted. [Para 26] [1003-D]

H *Dhananjay Sharma v. State of Haryana & Ors. (1995) 3*

**SCC 757: 1995 (3) SCR 964; Rita Markandey v. Surjit Singh Arora (1996) 6 SCC 14: 1996 (7) Suppl. SCR 56; Murray & Co. v. Ashok Kr. Newatia & Anr. (2000) 2 SCC 367: 2000 (1) SCR 367 – distinguished.**

*Dr. A.R. Sircar v. State of U.P. & Ors.* **1993 Suppl. (2) SCC 734; Shiv Shanker & Ors. v. Board of Directors UPSRTC & Anr. 1995 Suppl (2) SCC 726; Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager & Anr. v. Sree Kumar Tiwary & Anr. AIR 1997 SC 3071; M/s. GTC Industries Ltd. v. Union of India & Ors. AIR 1998 SC 1566 and Jaipur Municipal Corpn. v. C.L. Mishra (2005) 8 SCC 423; Food Corporation of India v. Sukha Deo Prasad AIR 2009 SC 2330; Hungerford Investment Trust Ltd. (In voluntary Liquidation) v. Haridas Mundhra & Ors. AIR 1972 SC 1826; The United Commercial Bank Ltd. v. Their Workmen AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors. AIR 1978 SC 22; Natraj Studios Pvt. Ltd. v. Navrang Studio & Anr. AIR 1981 SC 537; A.R. Antulay v. R.S. Nayak & Anr. AIR 1988 SC 1531; Union of India & Anr. v. Deoki Nandan Aggarwal AIR 1992 SC 96; Karnal Improvement Trust, Karnal v. Prakash Wanti (Smt.) (Dead) & Anr. (1995) 5 SCC 159: 1995 (1) Suppl. SCR 136; U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd. & Ors. AIR 1996 SC 1373; State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr. AIR 1996 SC 2664; Kesar Singh & Ors. v. Sadhu (1996) 7 SCC 711: 1996 (1) SCR 1017; Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors. AIR 1999 SC 2213; Collector of Central Excise, Kanpur v. Flock (India) (P) Ltd., Kanpur AIR 2000 SC 2484; The Premier Automobiles Ltd. v. K.S.Wadke & Ors. AIR 1975 SC 2238; Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs. (1990) 1 SCC 193: 1989 (2) Suppl. SCR 149; Samee Khan v. Bindu Khan AIR 1998 SC 2765; State of Punjab & Ors. v. Mohinder Singh Randhawa & Anr. AIR 1992 SC 473; Niaz Mohammad & Ors. v. State of Haryana & Ors. (1994) 6 SCC 332: 1994 (3) Suppl. SCR 720; Bank of Baroda v. Sadruddin Hasan Daya & Anr. AIR 2004 SC 942; Rama Narang v. Ramesh Narang & Anr.**

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A AIR 2006 SC 1883 and *Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.* AIR 1969 SC 189 – relied on.

B *Sardar Hasan Siddiqui & Ors. v. State Transport Appellate Tribunal, U.P., Lucknow & Ors.* AIR 1986 All. 132 – approved.

C *Sakharan Ganesh Aaravandekar & Anr. v. Mahadeo Vinayak Mathkar & Ors.* (2008) 10 SCC 186; *Mahender Kumar Gandhi v. Mohammad Tajer Ali & Ors.* (2008) 10 SCC 795; *Palitana Sugar Mills Private Limited & Anr. v. Vilasiniben Ramachandran & Ors.* (2007) 15 SCC 218; 2007 (4) SCR 221; *C. Elumalai & Ors. v. A.G.L. Irudayaraj & Anr.* AIR 2009 SC 2214; *Daroga Singh & Ors. v. B.K. Pandey* (2004) 5 SCC 26; 2004 (1) Suppl. SCR 113; *Bathina Ramakrishna Reddy v. State of Madras* AIR 1952 SC 149; *Brahma Prakash Sharma & Ors. v. The State of U.P.* AIR 1954 SC 10 and *State of Madhya Pradesh v. Revashankar* AIR 1959 SC 102 – referred to.

