

(1963) 06 CAL CK 0001

Calcutta High Court

Case No: None

Siemens Engineering and
Manufacturing Co. of India Ltd.

APPELLANT

Vs

S.P. Majoo and Others

RESPONDENT

Date of Decision: June 25, 1963

Citation: 68 CWN 693

Hon'ble Judges: Bose, C.J; G.K. Mitter, J

Bench: Division Bench

Advocate: M.N. Banerjee, S.R. Banerjee, Soumendra Nath Mukherjee and Bejoy Kumar Mukherjee, for the Appellant; Debi Dey, for the Respondent

Judgement

Bose, C.J.

This is an application for committal of the respondents Soli Majoo in his capacity as sole proprietor of Byron & Co. and in his capacity as executor to the estate of P. S. Majoo, deceased and also in his capacity as partner of a firm of Beverage & Merchandise Co. and one Sri Homi Pestonji Majoo alleged to be a partner of the said firm of Beverage & Merchandise Co. for contempt of Court. A Rule was issued by this court upon the said two respondents to show cause why they should not be committed for contempt of this Court constituting the following deeds, namely, the said respondent Soli Pestonji Majoo also known as S. P. Majoo in his status and capacity as the executor to the estate of P. S. Majoo, deceased and/or as claiming to carry on the business of and/or sole proprietor of Byron & Co. and/or to carry on the business in partnership in the firm under the name and style of Beverage & Merchandise Co. and/or in one of such status or capacity getting merged in another or others deliberately and/or willingly disobeying the order dated the 13th day of September last passed by the Court of Appeal directing the Official Receiver of this court to take possession of the entire premises No. 50, Chittaranjan Avenue, Calcutta, and the notice dated the 27th day of September last served by the Official Receiver requiring the petitioner company to pay the rent to the said Receiver by his

deliberate statements, affidavits and/or verification in respect of the course of the proceedings in this court throughout and/or in the suit No. 4138 of 1962 in the Presidency Small Causes Court and/or in the course of the correspondence inspired or obstructed by him with the said petitioner company and by initiating and/or maintaining suits or proceedings for parallel investigation into one of the vital issues and/or subject-matters and/or questions concerned directly in suit No. 691 of 1960 of this court, namely, the nature and extent of the interest of the said respondent opposite party No. 1, Soli Pestonji Majoo in or in respect of the entire premises No. 50, Chittaranjan Avenue, or any portion thereof. The facts giving rise to this application are shortly as follows:

On 10th December, 1940 one Dorabji Sorabji Majoo died intestate leaving an estate consisting inter alia of (1) an undivided $\frac{2}{3}$ rd share in the premises No. 50, Chittaranjan Avenue and (2) $\frac{1}{3}$ rd share in the business of Byron & Co. carried on at 50, Chittaranjan Avenue, Calcutta. On 9th June, 1941, the Administrator General of Bengal was appointed executor to the estate of D. S. Majoo, deceased. On the 22nd December, 1943 the Administrator General filed a suit in this court being Suit No. 1580 of 1943 for dissolution and accounts of the partnership firm Byron & Co. against one Pestonji Sorabji Majoo. On 23rd February, 1948 a consent decree was passed in the said suit providing inter alia as follows:

(1) The claims of the Administrator General on behalf of the Estate D. S. Majoo, deceased, in the business, goodwill and assets etc of Byron & Co. be finally settled at Rs. 15,500/- payable by P. S. Majoo.

(2) P. S. Majoo on behalf of the business of Byron & Co. agreed to pay to the Administrator General a sum of Rs. 275/- per month on account of the $\frac{2}{3}$ rd share of the estate of D. S. Majoo in the ground floor of premises No. 50, Chittaranjan Avenue, Calcutta from 1st March 1947 as long as the said premises would be occupied by the said Byron & Co. On the 14th August, 1954 P. S. Majoo died leaving a will of which probate was obtained by Soli Pestonji Majoo as executor and Mrs. Themina Pestonji Majoo as executrix of the said will. On 18th March, 1960 Mrs. Themina Pestonji Majoo, the executrix, died and S. P. Majoo became the sole executor. On 18th May, 1960 the Administrator General of West Bengal filed a suit in this court being suit No. 691 of 1960 inter alia for (a) ascertainment and declaration of the shares of the parties (b) partition of the undivided $\frac{2}{3}$ rd share of land and premises No. 50, Chittaranjan Avenue by metes and bounds and allotment to the plaintiff of his undivided share in severalty, (c) possession and (d) Receiver. On or about 31st January, 1961 an application was made in the said suit No. 691 of 1960 by the Administrator General for appointment of a Receiver. On 11th April, 1961 an order was made by G. K. Mitter, J. appointing the Official Receiver to be the Receiver of the properties in suit and directing the Official Receiver to collect rents of the said premises No. 50, Chittaranjan Avenue and out of such collection to pay to the Administrator General $\frac{2}{3}$ rd share of the rents. An appeal was preferred by the

