

Mahavir Singh v. Gian Parkash Khurana and another
(S. P. Goyal, J.)

interest. But to say that a contract between two companies is to be treated as invalid and beyond the power of one of the companies because one of the directors is interested in it, is a proposition which I have never heard advanced before, and which appears to me to be entirely unsound."

(6) The argument of the learned counsel was that even though the challenge to the competence of the two Companies to enter into the impugned contract was repelled, yet it was held that the Directors were not competent to enforce the contract against the Company which necessarily means that such a contract was against law or the public policy. The fallacy in the argument is quite obvious. The provision of Section 85 debarred the Director from having any interest in any contract with the Company and because of the same, a contract entered into with the Company was held to be unenforceable by such a Director. The Companies Act applicable in India, on the other hand, does not contain any provision prohibiting a Director from being interested in any contract with the Company. The only duty cast upon him by the provisions of Section 299 is to disclose the nature of his interest in the proposed contract at a meeting of the Board of Directors. The failure on his part to make such a disclosure, though has been made punishable, but does not have the effect of rendering the contract void or unenforceable. So, the impugned contract cannot be said to be void and unenforceable on the basis of any observation made in *Kaie's case* (supra) No case, consequently, has been made out for interference with the order of the trial Court and this petition is accordingly dismissed leaving the parties to bear their own costs.

R.N.R.

Before S. P. Goyal, J.

MAHAVIR SINGH.—Petitioner

versus

GIAN PARKASH KHURANA and another,—Respondents.

Civil Original Contempt Petition No. 365 of 1986.

May 27, 1987.

Industrial Disputes Act (XIV of 1947)—Section 17-B—Contempt of Courts Act (LXX of 1971)—Section 2(b)—Tribunal directing reinstatement with full back wages—Award of reinstatement stayed subject to section 17-B—No interim order passed staying payment

of back wages—Employer complying with order under section 17-B but not implementing award of back wages—Non-compliance of Award simpliciter—Whether act amounts to Contempt of Court.

Held, that it is difficult to subscribe to the view that simple non-compliance with any judgment, decree or order of the Court would amount to contempt on the part of the judgment-debtor as otherwise all laws and procedures relating to the enforcement of the decrees and orders would be rendered nugatory and meaningless. In case of wilful disobedience of any judgment, some positive act on the part of the judgment-debtor signifying disobedience of the judgment has to be alleged and proved. By passing a decree, neither the Court gives any direction to the judgment-debtor to obey it within any specified time nor he undertakes to do so. Therefore, it is the act of the contemner which in one case results in wilful disobedience of the judgment and in the other wilful breach of the undertaking which can give rise to contempt of Court and not non-compliance of a judgment, decree or order simpliciter. As admittedly no express or implied undertaking was ever given by the respondent-management for the payment of back wages, the simple non-compliance of the award by him would not amount to wilful disobedience of the award or to contempt of Court within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.

(Paras 5 and 7).

Contempt petition under Sections 11 and 12 of the Contempt of Courts Act, 1971, praying that the respondents be summoned and punished for committing contempt of Court.

U. S. Sahni, Advocate, for the petitioner.

Ashok Bhan, Senior Advocate, with Rakesh Garg, Advocate, for the Respondents.

JUDGMENT

S. P. Goyal, J.—

The services of the petitioner were terminated by the respondent and on a reference having been made under the Industrial Disputes Act, an award was made whereby the termination order was set aside and he was ordered to be reinstated with full back wages. The respondent challenged the award in this Court through a petition, Civil Writ Petition No. 5887 of 1986, which was admitted to hearing and the reinstatement of the petitioner stayed subject to the provisions of Section 17-B of the said Act. In spite of an affidavit having been filed by the petitioner in accordance with the

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requirements of Section 17-B and an application made to the management, his back wages were not paid. He has, therefore, filed this petition under the Contempt of Courts Act, 1971 (for short 'the Act') for taking proceedings against the respondent for deliberately disobeying the order of the Industrial Tribunal.

(2) The respondent, in his written statement, has stated that all the current wages in accordance with the provisions of Section 17-B of the Industrial Disputes Act have been paid to the petitioner. So far as the back wages are concerned, it is not disputed that the same have not been paid, but the plea taken is that the petition challenging the award having been admitted, the management was under no obligation to pay the back wages.

(3) From the pleadings of the parties, it is evident that there is no dispute on facts. The award ordered the reinstatement of the petitioner with full back wages. On the petition filed by the respondent, the reinstatement of the petitioner was stayed subject to the provisions of Section 17-B of the Industrial Disputes Act and there was no order staying the payment of the back wages. Still the question arises whether the non-compliance with the award simpliciter would amount to contempt of Court within the meaning of Section 2(b) of the Act.

