

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (CIVIL) Nos. 12-13 of 2006
IN
SPECIAL LEAVE PETITION (CIVIL) Nos. 7659-7660 OF 2004

PATEL RAJNIKANT
DHULABHAI & Anr. ... Petitioners

VERSUS

PATEL CHANDRAKANT
DHULABHAI & Ors. ...Respondents/Contemners

J U D G M E N T

C.K. Thakker, J.

1. The present contempt petitions are filed by the petitioners against respondent Nos. 1 to 3, alleged contemners, praying that they be held guilty of 'civil contempt' for violating orders passed by this Court on April 26, 2004 and on January 10, 2005 and be punished accordingly. A prayer is also made directing the contemners to deposit the amount received from third parties in consideration of

transfer of property effected by them during the period of interim orders of this Court.

2. Shortly stated the facts of the case are that petitioners and respondent Nos. 1, 4 and 5 (in Special Leave Petitions) are real brothers and heirs and legal representatives of one Dhulabhai Patel. It was the case of the petitioners that in 1961, one Chandulal Muljibhai Parikh and Dhulabhai Patel (father of petitioners and respondent Nos. 1, 4 and 5) purchased land bearing Revenue Survey Nos. 459/2, 464, 465, 466/1 and 466/2 admeasuring 6 acres and 9 gunthas of village Atladara, Taluka and District Baroda in the State of Gujarat from one Parvatibai Ingle by a registered sale deed. According to the petitioners, the amount of consideration was paid from the funds of Hindu Undivided Family (HUF) of Dhulbhai Patel, but name of respondent No. 1 Chandrakant Dhulabhai Patel was shown as the purchaser of the property being the eldest son of deceased Dhulabhai Patel along with Chandulal Muljibhai

Parikh. Respondent Nos. 4 and 5 were minors at that time. Respondent No. 1, Chandrakant Dhulabhai Patel was also studying in a college and was having no source of income whatsoever. The entire amount was paid by deceased Dhulabhai. According to the petitioners, several documents revealed that the property was managed by HUF of Dhulabhai Patel. In October, 1986, Dhulabhai died. No partition by metes and bounds had been effected between the sons of deceased Dhulabhai and the property continued to remain as HUF property. The petitioners used to manage property after the death of Dhulabhai.

3. In 1990, a Memorandum of Understanding (MoU) was entered into between respondent No. 1, Chandrakant Patel, being eldest son of Dhulabhai Patel family on one hand and heirs of deceased Chandulal Parikh on the other hand whereunder it was agreed that a portion of land towards western side would be treated as

property of deceased Dhulabhai Patel and his family members.

4. In 1998, however, respondent No. 1 in conspiracy with third party and behind the back of the petitioners and respondent Nos. 4 and 5 executed an agreement to sell the share of HUF property belonged to the petitioners and other members of deceased Dhulabhai Patel. A collusive suit came to be filed by respondent Nos. 2 and 3 (partners of M/s Om Shivam Corporation) in the Court of Civil Judge (Senior Division), Baroda, being Special Civil Suit No. 311 of 1999 for specific performance of agreement, dated January 18, 1998 against respondent No. 1 and within less than a month, a collusive and fraudulent consent decree was passed. The petitioners were neither aware of the suit nor the decree passed therein. It was only when a caveat was filed by M/s Om Shivam Corporation, a partnership firm that the petitioners suspected foul play. They, therefore, made an inquiry and came to know

about the suit and collusive decree. Immediately, they filed a suit being Special Civil Suit No. 605 of 2002 in the Court of Civil Judge, (Senior Division), Baroda for declaration, partition of joint family property and their share in the said property. Along with the plaint, the petitioners filed an application (Exh. 5) under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for interim injunction restraining the defendants from putting up any construction on the land admeasuring 1,43,000 sq. ft. towards western side of the land bearing Revenue Survey Nos. 459/2, 464, 465, 466/1 and 466/2 and from entering into any transaction of sale, gift, mortgage or from dealing with the property in any other manner or from handing over possession of the suit land to anyone else. The trial Court issued notice to the defendants, but did not grant injunction as prayed by the petitioners-

plaintiffs. The petitioners challenged the said order by filing Appeal from Order No. 140 of 2003 and the High Court of Gujarat vide its order dated May 2, 2003 directed the trial Court to dispose of the Application (Exh. 5) on merits within 15 days from the re-opening of the courts after summer vacation.

