

Venubai Savleram Songaonkar Vs Gajanan Savleram Alias Sawalaram Songaonkar and others

Court: Bombay High Court

Date of Decision: Sept. 20, 1991

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 " Section 5
Contempt of Courts Act, 1971 " Section 2
Penal Code, 1860 (IPC) " Section 114, 34

Citation: (1991) 3 BomCR 719

Hon'ble Judges: A.V. Savant, J

Bench: Single Bench

Advocate: S.L. Kapse, for the Appellant; D.B. Bhonsale, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Were it not for the two recent Supreme Court decisions taking a serious view of the breach of undertaking under the Contempt of Courts" Act

as discussed later, the contemner in this case also would have been able to get away with impunity with his conduct which is clearly dishonest and

which amounts to wilful breach of a solemn undertaking given to this Court. The tragedy is that the solemn undertaking was given in favour of his

aged and widowed step mother and the petition of 1983 is being heard in 1991 and in the meanwhile the poor widow has died in 1990.

2. This is a petition filed for action under the Contempt of Courts Act against the first respondent Gajanan Savlaram alias Sawalaram Songaonkar

for having committed a breach of the undertaking given by him to this Court on the 8th April, 1983 in Writ Petition No. 846 of 1983. The said

undertaking reads as under :-

I say that I am staying in bungalow at Baramati along with my wife and 3 daughters and one son. I say that I am in possession of 2 living rooms, 2

bed rooms, one kitchen and one small room at present. I hereby give an undertaking to this Hon"ble Court on behalf of myself and other members

of the family that I will vacate the said premises and hand over the peaceful possession of the said premises to Smt. Venubai Savleram Songaonkar

on or before 8th October, 1983.

I say that I will not obstruct Smt. Venubai if she visits the premises during this period for watering the plants.

The occasion to give the above undertaking arose as under :

3. One Savleram Songaonkar, husband of the petitioner and the father of the first respondent owned several properties in and around Baramati in

district Pune. Savleram had first wife Girijabai from whom he had four sons, one of them being Gajanan, the present respondent No. 1. Girijabai

died in 1933. Savleram married a second wife Kalavati, from whom he had a daughter Malati, but Kalavati died in 1941. Savleram married a third

wife Venubai from whom he had a daughter Sushila, but this Venubai also died in 1945. Savleram married a fourth wife viz. the original petitioner

in this contempt petition also named Venubai, who also died during the pendency of this contempt petition on 23rd May, 1990. This Contempt

Petition No. 96 of 1983 was admitted on the 5th December, 1983 and was expected to be heard in January, 1984.

4. Savlaram had made a Will on 1st August, 1973 in favour of his fourth wife viz. Venubai, the original petitioner in this contempt petition,

bequeathing a life interest in her favour and after her death the properties were to go to Nilesh, the son of the present respondent Gajanan viz.

Savleram's grand-son. As mentioned earlier, Gajanan is the fourth son of Savleram from his first wife Girijabai whereas Venubai the original

petitioner was the fourth wife of Savleram. However, on 2nd January 1975, the Will dated 1st August, 1973 was revoked by a registered codicil.

On 24th April, 1975 Savleram executed a fresh will in favour of his fourth wife Venubai in respect of some of the properties. There was a further

bequest in favour of the fourth wife Venubai in respect of the remaining properties on the 5th July, 1978. Savleram died on 26th June, 1979.

5. On 2nd July, 1979 Venubai filed Civil Suit No. 186 of 1979 in the Baramati Court for a permanent injunction against the other heirs of her

husband, including the present respondent No. 1 Gajanan. The trial Court granted the injunction on 14th December, 1979 only in respect of the

agricultural lands but not in respect of the house property. Being aggrieved by this order dated 14th December 1979, Venubai filed Misc. Civil

Appeal No. 29 of 1980 claiming injunction in respect of the house properties. Gujanan and the other defendants filed Misc. Civil Appeal No. 43

of 1980 against the same order dated 14th December, 1979 in respect of the injunction issued against them in respect of the agricultural lands. By

a common judgment and order dated 30th August, 1982, the Appeal Court allowed the appeal of petitioner Venubai and dismissed the appeal of

Gujanen and others. The result of this appellate order passed on 30th August, 1982 was that Venubai was able to obtain an injunction against the

defendants in respect of all the suit properties viz. both the agricultural lands and the house properties.

