(1968) 08 CAL CK 0013

Calcutta High Court

Case No: None

Indra Kumar Jaipuria	APPELLANT
Vs	
Lav Kumar Jaipuria and Others	RESPONDENT

Date of Decision: Aug. 1, 1968

Acts Referred:

- Arbitration Act, 1940 - Section 20, 31(2), 31(4), 33
- Civil Procedure Code, 1908 (CPC) - Section 113

Hon'ble Judges: Syed Sadat Abdul Masud, J

Bench: Single Bench

Advocate: Gouri Mitter, R.K. Bachowat and P.K. Mullick, for the Appellant;Ajit Dutta, Sankardas Banerjee and M.N. Banerjee for the Defendants, for the Respondent

Judgement

Mr. Justice Syed Sadat Abdul Masud

1. This is a contempt application moved on behalf of Indra Kumar Jaipuria. I suppose, out of exasperation under extra-ordinary circumstances. The parties are mostly descondants of one Surajmull Jaipuria who died leaving four sons named Sheobux Rai, Hariram, Ganpatrai and Anandram who all died. It appears from the Geneological Table at page 102 of the affidavit-in-reply of Indra Kumar Jaipuria that the Petitioner is one of the grandsons of Hariram and Mangturam, Defendant No. 4 Rajaram, Defendant No. 5 and Sitaram Defendant No. 6 are the direct descendants of Anandram, hereinafter described as Mangturam group. Mangturam happens to be the son of Anandram and Sitaram and Rajaram are the sons of Mangturam. The Respondent Nos. 1 and 2, Lav Kumar and Kush Kumar are the two minor sons of Rajaram. The only other Respondent, Mr. Gurdeo Khemani happens to be the brother-in-law of Mangturam. Admittedly, in 1960 several suits and other legal proceedings were pending in the Calcutta High Court between the members of the said Jaipuria family. The members of the said Jaipuria family wanted to have all their disputes settled and to achieve the said object, on 13th March, 1961, the members

of the said Jaipuria family and others entered into an arbitration agreement whereby they referred all their disputes to Mr. B. M. Birla as the arbitrator. On 26th of April, 1961, the litigations were withdrawn without leave to file fresh suits on the same cause of action. On 27th April, 1961, Banwarilal, a grandson of Hariram made an application in the Calcutta High Court for filing the arbitration agreement u/s 20 of the Arbitration Act. On 30th May, 1961 the said application was withdrawn. It may be stated here that the descendants of Anandram Mungturam, Sitaram and Rajaram have formed themselves into one group and the descendants of other brothers of Anandram including the Petitioner, Banwarilal and one Babulal, forming another group. On 2nd April, 1962 Purshottam Ojha, a party to the arbitration agreement made an application in the Subordinate Judge''s Court at Kanpur under the Indian Arbitration Act from a declaration that the arbitration was void and inoperative. In the said application, an injunction was sought restraining the arbitrator and the parties from taking steps thereunder. On 12th May, 1962, Purshottam Ojha obtained an interim injunction restraining the arbitrator and the parties from proceeding with the said arbitration. Thereafter, on 5th January, 1963, Babulal belonging to the Petitioner''s group made an application before the Kanpur Court and got the said Order dated 12th May, 1962 varied and liberty was given to the parties to move the Court at Calcutta, if so advised. On 11th March 1963, Shilvanti Debi, the widowed daughter-in-law of Ganpatrai for self and on behalf of her minor children made an application to the Calcutta High Court (Award Case No. 75 of 1963) for a declaration that the said arbitration agreement was valid and subsisting and also for extension of time for the arbitrator to make his award and for other reliefs. The said application was heard and disposed of by Mallick, J. on 17th April, 1964. The learned Judge held that by virtue of Section 31(4) of the Arbitration Act, the Calcutta High Court has exclusive has exclusive jurisdiction to deal with the said arbitration. The learned Judge, however, did not decide the questions as to whether the arbitrator misconducted himself and whether the arbitrator entered upon the reference and left the matters open for subsequent proceedings. On 24th July, 1964, Mangturam preferred an appeal to the Supreme Court and the Supreme Court, on 22nd September, 1964, passed an ex-parte order staying the arbitration proceedings. Babulal, thereafter, made an application in the Kanpur Court on 29th January, 1965 for vacating the order of injunction dated 12th May, 1962 obtained by Purshottam Ojha belonging to the opposite group. On 29th March, 1965, the Kanpur Court further varied the order of injunction dated 12th January, 1962 as modified by the order dated 5th January, 1963 whereby the parties were given liberty to proceed with the arbitration proceedings, but the arbitrator was directed not to make the award. On 3rd September, 1965, the arbitrator gave notice to the parties for the first meeting to be called on the 6th January, 1966. Thereafter, the statements of facts were filed before the arbitrator. At this stage, on 3rd January, 1966, Mangturam made an application to the Supreme Court for stay of the arbitration proceedings on the ground that charges of fraud were made against him which he wanted to be tried on open court. The said application, however, was

dismissed on 25th January, 1966. On 23rd February, 1966 Mangturam''s son Sitaram made an application to the Calcutta High Court for revocation of the authority of the arbitrator. But he withdrew the said application on 15th March, 1966 and on the same day filed another application for revoking the authority of the arbitrator. This application is still pending. On 19th March, 1966, one Madan Mohan Ojha, who is alleged to belong to the group of Mangturam, filed a suit in the Bikaneer Court for a declaration that the arbitration is invalid and not binding on him. He contended that he was described as the major in the arbitration agreement. But, in fact, was minor at that time. The Bikaneer Court passed an interim order on the 19th March, 1966 staying the arbitration proceedings. Banwarilal belonging to the Petitioner''s group moved an application on 22nd March, 1966 for staying all the operation of the order of the Bikaneer Court before the Calcutta High Court which thereafter passed an interim order to that effect. On 25th January, 1967, Mangturam''s appeal to the Supreme Court against the judgment of Mallick, J. dated 17th April, 1964 was dismissed as withdrawn. By the order disposing of the said appeal the time for the arbitrator to make his award was extended till 25th May, 1967. Then comes an important date which is 11th February, 1967 when an application (Misc. Arbitration Case No. 2/70 of 1967) was made in the Kanpur Court by Gurudeo Khemani, the Respondent No. 3 on behalf of Lav Kumar and Kush Kumar, Respondent Nos. 1 and 2 for a declaration that the arbitration agreement is void, that the judgment of Calcutta High Court is not binding on them and the Calcutta High Court has no jurisdiction to hear the matter etc. On the same day the Kanpur Court restrained the arbitrator from proceeding with the reference. On the 10th of March, 1967, Shilwanti Debi belonging to the Petitioner''s group made an application to the Supreme Court for staying the order of the Kanpur Court dated the 11th February, 1967. But, on 4th April, 1967 the said application was withdrawn by her. On 7th April, 1967, Banwarilal obtained an order from Calcutta High Court on his application restraining the parties from proceedings in Kanpur Court and for stay of operation of the order of the Kanpur Court. This application also was ultimately withdrawn on 13th June, 1967. On 28th April, 1967, Gurudeo Khemani on behalf of Lav Kumar and Kush Kumar moved an application before the Calcutta High Court (No. 104 of 1967) similar to the one made by him in the Kanpur Court on 11th February, 1967. On the same day the Calcutta High Court was pleased to order that the arbitration may continue but the arbitrator will not make or publish award on 22nd May, 1967, Khemani''s application before the High Court was withdraw by him with liberty to make fresh application on the same subject-matter. On 24th May, 1967 the Kanpur Court made a reference to the Allahabad High Court for clarification of the conflicting jurisdiction of the Calcutta High Court and the Kanpur Court with respect to the arbitration proceedings between the parties arising out of the order of Datta, J. dated 7th April, 1967. On 25th May, 1967, the arbitrator made his award which was subsequently filed in the Calcutta High Court on 7th June, 1967. On 16th June, Khemanion behalf of Lav Kumar and Kush Kumar made an application before the Allahabad High Court and obtained an injunction restraining the parties

from taking any steps in any court other than the Allahabad High Court. The Kanpur Court also was moved on 3rd July, 1967 for a direction upon the arbitrator to cause the said award or a copy thereof to be filled in the Kanpur Court (Misc. Arbitration Case No. 91 of 1967). Thereafter on 31st July, 1967 the present application was moved by Indra Kumar on which a rule for contempt was issued by Datta, J. upon the Respondents.

2. It appears that the disputes between the parties in respect of the validity of the arbitration agreement and the award remain undetermined and the fate of the award is still hanging. Mangturam, Sitaram and Rajaram, Lav Kumar and Kush Kumar and Gurudeo and Madan Mohan Ojha have filed objections against the award on or about 15th January, 1968. On 5th February, 1968, two applications were filed - one being No. 10/70 of 1968in the Kanpur Court on behalf Lav Kumar and Kush Kumar for restraining the parties from enforcing the award on which the Kanpur Court passed an interim order. It may be added here that the said order was made by the Kanpur Court fortified by the judgment of the Allahabad High Court in answer to the reference pending before the said High Court whereby the Allahabad High Court held that the Calcutta High Court had no jurisdiction to stay the operation of the order of Kanpur Court. The second application on the same date was made by Banwarilal before the Calcutta High Court and obtained an interim order restraining the parties from initiating any proceedings or from taking any steps pending proceedings in any court of law other than the Calcutta High Court in respect of the arbitration proceedings and the said award dated 25th March, 1967 except for the purpose of appearing in appeal or taking steps for further proceedings against the judgment of the Allahabad High Court dated the 22nd February, 1968. On the 10th March, 1968 Banwarilal filed another application in the Allahabad High Court for transfer of all cases pending in the Kanpur Court relating to the arbitration agreement and the award dated 25th May, 1967 to Calcutta High Court and stay of all proceedings pending in the said Court and operation of injunction order. The Allahabad High Court made an interim order staying all further proceedings in Khemani''s application on behalf of Lav Kumar and Kush Kumar filed on 5th April, 1968, that is, the application No. 10/70 of 1968. The present application has been moved as early as July 31, 1967, when Datta, J. issued the present Rules against the Respondents and, naturally, until the Rules are disposed of, the rights of the parties cannot be determined.

3. Before I discuss the contention of the respective parties, it is convenient if the grounds of the Rules for contempt are set out briefly. The rule substantially sets out the following grounds:

(a) The minor Respondents Lav Kumar and Kush Kumar and their next friend Gurudeo Khemani at the instance of Mangturam, Rajaram and Sitaram in collusion with each other interfered and are still interfering with the operation of the order of Mallick, J. dated 17th April, 1964 in Award Case or Matter No. 75 of 1963 (Shilvanti

Debi Jaipuria v. Mangturam Jaipuria and Ors.).

(b) The Respondents in collusion with each other rendered or intended to render the said order dated 17th April, 1964 nugatory, infructuous, non-workable and made the findings of Mallick, J. that this Court has exclusive jurisdiction in all matters relating to and arising out of the arbitration agreement dated 13th March, 1961 nugatory and illusory.

(c) The Respondents particularly the two minors and Khemani deliberately misused and abused the process of law with a view to interfere with and prevent administration of justice in the said Award Case No. 75 of 1963.