5. The trial Court thereafter heard the matter and dismissed the Application by refusing interim injunction. The petitioners once again preferred an appeal against the said decision in the High Court being Appeal From Order No. 241 of 2003. Along with Memorandum of Appeal, the petitioners filed Civil Application No. 5083 of 2003 for interim injunction. In paragraph 8 of the Civil Application, the petitioners prayed for interim relief. The High Court by an order dated July 23, 2003, granted *ex-parte* ad interim relief in terms of paragraph 8(A).

6. The said paragraph read as under;

8. The applicants, therefore, pray that :

(A) Pending admission, hearing and final disposal of the aforesaid Appeal from Order, the Hon'ble Court may be pleased to issue an injunction restraining opponents Nos. 1 to 3 herein, from putting up any construction on the suit land either themselves or through their agents and/or servants and from disposing of the said property or creating any interest therein in favour of a third party either by sale, mortgage, transfer, assignment, gift or in any other manner whatsoever.

7. It is thus clear that though interim injunction was refused by the trial Court, the High Court on July 23, 2003, granted the prayer of the petitioner and issued interim injunction during the pendency and final disposal of Appeal from Order instituted by the petitioners-appellants.

8. The High Court then heard the matter and by judgment and order dated March 26, 2004 dismissed the appeal observing that considering

the facts and circumstances of the case in their entirety, the order passed by the trial Court below Application Exh. 5 called for no interference. Interim relief which was granted earlier was ordered to be vacated.

9. The learned counsel appearing for the petitioners-appellants in the High Court, at that stage, made a prayer to the Court to continue interim relief granted earlier so as to enable the petitioners-appellants to approach higher forum. After hearing the learned counsel for the parties and noting objections raised by the other side, the Court continued interim relief granted earlier for four weeks.

10. Paragraphs 35 and 36 of the judgment which are relevant read as under;

35. Considering the entire facts and circumstances of the case and having regard to the legal position concerning the point in issue, this Court is of the view that the impugned order passed by the Trial Court below an application Exh. 5 does not call for any interference in this

Appeal From Order. Accordingly, this Appeal From Order is dismissed. Interim relief granted earlier is vacated.

36. At this stage, Mr. A.J. Patel, the learned advocate appearing for the appellants requested to continue the interim relief granted earlier by this Court for the period of six weeks so as to enable the appellants to approach the higher forum. Mr. Bhatt and Mr. Nanavati, learned advocate appearing for the respondents Nos. 1, 2 & 3 respectively have strongly objected to the extension of interim relief. **After considering their submissions on this issue, the interim relief granted earlier is extended for four weeks from today.**

(emphasis supplied)

11. Being aggrieved by the said order, the petitioners approached this Court by filing Special Leave Petition (Civil) Nos. 7659-7660 of 2004. On April 26, 2004, this Court issued notice and continued interim order passed by the High Court which was, as noted earlier, in terms of prayer para 8(A). The order, dated April 26, 2004 passed by this Court read as under;

"The interim order already granted by the High Court will continue subject to further orders of this Court".

12. Notices were served on the respondents who appeared. Affidavits and further affidavits were thereafter filed and Special Leave Petitions were disposed of by this Court on January 10, 2005.

13. The said order read thus;

"The dispute in these special leave petitions pertains to the construction on certain properties which are claimed to be the joint family properties. By the impugned interim order, the High Court has permitted construction to be made on the suit properties. We have considered the reasoning of the High Court. While not affirming the correctness of the prima facie opinion expressed therein, we are of the view that the interest of the parties will be adequately protected if a conditional order is passed. The special leave petitions, are, accordingly, disposed of by making it clear that **any construction which is made by the respondent - purchasers on the disputed properties will be subject to the outcome of the suit. Any third party right which is created shall be done after notice to the petitioners. The pendency of the**

proceedings shall also be notified to each of the third parties so involved. The Trial Court is directed to dispose of the suit expeditiously, preferably within a period of six months from the date of the communication of this order.

(emphasis supplied)

14. The allegation of the petitioners in the present Contempt Petitions is that in spite of interim order passed by this Court on April 26, 2004, as modified by final order dated January 10, 2005, the respondent Nos. 1 to 3 (contemners) dealt with and transferred the suit property by entering into agreements, accepted the amount by way of consideration, executed sale-deeds in favour of third parties without notice to the petitioners, allowed construction to be made and thereby committed wilful disobedience and intentional violation of the order of the Court and they are liable to be punished in accordance with law.

