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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 03<sup>RD</sup> DAY OF FEBRUARY, 2023

PRESENT

THE HON'BLE MR. JUSTICE B.VEERAPPA

AND

THE HON'BLE MRS. JUSTICE K.S.HEMALEKHA

**C.C.C. No.846/2017 (CIVIL)**

**BETWEEN:**

1. SRI SOMANNA  
S/O. LATE NAGARAJU,  
AGED ABOUT 40 YEARS,
2. KUM. MANI  
D/O. LATE NAGARAJU,  
AGED ABOUT 31 YEARS,
3. SMT. NINGAMMANI  
W/O. LATE NAGARAJU,  
AGED ABOUT 56 YEARS,
4. SMT. KEMPAMMANI  
W/O. SRI NAGARAJU

... COMPLAINANTS

(BY SMT. DIVYA KRISHNA, ADVOCATE)

**AND:**

1. LATE T.M. MAHADEVAPPA  
S/O. LATE MARILINGAPPA  
SINCE DECEASED BY HIS LRs.
- (a) SMT. SUBBAMMA  
MAJOR,  
W/O. T.M. MAHADEVAPPA

1(a) DELETED AS PER ORDER OF THIS  
HON'BLE COURT DATED 18/07/2017)

2. PRAKASH  
S/O. LATE DEVARAJU,

... ACCUSED

(BY SRI B.S. NAGARAJ, ADVOCATE FOR A-2 (NOC)  
V/O. DATED 18/07/2017 A1 IS DELETED)

THIS CCC IS FILED UNDER SECTIONS 11 & 12 OF THE  
CONTEMPT OF COURTS ACT, 1971, BY THE COMPLAINANT,  
WHEREIN HE PRAYS THAT THE HON'BLE HIGH COURT BE  
PLEASED TO INITIATE CONTEMPT OF COURT PROCEEDINGS  
AGAINST THE ACCUSED HEREIN AND TO TAKE SUITABLE  
ACTION FOR WILLFUL DISOBEDIENCE OF THE INTERIM ORDER  
DATED 22.11.2012 IN R.S.A. NO.553/2012 AND GRANT ALL  
OTHER CONSEQUENTIAL BENEFITS.

THIS PETITION HAVING BEEN HEARD AND RESERVED  
FOR ORDER ON 10/01/2023, COMING FOR PRONOUNCEMENT  
OF ORDERS THIS DAY, **K.S. HEMALEKHA J.**, PRONOUNCED  
THE FOLLOWING:

**ORDER**

The present contempt petition is filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act" for short) to take action and punish the accused-contemnor for deliberate and willful disobedience of the interim order of this Court dated 22.11.2012 in RSA No.553/2012.

2. The case of the complainants is that the complainants had filed suit in O.S. No.29/2009 for partition and separate possession of the suit schedule properties which came to be dismissed by the Trial Court by its judgment and decree dated 01.02.2011. Aggrieved by which, the complainants preferred R.A.No.145/2011, which is also came to be dismissed on 05.12.2011. Aggrieved by the judgment and decree in the regular appeal, the complainants preferred RSA No.553/2012 before this Court and the said appeal was admitted and an interim order was granted directing the respondent therein i.e., the accused-contemnor not to

alienate/encumber/create or otherwise discharge the suit schedule property pending disposal of the appeal.

3. It is stated by the complainants that, though the interim order was well within the knowledge of the accused-contemnor, and he willfully disobeyed the interim order granted by this Court dated 22.11.2012 and has created third party rights by executing registered sale deed dated 07.04.2014 in favour of one Smt. Rajamma wife of H.M. Girish in respect of item No.4 and by executing a registered mortgage deed dated 07.03.2014 in favour of one B. Mahesh in respect of item No.1 of the suit schedule property. According to the complainants, the said fact came to the knowledge of the complainants only when the RTC extracts was obtained by the complainants in respect of the suit schedule property. The complainants therefore, seek to initiate appropriate action against the accused-contemnor for having committed deliberate, willful disobedience of the directions issued by the learned Single Judge.