(d) The Respondents took proceedings in the Court of First Civil Judge at Kanpur and the High Court at Allahabad and thereby acted contrary to and inconsistent with the findings of the Court in the said Award Case or Matter No. 75 of 1963. The Respondents particularly Lav Kumar and Kush Kumar and Khemani interfered and are still interfering with the administration of justice by taking various proceedings in courts mentioned in paragraphs 7, 12 and 13 of the petition.

(e) The said minor Respondents and Khemani deliberately took steps or instituted proceedings in various courts to prevent the arbitrator, Shri B. M. Birla to make his award through this Court on or before the 25th May, 1967. The Respondents with full knowledge and notice that the Court at Kanpur had no jurisdiction in the matter and in spite of the findings of this Court that this Court has exclusive jurisdiction in the matter, initiated proceedings being Miscellaneous Case No. 2/70 of 1967 and thereby abused the process of law and lowered the dignity and prestige of this Court.

(f) The Respondents wrongfully and unlawfully in the Matter No. 2/70 of 1967 in the Kanpur Court challenged the following findings made by this Court in the said Award Case No. 75 of 1963, inter alia.

(i) This Court has exclusive jurisdiction in all matters relating to and arising out of the order dated 13th March, 1967.

(ii) the said arbitration agreement is valid and binding on all parties including the Respondents above named;

(iii) the said arbitration agreement is for the benefit of the minors. The Respondents with full knowledge and notice minors. The reps with full knowledge and notice that the Kanpur Court is not competent to sit in appeal in any judgment from the judgment of this Court ridiculed this Court and lowered the dignity and majesty of law.

(g) The Respondents in collusion and conspiracy with each other initiated the vexatious proceedings solely for the purpose of abusing the process of court and have in fact abused the process of court.

(h) The Respondents in collusion and conspiracy with each other wrongfully initiated proceedings in the Kanpur Court and Allahabad High Court with the sole object of defeating the ends of justice.

(i) The Respondents initiated proceedings in various courts in most vexatious manner to serve the purpose of oppression and injustice.

(j) The Respondents deliberately violated the order dated the 17th April, 1964 made by this Court in the Award Case No. 75 of 1963 or acted contrary to the spirit of the said order and sought to make the said order nugatory and infructuous.

(k) The Respondent wrongfully and unlawfully conspired together to impede the course of administration of justice.

(l) The Respondents unlawfully and malafide criticized and commented the judgment delivered by Mallick, J. dated 17th April, 1964 before the First Civil Judge, Kanpur in the Matter No. 2/70 of 1967 and thereby scandalized and ridiculed this Court.

(m) The Respondent, Mangturam Jaipuria and/or other Respondents made or caused to be made reckless or derogatory statements against the Hon''ble Judge of this Court in the petition for special leave to the Supreme Court and uttered the following contemptuous words:

Because the learned Judge is otherwise wrong in law and fact and the said judgment and order is liable to be set aside.

(n) The Respondents wrongfully and unlawfully in the Misc. Arbitration Case No. 91 of 1967 in the Court of Civil Judge, Kanpur acted contrary to the order and judgment dated 17th April, 1964 and the findings in that (i) this Court has exclusive jurisdiction in all matters relating to and arising out of the reference dated March, 13, 1961 and (ii) the Respondent Nos. 1, 2 & 3 filed the said Misc. Arbitration Case No. 91 of 1967 for an order that the award dated May 25, 1967 be filed in that Court with full knowledge that the award has already been filed in this Court and that the said Court at Kanpur has no jurisdiction in the matter, thereby lowering the dignity of this Court and taking vexatious proceedings in abuse of the process of this Court.

4. Mr. Gouri Mitter (with Mr. Bachawat and Mr. Mullick) in moving the present application has contended that the admitted facts in this case clearly show that the Respondents have committed acts of contempt of this Hon''ble Court. The reasons put forward by him are set out as follows:

(a) Sm. Shilwanti Devi Jaipuria made an application in this Court being Award Case No. 75 of 1963 on March 11, 1963 for, inter alia, determining the existence, validity and effects of the arbitration agreement dated 13th March, 1961 between the parties and their successors-in-interest and also for an order that the agreed arbitrator, Sri B.M. Birla named in the said arbitration agreement be directed to

enter upon the reference and to make his award. In the said application, it was also prayed that the Respondents be restrained by injunction of this Court from proceeding with or taking further steps in Misc. Case No. 14/70 of 1962 pending in the Court of First Civil Judge, Kanpur. All the present Respondents excepting Mr. Khemani contested the said application and Mallick, J. after hearing the matter for several days delivered a judgment on 17th April, 1964 expressly holding the Calcutta High Court has exclusive jurisdiction in the matters relating to and arising out of the said arbitration agreement dated 13th March, 1961. Against the said judgment Mangturam Jaipuria has preferred an appeal to the Supreme Court of India (Appeal No. 271 of 1966, Mangturam Jaipuria v. Shilvanti Debi Jaipuria and Ors.). Before the Supreme Court specific points have been raised that the Calcutta High Court has no jurisdiction in dealing with the reference arising out of the said arbitration agreement. The said appeal has been heard by their Lordships in the Supreme Court on January 23, 24 and 25, 1967. But on the last day Mangturam withdrew the said appeal. A fortnight thereafter, on 11th February, 1967, Gurudeo Khemani, Respondent No. 3 purporting to act as the next friend of the minor Respondents, Lav and Kush, made an application being Miscellaneous Arbitration Case No. 2/70 of 1967 (Lav Kumar Jaipuria and Anr. v. Banwarilal Jaipuria and Ors.), under the provisions of the Arbitration Act, 1940, inter alia, for a declaration that the said arbitration agreement dated 13th March, 1961 was invalid in law. In the said application Khemani raised two points specifically to the effect that Mallick, J. has delivered the judgment without jurisdiction and that the arbitration agreement on the basis of which the Calcutta High Court granted extension of time to the arbitrator to file the award was void and inoperative. In the said Kanpur application, Khemani, Lav and Kush obtained an ad interim order from the Court of the First Civil Judge, Kanpur on the following terms:

The arbitrator, Respondent No. 64, may be restrained by a permanent injunction from proceeding with the reference of which he is seized any further and from making any Award.

On 28th April, 1967, Lav and Kush through their next friend Khemani made an application in this Court being Matter No. 104 of 1967 for an order that the agreement of reference dated 13th March, 1961 is invalid and void. On 28th April, 1967, an interim order was obtained by Khemani to the effect that the arbitration proceeding might continue, but the arbitrator would not make or publish any Award until 2nd day of May, 1967. After three days'' hearing before Datta, J., the said application of Khemani was withdrawn on 22nd May, 1967. On 25th May, 1967, the arbitrator had made the Award which was duly been filed in this Hon''ble Court on 7th June, 1967. On 16th June, 1967, the Petitioner''s solicitor received a letter from M/s. G. C. Chunder & Co., Solicitors, whereby the Petitioner was informed that an order had already been passed by the Allahabad High Court on 16th June, 1967. The Petitioner was duly served with a copy of the said order which reads as follows:

Upon motion made unto this Court of Messrs Smt. Verma, Ambica P.D., O.P. Gupta and Devendra Shroff, Advocates for the applicants, and upon reading the petition of the said applicants, the Court doth order that an injunction be awarded restraining you or your servants, agents and workmen from (a) taking or initiating any proceedings in any court, other than this Hon''ble Court and/or Kanpur Court, in connection with or in respect of the Award of Sri B. M. Birla, given in pursuance of the Agreement, Reference dated 13.3.61 excepting for setting aside the Award or (b) from preventing the Petitioner or any Respondent from initiating or taking any proceedings in any court as aforesaid, in connection with the said agreement or the Award, given in pursuance thereof or (c) from initiating or taking any proceedings in any court as aforesaid, in respect of or in connection with the proceedings pending before the First Civil Judge, Kanpur in Arbitration Case No. 2/70 of 1967 or in respect of any order passed by the said Court in the said proceedings until further orders of this Court.

It appears from the petition filed in the Allahabad High Court that the Petitioners had also prayed for an order directing the arbitrator to file the Award in the Kanpur Court. In the premises, Khemani Lav and Kush made the said application in the Allahabad High Court in violation of the order passed by Mallick, J. dated 17th April, 1964 and contrary to the findings in the judgment delivered by Mallick, J. In the said application Khemani, Lav and Kush wrongfully and deliberately suppressed and concealed the following facts:

(i) That the Respondents, Khemani, Lav and Kush on or about April 28, 1967, made an application before this Hon''ble Court being Matter No. 104 of 1967 on substantially the same allegations as those contained in the petition before the Allahabad High Court.

(ii) That the said Matter No. 104 of 1967 was heard by this Hon''ble Court for a number of days.

(iii) That on 22nd May, 1967 Khemani, Lav and Kush withdrew the said application being Matter No. 104 of 1967 and Datta, J. passed the order which reads as follows: -

Liberty is granted to the applicants to withdraw this application with liberty to institute a fresh proceedings in respect of the subject-matter of this application. The Petitioner to pay one set of costs for one day only to the passing Respondents. The interim injunction is vacated and let the arbitrator be informed of this dissolution of the interim injunction by a signed copy of the minutes and the arbitrator will also be informed to note that the time for making the Award expires on 25th May, 1967.

The said order was obtained with the sole object to procure an interim order from the Allahabad High Court. Thereafter, on 3rd July, 1967, Khemani representing himself as the next friend of Lav and Kush, the minors, made an application before Kanpur Court, being Misc. Arbitration Case No. 91 of 1967 (Lav Kumar Jaipuria and Anr. v. Banwarilal Jaipuria and Ors.). The following allegations were made in the said

proceeding before the Kanpur Court: -

(i) That the Petitioners have learnt that the arbitrator has filed the Award in the Calcutta High Court in its Original jurisdiction on 7th June, 1967.

(ii) That as stated in the application u/s 33 referred to as above, it has been numbered as Misc. Arbitration Case No. 2/70 of this Court, this Court alone has got jurisdiction in the matter and even if the Award was made, it could have been filed only in this Court and not in any other court.

(iii) That the Calcutta High Court has no jurisdiction in the matter because of the provision of Section 31(4) of the Arbitration Act. Moreover, the subject-matter of reference pertaining to such immovable properties also as are situate without and beyond the jurisdiction of the Calcutta High Court and under Clause 12 of the Letters Patent, the Calcutta High Court, accordingly, has no jurisdiction in the matter to which the reference relates and for this reason proceedings in respect of the reference in question." Khemani, Lav and Kush suppressed from the said petition the facts that the operation of the order dated the 11th of February, 1967.

(a) Made by the Kanpur Court in Misc. Arbitration Case No. 2/70 of 1967 had been stayed by the order dated 7th April, 1967 made by the Calcutta High Court on the application of Banwarilal Jaipuria and that the said Award was made and published by the arbitrator during the period when the said order dated 11th February, 1967 made by the Kanpur Court remain stayed.