6. It is against this order dated 30th August, 1982 that Writ Petition No. 846 of 1983 was filed by respondent No. 1 Gujanan in this Court. In the

said writ petition, respondent No. 1 Gujanan had given the undertaking, which is reproduced above. On the basis of the said undertaking given to

this on 8th April, 1983, this Court permitted Gajanan and his family members to stay in the suit premises at Baramati till October 8, 1983 i.e. for a

period of 6 months from the date of the undertaking. In view of this arrangement, the writ petition filed by Gujanan was allowed to be withdrawn.

It appears, however, that in the meanwhile Namdeo Songaonkar, who is the eldest brother of Gajanan and who is respondent No. 5 in this

petition, had filed Special Civil Suit No. 327 of 1979 in the Baramati Court against his step mother Venubai and others. Respondent No. 1

Gajanan was also joined as defendant No. 4 in the said Civil Suit No. 327 of 1979. This suit was for partition and possession of the family

properties including the Baramati bungalow in respect of which the above undertaking has been given by Gajanan. Ex parte injunction was

obtained by Namdeo which was, however, vacated on 25th September, 1979. Namdeo had filed a review application for reconsideration of the

order dated 25th September, 1979. That review application was rejected on the 21st July, 1982.

7. Against that order dated 21st July, 1982, Namdeo had filed writ petition No. 2523 of 1982 in this Court. The said writ petition was also

disposed of on 8th April, 1983 and in view of the undertaking given by Gajanan in writ petition No. 846 of 1983 referred to above, Namdeo

withdrew his writ petition No. 2523 of 1982 on 8th April, 1983. The present contempt petition has been filed on 21st November, 1983. It

appears that there was some difficulty in serving respondent No. 1 Gajanan since it was not clear as to whether he was living in the bungalow at

Baramati or whether he was living elsewhere. The undertaking reproduced above is in respect of the bungalow at Baramati. In the contempt

petition, surprisingly Gajanan has filed no reply. However, on the death of Venubai on 23rd May, 1990 during the pendency of the contempt

petition, her legal heirs were brought on record by Civil Application No. 2517 of 1990. In that Civil Application Gajanan has filed an affidavit in

reply. Apparently, Gajanan's case is very simple. He says that he has vacated the bungalow in question, but that his wife and his major son Nilesh

as also his major daughters are in no mood to vacate the said bungalow. Gajanan has, however, tendered his unconditional apology because of the

breach of the undertaking on his part. He has, however, pleaded his inability to persuade his wife and major children to vacate the said bungalow.

This affidavit was filed in the Civil Application on 10th August, 1990. There is one more affidavit filed by Gajanan on 22nd August, 1991. This

affidavit purports to be in the contempt petition and all that Gajanan has said therein is to reiterate the contentions taken by him in his affidavit in

reply dated 10th August, 1990 in Civil Application No. 2517 of 1990. The position, therefore, is that Gajanan says that he has vacated the

bungalow and is not staying in the bungalow in question, but his wife and children, who have not given the undertaking are staying in the bungalow.

Gajanan's son Nilesh claims the bungalow under the Will of Savleram executed on 1st August, 1973 but which has been revoked on 2nd January,

1975. Savleram died, as stated earlier, on 26th June, 1979. The undertaking was given on 8th April, 1983. In these facts, the question is whether

Gajanan is guilty of any contempt. The wife and children of Gajanan are not even made parties in this contempt petition.

8. I have heard both the learned Counsel Shri Kapse for the petitioner and Shri Bhosale on behalf of the respondent Gajanan. The contempt

petition has already been dismissed against the other heirs who had given no undertaking. According to Shri Kapse, having regard to the

undertaking given by Gajanan, it is clear that he has committed breach of the undertaking inasmuch as the original petitioner Venubai was never put

in possession of the bungalow on the expiry of the period of six months stipulated in the undertaking dated 8th April, 1983. It may be, Shri Kapse

contends, that Venubai has expired on 23rd May, 1990. That according to the learned Counsel would not make any difference to the liability of

the first respondent Gajanan in the present contempt proceedings. Gajanan having committed the contempt of this Court inasmuch as he has

wilfully committed the breach of the undertaking given by him, is guilty of civil contempt within the meaning of Section 2(b) of the Contempt of

Courts Act, 1971.

