

## **K.S. Jhunjhunwala and another Vs Tayebhai Mohammedbhai Bagasapwalla and others**

**Court:** Bombay High Court

**Date of Decision:** Oct. 31, 1996

**Acts Referred:** Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 " Section 28

Constitution of India, 1950 " Article 141

Contempt of Courts Act, 1971 " Section 2

**Citation:** (1997) 2 BomCR 584 : (1997) CriLJ 1953 : (1997) 1 MhLj 37

**Hon'ble Judges:** P.S. Patankar, J

**Bench:** Single Bench

**Advocate:** A.Y. Sakhare, instructed by Mansukhlal Hiralal and Co., N.V. Walawalkar, for the Appellant; Milind Sakhardande, Anil C. Singh and Kiran Patil, for the Respondent

### **Judgement**

1. The question involved in this Appeal from Order is whether the appellant No. 1 should be convicted and punished under the Contempt of

Courts Act, 1971 in the facts and circumstances of the case ?

2. The learned Judge of the City Civil Court passed the order dated 2-12-1991 convicting the appellant No. 1 in civil prison of one month for

breach of the order passed in the suit, dated 15-2-1991. The same is challenged in this Appeal.

3. I am not traversing the whole field of facts, but only giving a few.

4. Respondents Nos. 1 and 2 are plaintiffs. The suit came to be filed against the appellant No. 2, its Managing Director and Municipal Corporation

of Greater Bombay. The appellant No. 1 came to be added as respondent No. 1 in the Notice of Motion as he was found to be carrying on the

construction work. It was averred in the plaint that they were owners in respect of the property being City Survey No. 730(B) admeasuring about

12090 sq. mtrs. and structure standing thereon. Part of the structure from ground and first floor was let out to the appellant No. 2 for commercial

purposes. The building caught fire on 25-8-1989 and partly it was gutted and destroyed. It was alleged that the tenancy rights came to be

extinguished and/or stood in abeyance in view of this calamity. It was further alleged that the appellants are not entitled to carry out any

construction and/or further construction on the said premises and the Bombay Municipal Corporation had issued notice u/s 354 of the Bombay

Municipal Corporation Act, 1888. It was averred that provisions of Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for

short "Bombay Rent Act"), were not attracted. It was prayed that Bombay Municipal Corporation be directed by mandatory order to issue further

notices u/s 351 of B.M.C. Act to the appellants to demolish whole structure and they should be restrained from carrying on any construction, or

any further construction on the disputed land in any manner whatsoever and/or from entering upon the said property through their contractors

and/or instructing their contractors, developers to carry on any work of construction of any nature whatsoever.

5. Respondents 1 and 2 took out Notice of Motion No. 949/1991 and ex parte order dated 15-2-1991 restraining appellants from carrying on

any work in suit property was passed and Court appointed Commissioner to visit the suit property and make a report to the Court. A report was

submitted which pointed out that appellants have proceeded with the construction work/activity on the suit premises. The respondents took out

Notice of Motion No. 2315 of 1991 against the appellants and others for violation of the order of injunction dated 15-2-1991.

6. On 16-8-1991 a Notice of Motion No. 4860/1991 was taken out on behalf of the appellants for determination of issue of jurisdiction and to

decide it as a preliminary one. The appellants contended that suit fell u/s 28 of the Bombay Rent Act and, therefore, the City Civil Court, Bombay

has no jurisdiction. The said Notice of Motion came to be dismissed by the learned Judge of the City Civil Court by passing the order on 29-11-

1991 holding that the City Civil Court has jurisdiction to decide the suit.

7. The Notice of Motion No. 949/1991 taken out by the respondent Nos. 1 and 2 praying for grant of interim injunction restraining the appellants

from carrying out any construction work and appointing Court Receiver was heard and the learned Judge granted the same on 29-11-1991. This

is challenged by appellants by filing appeal from Order No. 1406/1991.

8. The order passed by the learned Judge of the City Civil Court holding that the City Civil Court was having the jurisdiction to decide the suit

came to be challenged on behalf of the appellants by filing Civil Revision Application No. 888 of 1996.

9. The appellants also challenged the order of punishing the appellants for contempt in Notice of Motion No. 2315 of 1991 by filing this appeal.