15. On these petitions, notices were issued on February 6, 2006. The respondents

appeared and filed affidavits. Having satisfied that the pleadings were complete, the Registry was directed to place the matters for final disposal. That is how the matters have been placed before us.

16. The learned counsel for the petitioners contended that in spite of the orders passed by this Court, the contemners sold the property, received consideration and executed sale-deeds. No notice was given to them about the transactions before they were entered into. The orders of this Court were abundantly clear. The first order dated April 26, 2004, totally restrained the respondents from taking any action during the pendency of the proceedings. In spite of such clear-cut order, properties were sold and several other actions were taken by the contemners and they are liable to be punished for committing contempt of Court. It was also submitted that even under the order dated January 10, 2005, when Special Leave Petitions were disposed of

and earlier interim order was modified, the contemnners had acted in violation of the directions. And on that ground also, they are liable under the Contempt of Courts Act.

17. The learned counsel for the petitioners, in this connection, referred to agreements to sell as well as sale deeds and acceptance of part payment or full payment of consideration during the intervening period between July 23, 2003 when the High Court granted interim relief in terms of para 8(A) and also orders dated April 26, 2004 and the final order dated January 10, 2005 by this Court. It was urged that though the suit was pending before the trial Court and the matter was **sub-judice**, in agreements to sell as also in sale deeds, an express and unequivocal statement was made by the contemnners that their title to the property is 'clear' and 'marketable'. It was ordered by the Court on January 10, 2005 that if any third party right

would be created, it "shall be done **after** notice to the petitioners". No such notice, however, was given to the petitioners. It was only after the properties were sold that a '**pursis**' was filed in the trial Court stating therein that certain properties were sold by the defendants. Thus, there was clear breach of orders of this Court and the contemners are liable to be punished for violating the interim orders.

18. The learned counsel for the respondents-contemners, on the other hand, submitted that the Contempt Petitions are liable to be dismissed. The respondents had not wilfully and intentionally violated interim orders of this Court. No doubt, the High Court, granted interim injunction in Civil Application in Appeal from Order on July 23, 2003 but finally Appeal from Order itself was dismissed. Similarly, this Court on April 26, 2004 continued interim relief but ultimately, dismissed Special Leave Petitions on January

10, 2005 by modifying earlier interim order. It was also submitted that this Court never ordered to give '**prior**' notice to the petitioners before entering into any agreement or executing sale-deed. It was, therefore, not necessary for the respondents either to issue notice or to intimate petitioners **before** entering into any transaction. But in certain cases, even '**prior**' notice of transaction was given to the petitioners by the respondents; though in some cases, such notice was given after entering into agreements/transactions but the same could not be said to be violative of the orders passed by this Court. Alternatively, it was submitted that even if the Court finds that there is '**technical**' breach of the orders of this Court, the respondents have tendered unconditional and unqualified apology which may be accepted by this Court and contempt proceedings may be dropped against them by showing magnanimity and taking lenient view.

19. We have given most anxious and thoughtful consideration to the rival contentions of the parties. We have also gone through the relevant record and orders passed by the High Court as also by this Court. We have perused affidavits and further affidavits filed by the parties to these petitions. We have carefully gone through various documents on record.

20. We have reproduced both interim orders passed by this Court; (i) order, dated April 26, 2004, and (ii) order, dated January 10, 2005. Under the first order, larger relief was granted, obviously because at that stage, the Court on *prima facie* satisfaction of the case, issued notice to the respondents. Moreover, even the High Court which had granted interim relief on July 23, 2003, continued the said relief (though Appeal from Order was dismissed and interim relief was vacated) so as to enable the aggrieved parties to approach this Court. On January 10, 2005, however, this Court

disposed of Special Leave Petitions. But taking note of the pendency of the main matter (suit), the Court did not totally vacate interim relief but modified it by imposing certain conditions. The question before us is whether the contemners had violated both the orders or any of the two orders and whether such violation or disobedience was wilful or intentional as alleged by the petitioners. If so, what punishment should be imposed on the contemners and what should be the final order in these contempt petitions.

21. Before proceeding with the consideration of rival contentions, it may be stated for the completion of record that Special Civil Suit No. 605 of 2002 instituted by the petitioners herein (plaintiffs) was decreed by the IXth Additional Senior Civil Judge, Vadodara on May 23, 2006 and it was declared that plaintiff Nos. 1 and 2 and defendant Nos. 1, 4 and 5 each has 3/16 share in the suit property and defendant Nos. 7, 8

and 9 each has 1/48 share in the said property. Preliminary decree was ordered to be drawn up accordingly. It was also stated that the defendants against whom the decree is passed have challenged the decree by filing First Appeal in the High Court and the matter is *sub-judice*.

