



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 25TH DAY OF OCTOBER 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE H.P. SANDESH

C.C.C.NO.2047 OF 2017

BETWEEN:

KISHIN T. PANJABI,
SON OF LATE SHRI THAKURDAS P. PANJABI,
AGED ABOUT 57 YEARS,
RESIDING AT NO.45,
PROMENADE ROAD, GURUKRUPA,
BENGALURU - 560 042.

... COMPLAINANT

(BY SMT. VIJETHA R. NAIK, ADVOCATE FOR
M/S. RAVI B. NAIK ASSOCIATES)

AND:

SURESH KOTHARI,
SON OF MANGILAL KOTHARI,
AGE MAJOR,
PARTNER IN MESSRS KOTHARI ASSOCIATES,
NO.C-3-4, 3RD FLOOR,
SAKALAJEE MARKET, AVENUE ROAD,
BENGALURU - 560 052.

... ACCUSED

(BY SRI GANAPATHI HEGDE, ADVOCATE AND
SRI SHIKARA P.K., ADVOCATE FOR
M/S. DUA ASSOCIATES)

THIS C.C.C. IS FILED UNDER SECTIONS 11 AND 12 OF THE CONTEMPT OF COURTS ACT, 1971 READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA PRAYING TO PASS AN ORDER TO SECURE THE PRESENCE OF ACCUSED AND PUNISH HIM FOR HAVING WILLFULLY DISOBEYED THE ORDER DATED 8.6.2017 PASSED BY THIS HON'BLE COURT IN M.F.A.NO.7719 OF 2016 CONNECTED WITH M.F.A.NO.6323 OF 2016.

THIS C.C.C. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.9.2019, COMING ON THIS DAY, H.P. SANDESH J., PRONOUNCED THE FOLLOWING:

ORDER

This contempt petition is filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, praying this Court to secure the presence of the accused and to punish him for having willfully disobeyed the order dated 8.6.2017, passed by this Court in M.F.A.No.7719 of 2016 connected with M.F.A.No.6323 of 2016.

Brief facts of the case are as follows:

2. The complainant herein had instituted a suit in O.S.No.10415 of 2015 seeking the relief of injunction and other reliefs as against the accused. The complainant had also filed I.A.Nos.1 and 2 seeking a direction to the accused herein to restore the water connection and for

temporary injunction respectively, against the accused. The Trial Judge, by order dated 22.8.2016, was pleased to allow I.A.No.1 directing the accused to restore water connection and rejected I.A.No.2 seeking the relief of temporary injunction. Being aggrieved by the rejection of I.A.No.2, the complainant preferred M.F.A.No.6323 of 2016 and the accused herein had preferred M.F.A.No.7719 of 2016 challenging the order of allowing I.A.No.1 before this Court.

3. This Court clubbed both the M.F.As. and passed a common order dated 8.6.2017, directing the accused herein to stop the construction activity in the schedule property. However, the accused despite the said order, continued with the construction and willfully disobeyed the order of this Court. Hence, the present contempt petition is filed.

4. In pursuance of the contempt petition, this Court has issued notice against the accused and the accused appeared and filed the statement of objection. In the statement of objection, the accused had contended that if

the complainant thinks that there is any violation of the aforesaid orders by the accused, the complainant ought to have moved for disobedience orders before the Learned Single Judge under Order 39 Rule 2A of Code of Civil Procedure and that the present complaint for contempt is not maintainable at all. When there is an alternative remedy available in respect of the alleged violation of the orders of this Court, the contempt petition is not maintainable. Hence, the same is to be dismissed.

5. It is further contended that even otherwise, the complainant on 24.7.2017, had filed an application before the learned Single Judge under Order 39 Rule 2A of Code of Civil Procedure and the same is also pending for consideration. When he has already moved the learned Single Judge seeking for initiating appropriate action against him, the contempt petition is not maintainable. Though the complainant has stated that he has already sought for withdrawal of the application, no orders are passed by the learned Single Judge, while he has rushed to this Court in his eagerness to take contempt action against

the accused. The same is premature in nature and the same is liable to be dismissed.