10. The Civil Revision Application came to be heard by my learned brother (Lodha, J.) The learned Judge exhaustively dealt with the question of

jurisdiction and came to the conclusion that City Civil Court was having no jurisdiction to decide the suit as it fell within the four corners of Section

28 of Bombay Rent Act. The said order dated 3-7-1996 came to be challenged on behalf of the respondents 1 and 2 by filing SLP No. 14182 of

1996. The said SLP came to be dismissed on 3-9-1996 by the Supreme Court.

11. In the meanwhile Civil Application No. 5507 of 1996 was filed by the appellants herein for possession in view of dismissal of SLP filed by

respondents 1 and 2. They prayed that as the City Civil Court is having no jurisdiction to decide the suit, all restrictions should be lifted and

possession should be handed over to them. Order came to be passed on the civil application and the appellants were allowed to occupy and carry

out their business in the premises as before without royalty and any security. This order was challenged by respondents Nos. 1 and 2 by filing SLP

(Civil) No. 18942 of 1996. The order came to be passed by the apex court on 1-10-1996 observing that ""we have been informed that the Appeal

from Order No. 1407 of 1991 arising out of contempt proceedings is pending before the High Court.".... ""We do not wish to go into the merits of

the impugned order of the High Court but at the same time we direct that the respondents shall not be entitled to be put into possession of the

premises till the appeal is decided by the High Court."" The apex Court further directed the High Court to dispose of the appeal by end of

November, 1996.

12. The learned Counsel for the appellants first submitted that in view of the fact that the City Civil Court was having no jurisdiction to decide the

suit now there is no question of violation of any interim order passed by the City Civil Court, Bombay as those orders were void ab initio and

nullity.

13. The learned Counsel for the respondents 1 and 2 submitted that in view of the fact that the order of ad interim injunction was passed in view of

Section 9-A of the CPC (added vide Maharashtra Act 65 of 1977), there was jurisdiction to pass ad interim order. It was a kind of special

jurisdiction and as the appellants have violated the ad interim order passed by the City Civil Court, they are liable to be punished.

14. The learned Counsel for the appellants in support of his submission has relied upon the judgment of the Division Bench reported in 1984 Mh

LJ 520 : 1985 Cri LJ 359 (S. P. Kurdukar (as he then was) and M. S. Jamdar, JJ.) Vivekanand Atmaram Chitale v. Vidya Vardhini Sabha. The

Division Bench was concerned with a case where there was violation of interim injunction order. It was finally found that the Court was having no

jurisdiction to decide the suit. The question arose whether defendant would be convicted under Contempt of Courts Act, 1971. It was held there

can be no conviction. The Division Bench considered the various judgments including the apex Court and held as follows (at pp. 366 and 367 of

Cri LJ) :

22. It is well settled that an order without jurisdiction is a nullity which can be ignored with impunity. This is the ratio of the decision of this Court in

Abdullamiyan Abdulrehman Vs. The Government of Bombay, . In that case, relying on the decision in Surananna v. Secretary of State,

Malkajappa v. Secretary of State, Rasul Khan Hamid Khan v. Secretary of State, Dhanji v. Secretary of State and Manibhai v. Nadiad City

Municipality, the learned Judges held that where an authority which purports to pass an order is acting without jurisdiction, the purported order is a

nullity and it is not necessary for a party, who objects to that order to apply to set it aside. He can rely on its invalidity when it is set up against him

although he has not taken steps to set it aside.

23. Another decision which is pressed into service by Shri Mahendra Shah in support of the above mentioned proposition in Sultan Ali v. Nur

Hussein 1949 Cri LJ 598 : AIR 1949 Lah 131. In that case Election Petition Commission was sought to be indicated for contempt of Court for

disregarding the order of stay passed by a single Judge of the Lahore High Court. It was found that the order was without jurisdiction and the Full

Bench by majority held that the order was void and bound nobody and disobedience of that order did not amount to contempt of Court.

24. Reliance was also placed on behalf of the contemnors on the decision of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan

and Others, . In that case their Lordships held that it is the fundamental principle that a decree passed by a Court without jurisdiction is a nullity and

that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in

collateral proceedings. It was further held that a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject-

matter of the action strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. It

would be worthwhile to observe that this decision was ignored by the Madras High Court while deciding Nalla Senapathi v. Sri Ambal Mills. The

same proposition was reiterated by their Lordships of the Supreme Court in Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan and Another,

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25. In Dwarkadas Mulji v. Shantilal Laxmidas and another, Sawant J. elaborately considered the question whether the breach of an undertaking

given by a party in a proceeding, which is ab initio void for lack of jurisdiction, amounts to contempt. While answering the question in the negative,

the learned Judge rightly distinguished the decision of the Allahabad High Court in State of U.P. v. Ratan Shukla and placed reliance upon the

decision of Punjab High Court in Narayan Singh v. S. Hardayal Singh. He also quoted American Law on the subject as found in Corpus Juris

Secondum, Vol. XVII, para 19. The relevant quotation is as follows :-

Disobedience of, or resistance to, a void mandate, order, judgment or decree or one issued by a Court without jurisdiction of the subject-matter

and parties litigant, is not contempt and where the Court has no jurisdiction to make the order, no waiver can cut off the rights of the party to

attack its validity.