22. Now, it is the case of the petitioners that in spite of interim orders of this Court, dated April 26, 2004 and January 10, 2005, in gross violation, wilful disobedience and intentional breach thereof, the contemners had sold certain properties without notice to the petitioners. It was stated that the contemners executed a sale-deed in favour of Madhuben Rohit and Jasodaben Thakor on August 30, 2005 for consideration of Rs.3,30,000/-. The contemners accepted a cheque of Rs.2,00,000/- bearing No. 531526, dated October 15, 2004. Similarly, an agreement to sell was executed in favour of Hemlataben Shah for Rs.3,00,000/- on May 26, 2005 and the entire amount was received

by three cheques; cheque No.719372, dated April 15, 2004; cheque No.719374, dated April 22, 2004 and cheque No. 216684, dated April 29, 2004. Again, a sale deed in favour of Smt. Ranjit Gulati was executed by accepting a cheque of Rs.51,000/- dated September 10, 2003, a cheque of Rs.1,00,000/- dated October 8, 2004 and a cheque of Rs.1,39,000/- dated April 26, 2004. By producing additional documents on record, the petitioners have stated that sale-deeds were executed by the contemners in favour of Jayesh Natwarlal Parikh on August 18, 2005; Hemaben Jayeshbhai Parikh on August 18, 2005, Rashmikaben Navinchandra Desai on August 30, 2005 and Tolaram Radharam Popat on April 25, 2005. All these transactions were entered into in gross violation and breach of the orders of the Court and the contemners may, therefore, be punished for committing contempt of Court.

23. The respondents have filed affidavits denying the allegations levelled by the petitioners and asserting that they have not

committed any act in disobedience of the order of the Court and the contempt petitions are liable to be dismissed.

24. Respondent No. 1 (Chandrakant Dhulabhai), in his affidavit, dated June 16, 2006 (filed on August 17, 2006) stated that the contempt petitions are 'primarily' directed against respondent Nos. 2 and 3 who are alleged to have violated the orders of this Court. It was stated that the orders were required to be complied with by respondent Nos. 2 and 3 and were not directed against respondent No. 1. It was also stated that the respondent No. 1 is 67 years old and has been impleaded just to harass him without making any averment/allegation against him. It is, therefore, prayed to dismiss contempt petitions against him.

25. A counter-affidavit is also filed by respondent Nos. 2 and 3 controverting the averments and denying the allegations of the petitioners in the Contempt Petitions. It was stated that during the operation of interim

order dated April 26, 2004, they had neither executed any sale deed nor created third party interest in the suit property. The cheques said to have been accepted by them during interim orders represented the amount paid towards consideration of the apartment booked prior to the issuance of interim orders.

26. Regarding the allegation that the title of the suit property was described as 'clear and marketable', it was stated that as per the order of the Court, what was required to be mentioned was the pendency of the proceedings. In all the sale deeds, executed by the respondents, specific recital was made that the transaction was subject to pendency of civil suit and final decision therein.

27. Regarding the third allegation of not giving notice to the petitioners, it was stated that no 'prior' notice was required as per the order of this Court. It was stated;

- a. in order to protect the interest of the parties, this Hon'ble Court passed a conditional order stating

inter alia "any third party rights which is created shall be done after notice to the petitioners". This Hon'ble Court has not used the word "prior" as alleged. This Hon'ble Court had desired that as and when third party rights are created, the petitioners should be duly informed. The purpose of such information was to enable the petitioners to protect their interest by impleading such third parties in the pending suit.

- b. Admittedly, initially, by pursis dated 1.3.2005, the petitioners were given prior intimation about the creation of third party rights. However, subsequently it was found that out of the 11 sale deeds which were proposed to be executed and about which prior intimation by pursis dated 1.3.2005 was given - 7 sale deeds could not be executed for quite some time, as the deal could not be finalized. Further, before executing the sale deeds, 2 buyers/third parties/allottees got the deals transferred in some other name, viz. name of their wife/child.

28. Hence, as per legal advice obtained, the intimation was being submitted before the Hon'ble Civil Court **after** taking endorsement of Advocate for the petitioner.

