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fundamental question which if found to be correct would render entire proceedings bad, it appears expedient to direct the Commissioner of Survey and Settlement to examine it after affording opportunity to both sides to lead evidence. The finding shall be recorded after examining the original records. a

3. In the result, this appeal succeeds and is allowed. The orders passed by the learned Single Judge and the Division Bench are set aside. The order of the Commissioner of Survey and Settlement is also set aside. He shall decide the dispute afresh after examining the original record and recording the finding if the documents filed by the respondents are genuine or not. b

4. Parties shall bear their own costs.

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(BEFORE K. JAYACHANDRA REDDY AND G.N. RAY, JJ.) c

ZAHURUL ISLAM .. Petitioner;

*Versus*

ABUL KALAM AND OTHERS .. Respondents. d

Contempt Petition No. 232 of 1993 in SLP (C) Nos. 9452-53 of 1992, decided on November 23, 1993

**Contempt of Courts Act, 1971 — S. 2(b) — Eviction order confirmed finally by Supreme Court but order stayed till a specified date on condition of the tenant filing the undertaking to vacate and paying the arrears of rent — Tenant not only not complying with the conditions of stay but also allegedly setting up third parties to file suits against the decree-holder and to obtain stay of the execution of the decree — Held, in the circumstances of the case the executing court should direct delivery of vacant possession of the entirety of the demised premises covered by the decree under execution to the decree-holder, if necessary, by the assistance of the police — Interim order staying execution of decree passed by the District Judge in suits filed by third parties and the inexplicable stubborn manner in which the Judge dealt with the application to vacate stay filed by the decree-holder, strongly disapproved and condemned — However, in view of the unqualified apology tendered by the respondent-contemners, no further order passed in the contempt application** e

*Firm Sampat Ram Raj Kumar v. Kalu Ram*, 1989 Supp (2) SCC 418; *Ram Pyari v. Jagdish Lal*, (1992) 1 SCC 157 : AIR 1992 SC 1537, *relied on* f

V-M/AC/14143/S

ORDER

1. Mr Zahurul Islam, petitioner, in this contempt application instituted a suit being title Suit No. 112 of 1982 in the Second Court of learned Subordinate Judge, Alipore, against Respondent 1, Abul Kalam for declaration of title, recovery of khas possession of the suit property being premises No. 70, Beck Bagan Row, Calcutta, and for permanent injunction. The said Abul Kalam also instituted a title suit in the Second Court of learned Munsif being title Suit No. 123 of 1983 against the petitioner, Zahurul Islam, for permanent injunction restraining the said Zahurul Islam for interfering with the possession of the said Abul Kalam in respect of the disputed property. The aforesaid Suit No. 123 of g h

a 1983 instituted by Abul Kalam was transferred to the Second Court of learned Subordinate Judge and was renumbered as Suit No. 209 of 1982. Both the suits were analogously heard and the suit instituted by Abul Kalam was dismissed with costs and the suit instituted by Zahurul Islam was decreed with costs on 9-12-1987. It was inter alia held by the learned Assistant District Judge that the Urdu receipt (Ext. A) filed by Abul Kalam in support of his tenancy right was mutilated document with so many tamperings and interpolations that it led to suggest that it was a spurious document. The learned Assistant District Judge not only dismissed the title Suit No. 209 of 1982 but he also initiated the proceedings being Misc. Judicial Case No. 2 of 1988 against Abul Kalam for filing the said forged rent receipt in the suit. The said miscellaneous judicial case is stated to be pending in the Second Court of the Assistant District Judge, Alipore.

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c 2. The said Abul Kalam thereafter preferred two appeals before the High Court at Calcutta against the judgment and decree passed in Suit No. 12 of 1982 and Suit No. 209 of 1982 which were numbered as F.A. No. 78 of 1989 and F.A. No. 97 of 1990. The Division Bench of the Calcutta High Court dismissed both the said appeals on 17-9-1990 and the High Court inter alia came to the finding that the rent receipts filed by Abul Kalam were tampered and the name of the original tenant, Abdul Shakoore, was erased out in the receipt and the High Court also came to the finding that Abul Kalam was not the tenant. The High Court also negatived the contention of Abul Kalam that he had perfected his title by adverse possession.

