

Chhaganbhai Norsinbhai

Vs

Soni Chandubhai Gordhanbhai and Others

Civil Appeal No. 88 of 1975

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

23.03.1976

JUDGMENT

BEG, J. -

1. This is an appeal under Section 19(1)(b) of the Contempt of Courts Act, 1971. The defendant-appellant was convicted by the Division Bench of the High Court of Gujarat for having deliberately violated an order secured from the High Court on January 22, 1973 upon undertakings given to it. The very first term of the order is :

The defendant gives solemn undertaking to this Hon'ble High Court that he will vacate suit premises by handing over the key of the premises to the Court of the Civil Judge, Junior Division, Anand, in pursuance of the decree within one and a half months after receipt of the notice from the plaintiffs that the plaintiff Dr. I. G. Soni has returned from abroad and intends to start medical practice in the suit premises.

2. He also undertook to clear the arrears of mesne profits and to continue to pay them regularly as and when due. Furthermore, he understood not to part with possession in favour of any person other than the landlord decree-holder until he received the notice contemplated by the first condition. It is not disputed that the appellant received that notice on October 10, 1974. There is nothing in the conditions of the undertaking to imply that it was merely a consent order passed upon an agreement between the parties to which the order of the court had been superadded. The order incorporated express undertakings to the court although these may have induced the plaintiff to agree to the passing of the order in the form in which it was passed instead of pressing for an order of dismissal of the revision application before the High Court after which he could have executed his decree immediately. This feature in itself, could not convert the order actually passed upon the undertakings given into a mere consent order. It was clearly a case of express undertakings to the court incorporated in the order. The order passed on January 22, 1973, ended as follows :

In view of the respective undertakings given by the parties to this proceeding, which undertakings are on record, the petitioner does not wish to proceed with this C.R.A. and does not therefore survive. The application is dismissed. No order as to costs in this circumstance of the case.

3. The defendant-appellant not only did not abide by the undertakings given to the High Court but his Counsel took the impossible position that it was a mere agreement between the parties to which an order of the court has been appended. On this flimsy and unsustainable ground, an argument put forward before us was that there was no breach of any undertaking. The High Court

found that express undertakings had been violated. We have no hesitation whatsoever in holding that the High Court's finding is correct upon the recorded admissions on behalf of the defendant-appellant. It is true that the defendant-appellant surrendered possession after the initiation of contempt proceedings in 1974. But, that made no difference to the initial wrong committed.

4. Another feature of the case is that the appellant gave no sign of even regret at any stage not to mention an apology of any kind. Even in this Court, learned Counsel for the appellant took up the impossible position that there had been no breach of any undertaking. We agree with the High Court that this is a case of a perverse and deliberate flouting of undertakings given by a litigant who, evidently, had no intention to abide by them. The undertakings seemed to have been taken very lightly by him as mere cloaks for obtaining an order which would not have been passed but for the undertakings. The High Court rightly observed that it had no option except to convict the appellant and to sentence him to three months' imprisonment in civil jail.

5. Before parting with this case we may refer to Halsbury's Laws of England - Fourth Edn., Vol. 9, page 42 (paragraph 71) where, after citing *Dashwood v. Dashwood* ((1927) 71 Sol Jo 911) for the proposition that, when a party fails to comply merely with the terms of a consent order, the remedy of the injured party is to apply, not for committal, but for an order for specific performance or an injunction, and then to base proceedings for contempt on any subsequent breach, the observation is made :

Where, however, there is an express direction or undertaking in the body of the order, a breach will enable an immediate application for committal to be made.

In the same volume, at page 44 (para 75) we find the law thus stated :

An undertaking given to the court by a person or corporation in pending proceedings on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt.

6. The case before us being a case of a deliberate violation of an undertaking to the court the effect was the same as that of breach of an injunction.

7. Consequently, finding ourselves in agreement with the High Court, we affirm the judgment and order of the High Court and dismiss this appeal with costs.

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