

(1990) 09 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Original Contempt Petition No. 411 of 1990

Ram Nath Kapoor

APPELLANT

Vs

Chottu Ram

RESPONDENT

Date of Decision: Sept. 24, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3
- Contempt of Courts Act, 1971 - Section 2

Citation: (1991) 2 ILR (P&H) 26 : (1991) 1 RCR(Criminal) 205

Hon'ble Judges: Amrit Lal Bahri, J

Bench: Single Bench**Advocate:** T.R. Arora, for the Appellant; Chandra Singh, for the Respondent**Final Decision:** Dismissed

Judgement

A.L. Bahri, J.

Ram Nath Kapoor prayed for punishing Chhotu Ram Respondent for committing contempt of Court of having deliberately breached the undertaking given by him to the Court of Senior Sub Judge on August 4, 1989. The undertaking given was that he would vacate the premises by March 31, 1990 but had failed to do so. On notice being given, Chhotu Ram submitted reply contesting the case.

2. Chhotu Ram had filed a suit for grant of permanent injunction in April 1989 in the Court of Senior Sub Judge, Chandigarh, against Ram Nath Kapoor restraining him from interfering with the physical possession of the premises; one room and a store on barsati floor of house No. 1607, Sector 7-C, Chandigarh, with the common use of latrine and bath. Chhotu Ram claimed himself to be the tenant of the aforesaid premises. On August 4, 1989 Ram Nath Kapoor, who was Defendant in the suit, made statement to the effect that he would not evict and interfere in the peaceful possession of the Plaintiff (Chhotu Ram) in respect of the premises as described and shall evict him in due course of law. He further stated having received rent upto July

31, 1989 at the rate of Rs. 325 per month exclusive of water and electricity charges. Statement of Chhotu Ram (Plaintiff in the suit) was also recorded who accepted the statement of Ram Nath Kapoor as correct. He further stated as under:

... I shall vacate the premises by 31st March, 1990. The suit filed by me be dismissed as withdrawn.

While passing the final order, the Senior Sub Judge observed that in view of the statement of the Defendant and that of the Plaintiff the suit stood dismissed as withdrawn having compromised. File be consigned to the record room.

3. Section 2(b) of the Contempt of Courts Act defines civil contempt as under:

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.

4. It has been argued on behalf of the Respondent that the suit was liable to be dismissed as withdrawn on the statement of Ram Nath Kapoor who was not to interfere with the possession and was to evict in due course of law. Any undertaking given by Chhotu Ram in his statement in the suit was only a promise to Ram Nath Kapoor and was not an undertaking given to the Court and even if there was breach of the aforesaid undertaking on the part of Chhotu Ram, no contempt is made out. I find force in this contention. In the suit filed there was no claim of dispossession of the tenant. Rather the suit was filed by the tenant that the landlord should not interfere with the possession for which he claimed injunction against the landlord. On the statement given by the landlord Ram Nath Kapoor the suit was to be dismissed and it was so ordered. Undertaking to vacate the premises by the specified date may be promise between the landlord and the tenant. Breach of the same does not amount to committing of contempt of court as defined. If such a promise was enforceable at law the landlord could do so. The contention of counsel for the Petitioner is that on account- of the aforesaid undertaking, the Petitioner could not file ejectment application till March 31, 1990 and thus on failure of Chhotu Ram to vacate the premises on the date aforesaid the Petitioner in a way was restrained from filing ejectment application earlier. Be that as it may, in the circumstances aforesaid no contempt of Court was made out. Even otherwise the alleged compromise was not recorded in accordance with the Order XXIII Rule 3 of the CPC which require the compromise to be in writing to be executed to be acted upon by the Court. In the present case in fact the Court did not act upon the aforesaid undertaking. No order was passed on that undertaking and none was required to be passed as the suit was liable to be dismissed as withdrawn which was filed by the tenant. It is not considered appropriate to proceed with this contempt petition which is dismissed. No costs.