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e 3. The petitioner, Zahurul Islam, put the decree for eviction into execution which is numbered as title execution case No. 2 of 1988. The said title execution case was, however, stayed during the pendency of the appeal before the Calcutta High Court and after the disposal of the said appeals, the proceedings of the said execution case were commenced. Abul Kalam preferred two special leave petitions before this Court against the decree passed by the High Court in the said first appeals which were numbered as Special Leave Petition (Civil) Nos. 9452-53 of 1992. Both the said special leave petitions were heard on 26-8-1992 and were dismissed on the finding that there was no ground for interference. This Court, however, on the prayer of the petitioner in the said special leave petitions granted time till 31-3-1993 to vacate the disputed premises subject to the condition of his filing the usual undertaking within four weeks. It was also indicated in the order that if there were any arrears of rent the same should be paid within two months from the said date.

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g 4. Although on the prayer of Abul Kalam, time to vacate till 31-3-1993 was given by this Court, and although the contemner, Respondent 1, Abul Kalam, enjoyed the benefit of extended time to vacate, he did not file any undertaking before this Court and he also failed and neglected to pay the arrears of rent up to 31-3-1993 at Rs 1500 per month as directed by this Court. The decree-holder Zahurul Islam, however, made an application on 20-11-1992 before the executing court to the effect that in view of the direction of this Court, the execution of decree should not be proceeded with till 31-3-1993.

h 5. After the dismissal of the special leave petitions of Abul Kalam, Respondent 15, Ahsan Alam, who is stated to be the nephew of Abul Kalam,

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filed a suit in the court of learned Second Munsif, Alipore, being Suit No. 143 of 1993 claiming right of tenancy in respect of a portion of the suit premises covered by the decree under execution. The said Ahsan Alam obtained an interim order of status quo in the said Suit No. 143 of 1993. Such interim order, however, was vacated on 9-7-1993 on contest by Zahurul Islam. Respondents 13 and 14, namely, Mohd. Nabi Hasan and Mohd. Samir, filed a Suit No. 114 of 1993 in the Second Court of learned Munsif, Alipore, inter alia claiming tenancy right in respect of a portion of the disputed premises and alleging that they had been paying the rent to the said Abdul Kalam in respect of their tenancy. The prayer for interim order made by the said two plaintiffs was rejected by the learned Munsif but on appeal the learned District Judge, 24-Parganas (South) passed an ex parte interim order directing the parties to maintain the status quo. The said interim order to maintain status quo was passed on 16-4-1993 and the learned District Judge directed that the said interim order continue until further orders. The decree-holder, Zahurul Islam, made an application on 25-5-1993 for vacating the interim order of status quo. The learned District Judge fixed the hearing of the said application on 6-1-1994, namely, after more than seven months. The prayer of the petitioner, Zahurul Islam, for advancing the date of hearing was not acceded to by the learned District Judge and the matter was adjourned till 6-1-1994.

6. The petitioner has contended that in view of the expiry of the time granted by this Court on 31-3-1993, the executing court should have taken all steps for executing the decree and should have given delivery of possession to the petitioner. It has also been contended by the petitioner that the learned District Judge should not have passed the interim order of status quo when his attention was specifically drawn to the order of this Court. It has been very strongly contended by the learned counsel for the petitioner that the learned District Judge has in fact committed contempt of this Court when despite his attention being drawn to the order of this Court, he refused to hear the application for vacating the interim order and for advance of the date of hearing but stubbornly stuck to the earlier order and fixed the date of hearing on 6-1-1994 which was beyond a period of seven months from the date of the application.

7. It may be stated that although Respondents 6 and 13 to 15 have been claiming tenancy rights in respect of the portions of the disputed premises which is the subject-matter of the execution, it has been admitted by all the respondents that they had been paying the rent to Abul Kalam.