4. Pursuant to the notice issued by this Court on the contempt petition, 2<sup>nd</sup> accused-contemnor appeared and filed his counter. The 1<sup>st</sup> accused (a) - mother of the 2<sup>nd</sup> accused-contemnor died during the pendency of the contempt petition and vide order dated 18.07.2017, 1<sup>st</sup> accused (a) was deleted and the present contempt is only against the 2<sup>nd</sup> accused-contemnor, who is the sole accused.

5. The accused-contemnor contended in his counter affidavit that he is the adopted son of T.M. Mahadevappa and his father late T.M. Mahadevappa had incurred heavy loans from various private persons and in order to reimburse the loan amount, they were forced to mortgage item No.1 and obtained some amount to clear the loan borrowed by them and further, in spite of mortgaging item No.1, the loans could not be cleared and hence, they sold item No.4 of the suit schedule property to the third party. According to the accused-contemnor after the death of his father and on knowing

about the filing of the contempt, all efforts have been made to cancel the alleged sale deed however, the purchaser had not agreed for the cancellation of the sale deed. According to the accused-contemnor the mortgage obtained in respect of item No.1 of the suit schedule property is also been cleared on 11.12.2017. Stating these grounds, the accused-contemnor sought to tender unconditional apology for unintentional mistake committed by his father late T.M. Mahadevappa and himself, according to the accused-contemnor, the said acts were for the bonafide reason to clear the old debts and it was necessary for the survival of their family members and accordingly, sought to drop the contempt proceedings.

6. By way of additional counter affidavit dated 21.06.2018 stated that the rights of the complainants would be subject to result of the second appeal, which is pending consideration. It is further stated that item Nos.1 and 4 are the self acquired property of late T.M.

Mahadevappa and not the joint family property as contended by the complainants. Further contents of the counter affidavit would clearly depicts the same version as stated in the earlier affidavit.

7. This Court vide order dated 14.06.2018 held that the accused-contemnor has intentionally and willfully violated the orders passed by this Court dated 22.11.2012 in RSA No.553/2012 by executing a sale deed in favour of one Smt. Rajamma with regard to item No.4 of the suit schedule property vide registered sale deed dated 07.04.2014 and similarly has executed a mortgage deed in favour of one B. Mahesh in respect of item No.1 of the suit schedule property on 07.03.2014 and accordingly, this Court directed the contempt petition to be listed for framing of charges. This Court on 20.08.2018, again heard the learned counsel for the parties and accorded an opportunity to the accused-contemnor to submit his defence by the next date and the charges were framed on 24.07.2019.

8. After framing of charges, the evidence of complainant No.1 and accused were recorded.

9. We have heard the learned counsel for the complainants and the learned counsel appearing for the accused-contemnor.

10. Learned counsel Smt. Divya Krishna, appearing for the complainants would vehemently contend that:

(i) This Court vide order dated 22.11.2012 in RSA No.553/2012 had granted an interim order directing the respondent-accused-contemnor herein not to alienate/encumber/create or otherwise discharge the suit properties pending disposal of the appeal and in spite of the interim order being within the knowledge of the accused-contemnor, who was represented by a counsel and on hearing, willfully violated the interim order granted in RSA No.553/2012.



(ii) By creating of third party rights with regard to item No.4 in favour of one Smt. Rajamma and also executing a mortgage deed with regard to item No.1 of the suit schedule property in favour of one B. Mahesh is on the face of it deliberate willful disobedience of the interim order passed by this Court and accordingly, would contend that the accused-contemnor is liable to be punished for deliberate disobedience of the order passed by this Court.