9. As against this, Shri Bhosale appearing for the first respondent - Gajanan - states that as far as Gajanan is concerned, there is no longer any

breach of the undertaking given by Gajanan. Gajanan has vacated the bungalow, if not on 8th October, 1983, soon thereafter as per the

undertaking given to this Court in that behalf. Shri Bhonsale has relied upon the judgment of this Court in the case of Shamkant Tukaram Naik v.

Dayanabai Shamsan Dighodkar, reported in 1989 M LJ 857 : 1989 Cri LJ 2341. In Samkant Naik's case the petitioner landlord had obtained a

decree for possession against respondent No. 1 - tenant under the Bombay Rent Act. The tenant's appeal was dismissed and her writ petition was

also rejected on the 7th November, 1986. However, this Court gave her time to vacate the premises by 6th December, 1986 on her giving an

undertaking which she gave on 26th November, 1986. By the said undertaking, the tenant stated that she was residing in the premises and she

undertook to this Court to quit and vacate the premises and deliver vacant possession. It appears that thereafter her son filed a declaratory suit that

he was a tenant in respect of the suit premises, inasmuch as, on the death of his father on the 14th May, 1962 by virtue of the provisions of Section

5(11)(c) of the Bombay Rent Act, he had become the tenant and was, thus, protected. The question arose whether the respondent tenant and her

son were guilty of the breach of the undertaking given to this Court in the Writ Petition. It was held by the learned single Judge that there was no

provision in the Contempt of Courts Act like Section 34 of Section 114 of the Indian Penal Code with the aid of which the son of the tenant or her

unmarried daughter could also be held guilty for aiding and abetting the breach of the undertaking if any. This Court held that though the tenant has

expressed her inability to get the premises vacated, she was not guilty of contempt. She had herself left the premises and it was not a case of wilful

breach of the undertaking and hence, no action could be taken against her for the alleged breach of the undertaking which breach was not wilful.

Relying upon this judgment, Shri Bhosale for the first respondent contended that the first respondent could not be convicted under the Contempt of

Court Act. However, it is clear from the facts of the said case that the ratio of the decision in Shamkant Naik's case would not be applicable to the

facts of the present case.

4th October 1991.

10. As against this, Shri Kapse, the learned Counsel appearing on behalf of the heirs of the original petitioner, contended that the undertaking that

was given to this Court on 8th April, 1983 was specifically given on behalf of the first respondent himself and also on behalf of the other members

of his family. The undertaking mentions clearly that the first respondent was staying in the bungalow at Baramati along with his wife, 3 daughters,

and one son. Experience shows that when the Court is about to dismiss a petition or an appeal, time to vacate is sought and undertaking is offered.

Relying upon such an undertaking and the spirit in which the undertaking is given, some times, the Court does permit the petitioner or the appellant

concerned to continue to remain in possession of the premises for some time. This is exactly what has happened here, when on 8th April, 1983, on

the undertaking given by the first respondent - Gajanan - on behalf of himself, his wife and members of his family, he was allowed to continue in the

premises for six months more. Shri Kapse has placed strong reliance on the recent decision of the Supreme Court in the case of Dr. (Mrs.) Roshan

Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, . In Dr. (Mrs.) Joyce's case before the Supreme Court, the landlord had first filed the first suit

for eviction in the year 1966 on the ground of bona fide requirement in the Small Causes Court at Bombay. There was a second suit filed by the

landlord in the year 1968 for eviction of the tenant on the ground of arrears of rent. The 1966 suit of the landlord on the ground of bona fide

requirement was decreed on 30th September, 1975. However, the 1968 suit for possession on the ground of arrears was dismissed. The appeal

filed by the tenant before the Appellate Bench of the Small Causes Court against the decree dated 30th September, 1975 in the 1966 suit was

dismissed on 19th December, 1986. The landlord had also filed an appeal against the dismissal of his second suit claiming possession on the

ground of arrears of rent. That appeal was, however, allowed on 19th December, 1986. Against the order dated 19th, December, 1986 allowing

the landlords; appeal in the 1968 suit based on arrears of rent, the tenant had preferred the writ petition No. 1065 of 1987. Against the concurrent

finding on the ground of bona fide requirement against the tenant in the 1966 suit, the tenant had preferred the writ petition No. 1066 of 1987.

