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*Before M. M. Kumar, J*

MADAN LAL BOUNTRA,—*Petitioner*

*versus*

BHIM SINGH,—*Respondent*

C.O.C.P. No. 87 OF 2003

18th August, 2003

*Contempt of Courts Act, 1971— S. 2(b)—First appellate Court ordering ejection of tenant from demised premises—High Court on undertaking by tenant granting time to vacate the premises—Tenant failing to comply with his undertaking—No mention regarding structure, shed & gate put by tenant at the time of giving undertaking—Tenant removing shed structure etc. from the land— Violation of High Court order as well as undertaking — Guilty of civil contempt— Contumacious conduct of tenant— Simple imprisonment for a term of two months ordered.*

*Held*, that a perusal of the provisions of Section 2(b) shows that if there is wilful breach of an undertaking given to the Court then such a person is guilty of 'civil contempt'. The tenant has violated the order dated 25th January, 2002 and undertaking dated 28th January, 2002. The intention to defy order can be inferred from his conduct when he refused to accept notice of the contempt petition resulting into the passing of an order asking him to be present in person before this Court. Thereafter, on 28th July, 2003, this Court has directed him to hand over possession of the premises before this date i.e. 18th August, 2003. He has handed over the possession of the land but has removed the shed, structure and gate etc. from the land. This Court specifically mentioned in the order dated 27th August, 2003 that his right to structure etc. was subject to the decision of the Executing Court but the contemner has preferred to take law in his own hands and thereby has committed further contempt.

(Para 10)

*Further held*, that the contemner—respondent has been held *prima facie* guilty of contempt and no doubt is left that he has intentionally violated the undertaking dated 28th January, 2002 given to this Court in pursuance to its order dated 25th January,

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2002, then he refused to accept summon, and has also violated the order dated 28th July, 2003 passed by this Court. It is thus obvious that he has no regard for the law of the land and the order passed by this Court. Therefore, the contemner—respondent is convicted of committing contempt of this Court by violating the order dated 25th January, 2002, the undertaking dated 28th January, 2002 and order 28th July, 2003.

(Para 10)

R. P. Singh, Advocate, for the petitioner.

Deepak Agnihotri, Advocate, for the respondent.

### JUDGMENT

*M. M. Kumar, J*

(1) This contempt petition filed under Section 12 of the Contempt of Courts Act, 1971 complains violation of undertaking recorded in the order dated 25th January, 2002 passed by this Court in Civil Revision No. 5628 of 2001. The tenant-respondent Shri Bhim Singh son of Shri Moti Ram had lost before both the Courts below. Both the Courts have ordered his ejection from the demised premises. The operative part of the order dated 22nd September, 2001 passed by the Appellate Authority, Rohtak, Annexure P-2 with C.M. No. 1087-CII of 2003 reads as under :—

“Accordingly, the present appeal has no merit. Hence, it is dismissed with costs. Accordingly, the present ejection petition under section 13(3-A) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 of the respondent/landlord succeeds and an ejection order is confirmed against the respondent/appellant who is directed to hand over the vacant possession of the premises in dispute within 30 days.”

(2) Thereafter the tenant-respondent had approached this Court by filing Civil Revision No. 5628 of 2001. He made a statement before this Court that since he has been in occupation of the land in question for about three decades and he is running his business of

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service station on the premises, he may be allowed some time to find an alternative accommodation and to shift therein. Accepting his request to be justified, this Court on 25th January, 2002 allowed him to continue in the occupation of the premises till 31st December, 2002. Certain conditions were imposed by the order dated 25th January, 2002 which are as under :-

- (i) "that the petitioner tenant would file an affidavit in this Court on or before 31st January, 2002 under taking therein to vacate the premises in question and hand over the same to the respondent No. 1-landlord on or before 31st December, 2002.
- (ii) The petitioner tenant pays all the arrears of rent if any, to the respondent No. 1-landlord on or before 31st January, 2002 and that all future rent upto 31st December, 2002 shall be paid on or before 31st March, 2002."