(iii) In support of her contention, learned counsel relied upon the judgments of the Hon'ble Apex Court in the case of ***Abi International Ltd., and Another vs. Export Credit Guarantee Corpn. I. Ltd. and others*** [*Abi International Ltd.,*] reported in **(2005) 10 SCC 495** at paragraph No.7 and in the case of ***Sita Ram vs. Balbir Alias Bali*** reported in **(2017) 2 SCC 456.**

11. *Per contra*, Sri. B.S. Nagaraj learned counsel appearing for the accused-contemnor would contend that:

(i) The accused-contemnor is the adopted son of late T.M. Mahadevappa and has an obedient son and in order to clear the loan amount borrowed by the father from the private persons and the question of existence of their family members was relevant at that time, the accused-contemnor along with his adopted father and mother had executed the sale deed in respect of item No.4 and mortgaged item No.1.

(ii) According to the learned counsel, the act on the part of the accused-contemnor is not willful and deliberate violations but due to bonafide reasons.

(iii) It is further contended that insofar as item No.1 of the suit schedule property, the mortgage has been cleared by executing the mortgage clearance deed dated 11.12.2017 and as such, the contempt would not be sustainable against the accused-contemnor in respect of item No.1. Learned counsel further submits that the efforts made by the accused-contemnor to cancel the sale deed dated 07.04.2014 has turned in vain in view

of the fact that the purchaser has not agreed to take back the consideration amount.

(iv) It is further submitted that the accused is ready to abide by the directions of this Court and also ready to deposit the sale consideration amount received by the accused-contemnor in view of the registered sale deed.

(v) Learned counsel would submit that the execution of the sale deed is unintentional and due to bonafide reasons to clear the home loans and would contend that the complainants have not made out any ground for initiation of contempt proceedings against the accused-contemnor as there is no willful disobedience or violation of the order dated 22.11.2012.

12. Having heard learned counsel for the parties and on perusal of the material on record, the point that arises for our consideration is:

*"Whether the complainants have made out a case to punish the accused-contemnor under*

*Sections 11 and 12 of the Contempt of Courts Act in the peculiar facts and circumstances of the present case?"*

13. We have given our anxious consideration to the rival contentions urged by the learned counsel for the parties and perused the entire materials on record and the orders passed by this Court carefully.

14. This Court on 24.07.2019 framed the charges and plea was recorded considering the counter filed by the accused-contemnor and the said charges reads as under:

*"The complainants filed O.S.No.29 of 2009 seeking the relief of partition and separate possession of the suit schedule properties which came to be dismissed on 01.02.2011. Being aggrieved by the dismissal of the suit, the complainants filed R.A.No.145 of 2011 and the same came to be dismissed on 05.12.2011.*

*Being aggrieved by the dismissal of the appeal, the complainants have filed R.S.A.No.553 of 2012. This Court admitted the*

*matter on 29.05.2012 by framing substantial questions of law. Further, by order dated 22.11.2012, this Court directed you accused not to alienate/encumber/create or otherwise discharge the suit schedule properties pending disposal of the appeal.*

*In spite of the direction dated 22.11.2012 passed in R.S.A.No.553 of 2012 you accused have executed sale deed in favour of Smt. Rajamma on 07.04.2014 in respect of Item No.4 of the suit schedule properties and also executed mortgage deed dated 07.03.2014 in respect of item No.1 of the suit schedule properties in favour of one Sri B.Mahesh which amount to contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971, punishable under Sections 11 and 12 of the Act, within the cognizance of this Court."*

And plea was recorded as under:

*"Have you heard the charge read over to you?  
Yes*

*Have you understood the charge?  
Yes*

*Do you plead guilty or claim to be tried?  
Not guilty claim to be tried"*

15. Complainant No.1 examined himself as C.W.1 and got marked documents at Ex.P.1 to P.5 and was cross-examined by the counsel for the accused-contemnor. In the evidence the complainant has reiterated the averments made in the complaint about the willful disobedience of the order dated 22.11.2012 and stood the test of cross-examination. The accused-contemnor was examined himself as D.W.1 and got marked document Ex.D.1- the original registered Mortgage Release Deed dated 11.12.2017 and has categorically admitted in his cross-examination that he has not obtained any permission from any Court for alienating the property in question.