6. It is further contended that on 4.10.2017, he had moved the learned Single Judge seeking for vacating the temporary injunction orders granted by this Court and the same is pending consideration. The complainant is also aware of the said fact, as he has filed his objections to the same and has deliberately moved this contempt petition on 20.11.2017, without even bringing the said fact of pending application and the same is bad in the eye of law for suppression of material fact. The other contention is that the allegations made by the complainant that the construction activity is still going on in utter violation of this Court order dated 8.6.2017, are all false and the same are categorically denied. It is further contended that since the date of passing of the order dated 8.6.2017, no construction, repairs, alterations, changing, or otherwise of whatsoever nature is done over the second floor, namely the third floor. However, certain renovation works are carried out on the first floor and second floor of the building and the complainant though being aware of the

said fact, has deliberately produced fabricated photographs to contend that the accused is still going on with the construction activity on the third floor by violating the order dated 8.6.2017. The same is done only to harass the accused. Hence, prayed this Court to dismiss the contempt petition.

7. This Court after considering the contents of the complaint and also the objection statement of the accused, proceeded to frame the charge, since the materials are found to frame the charge and accordingly charge was framed and accused denied the charge and his plea was recorded.

8. The complainant in order to substantiate the contents of the complaint, examined himself as C.W.1 and got marked the documents at Exs.P.1 to 19. The accused also examined himself as D.W.1 and got marked the documents at Exs.D.1 to 7. After the closure of the evidence, this Court heard the arguments of the respective counsel.

9. The learned counsel for the complainant in her argument vehemently contended that in the order dated 8.6.2017, while extending the interim order of status-quo granted earlier, this Court made it clear that the appellant in M.F.A.No.7719 of 2016 i.e., accused herein, shall not proceed with any activity of construction whatsoever either altering, changing, repairing, or otherwise over the terrace of second floor, namely the third floor, till the next date of hearing. In spite of the specific order of this Court, the accused has proceeded with the construction work. The photographs at Exs.P.5 to 9 clearly establish that the accused has continued with the construction. Hence, the accused has committed willful disobedience of the order of this Court.

10. In support of her arguments, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of PATEL RAJNIKANT DHULABHAI AND ANOTHER v. PATEL CHANDRAKANT DHULABHAI AND OTHERS reported in (2008) 14 SCC 561 and contended that the Apex Court with regard to scope of punishment is concerned has held that the punishment is a drastic step,

to be taken sparingly. However, it is also the duty of the courts to maintain their dignity and majesty of law. Hence, the courts should not hesitate to exercise the power of punishment, if it is so required in the interest of administration of justice and compliance with Court orders. The counsel referring this judgment would contend that this judgment is aptly applicable to the case on hand, since the accused has willfully violated the order of this Court.

11. Per contra, the learned counsel for the accused would contend that the accused has not violated any order. The photographs which are produced by the complainant are inside the building and the complainant has not stated when exactly he came to know of the violation, in the complaint. The construction was already completed prior to passing of the order dated 8.6.2017. The dates in the photographs are manipulated. The accused relied upon Exs.D.4 and 5, which shows that the work was completed and not disputed in the cross-examination of D.W.1.

12. The other contention of the accused counsel is that the course open to the complainant is under Order 39 Rule 2A of CPC and not the contempt proceedings. The order has been passed on an application filed under Order 39 Rules 1 and 2 of CPC. When such being the circumstances, the contempt petition is not maintainable. The counsel also would contend that the photographs produced by the complainant cannot be considered, since there is no compliance under Section 65B of the Indian Evidence Act, 1872.

13. The learned counsel for the accused in support of his arguments relied upon the judgment of the Hon'ble Supreme Court in the case of T.C. GUPTA v. BIMAL KUMAR DUTTA AND OTHERS reported in (2014) 14 SCC 446 and contended that in order to invoke contempt jurisdiction, that too for willful disobedience, satisfaction of the Court is very much necessary. Relying on this judgment he would submit that the Apex Court has held that since a contempt action being in nature of quasi-criminal proceedings, degree of satisfaction for Court to hold a person guilty of commission of contempt should be beyond reasonable

doubt. He also contended that there is no such degree of satisfaction for Court to hold the accused guilty of commission of contempt and the complainant has not proved beyond reasonable doubt. Hence, the contempt proceedings cannot be sustained against the accused.

14. The learned counsel also relied upon the decision of the this Court in the case of H. GOVINDARAJU v. SHANKARALINGE GOWDA AND OTHERS reported in AIR 2007 KAR 177 and contended that to initiate contempt petition, the availability of efficacious remedy under Order 39 Rule 2A of Code of Civil Procedure for punishing a person is very exhaustive. The High Court cannot involve its contempt jurisdiction when parallel remedy is available. Invoking the jurisdiction under Code of Civil Procedure and another by invoking provisions of Contempt Act, is not available. Hence, this Court has to dismiss the contempt petition.