29. It was further stated by respondent Nos. 2 and 3 that originally land bearing Survey Nos. 459/2, 464, 465, 466/1 and 466/2, admeasuring 26.608 Sq.M. was jointly purchased by Chandrakant Dhulabhai Patel and Chandulal Muljibhai Parikh in 1961. In 1990, however, an understanding had been arrived at between the heirs and legal representatives of Chandulal Parikh and Chandrakant Dhulabhai Patel and as per partition, 50% land situated on the western side (Part 'A') fell to the share of Chandrakant Patel whereas 50% land on the eastern side (Part 'B') came to the share of Parikh family. It was further stated that respondent Nos. 2 and 3 entered into Development Agreement with Parikh family for 50% eastern side land (Part 'B') which came to the share of Parikh family and also with respondent No. 1 Chandrakant Patel for western side of land (Part 'A'). The scheme was thus jointly promoted for part 'A' land and part 'B' land. In course of time, property 'A' became

disputed property, but there was no dispute as to property of part 'B'. It was also stated that part 'B' property abuts 30 metres wide road while part 'A' property abuts 40 meters wide T.P. Road. Thus, part 'A' property (suit property) was having better location and higher commercial value.

30. Respondent Nos. 2 and 3 admitted that Madhuben Rohit and Jasodaben Thakor deposited Rs. two lacs on October 15, 2004 for booking one of the shops which was to be constructed on Part 'B' property. But after the disposal of Special Leave Petitions on January 10, 2005, the injunction came to an end regarding part 'A' property. Under the circumstances, request of Madhuben and Jasodaben for allotment of shop in part 'A' property instead of part 'B' property was favourably considered and accepted. Cases of Hemlataben Shah, Rashmikaben and Ranjit Gulati were identical. Sale-deed in favour of Dr. Tolaram Popat was executed on January 24, 2005, i.e. after final disposal of

SLP and there was no interim injunction at that time.

31. It was, therefore, submitted that respondent Nos. 2 and 3 had not created any right in favour of third party during the operation of interim order and there was no question of taking proceedings under the Contempt of Courts Act.

32. Regarding notice to petitioners, the respondents stated that *pursis*, Ex. 88 was filed in the trial Court wherein details had been supplied in respect of 11 transfer deeds which were to be executed. Thereafter, again *pursis*, Ex. 106 was filed on September 01, 2005 in which all details were given. Thus, they have not violated the order of this Court.

33. Finally, it was stated;

"Without prejudice to the above, the respondents tender their unconditional apology to this Hon'ble Court."

34. In affidavit-in-rejoinder, the petitioners have stated that after examining

oral and documentary evidence, the competent Court passed a decree in favour of plaintiffs declaring shares of plaintiffs and defendants. Meanwhile, however, the respondents disposed of several properties. It was reiterated that illegally and with mala fide intention, the respondents created third party interest in gross defiance of interim orders and by making inconsistent and contradictory statements. A false statement was made by respondents in sale deeds and in agreements to sell that the title of the respondents over the property was 'clear and marketable'. As to properties part 'A; and 'B', it was stated that the contention was wholly irrelevant inasmuch as the trial Court decreed the suit by holding the plaintiffs as joint owners of the property.

35. Further affidavit was thereafter filed by respondent Nos. 2 and 3 on February 25, 2008 on the question of title deeds. It was stated that in sale deeds, a statement was made that "third party has no right, title, interest or

claim and the property (subject-matter of sale deed) was not under attachment". But it was also stated that the suit was pending and the sale-deeds were executed subject to final decision in the suit. Thus, the respondents had acted bona fide. They have not only notified in the sale-deeds the pendency of civil suit but also have gone a step further and stated that the sale-deeds were being executed subject to final decision in the pending suit. It was, therefore, submitted that the Contempt Petitions should be dismissed.

36. From the facts stated above, it is proved that there is breach of interim orders passed by this Court. So far as the defence as to properties falling in parts 'A' and 'B' is concerned, in our opinion, it is clearly an after thought and the plea has been put forward without there being anything on record. Though it was stated that initially, Madhuben, Hemlataben, Rashmikaben and Ranjit Gulati were

given shops in part 'B' property, no such agreements/deeds have been placed on record. It was then stated that after interim relief was vacated and request was made by them to allot them shops in part 'A' property, no evidence/material has been adduced by the contemners. A stereo-type affidavits have been filed sworn on one and the same day, July 29, 2006 after contempt notice was served upon the respondents. Even the sale-deeds do not recite part 'A' or 'B' of the property or the fact that earlier the allottee was granted shop in part 'B' property but after the disposal of the Special Leave Petitions, request was made by the purchaser to convert the allotment from part 'B' property to part 'A' property. The so-called defence, therefore, is apparently to avoid consequences of contempt proceedings.