16. The fact reveal that, the learned Single Judge vide order dated 22.11.2012 in RSA No.553/2012 passed the following order:

*"This Court doth order that pending disposal of the above RSA respondents shall not alienate / encumber / create or otherwise*

*discharge the suit property, pending disposal of the appeal."*

**"SCHEDULE**

***Item No.1: Landed property bearing Sy.No.199 measuring 6 acre 11 guntas, assessed at Rs.10.74, situated at Thummaneral Village, Chikkaiahna Chatra Hobli, Nanjangud Taluk and bounded on:***

***East by : Lands of Nagaraju and Mahadevappa***

***West by : Voni***

***South by : Lands of Nagaraju***

***North by : Lands of Nagaraju***

*Item No.2: landed property bearing Sy.No.6 measuring 2 acres 5 guntas (with 10 Sq. of RCC house) assessed at Rs.5.04 situated at Thummaneral Village, Chikkaiahna Chatra Hobli. Nanjangud Taluk and bounded on:*

*East by : Channel Bund (Yeri)*

*West by : Lands of Kunta Shivappa and Pond*

*South by: Road*

*North by : Lands of Bokkatii Family.*

*Item No.3: Landed property bearing Sy.No.297 measuring 13 guntas assessed at*

*Rs.0.82, situated at Thummaneral Village,  
Chikkaiahna Chatra Hobli, Nanjangud Taluk.*

***Item No4: Landed property bearing  
Sy.No.298 measuring 33 guntas assessed at  
Rs.2.07 situated at Thummaneral Village,  
Chikkaiahna Chatra Hobli, Nanjangud Taluk.***

***Item Nos.3 and 4 commonly bounded on the:***

***East by : Lands of T.G. Nagendra Prasad***

***West by : Lands of Ningaraju S/o.  
Guramailappa***

***South by : Road leading to river***

***North by : Lands of Bathappa.”***

17. On careful perusal of the order would show that the learned Single Judge on hearing the respondents-accused-contemnor, who appeared through his counsel had granted an interim relief pending disposal of the appeal. It is the contention of the complainants that in spite of the interim order granted by the learned Single Judge, the respondent-accused-contemnor though was aware about the interim order granted on 22.11.2012 in RSA No.553/2012 is in gross violation, willful disobedience and intentional breach thereof the



accused-contemnor along with his father late T.M. Mahadevappa and mother late Smt. Subbamma have executed a sale deed dated 07.04.2014 in favour of one Smt. Rajamma in respect of item No.4 for valuable consideration and similarly, a Mortgage Deed has been executed in favour of one B. Mahesh in respect of item No.1 vide registered Mortgage Deed dated 07.03.2014. The complainants have produced the registered sale deed and mortgage deed at Annexures-C and D respectively.

18. The counter affidavit filed by the accused-contemnor at paragraph Nos.4, 7 and 8 reads as under:

*"4. I humbly submit that my adopted father late T.M.Mahadevappa, had incurred heavy loan for surviving himself and his family members; from various private persons due to heavy drought in the preceding years and as such he could not reimburse the loan amount, which was borrowed from various creditors. And, that apart, he had various litigation expenses and the same he could not clear due to drought and having no income from*

agriculture. And, the creditors had more demanded to repay the loan amount and interest and finally he lost his stability to resist the creditors; except suicide himself. Therefore, he was forced to mortgage the item No.1, and the amount obtained from the mortgage of item No.1, was not even sufficient to clear the entire his loan amount borrowed by him from different creditors. Therefore, again he was decided to sell the item No.4, of the suit schedule property. Even after disposal of the item No.4, of the suit schedule property also the loan borrowed by late father still it is not cleared.

x x x

7. I humbly submit that with great respect to the orders of this Hon'ble court and as well as a obedient son of my father late, T.M.Mahadevappa, I had cleared the loan amount borrowed by my father by mortgaging the item No.1, of the suit schedule property, by obtaining a registered Mortgage clearance deed dated, 11.12.2017. The true copy of the said clearance of registered Mortgage document is submitted herewith at **Annexure - R1.**