Undertaking was given to the High Court on 25th March, 1987 in Writ Petition No. 1066 of 1987 and time of 8 weeks was given to the tenant to

vacate the premises. In view of this, both the writ petitions Nos. 1065 of 1987 and 1066 of 1987 were dismissed by the High Court on 31st

March, 1987. In the meanwhile, however, on 27th February, 1987, the Chairman of respondent No. 1, Company which was the tenant in Dr.

(Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, , had filed a third suit in the Court of Small Causes at Bombay for a declaration

that he was the sub-tenant of the company which was the tenant. Interlocutory notice taken out by the Chairman in that suit, instituted on 27th

February 1987, however, was made returnable on 3rd July, 1987. On 28th April, 1987, however, the Chairman of the first respondent company

filed another suit, the fourth suit relating to the premises in dispute, in the City Civil Court at Bombay for declaration that the decree passed by the

Small Cause Court was nullity and was, therefore, not binding on him. The said Chairman's motion for interim relief in the City Civil Court suit was

dismissed on 16th June, 1987. However, in the Small Causes Court suit filed by the Chairman on 27th February, 1987, the third suit, the

Chairman was able to obtain injunction on 3rd July, 1987. In the result, the decree could not be executed and the tenant. Company failed to

honour the undertaking given to this Court. Though the Company did not vacate the premises, the High Court expressed its inability to hold the

officers of the company guilty of contempt in the contempt petition. On an appeal to the Supreme Court, the Supreme Court observed thus in Dr.

(Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, of the report :

In the circumstances set out earlier, although the learned Judge of the High Court might have felt constrained by what he considered to be the

limits of his jurisdiction in a contempt proceeding, we feel that our hands are not so tied and, where there is patent dishonesty on the part of

respondents Nos. 1 and 2 writ large on the face of the record, the law does not require that we should sit back with folded hands and fail to take

any action in the matter.

The Supreme Court further observed in para 9 at page 1887 (of AIR) : (at p. 1776 of Cri LJ) as under :

We are, of course, quite conscious of the fact that the proceedings in the contempt are quasi criminal in nature, that the law of contempt has to be

strictly interpreted and that the requirements of that law must be strictly complied with before any person can be committed for contempt.

However, as we have pointed out, respondent No. 1 have an undertaking based on an implication or assumption was false to its knowledge and to

the knowledge of respondent No. 2.

In the end the Supreme Court observed in para 11 at page 1887-88 (of AIR) : (at p. 1776 of Cri LJ) as under :

The Court Receiver, High Court of Bombay who has already been appointed by our order dated January, 25, 1990 shall take possession of the

suit premises from the present agent and shall appoint the appellant as his agent in respect of the suit premises and hand over possession to the

appellant of the suit premises on such terms and conditions as the Court Receiver may think fit but with the limitation that the royalty for use and

occupation of the suit premises shall be limited to the actual outgoings plus a sum of Rs. 200/- per month in order to meet unforeseen contingencies.

This order shall be complied with within a period of eight weeks from a copy of this order being served on the Court Receiver. It is clarified that

the possession of the premises will be taken from whoever might be in possession thereof and, if the Court Receiver finds any difficulty in obtaining

possession, he shall take the necessary assistance from the police authorities. It is further clarified that this order shall supersede any interim orders

which might have been passed by the Court of Small Causes or the Bombay City Civil Court or any other Court excepting this Court.

11. Relying upon the above Supreme Court decision, Shri Kapse strenuously contended that in this case, Venubai who had filed the Civil Suit No.

186 of 1979 was able to obtain the injunction in her favour in respect of both, the lands and the bungalow when the appeal Court passed the order

on 30th August, 1982. As stated earlier, as a result of the order of the Appellate Court dated 30th August, 1982. in Misc. Appeal No. 29 of 1980

and Misc. Appeal No. 43 of 1980, Venubai was able to obtain injunction in her favour in respect of both, the agricultural lands and the bungalow

at Baramati. Writ Petition No. 846 of 1983 was filed by respondent, her step-son Gajanan, being aggrieved by the said order dated 30th August,