(b) All the Respondents excepting Khemani reside at No. 16/14 Civil Lines, Swadeshi House, Kanpur, State of Uttar Pradesh Khemani has admitted that the materials on the basis of which he has moved the Kanpur Court are based upon informations received by him from Mangturam, Rajaram and Sitaram. Further, an application u/s 20 of the Arbitration Act, 1940 (Special Suit No. 2 of 1961) was made by Banwarilal Jaipuria in the Calcutta High Court on or about the 26th April, 1961, but the said application was withdrawn on 30th May, 1961. On 2nd May, 1962, Purushottam Ojha filed a petition in the Kanpur Court being Misc. Case No. 14/70 of 1962 for a declaration that the arbitration agreement dated 13th March, 1961 has ceased to exist and on 12th May, 1962 obtained an ex parte injunction restraining the Petitioner and his group from giving effect to and taking any action in connection with the arbitration agreement pending disposal of the Kanpur application. These facts along with various other proceedings could not be known to Khemani who does not belong to Jaipuria family. On 22nd September, 1964, Mangturam preferred an appeal in the Supreme Court against the order of Mallick, J. dated 17th April, 1964, by special leave from the Supreme Court when Mangutram obtained an ex parte stay of the arbitration proceedings in the application marked as No. 2135 of 1964 from the Hon''ble Supreme Court. The said application was heard on 29th January, 1965 and the Hon''ble Supreme Court was pleased to allow the arbitration proceeding to continue. After the Supreme Court passed the said order, Babulal

Jaipuria again moved the Kanpur Court and obtained similar order on 29th March, 1965. Thereafter, by a letter dated 2nd April, 1965, Shilvanti Devi called upon the arbitrator to proceed with the arbitration proceeding. The arbitrator started the proceedings by a notice dated 3rd September, 1965. On 3rd January, 1966, another application being Misc. Petn. No. 63 of 1966 was made by Mangturam Jaipuria to the Supreme Court for staying the arbitration proceedings, but the said application was dismissed on 25th January, 1966. Thereafter, Mangturam having failed to obtain stay of the arbitration proceedings from the Supreme Court, his son Sitaram made another application in the Calcutta High Court being Matter No. 28 of 1966 (Sitaram Jaipuria v. B. M. Birla and Ors.), for revocation of the authority of the arbitrator and for an order for his removal and also for an injunction restraining Sri B. N. Birla to continue the arbitration proceedings. An interim order was passed by Mallick, J. on 23rd February, 1966 on the said application and the same was recalled on the following day. After hearing for several days, Sitaram withdrew the said application on 16th March, 1966 with liberty to made fresh application. On the same date, Sitaram Jaipuria made another application in this Court for a similar order . . . . that is, for revocation of the authority of the arbitrator and also for a permanent injunction restraining the arbitrator from proceeding with the reference. Thereafter, Mangturam Jaipuria and his group having failed to render the arbitration agreement and the pending reference infructuous, caused one Madan Mohan Ojha alias Madan to institute a proceeding in the Court of First Munsif at Bikaner in the State of Rajasthan being Civil Suit No. 67 of 1966 (Madan Mohan Ojha v. Brij Mohan Birla), and on 19th March, 1966 obtained an ex parte injunction from the said Court staying the arbitration proceeding which was fixed for hearing on March, 22, 1966. Immediately after 22nd March, 1966, Banwarilal Jaipuria made another application in this Hon''ble Court, whereby the Calcutta High Court passed an interim injunction staying the operation of the order passed by the learned Munsiff. On 23rd March, 1966, Madan Mohan Ojha preferred an appeal, but the interim order sought by Madan Mohan Ojha before the Appeal Court was ultimately refused. The arbitrator, Sri B. M. Birla, continued the arbitration proceedings and heard the parties for a number of days. All these facts got to show that -

(a) Mangturam, Rajaram and Sitaram have, in collusion and conspiracy with each other, interfered and are still interfering with operation and carrying out of the order dated 17th April, 1964 made by Mallick, J. in the Matter No. 75 of 1963.

(b) They in collusion with each other deliberately misused and abused the process of law with a view to prevent the administration of justice by this Court pursuant to the order and judgment dated 17th April, 1964.

(c) They in collusion and conspiracy with each other initiated vexatious proceedings with the sole object of staying a lawful arbitration proceeding and/or giving effect to the Award passed under the order of the Calcutta High Court and the Supreme Court.

(d) The Respondents in collusion with each other interfered and are still interfering with the administration of justice by taking frivolous proceedings in various courts of India.

(e) The Respondents in collusion with each other have initiated proceedings to make the orders of the Calcutta High Court nugatory.

(f) The Respondents have abused the process of court with the sole object to defeat the aims of justice and for serving the purpose of oppression and injustice. Mangturam, Rajaram and Sitaram having set up Khemani as a next friend of the minors, Lav and Kush, have abused the process of court and delayed justice and caused oppression to the Petitioner.

5. Mr. M. N. Banerjee, appearing on behalf of the Respondent No. 6, Sitaram Jaipuria, has submitted that there is no question of client having committed contempt inasmuch as his client has not done anything in contravention of the judgment and order of Mallick, J. dated 17th April, 1964. Sitaram, according to him, did not initiate any proceeding or take any steps in any court other than the Calcutta High Court. A bald allegation of collusion and conspiracy has been made by the Petitioner against Sitaram but no particulars have been given as to the overt acts which his clients has committed in support of such allegation. It is alleged that Sitaram along with other Respondents have set up Khemani as the next friend of Lav and Kush in initiating proceedings in the Kanpour Court against the Petitioners. Relying on (a) AIR 1938 295 (Privy Council) , he has argued that Khemaninot being a party in the proceedings before Mallick, J. no contempt application could be moved against Khemani in this Court and, as such, Sitaram also cannot be held liable for aiding and abetting Mr. Khemani. There cannot be a constructive contempt of court on surmise. Mr. Banerjee has also contended that the rule against his client should be discharged as the order as not been served on his client personally and the rule does not set out the specific acts of Sitaram which amount tocontempt. In support of the said contentions, he has relied on In re: (2) Tuck March v. Loosemore, (1906) 1 Ch. D. 692, 696, (3) Sri Sri Iswar Nitto Gopal Jew Vs. Angur Bala Mullick, ; (4) Dwijendra Krishna Dutt v. Surendra Nath Nag Chowdhury and Ors., 32 CWN 525; (5) Hoshiar Singh Vs. Gurbachan Singh, ; (6) Tarafatullah Mondal and Ors. v. S. N. Maitra, 56 CWN 387; (7) Dhubnath Prasad Shaw v. Krishna Kumar Mukhopadhyay, ILR (1952) 1 Cal 21 and (8) Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, .

6. The learned Advocate-General has argued that the rule should be discharged against the Respondent Nos. 1 and 2, Lav and Kush and their next friend Khemani, the Respondent No. 3 for the following reasons: -

(a) Khemani being not a party to the proceedings before Mallick, J. there is no question of any interference by Khemani with the proceedings before this Court.

(b) The Rules issued against the Respondent Nos. 1, 2 & 3 do not disclose particulars of interference.

(c) Assuming that the Kanpur proceedings commenced by Khemani vexatious, the contempt application if at all is to be filed in Kanpur Court and not in this Court. The abuse of the process of law, if any, has been made with reference to the Kanpur Court and no action against Khemani is maintainable in this Court.

(d) When Khemani initiated the proceedings in the Kanpur Court on 11th of February, 1967, there was no proceeding pending against Khemani in any court nor was Khemani appointed the guardian-ad-litem of the two minors in proceedings before the Calcutta High Court or any other Court.

(e) Proceedings have been started by Khemani as next friend of minors to protect the interest of the minors. The disputes between the parties relate to the firm of Anandram Gajadhar. The earliest application in respect of the arbitration agreement between the parties was made by Purshottam Ojha, a partner Anandram in Kanpur Court and, as such, the proceedings before the Calcutta High Court are without jurisdiction u/s 31(4) of the Arbitration Act. The Arbitration agreement relates to the dispute of a Mitakshara Joint Family and Rajaram, the father of the two minors, Lav and Kush , has adverse interests as between him and his sons and, as such, representations made by him cannot beheld to be valid representations in law on behalf of the minors and in support of the said contention he has relied upon in (9) Kamal Singh and Another Vs. Sekhar Chand and Others, . The judgment of Mallick, J. is a nullity inasmuch as the interests of the guardian-ad-litem are adverse to the minors and the representations could not be made by the guardian-ad-litem for their benefit. The arbitration agreement having been entered into by Rajaram for self and as natural guardian of the minors and Rajaram having agreed to give summary powers to the arbitrator in respect of the disputes of the minors, Khemani honestly believed that the arbitration agreement is detrimental to the interests of the minors. Further, relying on (10) Mt. Siraj Fatima and Ors. v. Mahmood Ali and Ors., 54 All 646 and (11) Lalla Sheocharan Lal v. Ram Nandan Dubey, ILR 22 Cal 8, it is contended that if the guardian acts negligently, the order is not binding on the minors; and in (12) Chintalapudi Sanyasirao v. Venkat Rao, 44 MLJ 263. For all these reasons, Khemani has bonafide instituted the proceedings in the Kanpur Court in protection of the minor''s interest. Impeachment by a guardian of a decree in a separate suit is valid and in support of the said proposition in (13) Mst. Rashidunnessa v. Md. Ismail Khan and Ors., 36 IA 168, 175 has been cited. Thus, Khemani having taken recourse to legal steps to protect minor''s interests cannot be held to be liable for contempt.

(f) The legal proceeding has been started by Khemani before the Kanpur Court. The Kanpur Court will decide whether the order of Mallick, J. dated 17th April, 1964 is binding on the minors. It is quite possible that the Kanpur Court may set aside the said order or the Allahabad High Court or the Supreme Court may affirm it. Khemani

may lose ultimately but the fate of a proceeding cannot decide the maintainability of such proceeding. The question of res judicata, if at all, will arise in the Kanpur Court. Reference also has been made to (14) Selappa Goundan v. Masa Naikar and Ors., 47 Madras 79, and in (15) Ismail Ebrahim and Anr. v. Mathai Cheriyan, AIR 1956 TC 71.

(g) No vexatious proceeding has been started by Khemani as the later has moved the Kanpur Court primarily for the protection of the minor''s interests. The minors reside within the jurisdiction of the Kanpur Court and they have an independent right to move the Kanpur Court. Khemani as the next friend right or wrongly has believed in good faith that the proceedings in the Calcutta High Court have been instituted without any jurisdiction and that the arbitration agreement, if given effect to, would jeopardize the interests of the minors. The Kanpur Court and the Allahabad High Court are satisfied that the two minors have a prima facie case and the Kanpur Court even issued an interim injunction on 11th February, 1967 restraining the Arbitrator to make the Award. The two courts did not consider the Kanpur proceedings as vexatious. The Allahabad High Court was also satisfied when it virtually stayed the order of the Calcutta High Court dated 7th April, 1967. The proceedings before the Allahabad High Court have been initiated by the Kanpur Court, and not by Khemani, u/s 113 of the Code of Civil Procedure. Reference to a court of law can never be contempt.

7. The Advocate-General has also argued that no contempt application is maintainable against the minors. It has not been alleged anywhere that the minors have attained a particular age and are mature enough to understand the nature of the Kanpur proceedings. It is also not alleged that Khemani is set up by the minors. Khemani as next friend cannot be considered as the agents of the minors, nor could the minors be made responsible for acts of Khemani. Relying on S. N. Banerjee and Anr. v. Kotchwar Lime & Stone Co. Ltd. and Anr. (Supra) it has been submitted that the minors cannot held liable for aiding and abetting contempt of court.