*Doe d. Rochester (BP) v. Bridges* 109 ER 1001; *Barraclough v. Brown* 1897 AC 615 – referred to.

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**Case Law Reference:**

	AIR 1982 SC 816	relied on	Para 6
	AIR 1987 SC 197	relied on	Para 6
	AIR 1993 SC 2525	relied on	Para 6
F	AIR 2003 SC 4300	relied on	Para 6
	1993 Suppl. (2) SCC 734	relied on	Para 9
	1995 Suppl (2) SCC 726	relied on	Para 9
	AIR 1997 SC 3071	relied on	Para 9
G	AIR 1998 SC 1566	relied on	Para 9
	(2005) 8 SCC 423	relied on	Para 9
	AIR 2009 SC 2330	relied on	Para 11
	AIR 1972 SC 1826	relied on	Para 12
H	AIR 1951 SC 230	relied on	Para 13

AIR 1978 SC 22	relied on	Para 13	A
AIR 1981 SC 537	relied on	Para 13	
AIR 1986 All. 132	approved	Para 13	
AIR 1988 SC 1531	relied on	Para 13	
AIR 1992 SC 96	relied on	Para 13	B
1995 (1) Suppl. SCR 136	relied on	Para 13	
AIR 1996 SC 1373	relied on	Para 13	
AIR 1996 SC 2664	relied on	Para 13	
1996 (1) SCR 1017	relied on	Para 13	C
AIR 1999 SC 2213	relied on	Para 13	
AIR 2000 SC 2484	relied on	Para 13	
109 ER 1001	referred to	Para 13	
1897 AC 615	referred to	Para 13	D
AIR 1975 SC 2238	relied on	Para 13	
1989 ( 2) Suppl. SCR 149	relied on	Para 13	
AIR 1998 SC 2765	relied on	Para 14	
AIR 1992 SC 473	relied on	Para 15	E
1995 (3) SCR 964	distinguished	Para 18	
1996 (7) Suppl. SCR 56	distinguished	Para 18	
2000 (1) SCR 367	distinguished	Para 18	
(2008) 10 SCC 186	referred to	Para 19	F
(2008) 10 SCC 795	referred to	Para 19	
1994 (3) Suppl. SCR 720	relied on	Para 19	
AIR 2004 SC 942	relied on	Para 19	
AIR 2006 SC 1883	relied on	Para 19	G
2007 (4) SCR 221	referred to	Para 23	
AIR 2009 SC 2214	referred to	Para 23	
2004 (1) Suppl. SCR 113	referred to	Para 24	
AIR 1952 SC 149	referred to	Para 24	H

A	AIR 1954 SC 10	referred to	Para 24
	AIR 1959 SC 102	referred to	Para 24
	AIR 1969 SC 189	relied on	Para 25

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1798 of 2009.

From the Judgment & Order dated 20.7.2009 of the High Court of Delhi at New Delhi in Contempt Case (Criminal) No. 9 of 2004.

C Tanmaya Mohta (for Purnima Bhat) for the Appellant.

Shree Prakash Sinha, Vijay Kumar and Shekhar Kumar for the Respondent.

The Judgment of the Court was delivered by

D **DR. B.S. CHAUHAN, J.** 1. 'Liberty' - the most cherished  
fundamental right, a basic human right, a "transcendental",  
inalienable, and 'primordial' right, should not be put in peril  
without following the procedure prescribed by law and in a  
casual and cavalier manner. Instant case is an example where  
E all proceedings in the suit as well as under the Contempt of  
Courts Act, 1971, (hereinafter called as 'Act 1971'), have been  
taken without adverting to the procedure known in law.

