Khasra No. 83 which according to the same *Jamabandi* is in possession of the Mohatmims of Mandir Durga Mai Ji. According to the *Jamabandi* for the year 1961-62 Khasra No. 77 (OK—8M), 77/1 (4K—7M) and 77/2 (1K—7M), which belongs to the Gram Panchayat, is described as *"Gair Mumkin Mela Ground Mandir Devi Ji"*. Mr. S. K. Mittal explained that whereas the temple of the deity was situated in Khasra No. 83, certain lands comprised in Khasra No. 77, 77/1 and 77/2 were also in possession of the temple. The Gram Panchayat sought eviction of the Mohatmims of the deity under section 7(2) of the Village Common Lands (Regulation) Act 1961. The Assistant Collector 1st Grade, Narnaul, by order dated December 26, 1966, dismissed the application of the Gram Panchayat. The above explanation *prima facie* goes to explain that the temple of the deity does not appear to be situated in Khasra numbers vesting in the Gram Panchayat but in another Khasra number, namely, Khasra No. 83, which vests in the Murti itself.

It is not factually correct to say that review was sought only on the ground that the Court did not take notice of the injunction order granted in the R.S.A. In fact, the other grounds, namely, relating to *prima facie* case and the previous litigation, were also taken in the review application. Where the plaintiff is unable to make out a strong *prima facie* case with regard to its exclusive possession, broadly speaking it cannot be considered just and convenient to appoint a receiver. In the present case, extraordinary circumstances have not been made out justifying the appointment of receiver even though *prima facie* the plaintiffs had not been found to be in possession.

(7) For the foregoing reasons, the order dated December 17. 1991, in Civil Revision No. 2647 of 1991 is recalled and the revision petition dismissed. The trial Court shall, however, dispose of the suit expeditiously.

J.S.T.

Before : *G. R. Majithia, J. and A. S. Nehra, J.*

RAGHU NATH,—*Petitioner.*

versus

BHAG MAL,—*Respondent.*

Contempt Appeal No. 4 of 1983.

9th July, 1992.

Contempt of Courts Act—(70 of 1971)—*Section 19—Appellant filed suit for possession—Suit decreed by Appellate Court—Application moved by respondent for temporarily staying dispossession till*

such time as appeal filed—Counsel for appellant made statement that decree will not be executed till 26th June, 1981—Appellant delivered symbolic possession on 22nd June, 1981—Respondent filed Regular Second Appeal—Court ordered on June 24, 1981 that possession of Respondent be not disturbed—As possession handed over on June 22, Contempt proceedings initiated against appellant for violation of undertaking given by counsel—Whether such statement of counsel binding on appellant.

G. R. Majithia.

Held, that in the light of this amendment, the pleader can perform these acts on the strength of power of attorney. The proceedings in a suit of appeal does not terminate as mentioned in sub-rule (3) of Rule 4 for the purposes mentioned above, but the pleader cannot make any admission or give undertaking on behalf of his client after the termination of the proceedings. The proceedings will terminate when the *lis* is determined finally. After the court pronounces final judgement, the suit or appeal will be deemed to have been determined disentitling the counsel to make any admission, concession or undertaking on behalf of his client except where he has been specifically authorised to do so.

Code of Civil Procedure (V of 1908) (As amended in Punjab, Haryana and Chandigarh)—Sub rule (3) of Rule 4 of order 3—Determination of a pleader employment-proceedings in a suit of Appeal terminate when lis is determined finally—Once Judgement is pronounced—Suit or appeal will be deemed to be determined—Counsel now has no authority to make any admission, concession or undertaking except where specifically authorised to do so.

Held, that in the instant case, no such authorization was proved to have been given. The undertaking given by the counsel as stated above, was unauthorized and not binding on the appellant. In order to bind the appellant with statement of his counsel made before the first appeallate court after decision of the appeal, it was imperative for the respondent to lead positive evidence to establish that the counsel was authorized to make such a statement and he conveyed to the contents of the undertaking given by him in court to his client. In the absence of any evidence to this effect, it will be presumptous to conclude that the counsel had communicated the undertaking given by him in court to his client.