8. *I humbly submit, with great respect to the order of this Hon'ble Court and as a obedient son of my father Late T.M.Mahadevappa, I tried my best with all my efforts to get cancel the alleged sale deed dated 07.04.2014, with the purchaser Smt. Rajamma; but she has not agreed to take back the consideration amount and cancel the sale deed, which was paid to my father at the time of executing the alleged sale deed. Even, now I am ready to deposit the sale consideration amount. Even though, this petition is not maintainable as it is Garred by law under Section 20 of the Contempt of Court Act."*

19. The accused-contemnor has admitted in his counter affidavit about the execution of the sale deed and creating third party rights in respect of item No.4 and having executed a mortgage deed in respect of item No.1, however an explanation sought to be leveled by the accused-contemnor stating that the said deeds or the act on the part of the accused-contemnor was due to the heavy loan incurred by his father late T.M. Mahadevappa and in order to reimburse the loan

amount, which were borrowed from the various creditors and the sustenance of the family members was in question, the said documents were executed.

20. The accused-contemnor has categorically admitted in his cross-examination about non-obtaining of any permission from any Court for alienating the property in question. Thus, the defence taken by the accused-contemnor does not appear to be probable as normally, in such circumstances, if an interim order has been passed by the Court restraining the accused-contemnor from alienating or creating any third party rights which was very much within his knowledge, every efforts ought to have been made by the accused-contemnor to seek for modification or vacating or permission seeking to alienate the property in view of the constrained situation. Having failed to do so as admitted by the accused-contemnor in his cross-examination, the said defence taken that the third party rights were created for bonafide reasons is not

sustainable and mere fact that the accused-contemnor in the contempt petition had some explanation to offer, would not absolve him from the liability under the Act.

21. Our view is fortified by the judgment of the Hon'ble Apex Court in the case of ***Ab! International Ltd.***, at paragraph No.7, which reads as under:

*"7. So far as Section 34 of the Code of Civil Procedure is concerned, we cannot lose sight of the fact that the Court in the instant case was exercising jurisdiction under Article 226 of the Constitution and, therefore, strictly speaking Section 34 will not apply. In any event, the court is entitled to award a higher rate of interest for the period subsequent to the date of decree keeping in view the nature of the transaction, and in this case admittedly the transaction is of a commercial nature. We will accept the explanation of the respondents that they have not wilfully defaulted in making the payment since they acted on the basis of legal advice. But that, however, does not absolve them of the liability under the judgment and order of this Court to pay to the applicants interest payable thereunder. The*

*mere fact that the respondent in a contempt petition has some explanation to offer, does not absolve him of the liability under the Contempt of Courts Act. In this case it appears to us that the direction of this Court and that of learned Single Judge, were quite clear and did not permit of any other interpretation. However, we do not wish to go into that question."*

22. The accused-contemnor subsequent to the mortgage deed executed on 07.03.2014 vide Annexure-D in respect of item No.1 has cleared the loan amount and has obtained the registered Mortgage Clearance Deed dated 11.12.2017 vide Annexure-R1. Though the Mortgage property has been cleared from encumbrance the same does not absolve clear breach and violation of the order of this Court dated 22.11.2012 in RSA No.553/2012. It is also not in dispute that the third party rights have been created as admitted by the accused-contemnor. Therefore, there is a clear violation and disobedience of the order passed by this Court and the accused-contemnor is responsible for such an act.

23. From the overall consideration of the oral and documentary evidence on record and in light of series of events, we hold that the accused-contemnor has disregarded and violated the interim order granted by this Court vide order dated 22.11.2012 in RSA No.553/2012.

24. Now, the next question is whether for disobedience of the order passed by this Court the accused-contemnor is liable for punishment?