8. Mr. Ajit Dutta, learned Counsel for the Respondent No. 5, Rajaram, has adopted the arguments of Mr. Banerjee and the Advocate-General and has added that the rule issued against his client should be discharged on the following grounds: -

(a) A choice of forum by a litigant or by a party aggrieved cannot amount to contempt of Court. Very often a complainant lodges more than one First Information Report at different places.

(b) As Khemani not being the party to proceedings before Mallick, J. cannot be the principal offender, his client cannot be guilty of aiding and abetting contempt of court.

(c) No violation of the order of the Calcutta High Court could be made inasmuch as Mallick, J. hasnot passed any mandatory or prohibitory order. According to his judgment, there is only a declaration that the Calcutta High Court has exclusive jurisdiction to deal with the arbitration agreement.

(d) The proceedings have been started on behalf of the minors who cannot have any mens rea. It is extra-ordinary that the rule issued at the instance of the Petitioner has been issued against the minors by using the word "particularly" against them.

(e) Complicated questions of facts cannot be decided in summary proceedings like contempt and Court''s Jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with due course of justice: Vide (16) Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others, and in (17) Legal Remembrancer v. Matilal Ghosh and Ors., AIR 41 Cal 173.

(f) Any act done under authority of law cannot be a contempt Vide: (18) Rizwan-ul-Hasan and Anr. v. State of Uttar Pradesh, AIR 1953 SC 165. The interference with the administration of Justice, if any may be lawful. If the alleged act of contempt is purported to have been done under the ambit of law, no contempt proceedings would be maintainable for the same.

(g) The contempt proceedings are in the nature of quasi criminal proceedings and, as such, the allegations against the contemnor must be proved beyond reasonable doubt (Vide: (19) Homi Rustomji Pardivala v. Sub-Inspector Baig and Ors., 1944 Lah 196; (20) Amar Nath Sawan Mal v. Joginder Singh and Ors., 1961 Pun 18; (21) The State v. Dasrath Jha, 1951 Pat 443).

(h) In any event, the rule as issued is defective and is not maintainable as Rajaram has not initiated any proceedings in any Court.

8. Mr. Sankar Das Banerjee, learned Counsel for the Respondent No. 4, Mangturam, has also adopted the arguments of the Advocate-General, Mr. M. N. Banerjee and Mr. Datta andhas drawn by attention to the admitted fact that Shilwanti Devi belonging to the Petitioner''s group moved an application before the Supreme Court after the commencement of proceedings in Kanpur Court by Mr. Khemani. There is no explanation why the said application was withdrawn on 4th April, 1967. The validity of Kanpur proceedings has been challenged and could have been examined by the Supreme Court. But the Petitioner instead of obtaining the decision on the point on this matter have chosen to move the present contempt application in the Calcutta High Court on the same allegations. Secondly, if Kanpur proceedings have been initiated as an abuse of the process of law, the Petitioner should have moved the Kanpur Court for contempt. Thirdly, the matters in dispute between the parties, whether co-partner or not, should be decided in Kanpur Court because all the members of the family are residing in Kanpur and also because the minors have not been properly represented by a legal guardian in the proceedings before Mallick, J. Fourthly, relying on in (22) Sadhu Venkayya and Another Vs. Colla Meenakshamma, , it is argued that a contempt application is not maintainable on a mere presumption of fact. Vexatious or multifarious proceedings, if initiated by a party, may lead to their dismissal, but institution of such proceedings cannot amount to contempt. He has reiterated that as the Allahabad High Court has not held the Kanpur

proceedings to be vexatious, the Calcutta High Court should not decide otherwise.

9. The contentions of the counsel for the different parties may now be examined. One of the main contentions of the Petitioner is that the Respondents in collusion and conspiracy with each other have violated the order and judgment delivered by Mallick, J. on 17th April, 1964 holding that the Calcutta High Court has exclusive jurisdiction and is the only court where all applications relating to the said arbitration agreement can be heard and disposed of and in doing so the Respondents have committed acts of a contempt of this Hon''ble Court by abusing the process of this Court and also by interfering with the administration of justice. According to him, the sole object of the Respondents is not to allow the arbitrator to proceed with the reference and not give effect to the arbitrator''s Award, although the Respondents are parties to the arbitration agreement. Admittedly, the arbitration agreement referring all disputes between the parties to the sole arbitration of Sri B. M. Birla was entered into on 13th March, 1961. On 26th April, 1961, Banwarilal, grandson of Hariram belonging to the Petitioner''s group made an application in this Hon''ble Court u/s 20 of the Arbitration Act for filing the arbitration agreement in this Court. It appears from Paragraph 17(a) of the petition that the said application was withdrawn by arrangement between the parties on 30th May, 1961. Paragraph 14(a) of the affidavits of Mangturam and Sitaram and also Paragraph 29 of the affidavit of Khemani show that the withdrawal of the said application by arrangement between the parties on 30th May, 1961 has not been specifically denied. It may be stated that the affidavit-in-opposition of Mangturam, Rajaram and Sitaram are almost identical word by word and the said three Respondents being the father and his two sons both in the affidavits and also before me are acting in complete agreement between themselves and are sailing in the same boat. It appears from the judgment of Mallick, J. (Annexure A to the petition) which has not been set aside by the Supreme Court, that all suits and proceedings between the parties were withdrawn after the arbitration agreement on 13th March, 1961 without any leave to institute fresh suits or proceedings. On 2nd April, 1962, Purushottam Ojha, one of the parties to the arbitration agreement filed a petition in the Court of the 1st Civil Judge, Kanpur being Misc. Case No. 14/70 of 1962 for a declaration that the arbitration agreement was void and inoperative. The Petitioner''s contention is that Purushottam Ojha belongs to the group of Mangturam. The allegation of Purushottam Ojha''s collusion and conspiracy with Mangturam, Rajaram and Sitaram has been denied by the latter. No supporting afgt of Purushottam Ojha has been filed in the proceeding before me in support of the contention that Purushottam Ojha commenced the proceedings in Kanpur Court independently. This is the first attempt for wriggling out of the arbitration agreement which the Petitioner''s group, as it appears from subsequent proceedings, were anxious to proceed with and which the Mangturam group wanted to get rid of. On 12th May, 1962, the learned Judge of the Kanpur Court in the said Case No. 14/70 of 1962 made an order of interim injunction restraining the

Petitioner and others from giving effect to the arbitration agreement. On 5th January, 1963 on the application of Banwarilal belonging to the Petitioner''s group, the order of the learned Judge of the Kanpur Court dated 12th May, 1963 was varied and liberty was given to the parties to move the Calcutta High Court, if so advised. After the said order, Shilwanti Devi with her minor children, belonging to the Petitioner''s group, made an application in this Court being Award Matter No. 75 of 1963 for a declaration that the arbitration agreement dated 13th March, 1961 is valid, subsisting and binding upon the parties and for an order that the time to make Award by the arbitrator be further extended. The said application was finally disposed of by Mallick, J. on 17th April, 1964 when the learned Judge after hearing the matter for several days, delivered a long judgment (Annexure A to the petition) holding that the Calcutta High Court has exclusive jurisdiction and is the only court where all applications relating to the said arbitration agreement would be heard. In the said application S.K. Mukherjee, soilicitor, was first appointed guardian-ad-litem to represent Lav Kumar and Kush Kumar, Respondents Nos. 1 and 2, grandsons of Mangturam. On the application of Rajaram, the father of Lav and Kush , S. K. Mukherjee was discharged and Rajaram, was appointed guardian-ad-litem of his two minor sons in connection with the said application resulting in the order and judgment of Mallick, J. The minors appeared before Mallick, J. represented by senior counsel. Thereafter, the Kanpur Court was moved by the Petitioner''s group for vacating its injunction dated 12th May, 1962 as varied by the order dated 5th January, 1962 on the basis of the judgment of Mallick, J. No order could be made on the said application as in the meantime Mangturam preferred an appeal from the order and judgment of Mallick, J. By an order dated 22nd September, 1964 Mangturam obtained from the Supreme Court ex parte stay of the arbitration proceedings in his application marked as No. 2135 of 1964. Mangturam said application came for final disposal on 29th January, 1965 when the Supreme Court was pleased to order as follows: -

This Court doth order that proceedings pending before the arbitrator pursuant to the order dated 17th April, 1964 of the Calcutta High Court in Award Case No. 75 of 1963 do continue but no final order shall be pronounced by the arbitrator in the matter pending the hearing and final disposal by this Court of Appeal by special leave abovementioned and this Court doth further order that this order be punctually observed and carried into execution by all concerned.

On the basis of the said Supreme Court order, the Kanpur Court was moved by Banwarilal on 29th March, 1965 when the learned Judge of the Kanpur Court was pleased to order as follows: -

I consider it just and proper to modify the injunction order dated 12th May, 1962 as modified on 5th January, 1963 do further modify to the effect that the Opposite Party No. 1 is restrained not to give the Award and the Opposite Party Nos. 2 to 65 are freed to proceed with the arbitration proceedings before the arbitrator.

Thereafter, Shilwanti Devi belonging to the Petitioner''s group by a letter dated 2nd April, 1965 called upon the arbitrator to proceed with the arbitration proceedings. Acting on the said letter of 2nd April, 1965, the learned Arbitrator started the proceedings by a notice dated 3rd September, 1965. Although Mangturam failed to get an order from the Supreme Court for staying the arbitration proceedings, he again made another application (being Misc. Petn. No. 63 of 1966) to the Supreme Court on 3rd January, 1966 for staying the arbitration proceedings and for variation of the order of the Supreme Court dated 29th January, 1965 to that effect. The Supreme Court by its order dated 25th January, 1966 refused to vary the order dated 29th January, 1965. Mangturam group then took recourse to extra-ordinary procedure for circumventing the Supreme Court order. On 23rd February, 1966, Mangturam''s son, Sitaram made an application in this Court being Matter No. 28 of 1966, inter alia, for leave to revoke the authority or the arbitrator, for removal of the arbitrator and for injunction restraining the arbitrator from proceeding with the reference and on the same day obtained an ex parte interim order from this Court staying the arbitration proceedings which again was recalled by his Lordship on the following day. After several days of hearing, on 15th March, 1966 Sitaram withdrew the said application with liberty to make fresh application. On the same day, Sitaram made another application in this Court for similar order, i.e., for revocation of the arbitrator''s authority and for injunction restraining the arbitrator from going on with the proceedings. It may be added here that Mangturam, Rajraram and Sitaram, both in the affidavits and also before me, have submitted that whatever proceedings are taken have been taken under competent legal advice. It is difficult to say whether the lawyers advised them to take recourse to the various legal steps or they instructed the lawyers to do the same. Be that as it may, various points of law ere raised in the said application of Sitaram moved on 15th March, 1966. But, instead of getting the law points decided by the Calcutta High Court by the said application, Sitaram again decided to withdraw the application on 19th March, 1966. On the same day, Madan Mohan Ojha, son of the said Purushottam Ojha, belonging to Mangturam''s group, filed a suit being Suit No. 67 of 1966 in the Bikaneer Court for a declaration that the arbitration agreement was invalid and not binding on him. The Petitioner''s counsel has submitted before me, not without reason, that Madan Mohna Ojha was set up by Mangturam whose sole object has been to prevent the arbitrator from proceeding with the reference, notwithstanding the order of the Calcutta High Court and the Supreme Court. It is relevant to note here that the reference was fixed for hearing on the 22nd March, 1966. The learned Munsif at Bikaneer Court on the same day, i.e. on 19th March, 1966, passed an ex parte injunction staying the arbitration proceedings which was fixed, as stated earlier, after three days. The copy of Madan Mohan''s petition before the Bikaneer Court has not been placed before me and I do not know on what materials the learned Munsif passed the said ex parte order in spite of the order of the Calcutta High Court and the Supreme Court. Immediately thereafter, on 22nd March, 1966, when the information of the order of the Bikaneer Court was received by telegram, Banwarilal