1982 and in that writ petition undertaking has been given, which has been reproduced above. In the mean while on the 28th July, 1979, Namdev

the eldest son of the first wife of Savleram had filed Special Civil Suit No. 327 of 1979 in the Court of Civil Judge, Senior Division, Pune for

partition and separate possession in which the present contemner respondent No. 1 was defendant No. 4. Though Namdev was able to obtain the

ex parte ad interim injunction on 28th July, 1979 in the said Special Civil Suit No. 327 of 1979, the said order was vacated on 25th September,

1979. Namdev, had no doubt, filed an application for review which was, as stated in para 6 above, rejected on 21st July, 1982. On 8th April,

1983, when respondent No. 1 Gajanan gave an undertaking, the undertaking was clearly on behalf of himself his wife and his children. On that

day, there was no order of any Court which could come in the way of the first respondent Gajanan complying with the undertaking given on 8th

April 1983 in favour of his widowed step-mother. As stated earlier, Gajanan had earlier filed no affidavit in reply to the contempt petition.

However, in the Civil Application No. 2517 of 1990 which has been filed for bringing the heirs of the deceased Venubai on record, Gajanan had

filed his affidavit in reply on 10th August, 1990. Gajanan has tendered his unconditional apology for the breach of the undertaking committed by

him. It was after this petition was initially heard for some time that Gajanan has filed a short affidavit in reply to the present contempt petition on

22nd August 1991 reiterating the contentions taken by him in his affidavit in reply dated 10th August 1990 in the Civil Application No. 2517 of

1990. It is now brought to my notice that Gajanan's son Nilesh has now filed Regular Civil Suit No. 163 of 1990 in the Court at Indapur on 7th

August 1990 for declaration that the properties in dispute including the bungalow in respect of which the undertaking has been given by his father

belonged to him under the Will of Savlaram executed on 1st August 1973. As stated earlier in para 4 the said Will has been revoked on 2nd

January 1975 and Savlaram died on 26th June 1979. If the attitude taken by the first respondent and his family members is tolerated, in my view, it

will make a mockery of the undertakings given by the litigants to this Court particularly when the undertaking is given by the person specifically on

behalf of his wife and minor children. There is no controversy and Shri Bhosale has very fairly conceded that when the undertaking was given by

Gajanan on 8th April 1983 to this Court his children were minor. If the undertaking is specifically given by Gajanan on behalf of his wife and minor

children, as he has done in this case, it would lead to very strange results if on his son becoming major, Gajanan is permitted to say ""I have vacated

the bungalow in accordance with the undertaking given by me but the possession of the bungalow cannot be handed over since my son, who has

now become major, is in no mood to vacate the bungalow"". As observed by the Supreme Court in Dr. (Mrs.) Joyce's case, (1990 Cri LJ 1770),

the Court would not be helpless in such a situation and should not sit back with folded hands. It is also true as observed by Supreme Court that the

contempt proceedings are quasi-criminal in nature and that law of contempt has to be strictly interpreted. At the same time allowing a litigant to

make a mockery of the undertaking would be putting a premium on the dishonesty of the litigant in a case like this. In my view the stand taken by

Gajanan is clearly dishonest and in the facts of the present case it is not open for him to say that no action can be taken under the Contempt of

Courts Act because now on his son becoming a major, the possession of the bungalow cannot be handed over to the original petitioner - his step

mother or her heir.

12. It was also faintly suggested by Shri Bhosale that the original petitioner Venubai having died, her heir has been brought on record and,

therefore, no action under the Contempt of Courts Act cannot be taken. The contention has to be stated merely for the purpose of being rejected.

If the contempt petition which was expected to be heard in 1984, but could not be heard till 1991, is to be defeated merely because of the death

of the original petitioner, it would be a sad day.

13. Apart from this, however, while appreciating this contention of Shri Bhosale, the nature of the contempt jurisdiction has to be borne in mind.