Appeal under Section 19 of the Contempt of Courts Act, 1971 praying that the appeal be accepted and the appellant be acquitted.

It is further prayed that the appellant be released on bail till the final decision of the appeal.

D. S. Chahal, Advocate, *for the appellant.*

None, *for the Respondent.*

ORDER

G. R. Majithia, J.

This appeal is directed against the judgment of the learned Single Judge dated January 31, 1983, convicting the appellant under Section 12 of the Contempt of Courts Act and sentencing him to undergo imprisonment for two weeks and to pay a fine of Rs. 1,000 or in default of payment of fine to undergo further imprisonment for one week.

The facts :—

The appellant filed a suit for possession by pre-emption against the respondent. The suit was decreed by the trial Judge. The judgment and decree of the trial Judge was affirmed on appeal, by the first appellate Court. Since copy of the judgment and decree of the first appellate Court was not made available to the respondent, he moved an application to it for temporarily staying his dispossession to enable him to move this Court and obtain an order of stay of his dispossession. Notice of this application was issued to the counsel representing the appellant in the first appellate Court. The counsel made a statement on May 15, 1981 to the effect that in case the appellant had not taken possession of the land decreed in his favour, the decree will not be executed before June 26, 1981. Appellant was delivered symbolical possession of the land on June 22, 1981. The respondent moved this Court in regular second appeal against the judgment and decree of the first appellate Court dated June 1, 1981, and on June 24, 1981, this court ordered that possession of the respondent be not disturbed. Since symbolic possession was delivered on June 22, 1981, the respondent initiated contempt proceedings for taking action against the appellant/decree-holder on the ground that the statement made by his counsel before the first appellate Court was binding on him and he had taken possession in flagrant violation of the undertaking given by his counsel. The learned Single Judge held that the counsel for the appellant did not plead lack of instructions before the first appellate Court; that he made the statement on June 15, 1981 to the effect that his client would not take possession of land till June 26, 1981 and that the statement was binding on his client. This Court had asked for a report from the Subordinate Judge, Rewari as to when the possession was taken by the appellant and whether the appellant had the knowledge of the undertaking given by his counsel. The Subordinate Judge submitted his report to this Court. He, on examining the evidence produced before him, gave a finding relying upon the

appellant's statement that he did not instruct his counsel to prosecute the proceedings after the determination of the appeal. Appellant, in his statement before the Subordinate Judge, specifically stated that he had not instructed his counsel to represent him after the decision of the appeal. The statement of the appellant remained unrebutted. The Subordinate Judge, after examining the evidence produced before him, arrived at the following finding :—

> "In the present case, undertaking by the counsel for the respondent No. 1 was made after the decision of appeal. When the proceedings of the case have come to an end. Respondent No. 1 has specifically stated that he did not instruct his counsel to further prosecute his case. There is no rebuttal of this point and hence it will be presumed that the counsel for the respondent was not having any instructions regarding the further prosecution of the case on behalf of the respondent No. 1. Hence the counsel for respondent No. 1 had no authority to make any undertaking on behalf of the respondent No. 1 and therefore, an undertaking made by the counsel for respondent No. 1 is not binding on respondent No. 1."

The learned Single Judge did not advert to this piece of evidence and the report of the Subordinate Judge. The appellant had no knowledge of the undertaking given by his counsel before the first appellate Court and thus, he cannot be held guilty for violating the same. Moreover, rule 4(2), Order 3, Schedule I, Civil Procedure Code, requires that after a pleader has been once appointed by a party, his employment cannot be determined except (i) by a writing signed by the client or the pleader and filed in Court with the leave of the Court, or (ii) by the termination of the proceedings in the suit. An explanation has been added to this sub-rule which says that the following shall be deemed to be proceedings in the suit :—

(a) an application for the review of decree or order in the suit;

(b) an application under Section 144 or under Section 152 of this Code, in relation to any decree or order made in the suit;

(c) an appeal from any decree or order in the suit; and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.