In support of the proposition, which the learned Judge laid down he also placed reliance on the decisions of the Supreme Court of the United

States in ex parte Rowland, Ex Parte Fisk, Ex Parte Sawyer, Unites States of America v. United Mine Workers of America and Joseph F.

Maggia v. Raymond Zeitz, in which unanimous view was taken that there is no contempt when breach is of the order passed in the proceedings,

which are ab initio void for lack of jurisdiction from their very inception.

15. The apex Court in Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, :

18. It is settled that a decree passed by a Court without jurisdiction on the subject-matter or on the grounds on which the decree made which

goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a Court is a nullity and is non est.

Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in

collateral proceedings. The defect of jurisdiction strikes at the very authority of the Court to pass decree which cannot be cured by consent or

waiver of the party.

16. The learned Counsel for the respondents 1 and 2 in support of his submission relied upon the judgment of the single Judge (Sharad Manohar,

J.) in Kapil P. Mohmed Vs. S. Anthony, , who observed "By virtue of the non obstante clause in said Section 9-A, even the Court having no

jurisdiction to entertain the suit is clothed with the power to pass certain orders by way of interim relief. The suit may be without jurisdiction and if

the orders are with jurisdiction there is no reason to hold that the efficacy is only short-lived.

The learned Judge held that Section 9-A confers special jurisdiction upon the Court to pass ad interim orders and that remains unaffected by the

decision relating to the preliminary issue. He further held that the efficacy of the earlier order granting the interlocutory relief will come to an end

with effect from the date when the preliminary issue is decided and whatever order relating to the interlocutory relief passed till that date will be

valid and this position is due to the direct result of non obstante clause contained in sub-section (2) of Section 9-A. It was held that whatever order

relating to interlocutory reliefs passed earlier is valid and if there is violation of the said order then the person is liable to be punished for contempt.

17. It is to be noted that this was challenged by filing Appeal - Contempt Appeal No. 1/84 and Division Bench of this Court by order dated 9-6-

1987 (Savant (as he then was) and Guttal, JJ.) set aside the said order.

18. The learned Counsel for the appellants submitted that Respondents 1 and 2 cannot taken any advantage or cannot rely upon the judgment of

the learned single Judge in the matter reported in Kapil P. Mohmed Vs. S. Anthony, , in view of the judgment of the Division Bench as this has

been set aside directly and, therefore, it is not in existence at all.

19. The learned Counsel for respondent Nos. 1 and 2 submitted that the said judgment is still good law as the Division Bench has not considered

the point that was raised by and decided by the learned single Judge.

Dated 1st November 1996

20. It is first to be noted that the Division Bench has set aside the order passed by the learned single Judge reported in Kapil P. Mohmed Vs. S.

Anthony, . While setting aside the same in para 3, the Division Bench noted that question of the jurisdiction was agitated. There was one more

reason given in the said judgment and finally it is held ""for all these reasons the appeal is allowed"". Therefore, ground that the order was passed

without jurisdiction was taken into consideration. There may not be detailed discussion about it.

21. Secondly in my opinion when the said order was set aside it does not remain in force and cannot be relied upon so as to necessitate reference

to a larger Bench.

22. The learned Counsel for the respondent Nos. 1 and 2 then relied upon the Full Bench judgment of this Court reported in Parappa Ningappa

Khaded and Another Vs. Mallappa Kallappa and Others, . The question before the Full Bench was whether Full Bench decision reported in

Sakarchand Satidas and Others Vs. Narayan Savla Vani and Others, was in the circumstances binding upon the Division Bench or not ? In that

context it came to be observed ""a decision of a Full Bench, or of any Court for the matter of that, is binding provided it is a considered decision.

But when a decision has been given without the pros and cons of the question being considered, it cannot possibly be urged that such a decision

acquires a finality which cannot be interfered with by any subsequent decision. The manner in which the decision was arrived at the end of the

judgment almost seems to suggest that the decision was given on a concession made by counsel at the Bar."" Therefore, it was held that such a

decision is not binding upon the Division Bench.