37. Moreover, the defence does not appear to be probable. *Normally*, no reasonable and prudent man/woman who purchases immovable property with a 'clear' title would request the

owner of the property to allot him/her property over which his title is not clear, which is the subject-matter of litigation, for which a suit is pending and the matter is *sub-judice* in a Court of law.

38. Further, the pleas advanced by respondent Nos. 2 and 3 are inconsistent, conflicting and irreconcilable. On the one hand, it was asserted that during the operation of the interim order, dated April 26, 2004, respondent Nos. 2 and 3 had not created third party interest in the suit property and the cheques said to have been accepted by them during the pendency of proceedings 'represented the amount paid towards consideration of the apartment **booked prior to the issuance of the interim orders,**' while on the other hand, it was stated that initial booking was for shops to be constructed on part 'B' property, but subsequently, after dismissal of Special Leave Petitions, at the request of purchasers,

allotment was converted from part 'B' property to part 'A' property. If it were so, there was no question of raising a plea that the acceptance of cheques during the pendency of the interim orders represented the amount of consideration booked **prior** to the issuance of interim orders. If initial booking and payment was in relation to part 'B' property, it was immaterial and altogether irrelevant whether it was prior or subsequent to filing suit by the plaintiffs or grant of interim orders either by the High Court or by this Court.

39. We are, therefore, fully convinced that during the pendency of the proceedings and in spite of interim orders passed by this Court, agreements have been entered into by the contemners, cheques had been accepted and consideration had been received at least in part. So far as the first order passed by this Court on April 26, 2004 is concerned, there was total prohibition from creating any interest in favour of third party either by sale, mortgage,

transfer, assignment, gift or '***in any other manner whatsoever***'. Hence, entering into an agreement or acceptance of full or even part consideration would be hit by the said order. In our considered view, it would amount to 'creation of interest' prohibited by this Court.

40. The matter did not end there. Special Leave Petitions were filed in this Court by the petitioners against an interim order not granting injunction below Application, Ex.5. Though the High Court granted such injunction, but it was vacated at the time of dismissal of Appeal from Order. But all the parties to the suit were aware that the main matter (suit) was pending and rights of contesting parties in the suit-property were yet to be decided. In the circumstances, 'injunction' or 'no injunction', the title of the defendants was 'under challenge'. It was 'cloudy' and unless and until the suit is decided, it cannot be said

that they had 'clear and marketable title'. Though the legal position is clear and beyond controversy, we find that an express, unambiguous and unequivocal statement is made by the contemners in all sale deeds that their title to the property is 'clear and marketable'. It was also stated that they were independent owners, possessors and occupiers of the property and there was no right, interest, part share, claim of anybody else therein.

41. It was, no doubt, submitted by the learned counsel for the contemners that it was specifically and clearly stated that a suit was pending in the Court of Civil Judge (Senior Division), Vadodara and it was also clarified that the documents were executed subject to the final decision in the suit. It was further submitted that if the owner of the property does not state that he has title over the property he seeks to transfer and that such title is 'clear and marketable', no reasonable and prudent man would come forward to purchase

such property. To this extent, the learned counsel is right. That, however, does not mean that in such case, a person whose title is challenged and the proceedings are pending will be permitted to say that his title is 'clear and marketable' and there is no impediment on the contemners from transferring the property in favour of purchasers.

42. Finally, in any case, there is clear breach and violation of the order of this Court, i.e. order, dated January 10, 2005 so far as 'notice' to the petitioners is concerned. It is not disputed even by the contemners that in some cases, notice as to creation of third party interest had been given after creation of such interest by filing ***pursis*** in the Court.

43. The learned counsel for the contemners half-heartedly submitted that this Court had not ordered that 'prior' notice should be given to the petitioners regarding creation of third

party rights and hence, there was no violation of the direction of the Court.

44. We are unable to agree with the submission. This Court has stated; "Any third party right which is created shall be done **after notice to the petitioners.**" In our view, the direction has only one meaning and it is that third party interest can only be created **after** notice to the petitioners. Admittedly, that was not done, at least, in few cases. It is, therefore, clear that there is violation and disobedience of the orders of the Court and the contemners are responsible for such act.