F 2. This Criminal Appeal has been preferred under Section  
19 (1)(b) of the Act 1971 against the impugned judgment and  
order dated 20.7.2009 passed by the High Court of Delhi at  
New Delhi in Contempt Case (Crl.) No.9 of 2004, whereby the  
appellant has been convicted for committing contempt of court  
by violating the undertaking given by him to the Court at the time  
of disposal of the suit and awarded him simple imprisonment  
for four months.

G 3. Facts and circumstances giving rise to this appeal are:

H A. The appellant executed a sale deed in favour of one  
Mohd. Yusuf on 5.9.2002 in respect of the premises bearing  
No. 148, village Khirki, Malviya Nagar, New Delhi for a sum of  
Rs.2,10,000/- and got the said deed registered.

KANWAR SINGH SAINI v. HIGH COURT OF DELHI 987  
[DR. B.S. CHAUHAN, J.]

B. Mohd. Yusuf filed suit No. 106/2003 in the Civil Court, Delhi, on 26.4.2003 for permanent injunction alleging that the appellant tried to dispossess him on 24.4.2003 from the said suit premises. His application for interim relief was rejected. The Civil Court issued summons and notice to the appellant/defendant.

C. In response to the said summons and notice, the appellant filed a written statement on 29.4.2003 admitting the execution of sale deed in respect of the suit premises for a sum of Rs.2.10 lacs and handing over its possession to the plaintiff but denied the allegation that he had made any attempt to dispossess the plaintiff. However, the appellant raised the grievance that the entire consideration of sale has not been paid to him as a sum of Rs.25,000/- still remained outstanding.

D. The Civil Court while taking his written statement on record also recorded the statement of the appellant/defendant in person that he had neither threatened to dispossess nor he would dispossess the plaintiff. The plaintiff's counsel accepted the statements made by the appellant/defendant in the court and the case was adjourned for 12.5.2003. On 12.5.2003, plaintiff asked the court to dispose of the suit in view of the statement made by the appellant/defendant. The court disposed of the suit directing the appellant/defendant not to breach the undertaking given by him.

E. Appellant's son filed a suit on 11.8.2003 for partition in respect of two plot Nos. i.e. 147A and 148 claiming that he had a share in the said properties.

F. Mohd. Yusuf-plaintiff in the Suit No. 106/2003 filed an application before the High Court under the provisions of Act 1971 alleging the violation of the undertaking given by the appellant to the civil court. The application came up for hearing on 11.9.2003 but none appeared to press the same. The High Court disposed of the application vide order dated 11.3.2003 giving liberty to the said applicant to approach the civil court. The said order was passed without issuing notice to the appellant or anyone else.

A G. Mohd. Yusuf filed an application dated 15.9.2003 under  
Order XXXIX Rule 2A of Code of Civil Procedure, 1908  
(hereinafter called 'CPC') read with Sections 10, 11 and 12 of  
the Act 1971 against the appellant, his wife and two sons  
alleging that when he visited the suit premises on 4.8.2003, he  
B found that the locks of the main door had been broken by them.  
The appellant filed reply to the said application on 22.10.2003  
alleging that the execution of the sale deed dated 5.9.2002 and  
his written statement and the statement made before the court  
on 29.4.2003 had been obtained by fraud.

C H. While hearing the said application, the Court vide order  
dated 16.2.2004 recorded that as the appellant had taken  
inconsistent pleas to his written statement filed earlier and  
violated the undertaking while making his oral statement, a  
prima facie case of contempt was made out and referred the  
D matter to the High Court to be dealt with under the provisions  
of Act 1971.

I. The appellant filed a suit on 23.2.2005 for cancellation  
of the sale deed dated 5.9.2002.

E J. The High Court while accepting the reference as  
Criminal Contempt, issued show cause notice to the appellant  
on 2.2.2005 directing him to appear in person on 16.2.2005.  
The Court vide impugned judgment and order dated 20.7.2009  
held the appellant guilty of criminal contempt on the basis of  
inconsistent pleas taken by him and also for the breach of  
F undertaking and imposed simple imprisonment for four months.  
The appellant was granted bail by this Court on 29.9.2009.