25. The provisions of the Contempt of Courts Act, 1971 have been invoked. Section 2(b) defines Civil Contempt which reads as under:

**"2. Definitions.-***In this Act, unless the context otherwise requires,-*

*(a) x x x*

*(b) "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"*

26. Reading of the said clause makes it clear that the following conditions must be satisfied to convict any person for civil contempt:

- (1) There must be a judgment, decree, direction, order or other process of Court (or an undertaking given to the Court);
- (2) There must be disobedience to a judgment, decree, direction, order or other process of Court (or an undertaking given to the Court);
- (3) Such disobedience of a judgment, decree, direction, order or other process of Court (or an undertaking given to the Court) must be willful.

27. Section 12 provides for punishment of Contempt of Courts and the said proviso reads as under:

*"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 other 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.*

*(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:*

*Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.*

*(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or*

*other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.*

*Explanation.—For the purpose of sub-sections (4) and (5),—*

- (a) "company" means any body corporate and includes a firm or other association of individuals; and*
- (b) "director", in relation to a firm, means a partner in the firm."*

28. The statute confers a special power upon the court to pass a sentence of imprisonment, or fine for the guilty of committing civil contempt and our view is fortified by the judgment of the Hon'ble Apex Court in the case of ***Sukhdev Singh vs. Hon'ble C.J., S. Teja Singh and the Hon'ble Judge of the Pepsu High Court at Patiala [AIR 1954 SC 186]***, has categorically held at para Nos.20, 21 and 22 as under:

"20. We have omitted references to the Bombay and Madras decisions after 1883 because the judicial Committee settled the powers of the three Chartered High Courts. What we are at pains to show is that, apart from the Chartered High Courts, practically every other High Court in India has exercised the jurisdiction and where its authority has been challenged each has held that it is a jurisdiction inherent in a court of Record from the very nature of the court itself. This is important when we come to construe the later legislation because by this time it was judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court.

The only discordant note that we know of was struck in - 'Emperor v. B. G. Horniman', AIR 1945 All 1 at p.4 (M), where a Division Bench of the Allahabad High Court held that after the Act of 1926 the offence of contempt was punishable under an Indian Penal statute and so the Code of Criminal Procedure applied because of the words "any other law" in Section 5. In our opinion, this is wrong because the Act of 1926 does not confer any jurisdiction and does not create the offence. It

*merely limits the amount of the punishment which can be given and removes a certain doubt. Accordingly, the jurisdiction to initiate the proceedings and take seisin of the matter is as before.*

*"21. The Pepsu High Court was established in 1948 and Section 33 of the Ordinance which established it recites that it shall be a court of Record and that it shall have power to punish for contempt. It will be remembered that the Charter of 1774 which established a Supreme Court for Bengal said the same thing of that court and yet the Privy Council did not trace its powers about contempt from the Charter but from the Common Law. In the same way, the law by this time was so well settled in matters of contempt that the words "court of record" and "power to punish for contempt" had acquired a special meaning. Consequently, it is immaterial whether in 1948 the power of the Pepsu High Court was derived from Section 33 or was inherent in the nature of the court because whichever it is the jurisdiction is a special one, and had the legislature desired to take it away and confer another kind of jurisdiction it would have been necessary to use express words in*

*view of the case law which by then had become well established.*

22. *In 1950 came the Constitution of India and Article 215 states that-*

*"Every High court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."*

*Here again, whether this is a fresh conferral of power or a continuation of existing powers hardly matters because whichever way it is viewed the jurisdiction is a special one and so is outside the purview of the Criminal Procedure Code.*

*(Emphasis Supplied)*

29. The Apex Court in the case of **Kapildeo Saha vs. State of Bihar** reported in **(1999) 7 SCC 569** held that for holding a person to have committed contempt, it must be shown that there was willful disobedience of the judgment or the order of the Court. The Apex Court held that the power to punish for the contempt is intended to maintain the effective legal system. As stated supra, the accused-contemnor has clearly and

willfully breached the interim order passed by this Court and as such, the complainants have made out a contempt of Court against the accused-contemnor.