45. From the overall considerations of the matter in the light of series of events, we hold that the respondents-contemners have disregarded and violated the orders passed by this Court on April 26, 2004 and January 10, 2005.

46. The next question is whether for disobedience of the order passed by this Court,

the respondents/contemners are liable to punishment? In this connection, we may refer to some of the legal provisions. Article 129 of the Constitution declares this Court (Supreme Court) to be "a Court of Record having all the powers of such a Court including the power to punish for the contempt of itself". Clause (c) of Section 94 of the Code of Civil Procedure, 1908 enacts that in order to prevent the ends of justice from being defeated, the Court may, commit the person guilty of disobedience of an order of interim injunction to civil prison and direct his property be attached and sold. Rule 2A of Order XXXIX as inserted by the Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976) reads thus:

2A. Consequence of disobedience or breach of injunction—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may

order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

47. The provisions of the Contempt of Courts Act, 1971 have also been invoked. Section 2 of the Act is a definition clause. Clause (a) enacts that contempt of court means 'civil contempt or criminal contempt'. Clause (b) defines 'civil contempt' thus;

(b) 'civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

48. Reading of the above clause makes it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt;

- (i) there must be a judgment, decree, direction, order, writ or other process of a Court (or an undertaking given to a Court);
- (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking given to a Court); and
- (iii) such disobedience of judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking) must be wilful.

49. Section 12 provides punishment for contempt of Court. The relevant part of the provision reads thus;

S. 12 - Punishment for contempt of court—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or

with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.--An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any Contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

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50. In *Ashok Paper Kamgar Union v. Dharam Godha & Ors.*, (2003) 11 SCC 1, this Court had

an occasion to consider the concept of 'wilful disobedience' of an order of the Court. It was stated that 'wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signifies the act done with evil intent or with a bad motive for the purpose. It was observed that the act or omission has to be judged having regard to the facts and circumstances of each case.

51. In *Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors.*, (1999) 7 SCC 569, it was held that for holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgment or order of the Court. But it was indicated that even negligence and carelessness may amount to

contempt. It was further observed that issuance of notice for contempt of Court and power to punish are having far reaching consequences, and as such, they should be resorted to only when a clear case of wilful disobedience of the court's order is made out. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order and if such allegation is proved, contempt can be said to have been made out, not otherwise. The Court noted that power to punish for contempt is intended to maintain effective legal system. It is exercised to prevent perversion of the course of justice.

52. In the celebrated decision of *Attorney General v. Times Newspaper Ltd.*; 1974 AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298; Lord Diplock stated:

“There is an element of public policy in punishing civil contempt, since the administration

of justice would be undermined if the order of any court of law could be disregarded with impunity."

53. In *Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors.*, (2002) 4 SCC 21, this Court held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence. It was observed that power to punish a person for contempt is undoubtedly a powerful weapon in the hands of Judiciary but that by itself operates as a string of caution and

cannot be used unless the Court is satisfied beyond doubt that the person has deliberately and intentionally violated the order of the Court. The power under the Act must be exercised with utmost care and caution and sparingly in the larger interest of the society and for proper administration of justice delivery system. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.

54. In *Commissioner, Karnataka Housing Board v. C. Muddaiah*, (2007) 7 SCC 689, one of us (C.K. Thakker, J.) observed that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance,

the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. Upholding of such argument would seriously affect and impair administration of justice.

55. In *All Bengal Excise Licensees Association v. Raghendra Singh & Ors.*, (2007) 11 SCC 374, this Court considered several cases and observed that wilful and deliberate act of violation of interim order passed by a competent Court would amount to contempt of Court.

56. A reference in this connection may also be made to a decision of this Court in *Tayabbhai M. Bagasarawala v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443. In that case, the plaintiff-landlord filed a suit

against the defendant-tenant in the City Civil Court for permanent injunction restraining the defendant from carrying on construction in the suit premises. Ad interim injunction was granted by the Court. Defendant's application for vacating injunction was dismissed. The defendant, however, committed breach of injunction. The plaintiff, hence, filed an application under Order XXXIX, Rule 2-A of the Code. The defendant came forward and raised an objection as to jurisdiction of the Court and power to grant injunction. The High Court, ultimately, upheld the objection and ruled that City Civil Court had no jurisdiction to entertain the suit. It was, therefore, argued by the defendant that he cannot be punished for disobedience of an order passed by a Court which had no jurisdiction to entertain a suit or to grant injunction. The High Court upheld the contention. The plaintiff approached this Court.