Hence, this appeal.

G 4. Mr. Tanmaya Mehta, learned counsel appearing for the  
appellant has raised the grievance mainly, that it was a case  
of civil contempt which could have been dealt with by the Trial  
Court itself and by no means could be treated as a criminal  
contempt case. The High Court erred in treating the same as  
criminal contempt and awarded the punishment to the appellant  
which was not warranted under the facts and circumstances of  
H

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the case and therefore, the judgment and order of the High Court convicting the appellant is liable to be set aside. A

5. Mr. Shree Prakash Sinha, learned counsel appearing for the plaintiff - Mohd.Yusuf, intervener, has opposed the appeal contending that the appellant and his family members had made false and misleading statements to scuttle the interest of justice. The appellant has not only committed criminal contempt but also abused the process of the court. Thus, no interference is called for. B

6. The suit was filed on 26.4.2003 and notice was issued returnable just after three days, i.e. 29.4.2003 and on that date the written statement was filed and the appellant appeared in person and his statement was recorded. Order X Rule 1 CPC provides for recording the statement of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial, i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order X Rule 1; Order XIV Rule 1(5); and Order XV Rule 1, CPC. The cumulative effect of the above referred provisions of CPC comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the Court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed. The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between the C  
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A parties i.e. framing of issues does not arise. The words the “first  
 day of hearing” does not mean the day for the return of the  
 summons or the returnable date, but the day on which the court  
 applies its mind to the case which ordinarily would be at the  
 time when either the issues are determined or evidence is  
 B taken. [Vide: *Ved Prakash Wadhwa v. Vishwa Mohan*, AIR  
 1982 SC 816; *Sham Lal (dead) by Lrs. v. Atma Nand Jain  
 Sabha (Regd.) Dal Bazar*, AIR 1987 SC 197; *Siraj Ahmad  
 Siddiqui v. Shri Prem Nath Kapoor*, AIR 1993 SC 2525; and  
*M/s Mangat Singh Trilochan Singh thr. Mangat Singh (dead)  
 C by Lrs. & Ors. v. Satpal*, AIR 2003 SC 4300]

7. From the above fact situation, it is evident that the suit  
 was filed on 26.4.2003 and in response to the notice issued in  
 that case, the appellant/defendant appeared on 29.4.2003 in  
 person and filed his written statement. It was on the same day  
 D that his statement had been recorded by the court. We failed  
 to understand as to what statutory provision enabled the civil  
 court to record the statement of the appellant/defendant on the  
 date of filing the written statement. The suit itself has been  
 disposed of on the basis of his statement within three weeks  
 of the institution of the suit. The order sheets of the suit read  
 E as under:

**26.4.2003:**

“Present: Ld. counsel for the plaintiff.

F Arguments on injunction application heard. No ground for  
 granting ex-parte stay order at this stage, request in this  
 regard is declined. Issue summons of the suit and notice  
 of the interim application to the defendants on PF and RC,  
 courier, UPC and dasti also for 29-04-2003.

G Sd/-  
 CJ/Delhi  
 26-04-2003”

**29.4.2003:**

“Counsel for the plaintiff.

H Defendant in person.

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He states that he is not likely to dispossess the plaintiff from the suit premises as he has already sold the same. However, he has stated that he has to take certain amount from the plaintiff towards expenses which has not been paid by the plaintiff. There is counter claim of the defendant affixing the court fee and in any case, he has legal remedy to exercise it. The defendant is ready to make the statement. Let it be recorded.

A

B

CJ/Delhi

"Statement of Shri Kanwar Singh Saini, Defendant on S.A.

C

Neither I have threatened the plaintiff nor I will dispossess him as I have already sold the suit property vide sale deed. The suit of the plaintiff may kindly be dismissed as there is no merit in the same.