defendants against the said order of G. K. Mitter, J. On 6th June, 1961 the court of Appeal passed an order directing the Receiver to restore possession of the ground floor of the premises No. 50, Chittaranjan Avenue to the appellants and allowed the appellants to remain in occupation of the premises on condition that the appellants would pay to the Administrator General from month to month on or before the 16th of every month a sum of Rs. 275]-. On 29th January, 1962 Soli Pestonji Majoo as proprietor of Byron & Co. leased out to the petitioner, Siemens Engineering and Manufacturing Co. of India Ltd. a portion of the ground floor of premises No. 50, Chittaranjan Avenue together with certain structures, plant machinery, fittings, etc. for a period of 21 years with effect from the date of delivery of possession at a rent of Rs. 1305/-, per month, and a sum of Rs. 15,500/- was given by way of advance to S. P. Majoo to be spent towards costs and repairs etc. it being stipulated that the said sum of Rs. 15,500/- would be repaid by deducting Rs. 400/ from the monthly rent payable by the petitioner. On 26th February, 1962 upon an application made by the Administrator General in suit No. 691 of 1960 Law, J. made an order prohibiting and restricting the defendants including S. P. Majoo as executor to the estate of P. S. Majoo from carrying out structural alterations to the premises except putting up a collapsible gate and roller shutter. Thereafter on 2nd April, 1962 possession of the demised premises was given to the petitioner company. On 18th July, 1962 the Administrator General made another application before the court of Appeal for directing the Official Receiver to take possession of 50, Chittaranjan Avenue and for varying the order dated 6th June, 1961. On 13th September 1962 the court of Appeal made an order directing the Official Receiver to take possession of the premises and varied the order of the 6th June accordingly. On 15th September 1962 a letter was written by the Solicitor of the Administrator General to the petitioner company intimating that by an order of the 13th September 1962 the Official Receiver who had been appointed Receiver of Premises No. 50, Chittaranjan Avenue by an earlier order was directed to take possession of the said premises, and by virtue of the said order the Official Receiver is now only entitled to realise all rents payable by the tenants of the said premises and the petitioner was, therefore, warned that it was not to pay rent to anyone else in respect of the portion of the ground floor of the premises which the petitioner company was occupying as tenant. On the 27th September, 1962 the Official Receiver also wrote a letter to the petitioner company intimating that by an order dated the 11th April, 1961 he had been appointed Receiver of the rents, issues and profits of premises No. 50, Chittaranjan Avenue, Calcutta, belonging to the estate which was the subject-matter of suit No. 691 of 1960 a portion of which premises was in the occupation of the petitioner company, and the petitioner company was further called upon to attorn and pay rent to the Official Receiver in respect of the said tenancy and to forward to the Official Receiver alone rent receipts for adjustment of the rent account. It was further pointed out in that letter that all rents both arrears and current should be paid to the Official Receiver and to no one else. On 2nd November, 1962 the petitioner company wrote a letter to the Official Receiver by way of reply to the letter of the 27th September

1962 intimating that without prejudice to their interest, rights and remedies and in view of their inability because of the High Court holidays to ascertain the correct facts and to obtain competent legal advice, the company was depositing with the Official Receiver a sum of Rs. 905/- by crossed cheque on account of rent payable in respect of their lease for the month of October, 1962. A copy of this letter was forwarded amongst others to S. P. Majoo, the proprietor of Byron & Co. On 6th November, 1962 one Mr. Baidyanath Sarkar, an Advocate, wrote a letter to the petitioner company on behalf of Messrs. Beverage & Merchandise Company and S. P. Majoo, proprietor of Byron & Co. complaining of the fact that the petitioner had wrongly and illegally refused to pay the agreed rent in respect of the lease dated 29th January 1962. In the said letter it was inter alia stated as follows:-

That inspite of my client's repeated demands you have yet failed and neglected to pay rent for the months of September and October, 1962 at Rs. 905/- per month as agreed upon. That my client states that there is no order by any competent court enabling you to pay rent to the Official Receiver....

