

there is no authority vested on the respondents to impose the impugned punishment on the appellant. For this reason also the impugned order of the respondents imposing various punishments on the appellant cannot be sustained because the said order is not backed by a legal authority.

(15) The Director in the present case simply issued a show-cause notice to the appellant. He did not hold any enquiry into the allegations made in the application. In the case of the present type, it was obligatory on the part of the Director of the Institute in the interest of natural justice, to hold an enquiry before imposing the punishment upon the appellant. In any case after the Director received an order dated 14th July, 1987 from the Acting Secretary, accepting the resignation of the appellant with effect from 1st March, 1984 it was obligatory on the part of the respondents to reconsider the matter and hold a proper enquiry into the matter. Once the resignation of the appellant is accepted with effect from 1st March, 1984, it means that on the date he was admitted to the postgraduate course by the respondents, he was not in service of the Government. For this reason also the order of the respondents imposing the aforesaid punishment on the appellant is illegal being in violation of principles of natural justice.

(16) In view of the above discussion we are unable to agree with the learned Single Judge in upholding the punishment imposed upon the appellant by the respondents. Accordingly, this appeal is accepted and the judgment and order of the learned Single Judge is set aside. A writ of certiorari is issued thereby quashing the impugned order Annexure P-5 passed by respondent No. 2. The respondents are directed to declare the result of the appellant forthwith. There will, however, be no order as to costs.

P.C.G.

Before : A. L. Bahri, J.

RAM NATH KAPOOR,—Petitioner.

versus

CHOTTU RAM,—Respondent.

Civil Original Contempt Petition No. 411 of 1990.

24th September, 1990

Contempt of Courts Act (70 of 1971)—Ss. 2(b), 11 & 12—Code of Civil Procedure, 1908 (Act V of 1908)—O. XIII, Rl. 3—Suit dismissed

Ram Nath Kapoor v. Chottu Ram (A. L. Bahri, J.)

as withdrawn in view of defendant's statement—Such statement is a promise and not undertaking—Compromise not in writing—Breach of promise—Whether contempt proceedings can be initiated.

Held, that on the statement given by the landlord Ram Nath Kapoor, the suit was to be dismissed and it was so ordered. Undertaking to vacate the premises by the specified date may be promise between the landlord and the tenant. Breach of the same does not amount to committing of contempt of court as defined. Even otherwise the alleged compromise was not recorded in accordance with the Order XXIII Rule 3 of the Code of Civil Procedure which require the compromise to be in writing to be executed to be acted upon by the Court.

(Para 4)

Contempt Petition under Sections 11 & 12 of the Contempt of Courts Act, praying that the respondent be held liable for the contempt of the Subordinate Court as he has breached the Undertaking given before the Senior Sub Judge, Chandigarh, on 4th August, 1989.

T. R. Arora, Advocate, for the Petitioner.

Chandra Singh, Advocate, for the Respondent.

JUDGMENT

A. L. Bahri, J.

(1) Ram Nath Kapoor prayed for punishing Chhotu Ram respondent for committing contempt of Court of having deliberately breached the undertaking given by him to the Court of Senior Sub Judge on August 4, 1989. The undertaking given was that he would vacate the premises by March 31, 1990 but had failed to do so. On notice being given, Chhotu Ram submitted reply contesting the case.

(2) Chhotu Ram had filed a suit for grant of permanent injunction in April 1989 in the Court of Senior Sub Judge, Chandigarh, against Ram Nath Kapoor restraining him from interfering with the physical possession of the premises; one room and a store on *barsati* floor of house No. 1607, Sector 7-C, Chandigarh, with the common use of latrine and bath. Chhotu Ram claimed himself to be the tenant of the aforesaid premises. On August 4, 1989 Ram Nath Kapoor, who was defendant in the suit, made statement to the effect that he would not evict and interfere in the peaceful possession of

the plaintiff (Chhotu Ram) in respect of the premises as described and shall evict him in due course of law. He further stated having received rent upto July 31, 1989 at the rate of Rs. 325 per month exclusive of water and electricity charges. Statement of Chhotu Ram (plaintiff in the suit) was also recorded who accepted the statement of Ram Nath Kapoor as correct. He further stated as under :—

“..... I shall vacate the premises by 31st March, 1990. The suit filed by me be dismissed as withdrawn.”

While passing the final order, the Senior Sub Judge observed that in view of the statement of the defendant and that of the plaintiff the suit stood dismissed as withdrawn having compromised. File be consigned to the record room.

(3) Section 2(b) of the Contempt of Courts Act defines civil contempt as under :—

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

(4) It has been argued on behalf of the respondent that the suit was liable to be dismissed as withdrawn on the statement of Ram Nath Kapoor who was not to interfere with the possession and was to evict in due course of law. Any undertaking given by Chhotu Ram in his statement in the suit was only a promise to Ram Nath Kapoor and was not an undertaking given to the Court and even if there was breach of the aforesaid undertaking on the part of Chhotu Ram, no contempt is made out. I find force in this contention. In the suit filed there was no claim of dispossession of the tenant. Rather the suit was filed by the tenant that the landlord should not interfere with the possession for which he claimed injunction against the landlord. On the statement given by the landlord Ram Nath Kapoor the suit was to be dismissed and it was so ordered. Undertaking to vacate the premises by the specified date may be promise between the landlord and the tenant. Breach of the same does not amount to committing of contempt of court as defined. If such a promise was enforceable at law the landlord could do so. The contention of counsel for the petitioner is that on account of the aforesaid undertaking the petitioner could not file ejection application till March 31, 1990 and thus on failure of Chhotu Ram to vacate the

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premises on the date aforesaid the petitioner in a way was restrained from filing ejection application earlier. Be that as it may, in the circumstances aforesaid no contempt of Court was made out. Even otherwise the alleged compromise was not recorded in accordance with the Order XXIII Rule 3 of the Code of Civil Procedure which require the compromise to be in writing to be executed to be acted upon by the Court. In the present case in fact the Court did not act upon the aforesaid undertaking. No order was passed on that undertaking and none was required to be passed as the suit was liable to be dismissed as withdrawn which was filed by the tenant. It is not considered appropriate to proceed with this contempt petition which is dismissed. No costs.

P.C.G.

Before : A. L. Bahri, J.

JAI RAM (DECEASED) AND OTHERS,—*Appellants.*

versus

JAGAT RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1349 of 1990

9th November, 1990

Code of Civil Procedure, 1908 (Act V of 1908)—O. 22, Rl. 3 & 9—Limitation Act (XXXVI of 1963)—S. 5—Setting aside of abatement—Application filed after one year—Applicant should show sufficient cause—Application for condonation of delay filed pleading ignorance of law—Ignorance of law held not to be sufficient cause—Abatement is automatic.

Held, the Civil Procedure Code having been amended as far as bringing on record the legal representatives of the defendants or the respondents for the disposal of the matter without bringing such legal representatives on the record; whereas position of the case where plaintiff or the appellant had died and legal heirs are not brought on record and there is abatement, is different and continues to be as before. The abatement is automatic, if legal heirs are not brought on record on the death of the plaintiff or the appellant. It is in that sense that it is to be examined as to whether sufficient