In Punjab, Haryana and Chandigarh, amendment was made to sub-rule (3) of Rule 4 of Order 3, Civil Procedure Code, and the same reads as under :—

"(3) For the purpose of sub-rule (2),—

(i) an application or a proceeding for transfer under Section 22, 24 or 25 of this Code;

(ii) an application under Rule 4 or Rule 9 or Rule 13 of Order IX of this Code;

(iii) an application under Rule 4 of Order XXXVII of this Code;

(iv) an application for review of judgment,

(v) a reference arising from or out of the suit;

(vi) an application for amendment of the decree or order or the record in the suit ,or an appeal, reference or revision arising from or out of the suit;

(vii) an application for the execution of any decree or order in the suit;

(viii) an application for restitution under Section 144 or Section 151 of this Code;

(ix) an application under Section 151 of this Code;

(x) an application under Section 152 of this Code;

(xi) any appeal (including an appeal) under the Letters Patent of the High Court or revision application from any decree or order in the suit or an appeal arising from or out of the suit;

(xii) any application relating to or incidental to or arising from or out of such appeal or revision or a reference arising from or out of the suit (including an application for leave to appeal under the Letters Patent of the High Court or for leave to appeal to the Supreme Court);

(xiii) any application for directing or proceeding for prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings, mentioned hereinbefore or an appeal or revision arising from and out of any order passed in such application or act for the purposes of obtaining

copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned hereinbefore;

(xv) any application for the withdrawal or for obtaining the refund to payment of or out of the monies paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the monies deposited as security for costs or for covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme Court);

(xvi) any application for expunging any remarks, observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit;

(xvii) any applicaion for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit; and

(xviii) any application under Rule 15 of Order XLV of the Code, shall be deemed to be proceedings in the suit :

Provided that, where the venue of the suit or the proceedings shift from one Court (subordinate or otherwise) to another, situate at a different station, the pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court."

In the light of this amendment. the pleader can perform these acts on the strength of power of attorney. The proceedings in a suit of appeal does not terminate as mentioned in sub-rule (3) of Rule 4 for the purposes mentioned above, but the pleader cannot make any admission or give undertaking on behalf of his client after the termination of the proceedings. The proceedings will terminate when the *lis* is determined finally. After the Court pronounces final judgment, the suit or appeal will be deemed to have been determined disentitling the counsel to make any admission, concession or undertaking on behalf of his client except where he has been specifically authorized to do so.

In the instant case, no such authorization was proved to have been given. The undertaking given by the counsel, as stated above, was unauthorized and not binding on the appellant. In order to bind the appellant with the statement of his counsel made before the first appellate Court after the decision of the appeal, it was imperative for the respondent to lead positive evidence to establish that the counsel was authorized to make such a statement and he conveyed the contents of the undertaking given by him in Court to his client. In the absence of any evidence to this effect, it will be presumptuous to conclude that the counsel had communicated the undertaking given by him in Court to his client.

A breach of an undertaking given to the Court is on the same footing as disobedience of an order of the Court, as far as the question of contempt is concerned. In order to amount to contempt of Court and to be punishable as such, the mere breach of an undertaking given to, or disobedience of the order passed by, the Court, is not enough. It must further be proved that the breach or disobedience was wilful or contumacious and the act of the contemnor, therefore, signified disrespect to the Court. The proceedings for contempt are quasi-criminal in nature as pointed out by the Privy Council in *Ambard* v. *Attorney General for Trinidad and Tobago* (1), referred to by the apex Court in *Sukhdeo Singh* v. *Chief Justice and Judges of Pepsu* (2), and that, therefore, the Court should be satisfied about the guilt of the appellant beyond reasonable doubt.

On the proved facts of the case, it is not possible to hold that the conduct of the appellant was contumacious. He had no knowledge of the undertaking given by his counsel before the first appellate Court nor such an undertaking could be given and he could not be held guilty for contempt for committing breach of the undertaking given in Court by his counsel.

For the reasons stated above, the appeal succeeds, the order of the learned Single Judge is set aside, the contempt petition is dismissed and the rule is discharged. No costs.

J.S.T.

(1) A.I.R. 1986 P.C. 141.

(2) A.I.R. 1954 S.C. 186.