(4) The learned counsel for the petitioner, relying on the definition of "civil contempt" contained in Section 2(b) of the Act, urged that the act of the respondent in not paying the back wages in spite of a written request having been made, would amount to wilful disobedience of the award and, therefore, would be civil contempt within the meaning of the said provision. In support of his contention, he relied on a Division Bench decision of this Court in (*Jagmohan Lal v. K. R. Awasthy*) (1). In that case, the question referred to the Division Bench was as to whether the Tribunal constituted under the Industrial Disputes Act was a Court subordinate to the High Court for the purpose of the Contempt of Courts Act or not, which was answered in the affirmative. Obviously, that decision has no bearing on the question in hand.

(5) It is difficult to subscribe to the view that simple non-compliance with any judgment, decree or order of the Court would

(1) C.O.C.P. No. 255 of 1976, decided on May 7, 1979.

amount to contempt on the part of the judgment debtor as otherwise all laws and procedures relating to the enforcement of the decrees and orders would be rendered nugatory and meaningless. In the definition of "civil contempt" the legislature has used two different words *qua* judgments and decrees etc. and the undertaking given to the Court. So far as the judgments and decrees etc. are concerned, civil contempt means their wilful disobedience whereas in case of undertaking given to the Court, it means its wilful breach. In case of an undertaking given to the Court, if the person concerned fails to honour it, it would obviously amount to its wilful breach because he fails to do or abstains from doing some act which he promised to the Court through his undertaking. So, the very act of not honouring the undertaking would amount to civil contempt in such a case. On the other hand, in case of wilful disobedience of any judgment, some positive act on the part of the judgment debtor signifying disobedience of the judgment has to be alleged and proved. By passing a decree, neither the Court gives any direction to the judgment debtor to obey it within any specified time nor he undertakes to do so. But, apart from non-compliance, if some act on his part shows disobedience of the judgment or the decree, such an act may amount to civil contempt if it is wilful and contumacious. For example, a decree is passed against 'A' for executing a sale deed of a house by way of specific performance of an agreement and delivery of its possession. Instead of complying with the decree, he either demolishes the house or transfers it to a third party. So, he not only fails to comply with the decree but disobeys it by some overt act on his part. In such a case his act may amount to civil contempt if it is shown to be wilful.

(6) The question whether the disobedience of a decree or order amounts to civil contempt came before the Supreme Court in *Babu Ram Gupta v. Sudhir Bhasin and another*, (2) and was answered in the negative with the following observations :—

"In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would co-operate with the receiver or that he would hand over possession of the Cinema to the receiver. Apart from this, even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he would

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hand over possession of the property to the receiver. In the employee *prima facie* discloses that it had been passed appellant or any undertaking incorporated in the order impugned it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking. What the High Court appears to have done is that it took the consent order passed which was agreed to by the parties and by which a receiver was appointed, to include an undertaking given by the contemner to carry out the directions contained in the order. With due respects, we are unable to agree with this view taken by the High Court. A few examples would show how unsustainable in law the view taken by the High Court is. Take the instance of a suit where the defendant agrees that a decree for Rs. 10,000 may be passed against him and the court accordingly passes the decree. The defendant does not pay the decree. Can it be said in these circumstances that merely because the defendant has failed to pay the decretal amount he is guilty of contempt of Court? The answer must necessarily be in the negative. Take another instance where a compromise is arrived at between the parties and particular property "having been allotted to A, he has to be put in possession thereof by B. B does not give possession of this property to A. Can it be said that because the compromise decree has not been implemented by B, he commits the offence of contempt of Court? Here also the answer must be in the negative and the remedy of A would be not to pray for drawing up proceedings for contempt of Court against B, but to approach the executing Court for directing a warrant of delivery of possession under the provisions of the Code of Civil Procedure. Indeed, if we were to hold that non-compliance of a compromise decree or consent order amounts to contempt of Court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the Courts amounts to contempt of Court is that the contemner by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the Court itself and thereby obstructs the course of justice and brings into disrepute the judicial

institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the Court but on one of the parties. Thus, the offence committed by the person concerned is *qua* the party not *qua* the Court, and, therefore, the very foundation for proceeding for contempt of Court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the Court by the contemner or incorporated by the Court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking implied or expressly incorporated in the order impugned. Thus, there being no undertaking at all the question of breach of such an undertaking does not arise."

(7) I am, therefore, of the considered view that it is the act of the contemner which in one case results in wilful disobedience of the judgment and in the other wilful breach of the undertaking which can give rise to contempt of Court and not non-compliance of a judgment, decree or order simpliciter. As admittedly no express or implied undertaking was ever given by the respondent for the payment of the back wages, the simple non-compliance with the award by him would not amount to wilful disobedience of the award or to contempt of Court. This petition, therefore, must fail and the rule issued is accordingly discharged.

R.N.R.

Before Pritpal Singh, J.

SHIVALIK ICE FACTORY AND COLD STORAGE and others,—
Petitioners.

versus

REGISTRAR OF COMPANIES,—Respondent.

Criminal Misc. No. 7861-M of 1986.

May 28, 1987.

Companies Act (I of 1956)—Sections 159, 162 and 220—Code of Criminal Procedure (II of 1974)—Section 468—Offences under sections 159 and 220—Whether continuing offences—Cognizance thereof—Whether can be taken after expiry of limitation provided in Section 468 of the Code.