15. The learned counsel also relied upon the judgment of the Apex Court in the case of ANVAR P.V. v. P.K. BASHEER AND OTHERS reported in (2014) 10 SCC

473 and contended that the certificate under Section 65B(4) of Indian Evidence Act is mandatory and such certificate must accompany electronic records. When the same is produced, in the absence of any such certificate, secondary evidence of electronic record cannot be admitted in evidence.

16. Having heard the arguments of the complainant counsel and accused counsel, the points that arise for our consideration are:

- (i) Whether the accused has wilfully disobeyed the order of this Court dated 8.6.2017, and thereby committed an offence punishable under Section 12 of the Contempt of Courts Act, 1971?
- (ii) What order?

Points (i) and ii):

17. The case of the complainant in nutshell is that this Court passed an interim order to maintain status quo and thereafter while extending the interim order, specifically directed the accused not to proceed with any

activity of construction whatsoever either altering, changing, repairing, or otherwise over the terrace of second floor, namely third floor, till the next date of hearing. In order to substantiate the contention of the complainant, the complainant got examined himself as C.W.1. The complainant in his evidence in lieu of chief examination in the form of affidavit reiterated the contents of averments of the complaint and so also the order of the Court passed in M.F.A. vide order dated 8.6.2017 and also in the affidavit he extracted paragraph No.7 of the statement of objection. The complainant got marked I.A.No.2 filed in the suit by the complainant under Order 39 Rules 1 and 2 of Code of Civil Procedure along with affidavit as Ex.P.2. The certified copy of the order dated 22.8.2016, passed in the original suit is marked as Ex.P.3. The certified copy of the order of this Court directing the accused not to proceed with any work is marked as Ex.P.4. The photographs showing the construction being done by the accused have been marked as Exs.P5 to 9. The C.D. which contains the said photograph is marked as Ex.P.10. The complainant also produced the photographs marked as

Exs.P.12 to 17 in order to show the construction being carried on even after the filing of the instant petition. The complainant was subjected to cross-examination.

18. In the cross-examination, it is suggested that the accused have purchased the second floor of the premises, but he denies the suggestion but volunteers that M/s. Kothari Associates have purchased only the covered area which is part of the second floor. The remaining portion is the terrace area, which is open to sky. It is elicited that in the sale deed there is a clause with regard to the fact that M/s. Kothari Associates are entitled to put up the construction in terms of Clause-1 to Schedule 'C'. It is elicited that the accused have erected steel pillars, columns, etc., and a slab has been put above that. It is suggested that there is no cement roof put up by the accused and the same was denied. The photographs – Exs.D.1 and 2 were confronted to the witnesses and got elicited that photographs shown to him are the photographs of the roof from inside the building. It is suggested that the entire construction activity was fully completed as on 8.6.2017 and the same was denied. It is

elicited that the photographs produced by him vide Exs.P.5 to 9 and 12 to 17 have been taken by him through his nephew. It is elicited that the photographs were taken through the digital camera. It is suggested that the dates appearing in the photographs could be manipulated or adjusted and the same was denied by him that he is not aware of the same. It is suggested that aforesaid photographs have been taken by him much earlier to 8.6.2017 and the same was denied. It is elicited that the photographs were developed by his nephew through a professional agency.

19. The accused has been examined as D.W.1. The accused in his affidavit in lieu of his chief examination reiterated the contentions of his objection statement and also states that the entire work relating to erection of the steel structure on the second floor terrace area i.e., the third floor of the building was accomplished before 8.6.2017 and the same may be evidenced by the photographs marked as Exs.D.1 and 2. He further reiterates that M/s. Kothari Associates have not put up any construction on the third floor of the said building after the

interim order was passed by this Court and not committed any act, which is in contempt of the said order. M/s. Kothari Associates had already completed the erection work on the existing structure in the said building. The accused has also got marked the certified copy of the sale deed as Ex.D.3, the original of invoice dated 1.6.2017 as Ex.D.4, Form VAT 100 as Ex.D.5, the copy of the web acknowledgment slip of the Government of Karnataka as Ex.D.6 and the certificate under Sections 65A and B of the Indian Evidence Act as Ex.D.7. The witness was subjected to cross-examination.