23. The learned Counsel for the respondent Nos. 1 and 2 next relied upon the judgment of the Supreme Court, reported in Vijay Kumar Sharma

and others Vs. State of Karnataka and others, . The Supreme Court was dealing with the effect of the observation which was made in the decision

of observation which was made in the decision of Privy Council earlier. In that context it was observed ""The observation further was not necessary

or the decision in that case since as is pointed out above, the Court had held that there was no repugnancy between the two statutes since they

covered two different subject-matters."" ..... ""What is more, when the matter went in appeal before the Privy Council, the said point was not even

remotely referred to and I find no observation in the judgment either in conformity, or dissenting from, the said observations. This being the case

the said observations cannot be regarded as more than general in nature. They are not even an obiter dicta much less are they the ratio decidendi

of the case. Hence the said observations do not have a binding effect.

24. The next reliance placed is on the judgment of the Supreme Court, reported in State of U.P. and Another Vs. Synthetics and Chemicals Ltd.

and Another, . The observations relied upon are from para 41 :

The Bench held that, "precedents sub silentio and without argument are of no moment". The Courts thus have taken recourse to this principle for

relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on

consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and

consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi.

25. In my opinion, none of these are applicable in the present case. There is no question of considering sub silentio precedent or to consider effect

of general observations made in the judgment or that ignoring it because all the pros and cons are not considered. Therefore, I reject the

submissions of the learned Counsel for the respondent Nos. 1 and 2 accept the submission made on behalf of the appellants.

26. In my opinion, if the order passed is without jurisdiction or void ab initio, it is not binding on the parties and for committing breach thereof, there

can be no punishment for contempt. Section 2(b) of the Contempt of Courts Act, 1971 contemplates "wilful disobedience" of any order which is

passed with jurisdiction. If the order is without jurisdiction, whether ad interim, interim or final, a person cannot be held guilty for committing breach

thereof. In fact the Division Bench in the judgment in 1984 Mh LJ 520 : 1985 Cri LJ 359 (cited supra) and the Division Bench in contempt Appeal

No. 1/1984 (cited supra) meant this and is in conformity with the view expressed by Supreme Court from time to time. It clearly means that there

is no jurisdiction since the beginning. I find no reason whatsoever why the ratio of the Division Bench reported in 1984 Mh LJ 520 : 1985 Cri LJ

359 (cited supra) dealing with the case of violation of interim injunction or of the judgment reported in Chiranjilal Shrilal Goenka (Deceased)

through Lrs. Vs. Jasjit Singh and Others, , should not be made applicable to the present case. If this is not so, then one has to imagine the serious

consequences when there are so many Courts/Tribunals vested with different jurisdictions. There may be a Court/Tribunal ready to oblige a

particular person with a favourable order. If it is held to be binding on the other party, though without jurisdiction, then other party would be

required to face serious consequences.

27. By amendment Maharashtra Act 65 of 1977, Section 9-A was introduced to Section that legitimate claim of a party to get interim order should

not be affected merely because some frivolous objection to jurisdiction is raised by the other side. As otherwise this may defeat the very purpose

of a suit or give unfair advantage to other side. But if the order passed is without jurisdiction, then it is void ab initio and binds one.

28. The learned Counsel for the respondent Nos. 1 and 2 submitted that the Supreme Court has set aside the order dated 13-9-1996 passed by

me in Civil Application No. 5507 of 1993 taken out by the appellants in this appeal from order. By the said Order I directed that appellants be

allowed to occupy and carry out their business in their premises as before, without payment of royalty or security to the Court Receiver. The

Supreme Court in Civil Appeal Nos. 1723-25 of 1996 passed order on 1st October 1996. The Supreme Court has observed "we have been

informed "that the appeal from Order No. 1407 of 1991 arising out of contempt proceedings is pending before the High Court. We are further

informed that the appeal is on the Daily List. Since the rights of the parties arising out of contempt proceedings are likely to be determined by the

High Court by deciding the civil appeal, we are of the view that status quo between the parties should be continued to be maintained till then we do

not wish to go into the merits of the impugned order of the High Court but at the same time we direct that the respondents shall not be entitled to

be put into possession of the premises till the appeal is decided by the High Court." In fact the Supreme Court has not set aside the order, but has

only directed that the Appeal from Order No. 1407 of 1991 should be decided first and thereafter the order regarding possession be passed. This

was clearly because the Appeal from Order was on Board for hearing.



29. It is not possible to accept the submission that the Supreme Court has decided the question of effect of violation of the ad interim order passed

without jurisdiction and, therefore, it need not be gone into.

30. In any case when the Court was having no jurisdiction to decide the suit, it is not necessary to take any steps under the Contempt of Courts

Act, 1971.

31. In view of this, Appeal from Order is allowed. The impugned order dated 2-12-1991 passed by the learned Judge of the City Civil Court,

Bombay in Notice of Motion No. 2315 of 1991 is set aside.

32. Appeal allowed.