R.O. &A.C.

D

Sd/

(Kanwar Singh Saini)

Sd/-

CJ/DELHI

29.4.2003"

E

"Statement of Ld. Counsel for plaintiff Shri Iqbal Ahmed without oath:

I have heard the statement of defendant and I have instruction from the plaintiff to accept the same. The suit of the plaintiff may kindly be disposed of.

F

R.O.&A.C.

Sd/-

(Iqbal Ahmed)

Sd/-

CJ/DELHI

29.4.2003

G

12.5.2003:

"I have heard the statement of defendant and I accept the

H

A same. My suit be disposed of in terms of statement of defendant.

RO&AC

Sd/-

B (Mohd. Yusuf)

Sd/-

CJ/DELHI

12.5.2003"

C Thereafter the learned Judge passed the following order:-

"12.5.2003

Present: Plaintiff in person.

Ld. Counsel for the defendant.

D Statement of plaintiff is recorded on a separate sheet. Statement of defendant is already recorded. Keeping in view of the statements of parties, the suit of the plaintiff is disposed of. Parties are bound by their statements as given in the court. No orders as to costs. File be

E consigned to Record Room.

Sd/-

CJ/DELHI

12.5.2003"

F 8. Be that as it may, the so-called statement/undertaking given by the appellant/defendant culminated into the decree of the Civil Court dated 12.5.2003. Thus, the question does arise as to whether the application under Order XXXIX Rule 2A CPC or under the Act 1971 could be entertained by the Civil Court and whether the matter could be referred to the High Court at all.

H 9. Application under Order XXXIX Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by the court under Order XXXIX Rules 1 & 2 CPC, which is naturally to enure during the

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pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order. A

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. (Vide: *Dr. A.R. Sircar v. State of U.P. & Ors.*, 1993 Suppl. (2) SCC 734; *Shiv Shanker & Ors. v. Board of Directors, UPSRTC & Anr.*, 1995 Suppl (2) SCC 726; *Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager & Anr. v. Sree Kumar Tiwary & Anr.*, AIR 1997 SC 3071; *M/s. GTC Industries Ltd. v. Union of India & Ors.*, AIR 1998 SC 1566; and *Jaipur Municipal Corpn. v. C.L. Mishra*, (2005) 8 SCC 423). B C

10. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation D E F G H

A or breach of permanent injunction granted at the time of passing of the decree.

11. In *Food Corporation of India v. Sukha Deo Prasad*, AIR 2009 SC 2330, this Court held that the power exercised by a court under Order XXXIX Rule 2A is punitive in nature, akin  
 B to the power to punish for civil contempt under the Act 1971. Therefore, such powers should be exercised with great caution and responsibility. Unless there has been an order under Order XXXIX Rule 1 or 2 CPC in a case, the question of entertaining an application under Order XXXIX Rule 2A does not arise. In  
 C case there is a final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order XXXIX Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.

12. The proceedings under Order XXXIX Rule 2A are  
 D available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with  
 E in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a  
 F decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both. The provision of Order XXI Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do  
 G some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to  
 H be made in pursuance of the Order XXI Rule 32 CPC as the

CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. (See: *Hungerford Investment Trust Ltd. (In voluntary Liquidation) v. Haridas Mundhra & Ors.*, AIR 1972 SC 1826). A

13. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. (Vide: *The United Commercial Bank Ltd. v. Their Workmen* AIR 1951 SC 230; *Smt. Nai Bahu v. Lal Ramnarayan & Ors.*, AIR 1978 SC 22; *Natraj Studios Pvt. Ltd. v. Navrang Studio & Anr.*, AIR 1981 SC 537; *Sardar Hasan Siddiqui & Ors. v. State Transport Appellate Tribunal, U.P., Lucknow & Ors.* AIR 1986 All. 132; *A.R. Antulay v. R.S. Nayak & Anr.*, AIR 1988 SC 1531; *Union of India & Anr. v. Deoki Nandan Aggarwal*, AIR 1992 SC 96; *Karnal Improvement Trust, Karnal v. Prakash Wanti (Smt.) (Dead) & Anr.*, (1995) 5 SCC 159; *U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd. & Ors.*, AIR 1996 SC 1373; *State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr.*, AIR 1996 SC 2664; *Kesar Singh & Ors. v. Sadhu*, (1996) 7 SCC 711; *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.*, AIR 1999 SC 2213; and *Collector of Central Excise, Kanpur v. Flock (India) (P) Ltd., Kanpur*, AIR 2000 SC 2484). B  
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When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". H

A Thus for enforcement of a right/obligation under a statute, the  
 only remedy available to the person aggrieved is to get  
 adjudication of rights under the said Act. (See: *Doe d.*  
*Rochester (BP) v. Bridges*, 109 ER 1001; *Barraclough v.*  
*Brown*, 1897 AC 615; *The Premier Automobiles Ltd. v.*  
 B *K.S.Wadke & Ors.*, AIR 1975 SC 2238; and *Sushil Kumar*  
*Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs.*, (1990) 1 SCC  
 193).

14. In *Samee Khan v. Bindu Khan*, AIR 1998 SC 2765,  
 this Court explained the distinction between a civil and criminal  
 C contempt observing that enforcement of the order in civil  
 contempt is for the benefit of one party against another, while  
 object of criminal contempt is to uphold the majesty of law and  
 the dignity of the court. The scope of the proceedings under  
 Order XXXIX Rule 2A CPC is entirely different. It is a mode to  
 D compel the opposite party to obey the order of injunction by  
 attaching the property and detaining the disobedient party in  
 civil prison as a mode of punishment for being guilty of such  
 disobedience. Breach of undertaking given to the court amounts  
 to contempt in the same way as a breach of injunction and is  
 liable to be awarded the same punishment for it.

E 15. It is a settled legal proposition that the executing court  
 does not have the power to go behind the decree. Thus, in  
 absence of any challenge to the decree, no objection can be  
 raised in execution. (Vide: *State of Punjab & Ors. v. Mohinder*  
*Singh Randhawa & Anr.*, AIR 1992 SC 473).

F 16. The case requires to be considered in the light of the  
 aforesaid settled legal proposition.

Whatever may be the circumstances, the court decreed the  
 suit vide judgment and decree dated 12.5.2003. The said  
 G decree was passed on the basis of admission/undertaking  
 made by the appellant on 29.4.2003 and the pleadings taken  
 by him in his written statement. Therefore, in a case where there  
 was any disobedience of the said judgment and decree, the  
 application under Order XXXIX Rule 2A CPC should not have  
 H been entertained. Such an application is maintainable in a case

where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree holder-Mohd. Yusuf had been to file application for execution under Order XXI Rule 32 CPC. The procedure in execution of an injunction decree is same as prescribed under Order XXXIX Rule 2A i.e. attachment of property and detention of the disobedient to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted.

17. Application of the decree holder had been for violation of the undertaking which at the most could be civil contempt as defined under Section 2(b) of the Act 1971 as it includes the wilful breach of an undertaking given to a court. Therefore, the Trial Court failed to make a distinction between civil contempt and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear cut case involving private rights of the parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to the High Court for initiating the proceedings for criminal contempt.

18. The High Court in para 29 of the impugned judgment has taken note of various judgments of this Court including *Dhananjay Sharma v. State of Haryana & Ors.*, (1995) 3 SCC 757; *Rita Markandey v. Surjit Singh Arora*, (1996) 6 SCC 14; and *Murray & Co. v. Ashok Kr. Newatia & Anr.*, (2000) 2 SCC 367, wherein it has been held that filing of a false affidavit or taking false pleadings in the court amounts to criminal contempt. The High Court failed to appreciate the nature/status

A of proceedings in which the alleged false affidavit had been filed. The instant case is quite distinguishable on facts from those cases. In the instant case, proceedings under Order XXXIX Rule 2A CPC were not maintainable at all. Had the complainant Mohd. Yusuf filed the execution proceedings under  
 B Order XXI Rule 32 CPC, the court could have proceeded in accordance with law without going into the averments raised therein by the appellant.