20. In the cross-examination, it is elicited that by order dated 9.2.2017, an order of status quo was granted by the Court against him and the complainant. The status quo order would mean that both the parties should maintain the property in as-is-where is condition as on the date of the said order. It is further elicited that the said interim order was extended by the Court on 8.6.2017. The order indicates that there should be no construction over the second floor, namely third floor of the premises. It is further elicited that he stands by the statements made by

him in his counter affidavit dated 19.1.2018, which is marked as Ex.P.18. It is suggested that he is putting up unauthorized construction on the second floor and the third floor of the building and the same was denied. It is further suggested that he has put up the construction as could be seen from Exs.P.5 to 9, namely the photographs dated 2.9.2017 and 14.6.2017 and the same was denied. The witness was confronted with a photograph marked as Ex.P.19. The witness states that what is evident in the photograph is only the water proofing of the cement over the metal sheet. It is suggested that he has violated the interim order of this Court and the same was denied.

21. Having considered the oral and documentary evidence of both the complainant and the accused and also the contentions of the respective counsel, this Court has to appreciate the material on record so as to ascertain whether there was any willful disobedience on the part of the accused.

22. The accused did not dispute the interim order dated 9.2.2017. In the cross-examination, he categorically

admits that by order dated 9.2.2017, an order of status quo was granted by the Court against him and the complainant. In view of this admission, it is clear that in M.F.A.No.7719 of 2016 connected with M.F.A.No.6323 of 2016, there was an order of status quo directing both the parties to maintain status quo vide order dated 9.2.2017. It is got elicited in the cross-examination also that the status quo order would mean that both the parties should maintain the property in as-is-where is condition as on the date of the said order. It is also elicited in the cross-examination that the said interim order was extended by the Court on 8.6.2017 in terms of Ex.P.4. D.W.1 also categorically admits that the order indicates that there should be no construction over the second floor, namely the third floor of the premises. It is further elicited that he stand by the statements made by him in his counter affidavit dated 19.1.2018, which is marked as Ex.P.18.

23. On perusal of the statement of objection, it is evident that he took up the defence that since the date of the passing of the order dated 8.6.2017, no construction, repairs, alterations, changing, or otherwise of whatsoever

nature is done over the second floor, namely the third floor. But it is contended that certain renovation works are carried out on the first floor and the second floor of the building and the complainant though being aware of the said fact, has deliberately produced fabricated photographs to contend that the accused is still going on with the construction activity on the third floor by violating the order dated 8.6.2017.

24. Having considered the statement of objection, it is clear that the accused had undertaken renovation works on the first floor and second floor of the building. His main defence is that the construction was completed prior to 8.6.2017. The categorical admission of D.W.1 in the cross-examination is that he was aware of the order dated 9.2.2017 and the status quo order was granted against both the parties. It is further elicited that the status quo order would mean that both the parties should maintain the property in as-is-where is condition as on the date of the said order. Hence, it is clear that the very work undertaken by the accused after passing of the order dated 9.2.2017 and 8.6.2017 amounts to willful

disobedience of the order of the Court. Even though he was aware of the meaning of the status quo order, which was granted on 9.2.2017, the accused had proceeded with the construction work. The order dated 8.6.2017, is also very clear that the accused shall not proceed with any activity of construction whatsoever either altering, changing, repairing, or otherwise over the terrace of second floor, namely the third floor, till the next date of hearing. In spite of it, the accused has proceeded with the renovation work. The complainant has produced the photographs - Ex.P.5 dated 4.9.2017, Ex.P.6 dated 2.9.2017, Ex.P.7 dated 2.9.2017, Ex.P.8 dated 2.9.2017, Ex.P.9 dated 14.6.2017. All these photographs are subsequent to the order dated 8.6.2017, and it is emerged in the evidence that work was continued even after the interim order. The main contention of the accused is that the photographs produced by the complainant cannot be relied upon, as those documents are created to suit the convenience of the complainant.

25. The counsel appearing for the accused relied upon the judgment of the Apex Court in the case of P.K.

BASHEER (supra) wherein it is held that in the absence of certificate, secondary evidence of electronic record cannot be taken note of. The counsel for the complainant, in reply to the arguments of the accused brought to our notice that an application is filed under Section 65B of the Indian Evidence Act along with certificate and also produced the C.D. which is marked as Ex.P.10 in respect of the said photograph. The very contention of the accused cannot be accepted. It has to be noted that subsequent to the judgment of the Apex Court in case of P.K. BASHEER (supra), the very same issue has been dealt with by the Apex Court in the case of SONU ALIAS AMAR v. STATE OF HARAYANA reported in (2017) 3 SCC (CRI) 663 and also in the case of SHAFHI MOHAMMAD v. STATE OF HIMACHAL PRADESH reported in (2018) 2 SCC 801. The Apex Court in the case of SHAFHI MOHAMMAD (supra), held that the requirement under Section 65B(4) of the Evidence Act to produce the certificate being procedural, can be relaxed by Court wherever interest of justice so justifies. Thus, requirement of certificate under Section 65B(4) is not

always mandatory. Paragraph Nos.29 and 30 of the said judgment reads as follows:

"29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.