...The Official Receiver is entitled to recover rent in respect of the entire ground floor of the premises from my client Messrs. Byron & Co. and you being in the position of a sub-lessee of their demised factory are liable to pay rent to my client and nobody else. This is the actual legal position and you will be better advised not to pay rent to the Official Receiver but to my client.

That under the circumstances I am instructed finally to call upon you which I hereby do to remit to me or my client a sum of Rs. 1800/-.....failing which my client without prejudice to other legal remedies will file a suit against you for recovery of the said sum together with all interest and costs and that without any further reference to you.

2. On 8th November, 1962 one B. K. Mukherjee, Advocate for the petitioner company, replied to the letter of the 6th November, 1962. On 30th November, 1962 S. P. Majoo, proprietor of Byron & Co. wrote a letter to the petitioner company saying that the deposit made by the petitioner company with the Official Receiver is invalid and is not binding on him and pointing out that the Official Receiver could not give and discharge for Byron & Co. On that very date (30th November, 1962) Beverage & Merchandise Company and S. P. Majoo filed a suit in the Court of Small Causes against the petitioner company being suit No. 4138 of 1962 for recovery of Rs. 1832/- for rent of September and October, 1962 (Rs. 1800/-) together with interest thereon at the rate of 12 p.c. per annum. The date fixed for appearance of the defendant in the Small Causes Court in the said suit was 14th December, 1962. On 17th December, 1962 the petitioner company moved an ex parte application before the court of Appeal and a Rule Nisi for contempt confined to certain specific prayers in the petition was issued on that date. The returnable date of the Rule was subsequently extended inasmuch as there was difficulty in serving the Rule upon the respondents. On 20th February, 1963 direction was given by the court of Appeal

for filing of the respective affidavits and also for serving a copy of the grounds on certain parties.

3. Apart from certain minor points which have been raised with regard to service of the order and as to the defective form and signature on the petition, the principal questions that have arisen for consideration in this case are whether the petition is maintainable at the instance of the petitioner company which is not a party to the proceedings in which the order for appointment of Receiver was made and whether the respondents are in fact guilty of contempt of court. It may be observed at the very outset that there is no specific charge made against the respondent Homi Pestonji Majoo and therefore there can be no question that the application for contempt is not maintainable as against this respondent and the Rule issued must therefore be discharged so far as he is concerned.

4. Now with regard to the question whether the application is maintainable at the instance of the petitioner company, the first thing to be considered is the nature of the contempt which is alleged to have been committed. It is well-known that a contempt may be a civil contempt or a criminal contempt. Criminal contempt consists of words or acts obstructing or tending to obstruct the administration of justice and Civil contempt otherwise known as contempt in procedure consists of disobedience to the judgments, orders and other process of the court and involving a private injury, e.g., disobedience to orders for the payment of money or wilful disobedience to any order or process or in the breach of any undertaking given to the Court. The case of interference with or obstruction to a Receiver appointed by the court is treated as a contempt of a criminal nature falling within the first category. As pointed out in the case of *Kilachand Devchand v. Ajudhia Prosad*, (I.L.R. 59 Bom. 10) by Kania, J. at pages 17-18.

The court jealously guards the possession of its Officer and therefore cases in which an action of ejectment is brought against a Receiver without the leave of the Court that appointed him, or taking forcible possession of estates or the rents and profits of which a Receiver has been appointed, or by issuing without the leave of the court a sequestration of the profits of a living of which a Receiver has been appointed previously, or levying an execution upon partnership assets in the possession of a Receiver or taking management out of his hands, are considered contempts of a criminal nature, See *Angel v. Smith*, *In re. Battersby's Estate*, *Broad v. Wickham*, *Hawking v. Gathercole*, *Lane v. Sterne*, and *Ex parte Hayward*; *Re Plant*.

5. Later on at page 25 in dealing with the question whether the High Court has jurisdiction to punish a person who commits contempt of its orders by interfering with the possession of a Receiver appointed by it even if that person is not a party to the suit in which order appointing Receiver is made, the learned Judge made the following observations:-

The question of contempt is not a dispute which arises between the parties in respect of the dealings as contained in the pleadings, but is a matter to be adjusted between the court on the one hand and the respondent on the other and that dispute may arise in respect of property which is outside the original civil jurisdiction of the court. I do not, therefore, see any difference in principles to be applied in assuming jurisdiction in contempt proceedings in cases where the defaulting respondent is a defendant in the suit or an outsider."