(3) It was made clear that in case any of the above conditions is not complied with by the time stipulated the contemner-respondent was liable to be evicted forthwith. Accordingly the tenant contemner-respondent filed an affidavit on 28th January, 2002 Annexure P-2 with an undertaking in terms of the order dated 25th January, 2002 which reads as under :-

"That in terms of the order of the Hon'ble Court dated 25th January, 2002 the applicant hereby undertakes that he would vacate the land/premises in question by 31st December, 2002 and would comply with the order dated 25th January, 2002 in all respects."

(4) It is complained that undertaking given before this Court on 28th January, 2002 has not been honoured resulting into the filing of the instant contempt petition against the tenant-respondent on 23rd January, 2003.

(5) Notice of the contempt was issued and the office reported in its report dated 9th May, 2003 that the contemner-respondent has refused to accept notice. On 24th July, 2003, this Court directed that

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the contemner-respondent would remain present in person on 28th July, 2003. On the aforementioned date this Court recorded the objection of the contemner-respondent who stated that there was some construction over the rented land which he was entitled to remove and for that reason he had not vacated the premises. It was further observed that since no such statement was made on 25th January, 2002 before this Court when the order in Civil Revision No. 5628 of 2001 was passed. There was no justification for violating the terms of order dated 25th January, 2002 and undertaking dated 28th January, 2002. Therefore, the contemner-respondent was held *prima facie* guilty of contempt for not vacating the premises as undertaken by him on 28th January, 2002. This Court further direct the contemner-respondent to vacate the premises subject to his right to claim the shed or structure etc. before the Executing Court. The order passed by this Court on 28th July, 2003 read as under :—

“Notice was issued and as per report of service, the respondent had refused to accept notice. However, at the time of last hearing, learned counsel for the respondent appeared and sought time. Respondent was required to remain present in court and he is present today. Learned counsel for the respondent states that the eviction petition related to rented land and respondent-tenant has made construction over the same which he is entitled to remove and, therefore, the respondent is not vacating, as the petitioner obstructed him in removing the sheds.

The undertaking recorded in this Court does not refer to any right of the respondent-tenant to remove the sheds. In any case, time to vacate was up to 31st December, 2002 and thereafter, no extension was sought nor the difficulty now put-forward was brought to the notice of this court. Respondent is, thus, clearly guilty of contempt. To purge himself of contempt, respondent is now directed to hand over possession of the premises before the next date. If the respondent has any claim over any constructions, he can pursue the same in the executing court but this cannot be an excuse to continue in the premises in violation of undertaking to vacate.

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List again on 18th August, 2003 for passing an appropriate final order of sentence in the light of developments that take place till then.”

(6) The petitioner has filed an application alongwith the affidavit of the Landlord-petitioner dated 14th August, 2003 stating that the contemner-respondent had assured the vacation of the premises but instead of handing over possession to the Landlord-petitioner, he has demolished the boundary wall and other structure on the site including the shed. A complaint in this regard has also been filed at the PS Civil Lines, Rohtak. A copy of the complaint dated 7th August, 2003 has also been attached as Annexure P-1. An affidavit by the contemner-respondent has been filed in this Court in which he has stated that he has vacated the rented land. He has further stated that he has removed all the material put by him or relating to him on the aforesaid land.

(7) Mr. R.P.S. Ahluwalia, learned counsel for the petitioner has contended that contemner-respondent has violated the order dated 25th January, 2002 passed by this Court and undertaking dated 28th January, 2002 filed in Civil Revision No. 5628 of 2001. This Court, on 28th July, 2003, has already found the contemner-respondent *prima facie* guilty of contempt because despite the undertaking given, he did not vacate the premises. According to the learned counsel in the order dated 28th July, 2003 it is made absolutely clear that since no objection regarding structure, shed etc. was raised at the time when undertaking was given on the order dated 28th January, 2002 on the basis of the order dated 25th January, 2002 passed by this Court in Civil Revision No. 5628 of 2001, he was bound to vacate the premises and his right to structure etc. was kept in tact subject to the order of the Executing Court. The learned counsel has pointed out that in the affidavit the contemner-respondent has admitted that shed and structure etc. has been removed by him. He has also placed on record the photographs Mark 'A' to 'H' to argue that even foundations have been dug to take away the bricks. However, contemner-respondent was still given an opportunity to comply with the undertaking given to the court by handing over premises to the Landlord-petitioner.