made an application in this Court and obtained an interim order for staying the operation of the order of the Bakaneer Court dated 19th March, 1966 obtained by Madan Mohan Ojha. Datta, J. who was taking the arbitration matters at that time heard Banwarilal''s application on the 23rd March, 1966 and refused to vacate the interim order passed by him on the day before, staying the operation of the order of the said Bikaneer Court. On the following day, Madan Mohna Ojha rushed to the Appeal Court for an interim order which was refused. The learned arbitrator, hwoever, continued the arbitration proceedings and reference proceeded for some days. It is alleged that Mangturam did not make the appeal before the Supreme Court ready by avoiding service of the notice on various parties. Shilwanti Devi on 29th October, 1966 moved an application (being Civil Misc. Petn. No. 3338 of 1966) before the Supreme Court for varying the order of the Supreme Court dated 29th January, 1965 and for an order authorizing the arbitrator to pronounce his award. It may be added here that Purushottam Ojha did not file any statement of case before the arbitrator and in the said application Shiulwanti Devi also asked for an order directing Purushottam Ojha to file a statement of case within a week. The Supreme Court directed the parties to file affidavits of service by 10th December, 1966 and also fixed the main appeal for hearing in the third week of January, 1967. The appeal was placed in the list for hearing in the Supreme Court list on 16th January, 1967 when another application was moved by the minor sons of Purushottam Ojha for further time. The Supreme Court, however, fixed the appeal for hearing on 23rd January, 1967 at the top of the subject to the part heard appeal. The said appeal was heard fully on the 23rd, 24th and 25th January, 1967, but Mangturam on the last day of hearing withdrew the appeal, perhaps on legal advice again. The Supreme Court in disposing of this appeal made the following order: -

. . . Upon a prayer for permission to withdraw the above appeal being made by Mr. Lal Narain Sinha, counsel for the Appellant, this Court doth order -

(1) That the time granted to the arbitrator by the Calcutta High Court by its order dated 17th April, 1964 in Award Case No. 75 of 1963 be and is hereby extended up to 25th day of May, 1967 and that thereafter, the appeal abovementioned shall stand dismissed as withdrawn . . . .

(2) That the Appellant herein do pay to the contesting Respondents their costs of this appeal . . . . . And this Court doth further order that this order be punctually observed and carried into execution by all concerned.

Within a fortnight after the said order of the Supreme Court another ingenious chapter was started by the brain-wave of Mangturam, group their lawyers. The Respondent No. 3, Gurudeo Khemani, a brother of the deceased first wife of Mangturam, appeared in the scene. This gentleman has been shown to have his residence at No. 26, Upper Chitpur Road, Calcutta. He has filed an affidavit in this proceeding affirmed on 22nd September, 1967 at Ranchi, Bihar. It is the common case that the minors were residing permanently in the same house at Kanpur with

their father Rajaram, uncle Sitaram and grand-father Mangturam. It is nobody''s case that Khemani has resided or is residing at any stage with the minors in Kanpur. The minors have been residing with Mangturam, Rajaram, and Sitaram and are in their custody and yet Khemani describing himself as next friend of the minors made an application in the Court of 1st Civil Judge, Kanpur for a declaration that the arbitration agreement was invalid and that the judgment Mallick, J. dated 17th April, 1964 was not binding on the minors. The same day, an interim order was obtained from the Kanpur Court restraining the arbitrator from proceeding with the reference. On 11th March, 1967 Shilwanti Devi filed a petition being Petition No. 983of 1967 before the Supreme Court for an order that the permission granted to Mangturam by the Supreme Court order dated 25th January, 1967 to withdraw the appeal to be recalled and the appeal be listed for delivery of judgment. In the said petition, the operation of the order of the Kanpur Court dated 11th Feb, 1967 was also sought to be stayed. But, as Shilwanti Devi''s application was made in Mangturam''s Apepal No. 2/70 of 1967 which Mangturam withdrew on 25thJan, 1967. Shilwanti Debi''s said Miscellaneous Petition No. 983 of 1967 had to be withdrawn on 4th April, 1967. On 7th April, 1967 an application was made by Banwarilal in the Calcutta High Court for restraining the parties from proceeding in the Kanpur Court and for stay of operation of the order of the Kanpur Court and an interim order as prayed was granted by the Calcutta High Court. As the interim order of the Calcutta High Court was directed against Khemani also, the latter had to make an application in the Calcutta High Court similar to his application made in the Kanpur Court on 11th February, 1967. In the interim order on Khemani''s application, Datta, J. was pleased to direct that the arbitration might continue but the arbitrator would not make or publish any Award. But, on 22nd May, 1967 after the hearing of Mr. Khemani''s application for three days, Khemani on behalf of the minors withdrew the said application before the Calcutta High Court. On 24th May, 1967, the 1st Civil Judge, Kanpur made a reference to the Allahabad High Court to determine the question whether the Calcutta High Court had the jurisdiction to stay the proceedings of the Kanpur Court which is directly subordinate to the Allahabad High Court. On 25th May, 1967, that is, the extended date under orders of the Supreme Court, the arbitrator made his Award which was subsequently filed in the Calcutta High Court on 7th June, 1967. On 13th June, 1967,the Calcutta High Court allowed Banwarilal to withdraw his application filed on 7th April, 1967 with liberty to make a fresh application on similar facts for similar reliefs, which might be available to him. On 16th June, 1967, Khemani made an application as next friend of the two minors before the Allahabad High Court praying for injunction restraining the parties from proceeding in any Court other than the Allahabad High Court and for an order that the Award be directed to be filed in the 1st Civil Judge''s Court at Kanpur. On 16th June, 1967, Khemani on behalf of the minors obtained an interim order from the Allahabad High Court restraining the Petitioner''s group from taking any step of initiating any proceeding in any Court other than the Allahabad High Court or the Kanpur court in connection with the Award of the arbitrator except for

the purpose of setting aside the Award. It may be added here that Khemani''s application before the Allahabad High Court was verified by one Shibnath Shukla deceased as the Constituted Attorney of Khemani. On 3rd July, 1967 Khemani made another application on behalf of the minors in the Kanpur Court for, inter alia, direction upon the arbitrator to cause the said Award or a copy thereof filed in Kanpur Court. Thereafter, on 31st July, 1967 the present application has been filed by the Petitioner, Indra Kumar Jaipuria before Datta, J. who issued the rule against all the Respondent including the minors the show cause why the Respondents would not be held liable for contempt.

10. In my view, on the admitted facts of this case, the Respondents Mangturam, Rajaram and Sitaram and Khemani have jointly acted in stultifying or attempting to stultify the reference directed by the Calcutta High Court under the Indian Arbitration Act, 1940 and also the orders of the Supreme Court. There is no justification for Khemani to set Kanpur Court against the Calcutta High Court and to create unnecessary misunderstanding between the learned Judges of the Allahabad High Court and Kanpur Court on the one hand and the Judges of the Calcutta High Court on the other, Mangturam, Rajaram and Sitaram and Khemani acted malafide in representing the case of the minors. Their entire object was not to protect the interests of the minors but to subvert justice by mis-using or abusing the process of court. The reasons why I came to this conclusion are as follows: -

(a) On 17th April, 1964 Mallick, J. of Calcutta High Court passed an order on Shilwanti Devi''s application being Award Case No. 75 of 1963 whereby the learned Judge came to the conclusion that the Calcutta High Court alone had exclusive jurisdiction and was the only Court where all applications relating to the arbitration agreement between the parties would be heard. Mangturam appealed against the said order. On 25th January, 1966, the said appeal stood dismissed as, after hearing of the appeal for two day, the Appellant Mangturam withdrew the appeal. On the same day, the Supreme Court expressly directed that the time granted to the arbitrator by the Calcutta High Court by its order dated 17th April, 1964 in the said Award Case No. 75 of 1963 be extended upto 25th May, 1967. Thus, the order of Mallick, J. dated 17th April, 1964 remained operative; or in other words, the conclusion of Mallick, J. that the Calcutta High Court exclusive jurisdiction was binding on Mangturam, Rajaram and Sitaram and also the two minors, Lav Kumar and Kush Kumar as represented by their natural father, Rajaram as guardian-ad-litem. The Supreme Court virtually approved the arbitration of Mr. Birla and extended the time to the arbitrator to make the Award. After a fortnight from the said Supreme Court order, Gurudeo Khemani, brother-in-law of Mangturam, describing himself as the next friend of minors, Lav and Kush , moved the application before the Kanpur Court for invalidating the arbitration agreement and for setting aside the order and judgment of Mallick, J. dated 17th April, 1964. The facts clearly show that Mangutram group having failed to stay the arbitration proceedings in the Calcutta High Court and in the Supreme Court, set up Mangtguram''s first wife''s brother, Khemani to make the

application before the Kanpur Court as next friend of the minors, Lav and Kush. Before making the application before the Kanpur Court any responsible man should have taken the permission of the Calcutta High Court or the Supreme Court. The application made by Sitaram for revocation of the authority of the arbitration filed on 23rd February, 1966 was then pending in this Court. In the application filed before the Civil Judge, Kanpur, Khemani suppressed the facts that the minors appeared through senior counsel and the matter was argued on the same law points for several days before justice Mallick passed the order. Mr. Khemani did not inform the Kanpur Court about the order of the Supreme Court passed on 25th January, 1967. Thus, Khemani dishonestly obtained the order from the Kanpur Court by suppression of materials facts.

(b) Mangturam''s appeal against the order of Mallick, J. has been dismissed by the Supreme Court on 25th January, 1967. The Supreme Court has expressly directed that the time granted to the arbitrator by the Calcutta High Court by its order dated 17th April, 1964 in Award Case No. 75 of 1963 is extended upto 25th May, 1967. Thus, it is obvious that the Supreme Court has affirmed the order and judgment of Mallick, J. that the Calcutta High Court has exclusive jurisdiction to deal with all matters relating to arbitration between the parties. Although the Supreme Court has allowed the arbitrator, Mr. Birla, to proceed with the arbitration proceedings, Khemani, on 11th February, 1967 has obtained an interim order restraining the arbitrator from proceeding with the reference. It is impossible to believe that Khemani has acted independently. Khemani has allowed himself to be described as the next friend of the two minors at the instance of Mangturam, Rajaram and Sitaram, although the minors were parties of the proceeding before Mallick, J. and also to the Supreme Court appeal and were duly represented by their father. This next friend of the minors, Khemani, has made the said application before the Kanpur Court purporting to act for the benefit of the minors. The grandfather Mangturam, the father Rajaram and the uncle Sitaram, according to Khemani, are supposed to have failed to protect the interests of the minors. This gentleman does not even live in Kanpur whereas the minors are in the custody and under the common mess of Mangturam, Rajaram and Sitaram at Kanpur. Khemani happnes to be Mangturam''s first deceased wife''s brother and, as such, is stranger to the family. Khemani''s act in obtaining the stay of the arbitration proceedings in the Kanpur Court is obviously initiated by Mangturam and his group who have unsuccessfully failed to invalidate the arbitration proceeding. Khemani has obviously lent his name to deny the order of Mallick, J. and also the order of the Supreme Court.