6. In the case of [Tarafatullah Mandal and Others Vs. S.N. Maitra and Others](#), Chakravartti, J. (as he then was) has pointed out that although contempt of court is a matter between the court and the party in contempt, proceedings in contempt must be allowed to be initiated by a motion made by private parties because that is one of the ways in which cases of breaches of the court's orders may come to the court's notice. The learned Judge in that case made the following observations:-

The High Court is and has always been jealous of its authority in public interest and will always continue to be so. It will regard persons who bring to its notice cases of violation of its orders as persons who aid the administration of justice." (Paragraph 23 of the judgment).

In a subsequent decision of a Division Bench of this court reported in [Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others](#), (3) Chakravartti, C.J. in dealing with the nature of contempt which is of a civil nature and of a criminal nature observed:

A contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party but where it has consisted in setting the authority of the courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature.

7. This distinction between criminal and civil contempt was again emphasised by Chakravartti, C.J. and Lahiri, J. in the case of [Saibal Kumar Gupta and Others Vs. B.K. Sen](#), and it was observed that:-

Where the contempt consists in offering affront to the court or in interfering or tending to interfere with the administration of justice, there is public wrong and the contempt committed in such form is said to be criminal contempt and it is undoubtedly a well settled law that if what is done by a person tends to interfere with the administration of justice then whether or not he intends such effect and whether or not the effect is actually caused he will be guilty of contempt of court.

8. In an English case reported in 20 Beavan's Reports 332 (Ames v. The Trustees of the Birkenhead Docks) (8) the learned Master of the Rolls observed:-

There is no question but that this court will not permit a Receiver, appointed by its authority and who is, therefore, its officer, to be interfered with or dispossessed of

the property he is directed to receive, by any one although the order appointing him may be perfectly erroneous.

9. In the case of Kilachand Devchand (1) (I.L.R. 59 Bom. 17) as pointed out already it has been held that the conduct of a party attempting to collect rent after the appointment of a Receiver amounts to interference with the possession of the Receiver and it is contempt of court of a criminal nature. Further it is clear that a court which has taken possession of a property through its Receiver for and on behalf of the parties to the suit should not concern itself with any claims of, or rights which may have accrued to, any third party by reason of any assignment or transfer during the pendency of that suit. Any interference with that possession by any such third party would be a contempt of the authority of that court, see [Doulat Koer Vs. Rameshwari Koeri alias Dulin Saheba](#) , at 463 (per Wilkins, J.).

10. Reference may also be made in this connection to another decision of the Division Bench of his court reported in [Amulya Chandra Bhaduri Vs. Satish Chandra Giri and Others](#), (6). In this case Lort-Williams, J. and S. K. Ghosh, J. in dealing with the question whether the application made before the District Judge for contempt at the instance of the Receiver to the Tarakeswar Estate, was maintainable or not, observed as follows:-

In all such cases the application should be made by one of the litigants who is or alleges that he is damaged by the actions of the other party, who have interfered with the arrangement made by the Receiver and that application must be made to the High Court direct supported by the necessary affidavits and asking that a rule shall be issued calling upon the other side to show cause why they should not be committed for contempt. The same procedure with regard to notices, to personal service and otherwise must be followed as in applications in contempt to the High Court on the Original Side. We do not say that in no case should the application be made by the Receiver himself or that in certain cases the Court might not take action of its own accord without any application either by the Receiver or by either of the parties to the litigation; such might be the case if the Receiver or the parties refused to apply.....

11. Another principle is also well settled that the existence of an alternative remedy does not preclude an application for committal for contempt. (AIR 1945 147 (Privy Council)).