As far back as in the case of Narendrabhai Sarabhai Hathessing v. Chinubhai Manibhai Seth, reported in AIR 1936 Bom 314 , a Division Bench

of this Court headed by Beaumont C.J. observed that the proceeding for contempt are matters entirely between the Court and the person alleged

to have been guilty of the contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal

because his opponent is guilty of contempt. Conversely, the mere fact, therefore, that the original petitioner Venubai had died during the pendency

of this petition on 23rd May 1990 cannot be a ground for ignoring the contempt committed by respondent No. 1 Gajanan. In this behalf I may

usefully refer to the observations of the Supreme Court in the case of Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the

Orissa High Court, , where the Supreme Court has in para 5 of the judgment at page 2258 (of AIR) : (at p. 4 of Cri LJ) of the report observed

that so far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemnors. As outside party

comes in only by way of drawing the attention of the Court to the contempt which has been committed. That party does not thereby become a

party to the proceedings for contempt which may be initiated by the Court. The Supreme Court in Baradakanta Mishra's case (supra) approved

the proposition laid down by the Division Bench of this Court in the case of Narendrabhai Sarabhai Hathessing (supra). If this be the correct

position of law as laid down by the Supreme Court, in my view, death of the original petitioner Venubhai can make no difference to the liability of

the first respondent Gajanan for the wilful breach of the undertaking committed by him in the facts of the present case.

14. Shri Kapse, the learned Counsel for the heirs of the original petitioner also invited my attention to the decision of the Supreme Court in the case

of Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, . The Supreme Court in Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills

Ltd. and others, has referred this decision in Noorali Babul Thanewala's case in para 9 of the judgment at page 1887 (of AIR) : (at p. 1776 of Cri

LJ) of the report. In Noorali Babul Thanewala's case, the prayer was for convicting respondent Nos. 1 and 2 for committing the contempt of the

Supreme Court by violating the terms of the undertaking given to the Supreme Court and for direction that whosoever is in possession, the suit

premises be handed over to the petitioner. In Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, the respondent Sh. K. M. M. Shetty

had given the necessary undertaking and had asked for time to vacate the premises in dispute which prayer was granted. Subsequently, however, a

suit was filed by another person for declaration that the decree obtained in the earlier proceedings which culminated in the Supreme Court, was not

binding and could not be executed against the plaintiff who had instituted the fresh suit in 1989. The original proceedings were civil suit No. 213 of

1980 which culminated in the Supreme Court Civil Appeal No. 2628 of 1980. Civil suit No. 306 of 1989 was, however, filed for a declaration

that the plaintiff in that suit was the licensee and was, therefore, protected under the provisions of the Bombay Rent Act. The plaintiff in the 1989

suit was able to obtain an injunction against the petitioner in the Supreme Court restraining him from executing the decree passed in his favour.

Holding that the grant of such an injunction was not justified, the Supreme Court considered the question of the relief to be granted to the petitioner

as also the question of punishment to be imposed on the first respondent who was an old man of more than 84 years. The Supreme Court

observed thus in paras 11 and 12 of the judgment at page 468 (of AIR) : (at p. 320 of Cri LJ) of the report as under :

When a Court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance

to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a

civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose

of enforcing an undertaking that undertaking is treated as an order so that as undertaking, if broken, would involve the same consequences on the

person breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach

of an undertaking given to a Court by a person in a civil proceeding on the faith of which the Court sanctions a particular course of action is

misconduct amount to contempt. The remedy in such circumstances may be in the form of a direction to the contemner to purge the contempt or a

sentence of imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a breach of the

undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the

contempt by directing the first respondent-contemnor to deliver possession immediately and if necessary further and consequential directions for

enforcing the same.

In the foregoing circumstances we find the first respondent guilty of committing contempt by wilful disobedience of the undertaking given by him in

this Court and accordingly we convict him and sentence him to pay a fine of Rs. 500/- within the period of four weeks, failing which he shall suffer

simple imprisonment for one month, and also direct him to deliver vacant possession of the premises forthwith to the petitioner to the extent

possible by him. We further direct the District Magistrate, Thane to evict all those who are in physical possession of the property including the 2nd

respondent and his men and if necessary with police help and give vacant possession of the premises to the petitioner forthwith.

I am bound by the observations of the Supreme Court in abovementioned two cases, namely, Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty

and others, and Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, . Relying upon the ratio of the said two decisions, in my

view, the first respondent Gajanan is clearly guilty of the wilful breach of undertaking given by him to this Court on 8th April 1983 which

undertaking, as repeated above, is clearly on behalf of his wife and his children who were, at that time admittedly minors. While I do not wish

to express any opinion on the merits of the suit, now instituted by Nilesh son of the first respondent Gajanan namely, civil suit No. 163 of 1990, in

the Indapur Court, following the ratio of the Supreme Court decision in Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, and Dr.

(Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, , in my view, the possession of the bungalow at Baramati must be restored to the

heir and legal representative of the original petitioner Venubai in this proceeding. The Supreme Court in Noorali Thanewala's case declined to go

into the question of the right of the plaintiff in the 1989 suit. This has been so observed in para 8 of the judgment at page 468 (of AIR) : (at p. 319

of Cri LJ) of the report. Similarly, the Supreme Court in Dr. (Mrs.) Roshan Joyce's case (supra) observed at the end of para 9 of the judgment at

page 1887 (of AIR) : (at p. 1776 of Cri LJ) of the report that the Court was conscious of the fact that the declaratory suit was filed by respondent

No. 2 - Chairman in that case in the Court of Small Causes for declaration that he was sub-tenant of the suit premises and was, therefore, entitled

to the protection of the Bombay Rent Act. Despite the above, however, the Supreme Court was constrained to direct in both the cases that the

possession of the premises should be taken over from who-so-ever might be in possession thereof and that if there was any difficulty in obtaining

the possession necessary assistance from the police authorities could be taken. In Noorali Thanewala's case (supra), the Supreme Court clearly

directed the District Magistrate, Thane to evict all those who were in physical possession of the property including the second respondent in that

case who had filed the subsequent 1989 declaratory suit and his men and if necessary take police help and give vacant possession of the premises

to the petitioner forthwith. These observations are contained in para 12 of the judgment of the Supreme Court in Thanewala's case (supra).

5th October 1991.

15.7 In the present case, the undertaking given by the first respondent Gajanan was in favour of none-else than his widowed step mother, namely,

the original petitioner Venubai. It is unfortunate that despite the contempt petition having been admitted on 5th December 1983 and despite the rule

having been made returnable on 16th January 1984 the petition is being heard in September and October, 1991.

16. In my view, therefore, the first respondent Gajanan is clearly guilty of civil contempt within the meaning of S. 2 clause (b) of the Contempt of

Courts Act, 1971. However, in view of the apology tendered by him, I do not propose to impose a substantive sentence on him. While I do not

propose to pass orders on the lines of the orders passed by the Supreme Court in Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others,

and Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, regarding the handing over of the possession of the bungalow, in my

view, interests of justice would be met if the first respondent is sentenced to pay a fine of Rs. 2,500/- in default to undergo a simple imprisonment

for a period of two months. Accordingly, the following order is passed.

i) The first respondent Gajanan is held guilty of civil contempt in view of his admission that he has committed a breach of the undertaking given to

this Court on 8th April 1983 in writ petition No. 846 of 1983.

ii) The first respondent Gajanan is, therefore, sentenced to pay a fine of Rs. 2,500/- within the period of four weeks from today. In default of

payment of the said fine of Rs. 25,00/- as aforesaid, the first respondent is sentenced to suffer simple imprisonment for a period of two months.

iii) As far as the possession of the bungalow at Baramati, which is the subject matter of the undertaking given to this Court on 8th April 1983 in

writ petition No. 846 of 1983 is concerned, relying upon the observations of the Supreme Court in the judgment of Noorali Thanewala's case

(supra) and Dr. (Mrs.) Roshan Joyce's case (supra), District Magistrate Pune is directed to hand over the possession of the bungalow at

Baramati, namely the bungalow named ""Girijashram"" in Vasant Nagar locality situated on survey No. 284/1A, Hissa No. B/1 at Baramati to the

legal representative of the original petitioner Venubai in this contempt proceedings, namely, to Shri Vivekanand Savleram Songaonkar within four

weeks from today.

iv) The District Magistrate, Pune will forthwith take possession of the said bungalow from whom-so-ever is in possession thereof and if the District

Magistrate finds any difficulty in obtaining the possession he shall take necessary assistance from the police authorities and handover possession of

the said bungalow to Shri Vivekanand Savleram Songaonkar within four weeks from today.

v) In view of the fact that the contempt petition was pending in this Court for nearly 8 years, the possession of the bungalow as above should be

handed over to the said shri Vivekanand Savlaram Songaonkar within the period of four weeks from today.

vi) As far as the costs are concerned, the first respondent Gajanan shall pay a sum of Rs. 2,500/-, towards the costs of this contempt petition to

Shri Vivekanand Savlaram Songaonkar.

vii) Rule is accordingly made absolute with costs. as above.

17. Order accordingly.