

## Special Legal Issues Seminar

### *The Choice Between and the Possibility of Combining – A Contempt Petition under the CPC and under the Contempt of Courts Act*

## Introduction

- ❖ The law of contempt in India is akin to the law of contempt in English laws and finds its origin in both English laws as well as in ancient Indian laws and customs.
- ❖ Contempt of Court is essentially an offence that involves disrespect and disregard to the dignity or the authority of a court of law.
- ❖ The provisions pertaining to contempt are enumerated in the Code of Civil Procedure, 1908 and the Contempt of Courts Act, 1971.
- ❖ Contempt proceedings are founded upon the principle that willful disobedience will always invite penal action.
- ❖ The provisions related to contempt are curative in nature and their purpose is to ensure that the direction and orders of the Court are implemented, the disobedience of orders are remedied, and status quo is restored.

## Relevant Provisions of The Code of Civil Procedure, 1908

### ❖ Order XXXIX Rule 2A, Code of Civil Procedure, 1908—

#### “Consequence of disobedience or breach of injunction.—

*(1) In the case of **disobedience of any injunction** granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.”*

### ❖ Order XXI Rule 32(1), Code of Civil Procedure, 1908—

*“Where the party **against whom a decree** for the specific performance of a contract, or for restitution of conjugal rights, or for an **injunction**, has been passed, has had an opportunity of obeying the decree and **has wilfully failed to obey it**, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.”*  
[Emphasis supplied]

## Relevant Provisions of The Contempt of Courts Act, 1971

❖ **Section 2(a), The Contempt of Courts Act, 1971—**

*““contempt of court” means civil contempt or criminal contempt”*

❖ **Section 2(b), The Contempt of Courts Act, 1971—**

*““civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court”*

❖ **Section 2(c), The Contempt of Courts Act, 1971—**

*““criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—*

- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”*

## Relevant Provisions of The Contempt of Courts Act, 1971 (Contd.)

### ❖ Section 12, The Contempt of Courts Act, 1971

*“Punishment for contempt of court – (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with **simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both ...**”*

*(2) Notwithstanding anything contained in any law for the time being in force, **no court shall impose a sentence in excess of that specified in sub-section (1)** for any contempt either in respect of itself or of a court subordinate to it.*

*(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, **instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.***

*(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person ...” [Emphasis supplied]*

## Relevant Case Laws

❖ *Cargil India Private Limited v. M/s. M.M. Oil Enterprises* [2019 (78) PTC 577 (Bom)]

*“The Defendant has despite the Order of Injunction dated 12th April, 2017, restraining him from manufacturing and selling the impugned goods, has brazenly breached the said Order...the Proprietor of the Defendant has also disposed of/dealt with the impugned goods, which the Receiver had seized and sealed on 6th April, 2017 and had left the same with the Proprietor of the Defendant on an undertaking that he will keep the same in safe custody...”*

*“Such a Defendant certainly cannot be shown any leniency in sentencing. The lenient sentence in this case would mean and send a message to society at large **that the Court is itself not outraged by the flagrant disregard shown by the Proprietor of the Defendant and is adopting a 'forgive and forget' policy.** In doing so, the Court would be doing **grave injustice** to the Plaintiff, who for no fault of their own, have been put through a long and protracted round of litigation. It would further indicate that litigants can disobey the orders of the Court with impunity and still be shown mercy and forgiveness by the Court. Such a trend, in my opinion, **would destroy the very principle of deterrence, which punishments are intended to serve.**” [Emphasis supplied]*

## Relevant Case Laws (Contd.)

❖ *Whatman International Limited v. P. Mehta & Ors.* [(2019) 257 DLT 472]

*“The Defendants are acting in concert with each other and have repeatedly committed contempt of the order of this Court.”*

*“The **disobedience or breach of an injunction** has to have consequences in law. If strict action is not taken, orders of Courts would not be complied with by litigants, as is evident in the present case. Such disobedience **not only constitutes violation of the provisions of Order XXXIX Rule 2A but also constitutes contempt under the Contempt of Courts Act, 1971.** The conduct of the Defendants in the present case is in the face of the Court and thus Section 14 of the Act is clearly attracted.”* [Emphasis Supplied]

## Relevant Case Laws (Contd.)

- ❖ ***Om Prakash v. Omwati & Ors.* [CONT. CAS (C) 512/2017 OM CM APPL. 26032/2017, Delhi High Court, March 16, 2017]**

*“The provisions of Order 39 Rule 2A CPC not only deal with a situation where an injunction order has been passed by the civil court but it also deals and contemplates to deal with a situation where an order passed by the court, of which there is alleged to be willful disobedience, can be dealt with.*”

*The only difference between the provisions under Order 39 Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the **quantum of incarceration which a person can be sentenced to**. Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39 Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions...there is ample mechanism prescribed under the CPC for the purpose of implementation of an order.*

*The contempt power under the Contempt of Courts Act is not only **discretionary** but is also to be used **sparingly**. A trend which has been noticed by this court is that parties invariably try to invoke the provisions of the Contempt of Courts Act in order to get orders implemented while **there is machinery provided under the CPC for the purpose of getting orders, decrees or directions executed**.” [Emphasis Supplied]*