12. Bearing these principles in mind and coming to the facts of this case it appears that it cannot be said that the petitioner company was not at all justified in making the application that it has done in the present case. The effect of the order of the Appeal Court dated the 13th September, 1962 was practically to revive the order of G. K. Mitter, J. dated the 11th April, 1961. The said order for appointment of Receiver was drawn up according to the practice and rules of the Original Side of this Court in the form prescribed in Form No. 1 in Appendix F of the Original Side Rules of this

Court as contained in Chapter XXI of the Rules of the Original Side. Rule 7 of the said Rules provides that the order appointing a Receiver shall be in form No. 1 or as the court or a Judge may direct. A reference to Form No. 1 in Appendix F shows that an order appointing a Receiver should contain inter alia the following provisions:-

And it is further ordered that the defendants and all persons claiming under them do deliver up quiet possession of the said property, moveable and immovable, of the said intestate together with all leases, agreements for lease Kabuliats, accounts, books, papers, memoranda and writings relating thereto to the said Receiver. And it is further ordered that the said Receiver do take possession of the said property moveable and immovable, and collect the rents, issues and profits of the said immovable property and that the tenants and occupiers thereof do attorn and pay their rents in arrears and growing rents to the said Receiver." The expression "tenants and occupiers" as occurring in the order of appointment is, in my view, wide enough to include the petitioner company (see Jowitt's Dictionary of English law-Vol. 2 page 1259) and consequently if the petitioner company had refused to pay rent to the Official Receiver after the notices dated the 15th September 1962 and 27th September 1962 demanding rent to be paid to the Official Receiver by virtue of the order of appointment made, had been served, the petitioner company might be held to be guilty of contempt of court although the petitioner company was not a party to the proceeding in which the Receiver was appointed and was an outsider in that sense. The position in law is clear that an outsider may be bound by the effect of an order of court appointing a Receiver made in his absence. It was argued that the expression "occupiers" should be construed by applying the principle of ejusdem generis and as forming part of the genus "tenant". I find it difficult to follow the reasoning of this argument. The term "occupier" has a wider connotation and includes the case of the petitioner company. So as the petitioner company was in law bound by the order which affected its position as a tenant or occupier of the premises over which the Receiver was appointed, it is open to the petitioner to bring to the notice of the court which appointed the Receiver the fact that an attempt is being made or has been made by a party to the proceeding in which the Receiver was appointed to prevent the petitioner company from paying to the Receiver the rent which was payable by the petitioner company in respect of its occupation of a portion of the premises in question, or that an attempt was being made to realise the rent from the petitioner company by a party to the proceeding by a suit notwithstanding the fact that a Receiver had been appointed in respect of the premises with power to collect rents from persons who are the tenants or occupiers in respect of the same. The attempt to interfere with the collection of rent by the Receiver or the disobedience of the order of the court authorising the Receiver alone to collect rents from the tenants and occupiers amounts to criminal, contempt. Therefore there can hardly be any room for doubt that the petitioner company who was bound or affected by the order of appointment of Receiver is entitled to bring to the Notice of the court the act or conduct of the party alleged to

be guilty of such criminal contempt. The Receiver has realised the rent from the petitioner and therefore is not interested in making any application. It is well known that the jurisdiction to punish for contempt possessed by this High Court which is a court of record is a jurisdiction which can be exercised suo motu. In the circumstances, I hold that the application for contempt is maintainable at the instance of the petitioner company. But the further question that remains to be considered is whether the respondent Soli Pestonji Majoo can be punished for contempt of court in the facts and circumstances of this case. It is clear from the correspondence and also from the argument which the learned counsel for the contemner had advanced in this case that the contemner and his legal advisers have construed the effect of the order of appointment as not affecting the petitioner company at all and as casting no obligation upon the petitioner company to attorn or pay rent to the Receiver. It was thought by them that there was no privity between the Official Receiver and the petitioner company and as such it was the duty or obligation of the petitioner company to pay the rent to the lessor and not to the Official Receiver. It is fairly well settled that where the interference with the Receiver's possession or his right to collect the rents is not wilfully committed and where the act complained of is done under a mistake of law the court as a rule will not commit the person who is guilty of the act of interference to prison; but may impose a fine or direct the contemner to pay costs of the proceeding.) It appears to me that in the present case the act or conduct of the alleged contemner is prompted by a misunderstanding of the correct legal position and that there has been no wilful disobedience of the order of the court or deliberate interference with the possession of the Receiver or his right to collect the rents, and so I do not propose to make any order of committal or even imposition of fine against the respondent S. P. Majoo. It may further be pointed out that the petition is defective in form inasmuch as it does not bear any signature of or on behalf of the petitioner company. It is signed by a principal officer of the company no doubt, but not on behalf of the company. This is, in my view, is a curable defect and we have given liberty to the petitioner to put the matter right by having the proper signature put on record.

13. For the reasons given above, no order is made on his application.

14. There will be no order as to costs. Interim orders, if any, are vacated.

Mitter, J.

I agree.