8. Mr Sanghi, learned Senior Counsel, appearing for the petitioner, Zahurul Islam, has very strongly contended that Respondent 1, Abul Kalam, has resorted to a very sharp practice by trying to frustrate the decree obtained by Zahurul Islam and despite obtaining time from this Court, the said Abul Kalam failed and neglected to file the undertaking before this Court and/or to pay rents as directed in the order. Mr Sanghi has submitted that since Abul Kalam has obtained extension of time from this Court and has enjoyed such extension of time, he must be held guilty for contempt of court by not delivering peaceful vacant possession of the entirety of the disputed premises covered by the decree under execution after the expiry of the time granted by this Court and non-filing of the undertaking as directed by this Court is of no consequence. Mr Sanghi

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a has also submitted that it is apparent from the facts and circumstances of the case that Respondent 1, Abul Kalam, has deliberately set up the other respondents to file title suits only in 1993 after dismissal of special leave petitions on false allegations in order to prevent due execution of the decree obtained by the petitioner Zahurul Islam. Mr Sanghi has also contended that it has been categorically held that Abul Kalam was in illegal possession in respect of the disputed premises which is the subject-matter of the said title suit by forging rent receipt in the name of Shakoor and he did not get any tenancy right or the alleged thika tenancy right in respect of the said premises. It is, therefore, imperative on the part of the said Abul Kalam to deliver peaceful and vacant possession of the disputed premises without any demurrer in compliance with the direction of this Court. Mr Sanghi has submitted that Respondents 13 to 15 who are opposing the execution of the decree by falsely claiming interest in the disputed premises as tenants have been set up by the said Abul Kalam and this Court should direct for execution of the decree by delivering peaceful possession of the entirety of the disputed premises which is the subject-matter of the said title execution case by evicting all the respondents and any other person who may be found in actual possession of any portion of the disputed premises. In this connection, Mr Sanghi has referred to the decisions of this Court reported in *Firm Sampat Ram Raj Kumar v. Kalu Ram*<sup>1</sup> and *Ram Pyari v. Jagdish Lal*<sup>2</sup> by contending that under similar circumstances this Court directed for delivery of peaceful possession of the disputed premises to the decree-holder with police help, if necessary.

e 9. The learned counsel appearing for Respondents 13 to 15, have, however, submitted that they were not parties to the suit instituted by the petitioner, Zahurul Islam, against Abul Kalam and as such they are not bound by the decree passed in the said suit. It has been contended by the learned counsel for Respondents 6 and 13 to 15 that since the said respondents are claiming tenancy right in portions of the disputed premises not through Abul Kalam but independent of the right, title and interest of Abul Kalam, they should not be evicted and thrown out of the possession. It has been contended by the learned counsel for Respondents 13 to 15 that if before their suits are finally decided, they are dispossessed by executing the decree in question they would suffer irreparable loss and injury. It has also been contended by the learned counsel for the contesting respondents that even if it is assumed that Abul Kalam has committed any contempt of this Court or has deliberately attempted to frustrate the direction of this Court, such consideration should not weigh with the Court in giving any direction for recovery of possession of the entirety of the disputed premises because the execution of such decree will amount to virtual dismissal of their suits thereby causing irreparable loss and injury to the respondents.

g 10. It may be noted here that the learned counsel for Respondent 1 Abul Kalam, has submitted that since he is not in possession of the entirety of the disputed premises being the subject-matter of the execution proceedings, he cannot deliver possession of the entirety of such disputed premises but he is willing to deliver peaceful possession of the portion under his occupation in

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1 1989 Supp (2) SCC 418  
2 (1992) 1 SCC 157: AIR 1992 SC 1537

view of the fact that he is bound by the decree passed against him. He has also submitted that the arrears of rent should be paid by him within such time as this Court may fix.

11. After considering the respective contentions of the learned counsel for the parties and the affidavits filed by Respondent 6, M/s Hind Barrel Co. and Respondents 13 to 15, it appears to us that in the facts and circumstances of the case, the petitioner is entitled to a direction from this Court that the decree should be executed immediately by the executing court and delivery of the entirety of the suit premises covered by the decree under execution should be delivered to the decree-holder, the petitioner, Zahurul Islam, by the executing court by evicting Respondent 1, Abul Kalam and the other respondents including Respondents 6 and 13 to 15 and any other person in possession of any portion of the disputed premises, if necessary, with the police help. It may be indicated here that similar direction was passed in a case reported in *Ram Pyari case*<sup>2</sup>. In the said case, this Court granted time and stayed the execution of the decree after the dismissal of the special leave petition with a direction to file undertaking to hand over the possession on the expiry of the period granted by this Court. The judgment-debtor neither filed the undertaking nor paid the rent and also failed to hand over the possession. The decree-holder thereafter made an application for contempt against the judgment-debtor. It has been held by this Court to the following effect:

“The short question, therefore, is whether the respondent is guilty of contempt of court. We have already extracted the order passed by this Court on 17-2-1986. No doubt there is no violation of any specific direction contained in the order. Nevertheless we cannot agree with the respondent that the remedy will be only to execute the decree for eviction. He was granted three months’ time on condition that he will file an undertaking and pay the arrears of rent as well as future compensation. Insofar as he derived specific advantages under the order, we are of the view, the proper course will be to issue such directions as were issued in an identical case of *Firm Ganpat Ram Rajkumar v. Kalu Ram*<sup>1</sup>. It was held in the said decision: (SCC p. 422)

‘This Court dismissed the special leave petition and granted time of six months on the plea that the petitioner-firm would file an undertaking. All this could not have happened if the present plaintiffs in the Narnaul suit had not consented or allowed it to be passed or stood by. It is difficult to accept the position that they did not know. In the facts of this case, we are of the opinion that they deliberately did not object in this Court passing the order and thereby allowed the firm to mislead this Court. They are, therefore, bound to see that the order of this Court is complied with. Though contempt is a serious matter and it interferes with the right of those who are found guilty of contempt, no court should allow any party to mislead the court and thereby frustrate its order. In the aforesaid view of the matter, we are of the opinion that though perhaps the respondents could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case this Court should ensure compliance with its order dated 24-8-1987 and see that vacant and peaceful possession is given to the applicant in the interest of justice.’

*a* In the aforesaid view of the matter, we direct that learned senior Sub-Judge Narnaul (Haryana) to cause deliver up the vacant possession of the shop situated at Subzimandi, Narnaul District Mohindergarh (Haryana), if necessary with the help of police forthwith. The learned Senior Sub-Judge Narnaul is also directed to report compliance immediately.

*b* Similarly direction in the present case would meet the ends of justice. Therefore, we hereby direct the learned Additional Munsif of Shahjahanpur to cause delivery of vacant possession of shop No. 289 situated in Bazar Bahadurganj, Shahjahanpur under City Board Shahjahanpur to the applicants, if necessary with the help of police on or before 15-12-1991. The learned Munsif is also directed to report compliance immediately.”

We make it clear that the executing court will direct for delivery of the peaceful possession of the entirety of the disputed premises covered by the decree under execution to the petitioner, if necessary, by the assistance of the police.

*c* 12. Although prima facie we are not satisfied with the bona fides of the contentions made by Respondents 13 to 15 in their title suits and it appears to us that they were not entitled to any interim order by which the execution of decree by delivering vacant possession of the premises covered by the decree under execution is interfered with, we make it clear that we have not expressed any firm opinion on the merits of the title suits instituted by Respondents 13 to 15 and the same should be disposed of on their merits. We also keep on record our disapproval of the interim order passed by the learned District Judge, 24-Parganas (South) as referred to hereinbefore and the manner in which the application for vacating interim order was dealt with by the learned District Judge. It appears to us that in view of the reported decisions of this Court as indicated hereinbefore, the learned District Judge should not have passed the interim order and in any event should have vacated the same when the petitioner *d* apprised him of the facts and circumstances of the case. It was unfortunate that the learned District Judge postponed the hearing of the application for interim injunction to a very distant date with inexplicable stubbornness. It may be indicated here that very recently in similar circumstances, this Court hauled up both the applicants for interim order and the presiding Judge passing interim order despite the direction of this Court to hand over peaceful and vacant possession in Contempt Applications Nos. 235-236 of 1993 in Special Leave Petitions (Civil) Nos. 10425-26 of 1991 and disposed of the contempt proceeding after the applicant and the Judge appeared in person and tendered unqualified apology. *e*

*f* 13. However, in view of the unqualified apology tendered by the respondent-contemnors, we do not propose to pass any further order in the contempt application. *g*

14. For the aforesaid reasons, we direct the executing court to execute the decree and deliver peaceful and vacant possession to the decree-holder, Zahurul Islam, with the police help, if necessary and report compliance within six weeks from today. Post this matter on 9-2-1994.

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