(c) It is clear from the facts stated above that Khemani is set up by Mangturam and his group with thesole object to stay the arbitration proceedings. Mangturam having realized that he would not be in a position to set aside the judgment of Mallick, J. before the Supreme Court, withdrew the appeal from the Supreme Court after arguing the matter for more than two days. It has been argued both before

the Calcutta High Court and also the Supreme Court that the arbitration agreement is invalid inasmuch as the arbitration agreement and the arbitration proceedings are determinal to the interests of the minors. Khemani has stated on oath before the Kanpur Court that Rajaram, the father of the two minors, has not properly represented the minor''s interests. Elaborate arguments had been made on behalf of the minors by senior counsel before the Calcutta High Court and it is not proved by the Respondent that representations on behalf of the minors were not properly made. It is significant that the Kanpur Court or before me, Mangturam, Rajaram and Sitaram have not taken up the stand that the minors'' interests were properly represented before Mallick, J. It is not stated in the affidavits nor by their counsel before me that the father properly represented the case of the minors before Mallick, J. On the contrary, the conduct of the Mangturam''s group shows that they are all pleading guilty to Khemani''s allegations. I can understand that Mangturam, Rajaram and Sitaram have challenged the allegations of Khemani before Kanpur Court against them and the Kanpur Court believing the statements of Khemani came to the conclusion independently holding that a prima facie case has been made out by Khemani to the effect that the interests of the minors were not protected in the Calcutta High Court. Khemani has admitted in his affidavit that the collected all the materials in his application before the Kanpur Court from the Mangturam''s group. It is significant that Khemani has not chosen to move the Kanpur Court until the Supreme Court appeal is withdrawn. It is obvious that Khemani''s revelation to the effect that minors'' interests were not protected came to him only after Mangturam andhis group failed to get an order from the Supreme Court for nullifying the arbitration proceedings. This gentleman Khemani got all the informations from Mangturam and his group excepting the information as to the final order of the Supreme Court passed on n25th January, 1967 allowing the arbitrator to continue the proceedings. Khemani''s pretension to protect minors'' interests is exposed when knowing that the arbitrators'' Award has been made on 25th May, 1967 and the said Award has not been passed against the minors at all, he has moved an application on 16th June, 1967 before the Allahabad High Court praying for injunction restraining the parties from proceeding in any Court other than Allahabad High Court and also for an order that the Award be directed to be filed in the Kanpur Court. It is natural that this champion of the minors'' case, having found the Award not made against the minors, would show no further interests in the matter. Butas under the Award Mangturam''s group has a liability to pay a sum exceeding Rules. 2 crores to the Petitioners'' group the interests of Mangturam would not be subserved if Khemani remain inactive. Prior to the arbitration agreement, various suit were filed against Mangturam''s group in the Calcutta High Court. As all the parties wanted to settle their disputes by arbitration, the Petitioner''s group by arrangement between the parties withdrew the suits. In the said suits, large sums were claimed from Mangturam''s group. The suits were agreed to be withdrawn against Mangturam''s group without any leave to file a fresh suit on the same cause of action on the basis of the agreement that their

claims would be settled by the arbitration of Mr. B. M. Birla. Mangturam group after having got rid of the suits filed against them put all possible obstacles in not allowing the arbitrator to continue the reference. The Award having been already made against Mangturam''s group, Khemani is being goaded by Mangturam''s group to challenge the arbitration agreement and the Award in the Kanpur Court. Even this challenge to the validity of the arbitration agreement or the Award could have been made before the Calcutta High Court by Khemani before his application before the Kanpur Court, if the acts of Mangturam''s group and Khemani are to be construed as acts done in good faith. Further, it is alleged that Mr. Khemani is not a solvent man and he has not the means to engage the Advocate-General of U.P. before the Allahabad High Court the Advocate-General of West Bengal and also the leading Counsel of the Calcutta High Court before me and that Khemani''s litigation expenses are being borne by Mangturam''s group. Be that as it may, the learned Advocate-General has not submitted before me that in view of the facts that the Award did not make the minors liable, his clients Khemani and the two minors want to withdraw all the proceedings from the Kanpur Court. Far from tendering any apology the attitude of Khemani is that he is fully justified to take all the steps he has taken as next friend of the minors.

(d) On 17th April as stated earlier, Mallick, J. delivered a judgment holding that the Calcutta High Court had exclusive jurisdiction to hear all applications relating to the arbitration agreement. The minors were represented by their father, Rajaram as guardian-ad-litem. On 15th March, 1966, the minor''s uncle Sitaram made an application to this Court for revocation of the authority of Mr. Birla and also for injunction restraining the arbitrator from continuing with the proceedings. The said application is still pending and the minors have been impleaded there. On 19th March, 1966 Madan Mohan Ojha filed a suit in the Munsif''s court at Bikaneer and obtained an ex parte injunction from that Court staying the arbitration proceedings. It is not the Respondents'' case that Madan Mohan Ojha belongs to the Petitioner''s group. On the contrary, Madan Mohan Ojha is the son of Purushottam who filed the petition in the Kanpur Court on 2nd April, 1961 for a declaration that the arbitration agreement ceased to exist. Between March, 1966 and April, 1966, the minors appeared before the arbitrator represented by Mr. B. M. Birla, solicitor and their counsel Mr. S. Roy. Mangturam''s appeal before the Supreme Court has not been disposed of until 25th January, 1967. In the said appeal also Mangturam contended that the arbitration agreement was invalid in law and the arbitration proceedings should be stayed. It may be remembered here that before Mallick, J. elaborate arguments were made in support of the contention that the arbitration agreement was void. Thus, the grievance for which Khemani moved the application beore the Kanpur Court and the Supreme Court. The applications of Sitaram and Madan Mohan Ojha andalso of Banwarilal have not yet been disposed of in the Calcutta High Court or at the Bikaneer Court. Khemani could have applied to the Calcutta High Court or the Supreme Court or the Bikaneer Court alleging that Khemani

should be appointed as a guardian-ad-litem of the minors instead of their father Rajaram. If he would have applied to the said courts and failed, it may be contended that Khemani acted bonafide. On the contrary, Khemani having full knowledge of the long judgment delivered by Mallick, J. and also of the order of the Supreme Court, went to the Court of the 1st Civil Judge, Kanpur for getting the aqrbn agreement invalidated on almost the same ground as were urged before Mallick, J. and the Supreme Court. It is clear abuse of the process of law inasmuch as interference with administration justice has shamelessly been resorted to by Khemani who has no direct interest to represent the case of the minors.

(e) Mr. Datta, J. passed an order on 22nd March, 1966 staying the operation of the order of the Bikaneer Court dated 19th March, 1966 obtained by Madan Mohan Ojha. On 7th April, 1967 Dutta, J. also stayed the operation of the order of the 1st Civil Judge, Kanpur restraining the arbitrator from proceeding with the reference. Khemani having found that he could not proceed with his application before the Kanpur Court on account of the orders of the Calcutta High Court, on made an application in the Calcutta High Court 28th April, 1967 for a declaration that the arbitration agreement was invalid and void. Mr. Datta, J. on the same day on his said application passed an interim order to the effect that the arbitration proceeding might continue but the arbitrator would not make or publish any Award until 2nd May, 1967. It may be remembered here that the last date of file the Award, as directed by the Supreme Court was 25th May, 1967. After three days of argument, Khemani suddenly withdrew his said application on 22nd May, 1967. Thus, it is clear that Khemani was allowed by the Calcutta High Court to argue his case on behalf of the minors. But instead of having his grievances redressed in the Calcutta High Court, he moved the Allahabad High Court. On 22nd May, 1967, Datta, J. has fairly allowed Khemani to withdraw his said application with liberty to institute fresh proceeding in respect of the subject-matter of this application. It seems to me that Dutta, J. granted the said liberty to Khemani to institute fresh proceedings in the Calcutta High Court. Khemani, on the contrary, took the risk of running away from this Court and made an application before the Allahabad High Court on 16th June, 1967 for injunction restraining the parties from proceeding in any Court other than the Allahabad High Court.

(f) Dutta, J. passed an order of injunction on 27th April, 1967 restraining all parties from taking any steps or initiating any proceedings in any court other than this Court. The minors were parties to all proceedings in the Calcutta High Court. The injunction was effective against the minors. It is true that Khemani is not a party to the original proceeding in the Calcutta High Court, but Khemani has only described himself as the next friend of the minors and it cannot be said that Khemani is a party to the proceedings in the Kanpur Court or Allahabad High Court. Thus, Khemani knowing full well that the order of injunction is effective on the minors whom the purports to represent, has rushed to other courts on the ostensible protection of the minor''s interests creating a very unhealthy and embarrassing

situation. It is unfortunate that Datta, J. out of sheer desperation passed an order staying the proceedings of the Kanpur Court. The order passed by Datta, J. could have been easily varied or vacated by Mangturam group by making an application before him to review or modify the order. It seems to me Dutta, J. must have meant that the parties including the minors are restrained from proceedings with their application in the Kanpur Court. Inadvertently, however, the order was made as if the stay order was passed on the Kanpur Court. The Kanpur Court in good faith has referred the matter to Allahabad High Court to examine the validity of the order of Dutta, J. The Allahabad High Court has very rightly held that the Calcutta High Court cannot pass an order staying the proceedings of the Kanpur Court which is under the jurisdiction of the Allahabad High Court. On 16th June, 1967 the minors have obtained the interim injunction from the Allahabad High Court restraining the parties from taking any steps excepting in the Allahabad High Court. It may be added here that the Award has already been made on 25th May, 1967 as directed by the Supreme Court. Under the Award, minors have no liability whatsoever. Even then, Khemani knowing full well about the making of the Award, obtained the injunction on 16th June, 1967. The minors through Khemani could have applied to the Calcutta High Court for vacating Dutta, J.''s or staying the proceedings of Kanpur Court. On the contrary, Khemani treating the Calcutta High Court with contempt went to Kanpur Court and also caused reference to the Allahabad High Court with the sole object of creating conflict or jurisdiction and lowering the dignity of Courts of India and for setting one court against another court of co-ordinate authority.

(g) Admittedly, the Award was made on 25th May, 1967. It appears from the application of 16th June, 1967 that Khemani had full knowledge about the said Award. It is clear u/s 31(4) of the Arbitration Act, 1940, that no court other than the court where the earliest application has been made by a party has a jurisdiction to entertain any matter in respect of the Award and the arbitration agreement. Mangturam''s group and Khemani had knowledge that under the Award minors have no liability whatsoever. Even assuming that Mangturam''s group and the minors have got a very legitimate ground against the arbitration proceeding, the arbitrator or the Award, Khemani should have made the application before the Calcutta High Court. Khemani might have succeeded before the Calcutta High Court on the ground that the Calcutta High Court has no jurisdiction to deal with the Arbitration matter or with the Award inasmuch as the earliest application was made by Purushottam Ojha in the Kanpur Court which is the proper Court which could deal with the matter. But, unfortunately, that procedure was not adopted because the entire object of Mangturam group from the beginning till the end was to delay the arbitration proceedings, to get a favourable order from another court and thus to make the proceedings in the Calcutta High Court ineffective. It is clear from the facts in this case that it is not Khemani''s intention to have grievances of the minors redressed, but he is being set up to subverse the objects of Mangturam group.