## Relevant Case Laws (Contd.)

### ❖ *Bimal Chandra Sen v. Kamla Mathur and Ors.* [22 (1982) DLT 33]

*“The Code of Civil Procedure expressly provides for grant of injunctions and the punishment for their disobedience. Appeals lie against grant of injunctions. Appeals lie against punishment. Appeals lie against the order to punish or refusing to punish for disobedience.*

*The High Court does not come into the picture at all. It is neither a case of civil contempt nor criminal contempt under the Act. **It is a plain case falling within the four corners of Order 39 of the Code of Civil Procedure.** To hold that the High Court has power to punish will be to hold that the subordinate judge has the power to grant injunction, but the High Court has the power to punish for the disobedience of his order under Sections 10 and 12 for civil and criminal contempt...if this argument is accepted it will create chaos. Where will appeals lie no one will know.”*

*“a person **not a party to the suit cannot be proceeded against for contempt for aiding and abetting the breach and the jurisdiction to punish for disobedience of the injunction order vests in the court which granted the injunction.**” [Emphasis supplied]*

## Relevant Case Laws (Contd.)

### ❖ *Indu Tewari v. Ram Bahadur Chaudhari and Ors.* [AIR 1981 All 309]

*“It is well settled that the matter of **contempt** is always an **issue between the court and the contemner**. No right vests in a private party to get any person punished for contempt...The party which informs the Court about the alleged contempt can only assist the Court in coming to the conclusion whether any contempt has been committed or not. As opposed to this, if a person obtains an interim injunction or a final decree for injunction, he gets a right to enforce it. The provision for enforcement of an interim injunction is contained in Order XXXIX Rule 2-A, Civil P. C. and the provision for enforcement of a decree for injunction is contained in Order XXI, Rule 32, Civil P. C.*

*The orders passed in proceedings under Order XXXIX, Rule 2-A as well as the orders passed in execution proceedings under Order XXI, Rule 32 of the Code of Civil Procedure are **appealable orders**. Further the proceedings under Order XXXIX, Rule 2-A as well as execution proceedings under Order XXI, Rule 32 are **elaborate proceedings** in which the parties can adduce their evidence and they can examine and cross-examine the witnesses. As opposed to this, the proceedings under the Contempt of Courts Act are of **summary nature**.”*

*...a person who has got **an effective alternative remedy** of the nature specified under Order XXXIX, Rule 2-A or under Order XXI, Rule 32, Civil P. C. **should not be permitted to skip over that remedy and take resort to initiate proceedings under the Contempt of Courts Act, it would not be a proper exercise of discretion on the part of this Court to exercise its jurisdiction under the Contempt of Courts Act when such an effective and alternative remedy is available to any person.**” [Emphasis supplied]*

## Relevant Case Laws (Contd.)

### ❖ *Jagdishbhai Madhubhai Patel v. Saraswatiben Wd/O Asharam [(2020) 1 GLR 304]*

*“It becomes crystal clear that the proceedings are **analogous** to the contempt of court proceedings but they are taken under the provisions of Order XXXIX, Rule 2A of the Code for the reason that the **special provision inserted in the Code shall prevail over the general law of contempt contained in the, contempt of court act** . Even the **High Court**, in such a case, **shall not entertain the petition under the provisions of Act**”.*

*“...no period of limitation is prescribed for initiating proceedings for breach of an injunction under Order 39 Rule 2A CPC, which is provided under Section 20 of the Contempt of Courts Act. It must be held that so long as the breach of injunction continues, the aggrieved party in whose favour there is an injunction, can initiate the proceedings for breach of an injunction under Order 39 Rule 2A of the CPC.”*

[Emphasis supplied]

## Relevant Case Laws (Contd.)

❖ ***Kanwar Singh Saini v. High Court Of Delhi [2012 (90) ALR 24]***

*“An application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.”*

*“Unless there has been an order under Order XXXIX Rule 1 or 2 CPC in a case, the question of entertaining an application under Order XXXIX Rule 2A does not arise. In case there is a final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order XXXIX Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.” [Emphasis supplied]*

## Conclusion

- ❖ There exists a massive backlog of civil and criminal contempt cases pending before various High Courts and the Supreme Court of India.
- ❖ There have been conflicting High Court judgments resulting in misunderstandings and endless litigation.
- ❖ The primary object of Rule 2A of Order 39 of the Code is not only to punish a person who has disobeyed the order of injunction but also to enforce the order, it is a self-contained provision.
- ❖ The provisions related to Contempt are intended to maintain the majesty of judicial order, to preserve the rule of law and to ensure faith of litigants in the administration of justice.
- ❖ In contempt proceedings, the burden is heavily on the person who alleges disobedience to prove the ingredients of the offence beyond reasonable doubt.
- ❖ When an order has been passed on an application filed under Order 39 Rules 1 and 2 of CPC, the remedy lies only under Order 39 Rule 2A of CPC and contempt petitions filed under any provisions of the Contempt of Court Act, 1971 are not maintainable.
- ❖ Every decree- holder cannot be allowed to rush to the High Court stating that the decree passed by a subordinate Court is not obeyed- this is not the purpose of the Contempt of Courts Act.

# THANK YOU!

## Questions?

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