19. In a given case if the court grants time to a tenant to vacate the tenanted premises and the tenant files an  
 C undertaking to vacate the same after expiry of the said time, but does not vacate the same, the situation would be altogether different. (See: *Sakharan Ganesh Aaravandekar & Anr. v. Mahadeo Vinayak Mathkar & Ors.*, (2008) 10 SCC 186; and *Mahender Kumar Gandhi v. Mohammad Tajer Ali & Ors.*, (2008) 10 SCC 795).  
 D

In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before  
 E passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute  
 F a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances; and in that situation, no punishment can be awarded to him. (See: *Niaz Mohammad & Ors. v. State of Haryana & Ors.*, (1994) 6 SCC 332; *Bank of Baroda v. Sadruddin Hasan Daya & Anr.*, AIR 2004 SC 942; and *Rama Narang v. Ramesh Narang & Anr.*, AIR 2006 SC 1883)  
 G

Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.  
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20. The application filed under Order XXXIX Rule 2A CPC bearing Misc. No.89/2003 by the decree holder contains the following pleadings and prayer was made to punish the said contemnors:

“To his utter amazement, the petitioner-applicant on 4th of August 2003 on visiting the site (148, Village Khirki, New Delhi) learnt that the respondents in league and collusion with one another in deliberate and wilful breach of the aforementioned statement, assurance and/or undertaking had broken open locks and doors of the premises in reference 148, Village Khirki, New Delhi and taken possession thereof, thereby committing grave contempt of the Hon’ble Court (by breach of the aforementioned statement, assurance and/or undertaking furnished on 29th of April 2003 as accepted by the learned Civil Judge on 12th May 2003).”

The Civil Court considered the said application; took notice of the facts and in its order dated 16.2.2004 held:

“It also shows that plaintiff was in possession of the suit property on the date of making the statement. As on today, the respondents are in possession of the suit property. Even the respondent had not denied this fact rather their contention is that plaintiff was never in possession of the suit property. Further, a local commissioner was appointed and has also corroborated the fact that respondents are in possession. Therefore, prima facie, it appears that plaintiff has been dispossessed from the suit property by the respondents. The contention of the respondent no.1 that plaintiff was never in possession runs counter to the written statement of defendant filed in the original suit. Moreover, this fact needs evidence and evidence will be led only before Hon’ble High Court. Therefore, prima facie case for reference of the contempt petition has been made out.”

The Court reached the following conclusion :

“As to the contention of learned counsel for respondent

A no.1 that evidence is required before making a reference,  
the provision of section 11 of the Contempt of Courts Act,  
1971 are to be noted. Section 11 says that it is the Hon'ble  
High Court which has jurisdiction to inquire into or try the  
contempt petition. Therefore, the contention has no force.  
B This Court has only to see that prima facie case exist for  
referring the contempt."

The Court made the reference as under:

C "However, against other respondents there is no material  
for making the reference. In view of the above, a reference  
is made to the Hon'ble High Court with humble prayer to  
try the contempt petition against respondent no.1 and to  
punish the guilty accordingly. Application is disposed of  
accordingly."