(h) An intentional disregard of a court''s order and judgment cannot be said to be an act of good faith. Khemani knowing full well that the Calcutta High Court has previously decided almost all the points of law raised by him before Kanpur Court should not have order and judgment of the Calcutta High Court.

(i) Institution of vexatious and dilatory proceedings in deliberate disregard of substantive provisions of law is an abuse of process of court, and, as such, it amounts to contempt. In the present case on 16th June, 1967 Mangturam group including Khemani had full knowledge of the fact that the Award was made on 25th May, 1967 and filed in the Calcutta High Court on 7th June, 1967 and, yet, Khemani obviously under the dictates of Mangturam''s group moved the Allahabad High Court for an injunction restraining the parties from proceedings in any court other than the Allahabad High Court and for an order that the Award be directed be filed in the Kanpur Court. It is difficult to believe that Khemani and the Mangturam group who are assisted by eminent lawyers have no knowledge of the provisions of Section 31(2) of the Arbitration Act which reads as follows:

(2). Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an Award or an Arbitration agreement between the parties to the agreement or person or persons claiming under them shall be decided by the court in which the Award under the Agreement has been, or may be filed, and by no other court.

If Khemani has an unassailable position in law in invalidating the arbitration agreement and the Award, the only forum where he should have ventilated his grievances in respect of the minor''s interests was the Calcutta High Court. This running away from or escaping from the proper judicial forum to mislead other learned Judges of other courts in another act which demonstrates the fact that Khemani has allowed himself to be used a tool in the hands of Mangturam group to prevent administration of justice by taking recourse to abuse of the law and procedure of the land.

11. It is contended by Mr. N. N. Banerjee, the Khemani was not a party to the proceedings before Mallick, J. and, as such, he cannot be held liable for lawful proceedings commenced by him inviolation of the order and judgment of Mallick, J. In my view, this contention cannot be accepted in the facts and circumstances of this case. The minors were parties to the proceedings before the Calcutta High Court and also the Supreme Court. Rajaram was duly appointed as a guardian-ad-litem and has acted as such in the proceedings before Mallick, J. and also the Supreme Court. As stated earlier, Khemani has agreed to be described as the next friend of the minors and has allowed Mangturam group to use has name to protect the interests of Mangturam group. If a party is prohibited to do an act directly, he cannot be allowed to do so indirectly and by circumventing the law. The allegations against the Respondents is not only violation of the order and judgment

of Mullick, J. but also interference with the administration of justice by including in abuse of process of law. It is true, Khemani was not a party to proceedings before Mallick, J. but he has no independent interest of his own. Khemani could not be a formal party in a matter where the minors'' interest are involved. The minors are the real parties and Khemani cannot describe himself as a party either before the Calcutta High Court or before the Kanpur Court. If a party is guilty of the abuse of the process of law, his agent or any other person who has aided and abetted the party must also be held to be liable for contempt. In the present case, Khemani has acted as a principal in initiating the proceedings at Kanpur Court and thus has interfered with administration of Justice. He is ingeniously fighting the battle of Mangturam group as he has no independent interest of his own nor there is any occasion to protect minors'' interests as the award has not made the minors liable at all. Mangturam, Rajaram and Sitaram had full knowledge about the proceedings in the Calcutta High Court; the father of the minors was represented before the Calcutta High Court and the Supreme Court; accordingly Khemani who obviously acted under the guidance of Mangturam, Rajaram and Sitaram had also knowledge of the order and judgment of Mallick, J. and the Supreme Court. In any event, even assuming that Khemani has not acted on the advice of Mangturam group or had no constructive knowledge of the proceedings in the Calcutta High Court and Supreme Court, it cannot be denied that Khemani has initiated proceedings to prevent the arbitrator from proceeding under the Arbitration Act. Knowing fully well that the Award has not been made against the minors, Khemani cannot have any possible interest in continuing the proceedings in other courts. Mr. Banerjee has argued that the CPC and the Code of Criminal Procedure do not apply in the contempt application and the present application is not maintainable inasmuch as the rule has been issued jointly against all the Respondents and without any formal statement of the particulars of contempt which the contemnors are expected to answer. There is no substance in this contention. He himself has argued that this application must fail on account of misjoinder of parties. The misjoinder of parties itself is a branch of the procedure of law of land. Further, Courts of India being the courts of equity and good conscience have got inherent power to deal with contempt applications unless a specific rule has been framed by any court or an act has been passed with has curtailed the power of the court Vide (23) Sukdev Singh v. Teja Singh, AIR 1954 SC 186, 190. With respect to the criticism that the rules issued against the Respondents lacked particulars, the facts in Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, , relied upon by him andalso Mr. Ajit Datta are distinguishable. Further as stated by Chakraborty & Lahiri, JJ. in (24) Hem Bala Dassi Vs. Sundar Shaw and Others, the grounds for contempt if set out in the petition are sufficient to answer to the Rule. In my opinion, on the admitted facts in this case, as stated earlier, there are sufficient materials which compel me to conclude that the Respondents excepting the minors in collusion and conspiracy with each other have committed abuse of the process of Court. Excepting Mr. M. N. Banerjee, nobody has argued that the Rules have not been served personally. In any event, his client has full

knowledge of the grounds and, as held by the Supreme Court in Hoshiar Singh Vs. Gurbachan Singh, , this is not a case where Rule is to be personally served.

12. The learned Advocate-General has argued that if a party has got a legal right to commence a proceedings in different courts, preference of one Court to another court cannot be held to be an act of contempt. Accordingly to him, there are good reasons for holding that the minor''s interests were not protected by their father, Rajaram at all. The language in the arbitration agreement shows that very wide and summary powers were given to the arbitrator and it has been held by different courts that arbitrary and absolute powers to an arbitrator, as in the present case could be beneficial to the minors vide unreported judgment of S. R. Das, J. dated 24.5.44 in the case of Somesh Chandra Saha and unreported judgment of Dutta, J. delivered on 20.2.67 in Nawa Ratan v. Coal Products. It is also contended that the dispute between the parties relate to the conflicting interests of the members of the joint family and Rajaram''s appointment as guardian-ad-litem cannot be warranted in law as Rajaram himself as adverse interest as against the minors. Further, there is evidence to show that the earliest application in respect of the arbitration agreement was made, when Purushottam Ojha one of the parties to the arbitration agreement filed a petition on 2nd April, 1962 in the Court of 1st Civil Judge, Kanpur being Misc. Case No. 14/70 of 1962 for a declaration that the arbitration agreement ceased to exist. Thus, even from the point of jurisdiction, the Kanpur Court alone has jurisdiction u/s 31(4) of the Indian Arbitration Act and any proceeding under any other court is a nullity and as such, the proceedings, before the Calcutta High Court could not be a bar to institute a proceeding in a proper court. Further, according to him, the arbitration agreement was entered into on 13th March, 1961 and the reference started on 17th March, 1961. The alleged earliest application of Banwarilal filed on 26th April, 1961 is a nullity because the reference having been already started under Chapter II, no application u/s 20 of the Arbitration Act could be maintainable. Further, Banwarilal withdrew the said application on 30th May, 1961. Khemani could have made an application to the Calcutta High Court without gong to the Kanpur Court, but such an act would amount to a consent or submission to the jurisdiction of the Calcutta High Court which, according to Khemani, has no jurisdiction to hear the matter at all. The Advocate-General has made it very clear that Khemani may win or lose on the merits of the case or on the validity of the aforesaid propositions of law. But it cannot be said that he has not acted in good faith in instituting the proceedings in the Kanpur Court. In my view, the contentions of the Advocate-General cannot be accepted. This is not a case where before the commencement of any proceedings a party has a choice of more than one forum. The proceedings have been started in the Calcutta High Court before Mallick, J. there was an appeal against the judgment of Mallick, J. the Supreme Court has decided the matter in favour of arbitration proceedings and, yet, Khemani, who is not a party to the suit representing himself as a natural friend of the minors who were duly represented before Mallick, J. and also the Supreme Court by their father, has

chosen the Kanpur Court as a forum. I have already discussed the facts of this case and have come to the conclusion that Khemani has acted in collusion and conspiracy with Mangturam and his group. Further, it is argued that although Banwarilal''s application was withdrawn, it is not an ineffective application, and as such, Ojha''s application before the Kanpur Court is the earlier application in point of time. The question whether Banwarilal''s application is misconceived or not, the question whether favour of the Petitioner of his group. But the fact is that Banwarilal''s application was made and the said application is a matter of record of the Calcutta High Court. Further, most of the legal points, if not all, raised in the Kanpur proceedings, have been raised, argued extensively by senior counsel on behalf of the minors and Mangturam group and decided against the minors by the Calcutta High Court and the Supreme Court. There is no justification for Khemani to re-agitate the same matter in another Court and create a very anomalous situation. Nothing prevented Khemani from applying to the Calcutta High Court specifically stating that such application is made without prejudice to the contention that the Kanpur Court alone has jurisdiction. I agree with the Advocate-General that initiation of a proceeding in another court in good faith cannot amount to contempt. I also accept his contention that vexatious proceedings before the Kanpur Court would amount to contempt of Kanpur Court and not of Calcutta High Court. But I am satisfied that Khemani has acted not in good faith in initiating the Kanpur proceedings. His whole object was to invalidate arbitration proceedings and thus promote the interests of Mangturam and not the interests of the minors and, with that object in view, he has taken recourse to vexatious proceedings by abuse of the process of law.