57. This Court observed that until the question of jurisdiction had been decided, the City Civil Court possessed power to make interim orders. The Court could also enforce them. A subsequent decision that the Court had no jurisdiction to entertain the suit did not render interim orders passed earlier *non est* or without jurisdiction. A party committing breach of such orders could not escape the consequences of such disobedience and violation thereof. Accordingly, the Court held the defendant guilty for intentionally and deliberately violating interim order and convicted him under Rule 2-A of Order XXXIX of the Code and sentenced him to one month's imprisonment.

58. Speaking for the Court, Jeevan Reddy, J. stated;

“Can it be said that orders passed by the Civil Court and the High Court during this period of six years were

all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/ interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. ***Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts.*** (emphasis supplied)

59. From the above decisions, it is clear that punishing a person for contempt of Court is indeed a drastic step and ***normally*** such action should not be taken. At the same time, however, it is not only the ***power*** but the ***duty*** of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with

the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.

60. Now, in the instant case, both the orders passed by this Court on April 26, 2004 and January 10, 2005, were explicitly clear. The first order totally prohibited/restrained the respondents/contemners from creating any interest whatsoever in the suit property. As held by us, in spite of the said order, interest had been created by the contemners in the suit property. But even otherwise there is intentional disobedience and wilful breach of the subsequent order dated January 10, 2005 inasmuch as transactions had been entered into without issuing notice to the petitioners. We have already held that they could not have been entered into by the respondents before issuance of notice to the petitioners. The respondents were clearly aware of the order. In fact, the

action was sought to be defended and justified on the ground that the Court had not directed 'prior' notice, and as such, non-issuance of notice before entering into sale transactions would not amount to disobedience of the order of the Court. We are unable to uphold the contention. In the circumstances it must be held that the disobedience of the order by the contemnors was wilful, intentional and deliberate.

61. The question then is whether the case calls for imposition of punishment on the contemnors. The learned counsel for the contemnors submitted that in the affidavit in reply, the respondents have stated that if this Court comes to the conclusion that they had committed contempt of Court, the Court may accept unconditional and unqualified apology and may discharge notice. The counsel submitted that the statutory provision itself enacts that no apology shall be rejected merely on the

ground that it is qualified or conditional
[Explanation to Section 12(1)].

62. We must frankly admit our inability to agree with the learned counsel. In the light of what is stated above, we are convinced that the contemners have intentionally and deliberately violated the orders of the Court. We are also convinced that the orders were clear, unambiguous and unequivocal having one and only one meaning. Wilful and deliberate disobedience of the orders passed by the apex Court of the country can never be said to be bona fide, honest or in good faith. If it is so, the action calls for serious view to ensure proper administration of justice.

63. In *Hiren Bose, Re*, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated;

"It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a

weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be".

64. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide *M.Y. Shareaf v. Hon'ble Judges of the High Court of Nagpur*; (1955) 1 SCR 757 : *M.B. Sanghi v. High Court of Punjab & Haryana*, (1991) 3 SCR 312].

65. In *T.N. Godavarman Thirumulpad through*

the Amicus Curiae v. Ashok Khot & Anr., 2006 (5) SCC 1, a three Judge Bench of this Court had an occasion to consider the question in the light of an 'apology' as a weapon defence by the contemner with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D. Jaikwal v. State of U.P.*, (1984) 3 SCC 405:

"We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slipper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry".

66. The Court, therefore, rejected the prayer and stated;

"Apology is an act of contrition. Unless apology is offered at the

earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward".

67. Similar view was taken in other cases also by this Court.

68. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a 'tactful move' when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.

69. Considering the facts and circumstances in their entirety, in our opinion, ends of justice would be served if we hold the respondents/contemners guilty under Section 12 of the Contempt of Courts Act, 1971, read with Section 94(c) and Rule 2-A of Order XXXIX of the Code of Civil Procedure, 1908 as amended by the Code of Civil Procedure (Amendment) Act, 1976 and Article 129 of the Constitution and order the respondents-contemners to undergo simple imprisonment for a term of two weeks *i.e.* fourteen days.

70. Ordered accordingly. The Contempt Petitions are disposed of.

.....J.
(C.K. THAKKER)

NEW DELHI,
JULY 21, 2008.

.....J.
(AFTAB ALAM)