30. The Apex Court in the case of ***Patel Rajnikant Dhulabhai and another vs. Patel Chandrakant Dhulabhai & others (Contempt Petition (Civil) Nos.12-13/2006)*** placing the reliance of the judgment of *Anil Ratan Sarkar and others vs. Hirak Ghosh and others* held at paragraph No.53 as under:

"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."*

31. From the above decision, it is clear that the punishing the person for contempt of Court is indeed drastic step and normally such action should not be taken. However, at the same time, it is not only power but the duty of the Court to uphold and maintain the dignity of the Courts and Majesty of the law which may



call for such extreme steps. For proper administration of justice and to ensure the due compliance with the orders passed by the Courts, it is required to take strict view under the Act and it should not hesitate in wielding the potent weapon of contempt.

32. The accused-contemnor by way of an additional affidavit sought for an unconditional apology stating the third party rights were executed due to bonafide reasons. The Apex Court in the case of **L.D. Jaikwal vs. State of U.P. [(1984) 3 SCC 405]** held that mere apology without an expression of sorrow cannot be accepted and held at paragraph No.5, 6 and 8 as under:

*"5. Before the High Court the appellant sought to justify his conduct on the ground of the treatment alleged to have been meted out to him by the learned Judge. No remorse was felt. No sorrow was expressed. No apology was offered. Only when the appellant approached this Court he expressed his sorrow before this Court saying that he had lost his mental*

*balance. Upon finding that this Court was reluctant to hear him even on the question of sentence, as he had not even tendered his apology to the learned Judge who was scandalized, he prayed for three weeks' time to give him an opportunity to do so. His request was granted. He appeared before the learned Judge and tendered a written apology wherein he stated that he was doing so "as directed by the Hon'ble Supreme Court." This circumstance in a way shows that it was a 'paper' apology and the expression of sorrow came from his pen, not from his heart. For, it is one thing to 'say' sorry – it is another to 'feel' sorry. It is in this context that we have been obliged to make the opening remarks at the commencement of this judgment.*

*6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and*

*not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of Courts.*

x x x

*8. We firmly believe that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief. We are of the*

*opinion that the High Court was therefore justified in imposing a substantive sentence. And the sentence imposed cannot be said to be excessive or out of proportion."*

33. Thus the observation of the Apex Court in L.D. Jaikwal's case that:

*"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."*

34. Thus, we hold that the so called apology is not an act of penitence, contrition or regret and the acceptance of such an apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Courts.

35. Thus, in our considered view and in the facts and circumstances of the case, we answer the point raised for consideration in the Affirmative holding that the complainants have made out a case and the accused-contemnor is guilty for having committing willful disobedience of the order dated 22.11.2012 in RSA No.553/2012 and accordingly, answered the point framed for consideration.

36. For the reasons stated supra, the point framed for consideration is answered in the affirmative holding that the complainants have made out a case to punish the accused for the Contempt of Court under Article 215 of the Constitution of India read with Sections 11 and 12 of the Contempt of Courts Act.

37. In view of the above, we pass the following:

**ORDER**

- (i) The civil contempt petition is hereby ***allowed.***
- (ii) The accused-contemnor is hereby convicted for the contempt of Court, punishable under the provisions

of Section 12(1) of the Contempt of Courts Act and sentenced to undergo ***simple imprisonment for a period of three months*** with a fine of Rs.2,000/- (Rupees two thousand only) or ***deposit the entire sale consideration amount in RSA No.553/2012 pending consideration of the appeal, within two months from the date of the receipt of this order which would be subject to the result of the said R.S.A. and produce an acknowledgment to that effect,*** in default to undergo ***simple imprisonment for a further period of one month.***

- (iii) The Registrar (Judicial) of this Court is directed to prepare a warrant of commitment and detention in respect of accused-contemnor in Form No.3 as contemplated under Rule 16(1) of the High Court of Karnataka (Contempt of Court Proceedings) Rules, 1981 and take further action against the accused to undergo punishment imposed, if the amount is not deposited as stated supra.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**