D 21. In view of the above discussion, as such proceedings  
were not maintainable, the order of reference itself was not  
warranted. It also becomes crystal clear that the appellant had  
been subjected to unfair procedure from the institution of the  
suit itself. The suit had been "disposed of" in great haste without  
following the procedure prescribed in CPC. Once the suit has  
E been decreed, the court could not entertain the application  
under Order XXXIX Rule 2A CPC as the suit had already been  
decreed and such an application is maintainable only during  
the pendency of the suit in case the interim order passed by  
the court or undertaking given by the party is violated. In the  
F instant case, no interim order had ever been passed and the  
undertaking given by the appellant/defendant not to dispossess  
the said plaintiff culminated into a final decree and thus, if any  
further action was required, it could be taken only in execution  
proceedings. There has been manifest injustice in the case and  
G the doctrine of *ex debito justitiae* has to be applied in order to  
redress the grievances of the appellant/defendant. Judgment  
and order impugned cannot be sustained under any  
circumstance.

H 22. The courts below have proceeded with criminal  
contempt proceedings not for disobeying any judgment or order

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but for taking inconsistent pleas in the reply filed by the appellant to the application under Order XXXIX Rule 2A CPC, accepting it to be a false affidavit. Purposes of initiation of contempt proceedings are two-fold: to ensure the compliance of the order passed by the court; and to punish the contemnor as he has the audacity to challenge the majesty of law. In the instant case, admittedly, the grievance of the complaint had been disobedience of decree/order of the civil court dated 12.5.2003. The High Court convicted the appellant and sent him to jail but did not grant any relief so far as the enforcement of the order dated 12.5.2003 is concerned. We failed to understand as under what circumstances, the High Court did not even consider it appropriate to enforce the judgment/order/decree if it had been disobeyed by the appellant. The instant case is a glaring example of non-application of mind and non-observance of procedure prescribed by law for dealing with such matters. Entire proceedings have been conducted in most casual and cavalier manner.

23. Learned counsel for the contesting respondent has placed a very heavy reliance on the judgments of this Court in *Palitana Sugar Mills Private Limited & Anr. v. Vilasiniben Ramachandran & Ors.*, (2007) 15 SCC 218; and *C. Elumalai & Ors. v. A.G.L. Irudayaraj & Anr.*, AIR 2009 SC 2214, wherein this court held that wherever there is a wilful disobedience/contumacious conduct – deliberate flouting of the order of the court, it amounts to contempt and it becomes the duty of the court to exercise its inherent power to set the wrong right as a party cannot be permitted to perpetuate the wrong by disobeying the order further.

In the case at hands, the court initiated criminal contempt proceedings but ultimately after convicting the appellant did not enforce the order passed by the Civil Court dated 12.5.2003.

24. In *Daroga Singh & Ors. v. B.K. Pandey*, (2004) 5 SCC 26, this Court rejected the plea of the contemnors that the High Court could not initiate the contempt proceedings in respect of the Contempt of the Courts subordinate to it placing reliance

A upon earlier judgments in *Bathina Ramakrishna Reddy v. State of Madras*, AIR 1952 SC 149; *Brahma Prakash Sharma & Ors. v. The State of U.P.*, AIR 1954 SC 10; and *State of Madhya Pradesh v. Revashankar*, AIR 1959 SC 102. The Court further explained the scope of contempt proceedings  
B observing:

“..... For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of  
C its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the court orders for the survival of the rule of the court in the country. Incidents which undermine  
D the dignity of the courts should be condemned and dealt with swiftly..... If the judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which  
E the very constitutional scheme and public faith in the judiciary runs the risk of being lost.”

25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the  
F protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.

G In *Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.*, AIR 1969 SC 189, this Court observed as under:

H “A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the

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judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."

(Emphasis added)

26. In view of the above, as the application under Order XXXIX Rule 2A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim "*sublato fundamento cadit opus*" which means foundation being removed structure falls is attracted.

27. Thus, taking into consideration, the fact situation involved in the case, the appeal is allowed. The impugned judgment and order dated 20.7.2009 passed by the High Court of Delhi at New Delhi in Contempt Case (Crl.) No. 9 of 2004 is hereby set aside. His bail bonds stand discharged.

28. However, we clarify that any observation made in this judgment shall not affect, in any manner, merit of other cases pending between the parties in regard to the Suit property.

B.B.B.

Appeal allowed.