13. Mr. Ajit Dutta, on behalf of Rajaram has argued that complicated question of facts cannot be decided in summary proceedings like contempt of Court. I accept the proposition of law referred to by him Legal Rememberancer v. Matilal Ghosh and Ors. (Supra) and Anantalal Singh and Ors. v. Alfred Henry Watson and Ors. (Supra). But, in the present case we are not concerned with the merits of the Petitioner''s claim against the Respondents. The materials on the basis of which the present application has been made are matters of record and admitted. The decisions referred to by him in Homi Rustumjee Parrdivala v. Sub-Inspector Baig and Ors. (Supra); The State of Dasarath Jha (Supra); Amarnath Sawan Mal v. Jogindar Singh and Ors. (Supra), cannot also be questioned. Contempt proceedings are in the nature of criminal proceedings and, unless the court is satisfied beyond a reasonable doubt, the court should not hold a person liable for contempt. I have already hold earlier that Khemani has been set up by Mangturam, Rajaram and Sitaram and that the Mangturam group in collusion and conspiracy with Khemani, have acted malafide in over-reaching the orders of the Calcutta High Court and the Supreme Court. The contention of Mr. Dutta to the effect that Khemani not being a party to the proceedings before Mallick, J. and, as such, not being the principal offender, Mangturam and his group cannot be held liable for contempt of the

ground that they have aided and abetted Khemani. It seems to me that the principles laid down in S. N. Banerjee and Anr. v. Kutchwar Lime & Stone Co. Ltd. and Anr. (Supra) have no application in the present case. Khemani, as stated earlier, cannot be described as a formal party either before the Calcutta High Court or before the Supreme Court. The minors who were impleaded as the parties were represented by their father in the Calcutta High Court and Khemani represented the minors as their next friend before the Kanpur Court and Allahabad High Court. Khemani knowing full well the decision of the Calcutta High Court and also the order of the Supreme Court has allowed himself to interfere with the administration of justice by setting himself as the next friend of the minors without taking leave of the Calcutta High Court or proof of any act which would support his good faith in taking up the case of the minors. Further, there is no absolute rule that if a person is not a party he cannot be hold liable for contempt. That rule may apply if a party is made liable for contempt for violation of any mandatory or prohibitive order. But as Chakravarti, C.J. and Lahiri, J. held in Dulal Chandra Bhar and Ors. v. Sukumar Banerjee and Ors. (Supra), there may be cases of contempt which are neither civil nor criminal but of mixed character. An interference with the administration of justice and not with the infringement of a private right is a public wrong and a person although not a party to previous proceedings, may be, in a proper case liable for contempt. In my view where a person allows himself to lend his name in a new proceeding for vindicating the case of parties adversely affected by the orders of other courts and indulges in initiating frivolous proceedings on the ostensible plea of protecting the interests of the minors, there is no difficulty in holding him liable for contempt. In the present case, however, on the peculiar facts of this case, whether his client''s conduct amounts to contempt or not, will be discussed by me presently. Further, Mr. Dutta''s contention that Mullick, J.''s judgment, being merely of a declaratory nature to the effect that the Calcutta High Court has exclusive jurisdiction there is no question of violation of any order also cannot be accepted. This is not a case of civil contempt simplicitor. The minors are parties to the proceedings in the Calcutta High Court and the Supreme Court. The orders of the Calcutta High Court and the Supreme Court are binding on the minors inasmuch as they had been represented by their father as the guardian-ad-litem; Khemani the next friend of the minors who had knowledge of all previous orders has been made to initiate vexatious proceedings to protect the interest of Mangturam group who were parties to the proceedings in the Calcutta High Court and the Supreme Court, and has thus interfered with administration of justice.

14. Mr. Shankar Das Banerjee, had laid stress on the fact that the Petitioner''s present application has not been made bonafide inasmuch Shilwanti Devi belonging to the Petitioner''s group made an application before the Supreme Court on similar allegations against Khemani and the Mangturam group in respect of the Kanpur proceedings. There was no justification for Shilwanti Devi to withdraw her application on 4th January, 1967. Instead of having their grievances redressed

before the Supreme Court, the Petitioners'' group moved this Court to throttle the proceedings before the Kanpur Court. This contention of Mr. Banerjee cannot be accepted. It appears that the appeal preferred by Mangturam Jaipuria was withdrawn by Mangturam with the leave of Supreme Court, Shiwanti''s application before the Supreme Court for staying the order of the Kanpur Court had to be withdrawn, because there was no proceeding pending before the Supreme Court when Shilwanti''s application was filed. Mr. Banerjee reiterated the Advocate-General''s contention that if a vexatious proceeding has been started in the Kanpur Court, the abuse of the process of a court, if any, has taken place in the Kanpur Court and the Petitioner''s application for contempt should have been filed before the Kanpur Court. I shall discuss this point more fully later. I would only add that the institution of a proceeding or the existence of a pending proceeding in another court can never be allowed to justify the conduct of a party who, being already bound by the decision of other courts, sets up other persons to initiate proceedings in other courts with the sole object of thwarting or nullifying the previous orders of other courts. The principles of law laid down in Sadhu Venkayya and Anr. v. Colla Meenakshami (Supra), also cannot be questioned. The institution of a vexatious proceeding may result in dismissal of the application, but that fact by itself m may not amount to contempt, as decided in the Supreme Court case. Similarly, the Madras case has rightly held that contempt application cannot succeed against an interested party on a mere presumption that the interested party like the landlord must have cut the crops of the tenant in violation of the order of the court.

15. It is now necessary for me to find out whether the rule issued against the Respondents should be made absolute or not. There is not the slightest doubt in my mind that the Respondents have acted in collusion and conspiracy with each other in stultifying the proceedings of the Calcutta High Court and the Supreme Court by initiating proceedings in another Court, and by attempting to obtain orders from Kanpur and other Courts to make the orders of the Calcutta High Court and Supreme Court nugatory. In the connection, the action of the Respondents has resulted in setting up one court against the other and persistent attempts have been made to disturb the judicial climate of the country. It is argued by the counsel for the Respondents that vexatious proceedings, if any, have been started in Kanpur Court and if there is any abuse of the process of the court such abuse has taken place before the Kanpur Court and the application for contempt should have been made before the Kanpur Court. In this connection, it may be stated here that very often the words "abuse of process of the court" and "abuse of process of law" are loosely used as identical. In the words of Halsbury Vol. VIII 3rd Edition page 16:

Abusing the process of the court in a term generally applied to a proceeding which is wanting in bonafides and is frivolous, vexatious or oppressive, ordinary remedy in such case being to strike out a pleading or stay the proceedings, or to prevent further proceedings being taken without leave. Beyond this the Court has jurisdiction to punish abuse of process by committal or attachment as a contempt.

The same observations were made by Oswald in his Book on "Contempt of Court" 1910 Edition at Page 82. An application for contempt would certainly arise in a case of abuse of the process of court. Such application is maintainable before the court where collusive and vexatious proceedings are initiated to obstruct the course of justice. In such a case, the party affected may also make an application before the court where such proceedings have been started malafide to strike out a pleading or stay the proceeding and also to punish the opposite party for contempt of court. But abuse of the process of law may be stated to be a genus to which abuse of the process of court is a species although in the widest sense both may be read as identical. Abuse of the process of law is often used in the case of mis-use of substantive and adjunctive provisions of the law of land not with the object of obtaining justice but for subverting justice. New proceedings before the same court may not amount to an abuse of the process of that court, but it may amount to abuse of the process of law. In a proper case, abuse of the process of law and also abuse of the process of court both may be the foundation of an application for contempt. But, where the proceedings are pending in two different courts, an application for a rule for contempt should not succeed. It is the duty of all courts to respect the learning and integrity of the Judges of other courts. It will be a bad day when we, the Judges, should over-reach ourselves by the honour and dignity of other courts. In a matter of contempt of court it is not only the honour and dignity of one court that has to be renumbered, but the court must guard itself against any harm which might cause to the majesty and glory of other courts. In my view, the principles in the Full Bench decision of the Bombay High Court In Re: Sandesini (Supra), cannot help the Petitioner inasmuch as there frivolous and vexatious proceedings took place in the same High Court. The Allahabad decision in Thakurlal and Ors. v. Mahabir Prosad Sharma (Supra), also was based upon the decision in Bombay case where, apart from the facts that there were not sufficient materials amounting to contempt of court, no order of a court of co-ordinate authority was involved. My attention has been drawn by Mr. Mitter on behalf of the Petitioner to (25) Smith v. Bond, 153 ER 248, where the learned Judge C. B. Pollock made an observation to the effect that the contempt of court may arise in a case where a person obstructs, prevents and defeats the authority of the court and the ends of justice. The learned Judge has stated at page 249: -

. . . And I think that the object which the court ought to have in view will be sufficiently answered by the general expression of our opinion, that, whether it be force or fraud, especially by those who are suitors before the court, and consequently peculiarly amenable to its jurisdiction, the parties will be liable to be punished by attachment, if they adopt any means willfully to prevent the course of justice which they are bound to obey.

That was a case where the Defendant in an action obtained an order directing the Plaintiff''s attorney to deliver the particulars of the Plaintiff''s residence and occupation under a statute. The address was accordingly given which turned out to

be false and, in consequence, a rule was obtained by the Defendant calling upon the Plaintiff to show cause why an attachment should not be issued against him. One of the points taken up in that case was that the Plaintiff was not the party who was required by the statute to give the particulars of his place of abode. The learned Judge decided that if the rule would have been issued for an attachment against the Attorney, the rule might have been made absolute. But, as the rule has been sought for against the Plaintiff and that the Defendant has not suffered any injury by the incorrect address, the learned Judge taking all the circumstances into consideration discharged the rule. But in discharging the rule, the learned Judge made the above general observations. It is true that this case and the Bombay and Allahabad decisions would support Mr. Mitter''s contention that the Respondents conduct would amount to contempt of court. But, in all these three cases, the question of interference with the proceedings of other courts did not arise. As stated earlier, Khemani against whom the present rule has been issued has started proceedings in the Kanpur Court. The proceedings have not yet been finally disposed of. The learned Judge of the Kanpur Court might be persuaded to decide against the Petitioner''s group. It is not proper me to anticipate his findings. If the learned Judge comes to a finding which is different from the finding arrived at by the Calcutta High Court, an anomalous situation might arise. Even if the Kanpur Court decides against Khemani, Allahabad High Court or the Supreme Court might decide otherwise. Further, the question whether Khemani has lawful right to institute a proceeding in the Kanpur Court on behalf of the minors is a question that will be decided by the Kanpur Court in the pending proceedings there and, therefore, it is the Kanpur Court which will have to come to the conclusion whether Khemani''s application is an abuse of the process of law. Further, Mr. Ajit Dutta has argued that the rule has been issued against the Mangturam group on the ground that there was collusion and conspiracy to do an unlawful act. The question whether Khemani''s act is a collusive act or is the result of an agreement to do an unlawful act would again have to be determined by the Kanpur Court. Thus, although I am convinced that the Mangturam group has abused the process of law by obstructing or preventing the course of justice in the Calcutta High Court in respect of the rights of the Petitioner''s group and in respect of the Award of the Arbitrator, filed in this Court, it will not be proper for me to make the Respondents guilty of contempt when the validity or justification of the acts of the alleged contemners are matters which are awaiting determination by another court, and on this ground, in particular, I cannot persuade myself to make the rule absolute in the present case. In this connection reliance may be placed on (26) Malojirao Shitole Vs. C.G. Matkar and Another, . To decide otherwise would be to impair the dignity of another court for upholding the dignity of this Court. A court should not vindicate its jurisdiction to the detriment of the jurisdiction of another court not subordinate to it. In the premises the rules are discharged. But it appears to me, for reason stated earlier, that the Respondents are giving a go-by to all canons of justice by resorting to frivolous proceedings and by thus making a mockery of the substantive and procedural law of this country. The

legitimate grievance of the parties, if any, can be agitated and finally determined in the pending proceedings before the Courts of this State or the Courts of other States. In the interests of justice and to arrive at a finality of the grievances of the parties, the Respondents or their agents are, therefore, restrained from initiating any new proceedings before any court in connection with the said arbitration proceedings dated March 13, 1961 and the award filed on June 7, 1967, save and except by way of appeal, review or revision of any order passed in the pending proceedings. Ordinarily, the Rule having been discharged, the Respondents are entitled to costs. But contrary observations have been made in smith v. Bond (Supra), where Pollock, J. has stated that it will be sufficient in this case if we discharge the Rule with costs to be paid by the Plaintiff". In the present case I have held that the Respondents are guilty of the abuse of process of law and their conduct is malafide. I am, therefore, of opinion that this is not a case to apply the rule that the Respondent can only be ordered to pay costs if he has been guilty of contempt. I accordingly direct that the Respondents will pay cots to the Petitioner. Certified for 2 counsel. Interim orders, if any, passed by this Hon''ble Court stand vacated.