30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of

certificate being procedural can be relaxed by the Court wherever interest of justice so justifies."

In the case on hand, a certificate is produced and also an application is filed seeking permission to lead an electronic evidence and the said application is numbered as I.A.No.1 and the same is allowed. But certificate is not marked. Hence, the very contention of the accused cannot be accepted.

26. The other contention of the accused is that the complainant ought to have availed the efficacious remedy provided under Order 39 Rule 2A of Code of Civil Procedure. However, he filed an application not pressing the said application before the learned Single Judge and no order has been passed. The remedy under the Contempt Act has to be exercised sparingly and the remedy is under Order 39 Rule 2A of Code of Civil Procedure. Hence, the contempt petition is not maintainable. He relied upon the principles laid down in the Division Bench judgment of this Court in the case of GOVINDARAJU (supra). It is held therein that the accused in the said case had demolished the building of the complainant and it attracts the definition of "mischief" under Section 415 of the Indian

Penal Code and as the act of the respondents itself is an offence punishable under Indian Penal Code, the embargo under the provisions is attracted and this Court cannot take cognizance of the contempt. The factual matrix of the case on hand is different from the case referred. It is clear that a person like the complainant can choose either of forums and cannot choose both the forums. But here though an application is filed under Order 39 Rule 2A of Code of Civil Procedure, admittedly an application is filed for not pressing the said application. But no order has been passed. Hence, it is clear that the said application was not pressed before the learned Single Judge. Instead of that, the complainant has chosen to pursue this case.

27. The learned counsel appearing for the complainant referring to the judgment in the case of PATEL RAJNIKANT DHULABHAI (supra) brought to the notice of this Court paragraph No.70 of the judgment. It reads as follows:

"70. 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.”

28. In view of the principles laid down in the judgment, this Court has to examine in order to invoke Contempt Act, it is necessary to see the ingredients of Section 2(b) of the Contempt of Courts Act. It requires that there must be a willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a Court.

29. Having considered the ingredients of Section 2(b) of the Contempt of Courts Act, this Court has to consider whether there is any willful disobedience of the order of the Court. We have already pointed out that it is admitted in the cross-examination of D.W.1 that he was aware of the order passed by this Court in M.F.A. vide order dated 9.2.2017. There was an order of status quo to be maintained by both the complainant and the accused. It is also elicited in the cross-examination of D.W.1 that he

was aware of the meaning of the word "status quo" i.e., to maintain the property in as-is-where is condition as on the date of the order. The accused also did not dispute the fact that the said order was extended by order dated 8.6.2017. But his contention is that the work was completed prior to 8.6.2017. The accused had taken the contention that the photographs which was produced as Exs.P.5 to 9 are manipulated to suit the convenience of the complainant and when the said defence was taken, the burden lies on the accused to prove the same, the same has not been done. The complainant has produced the photograph with C.D. and if there is any manipulation, as contended by the accused, the same ought to have been proved, but the same has not been done. Mere taking of defence is not enough. There must be some cogent evidence before the Court regarding manipulation.

30. On perusal of the photographs, which are marked as Exs.P.5 to 9, it is evident that they are taken between 14.6.2017 to 4.9.2017. Hence, it is clear that the work was undertaken subsequent to the status quo order and also subsequent to the specific direction not to alter or

change vide order dated 8.6.2017. It is pertinent to note that in the statement of objection itself, the accused admitted that he carried out the renovation works. When he understood the meaning of status quo and also the order dated 8.6.2017, the accused ought not to have carried out any work, but he carried them out. Hence, it is clear that the act of the accused is nothing but willful disobedience of the order of the Court. Hence, the very contention of the accused that the work was completed prior to 8.6.2017 and he did not commit any act of contempt cannot be accepted.