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(8) Mr. Agnihotri, learned counsel for the contemner-respondent has pointed out that the possession of vacant land has been delivered to the Landlord-petitioner. The learned counsel states that an application has been moved before the Rent Controller on 16th August, 2003 stating therein that he wishes to remove the boundary wall, temporary shed, room gate and other material from the rented land, when the petitioner was not permitting him to do so and therefore, the removal of the shed by him does not in any way violate any order.

(9) After hearing the learned counsel for the parties, I am of the considered view that the contemner-respondent Bhim Singh firstly violated the undertaking dated 28th January, 2002 given to this Court in pursuance to order dated 25th January, 2002 passed in Civil ~~Revision~~ Revision No. 5628 of 2001 in as much as he did not vacate the premises till 31st December, 2002 which he had undertaken to do. In the order of the Appellate Authority dated 22nd September, 2001, there is no mention of structure or shed etc. Even in the order dated 25th January, 2002 or undertaking dated 28th January, 2002 no such mention of structure, shed etc. has been made. The conduct of the contemner-respondent is contumacious and is covered by definition of the expression 'civil contempt' used in Section 2 (b) which reads as under :—

“(b) “Civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court.”

(10) A perusal of the above provision shows that if there is wilful breach of an undertaking given to the Court then such a person is guilty of 'civil contempt'. In the present case he has violated the order dated 25th January, 2002 and undertaking dated 28th January, 2002. The intention to defy order can be inferred from his conduct when he refused to accept notice of the contempt petition resulting into the passing of an order asking him to be present in person before this Court. Thereafter on 28th July, 2003, this Court has directed him to hand over possession of the 'premises' before this date i.e. 18th August, 2003. He has handed over the possession of the land but has removed the shed, structure and gate etc. from the land. This Court

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specifically mentioned in the order dated 28th July, 2003 that his right to structure etc. was subject to the decision of the Executing Court but the contemner has preferred to take law in his own hands and thereby has committed further contempt. It is admitted position that from 28th July, 2003 to 16th August, 2003 he has removed the shed, structure, gate etc. claiming that the structure etc. belong to him. The photographs Mark 'A' to 'H' reveals a tell tale story about the conduct of the contemner-respondent. The contemner-respondent has already been held *prima facie* guilty of contempt and no doubt is left that he has intentionally violated the undertaking dated 28th January, 2002 given to this Court in pursuance to its order dated 25th January, 2002, then he refused to accept summon, and has also violated the order dated 28th July, 2003 passed by this Court. It is thus obvious that he has no regard for the law of the land and the order passed by this Court. Therefore, the contemner-respondent is convicted of committing contempt of this Court by violating the order dated 25th January, 2002, the undertaking dated 28th January, 2002 and order dated.

(11) Having convicted the contemner-respondent an opportunity is granted to the counsel for the contemner-respondent to address arguments on sentence.

(12) Mr. Deepak Agnihotri, learned counsel appearing for the contemner-respondent states that he is an old man of 65 years of age and he tenders unconditional apology for his misdeeds. It has further been stated that he is suffering from heart-disease.

(13) Keeping in view the arguments of Mr. Agnihotri, learned counsel for the contemner-respondent, and taking a lenient view and the contumacious conduct of contemner-respondent for violating the orders of this Court and undertaking given to this Court, I order that he be given simple imprisonment for a term of two months.

(14) In order to enable the contemner-respondent to file an appeal provided by Section 19 of the Act, the request of the learned counsel for the contemner-respondent is accepted and it is directed that sentence shall remain suspended for 15 days.

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**R.N.R.**