31. The fact that there was an order dated 9.2.2017 granting an order of status quo and the said order has been subsequently extended vide order dated 8.6.2017 and on reading of Ex.P.4, it is specific that the accused should not take up any nature of work over the terrace of second floor i.e., the third floor. But it is also admitted in the cross-examination of the accused that what is evident in the photograph – Ex.P.19 is only the water proofing of the cement over the metal sheet. The very admission shows that he had undertaken the construction work over

and above the second floor. The accused understood the order of status quo to maintain as-is-where is condition as on the date of the order. He also admits that the subsequent order indicates that there should not be any construction over the second floor. The accused made an attempt with regard to his further construction saying that it is only water proofing of the cement over the metal sheet. Hence it is clear that he has taken further construction and did water proofing of the cement over the metal sheet. The very conduct of the accused is nothing but willful disobedience of the Court order. In order to invoke contempt jurisdiction, there must be an order and its violation. The said violation must be a willful disobedience and in this case the accused willfully disobeyed the order which amounts to contempt under section 2(b) of the Contempt of Courts Act, 1971.

32. Hence, in view of the principles laid down in the judgment of the Apex Court in the case of PATEL RAJNIKANT DHULABHAI (supra), the Court should not hesitate to invoke the provisions of the Contempt Act. It is held therein that for the proper administration of justice

and to ensure due compliance of the order passed by a Court, it is required to take a strict view under the Act. Hence, from the material available before the Court, it is clear that the accused willfully committed an offence under Section 12 of the Contempt of Courts Act.

33. The counsel appearing for the accused also made the submission that the work was completed prior to 8.6.2017 and in order to substantiate his contention he relied upon Exs.D.5 and 6. In the cross-examination of C.W.1, it is elicited that the photographs shown to him are the photographs of the roof from inside the building, which are marked as Exs.D1 and 2 and also the counsel would contend that the invoice, which is produced before the Court clearly shows that work has been completed. The said invoice is marked as Ex.D.4. By relying upon Ex.D.4, the counsel would contend that for completion of the work, the contractor made the claim and payment has been made. It has to be noted that no doubt there was a declaration with regard to the work done by the contractor and claim was also made and it is also the contention of the accused that the same was declared in Form VAT 100

in terms of Ex.P.5. It has to be noted that these documents are with regard to the work which was done and the same was declared and there is no specific averments with regard to the completion of the work of the third floor and when the photographs which are marked Exs.P.5 to 9 and 12 to 17 shows that the work was continued even after the interim order, the very contention of the accused cannot be accepted.

34. Having considered the material on record and for coming to the conclusion that inspite of specific order of the Court, the accused wilfully disobeyed the order, it is appropriate to rely upon the judgment of Apex Court in the case of DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION CO. (P) LTD. AND ANOTHER reported in (1996) 4 SCC 622. It is held therein that the contemnor should not be allowed to enjoy or retain the fruits of his contempt. Paragraph Nos.17, 18 and 21 of the said judgment reads as under:

"17. The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt is well settled. In Mohd. Idris v. R.J. Babuji [1985 (1) S.C.R.598], this Court held clearly

that undergoing the punishment for contempt does not mean that the court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of court. The argument was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach (of undertaking)".

18. *The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In Clarke v. Chadburn [1985 (1) All.E.R. 211], Sir Robert Megarry V-C observed:*

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and

liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach in law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The Court must ensure full justice between the parties before it."

35. Having considered the principles laid down in the judgment supra, it is clear that the Court while exercising the contempt jurisdiction can give certain directions to remove the work, which was undertaken

inspite of the specific order of the Court. The Apex Court in the judgment also held that when the accused acted in breach of the order and held guilty of contempt, the Court can give appropriate directions to remedy the breach of undertaking.

36. In view of the discussions made above and the principles laid down in the judgments referred supra, we are of the opinion that the accused has to be sentenced for willful disobedience of the order of this Court and also a direction has to be issued to the accused to remove the work, which was undertaken subsequent to the order of status quo and also the extension of the interim order.

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

ORDER

- (i) Contempt petition is allowed.
- (ii) The accused is convicted for the offence punishable under Section 12 of the Contempt of Courts Act, 1971.

- (iii) The accused is sentenced to undergo simple imprisonment for a period of two months and directed to pay a fine of Rs.2,000/- in the Registry. In default of payment of fine, he shall further undergo simple imprisonment for one month.
- (iv) The accused is also directed to remove the construction made over the terrace of second floor, namely the third floor, within one month from the date of receipt of a copy of this order.

Sd/-
JUDGE

Sd/-
JUDGE

MD