सत्यमेव जयते

न्यायालय

सहायक कलक्टर/उपखण्ड अधिकारी

गुढामालानी—बाड़मेर

(पीठासीन अधिकारी —केशव कुमार मीना आर.ए.एस.)

वाद संख्याः— 2021/302 दर्ज तिथिः—06.12.2021

वादी	बनाम	प्रतिवादी
हीराराम पुत्र नगाराम वगैरह		कृष्णा पुत्र जेठा वगैरह
जरिये अधिवक्ता श्री हरिराम विश्नोई		जरिये अधिवक्ता श्री हरिश चौधरी

प्रार्थना पत्र अन्तर्गत आदेश—39 नियम—02ए
सिविल प्रक्रिया संहिता—1908
निर्णय तिथिः—29.09.2025

—:निर्णयः—

1. आज यह पत्रावली प्रार्थना—पत्र सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के अन्तर्गत बाबत् निर्णय प्रस्तुत हुई। प्रकरण का सुक्ष्म एवं सारतः वृतान्त इस प्रकार है कि वादी द्वारा राजस्व वाद संख्या 253/06 बउनवान हीराराम बनाम जेठाराम अंतर्गत धारा—188 का पेश कर निवेदन किया कि आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुडामालानी में अवस्थित है। उक्त वाद न्यायालय द्वारा दिनांक 04.10.2012 को स्वीकार किया जाकर वादी की आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुड़ामालानी पर प्रतिवादीगण को स्वयं एवं किसी और से हस्तक्षेप नहीं करने बाबत् स्थाई निषेधाज्ञा से पाबंद किया जाकर स्थाई निषेधाज्ञा जारी की गई थी।

2. कि उक्त स्थगन आदेश मौजा हाजाणियों की ढाणी के खसरा संख्या 468 रकबा 08—11 बीघा पर दिनांक 04.10.2012 को विरूद्ध प्रतिवादीगण जारी किया गया था। प्रार्थीगण के उक्त खसरे की सीमा अप्रार्थीगण के खेत मौजा सोढों की ढाणी के खसरा संख्या 497 रकबा 35—10 बीघा के सेढासेढ अवस्थित है। प्रकरण में दोनों ग्रामों की सीमा ओवरलेप है। इस कारण हाजाणियों की ढाणी के खसरा संख्या 468 के खातेदारों की सीमा मौजा सोढों की ढाणी खसरा संख्या 497 के अंदर तक आती है। प्रार्थीगण द्वारा अपनी आराजी का सीमाज्ञान करवाने पर प्रार्थीगण को सर्वप्रथम ज्ञात हुआ कि प्रार्थीगण की आराजी खसरा संख्या 497 में आती है। दोनों गांवों के बीच में ओवरलेप होने के कारण प्रार्थीगण द्वारा अपनी खातेदारी आराजी खसरा संख्या 468 पर सक्षम न्यायालय से दिनांक 04.10.2012 को स्थाई निषेधाज्ञा का अनुतोष प्राप्त कर लिया था।

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3. कि उक्त स्थगन आदेश के प्रभावी होने के बावजूद अप्रार्थीगण द्वारा षडयंत्रपूर्वक उक्त स्थगन आदेश की अवहेलना करते हुए हल्का पटवारी रतनपुरा, भू—अभिलेख निरीक्षक रतनपुरा एवं तहसीलदार गुड़ामालानी से मिलकर खसरा संख्या 497 मौजा सोढों की ढाणी में से 0.15 बीघा भूमि का समर्पण करने हेतु कागजात तैयार करवाकर रास्ते के लिये भूमि समर्पण कर दी गई। चूंकि दोनों ग्रामों की सीमा ऑवरलेप होने के कारण उक्त समर्पित भूमि प्रार्थीगण के खसरा संख्या 468 में आती है। प्रार्थीगण को सर्वप्रथम प्रशासन गांवों के संग अभियान खारवा में उक्त समर्पण आदेश का पता चला। प्रार्थीगण द्वारा उसी दिन दिनांक 25.11.2021 को उक्त समर्पण आदेश की प्रति प्राप्त की। तब प्रार्थीगण को स्थगन आदेश के बावजूद उक्त समर्पण का ज्ञान हुआ। अप्रार्थीगण द्वारा प्रार्थीगण की आराजी पर स्थगन होने के उपरांत भी उक्त समर्पण आदेश दिनांक 05.01.2021 की आड़ में मौके की स्थिति में परिवर्तन कर दिया है। जो कि न्यायालय आदेश की अवहेलना की श्रेणी में आता है।

4. इस प्रकार स्थाई निषेधाज्ञा का स्थगन आदेश वर्तमान में प्रभावी है। परंतु न्यायालय के स्थगन आदेश की अवमानना कर अप्रार्थीगण के द्वारा वादग्रस्त आराजी एवं कब्जा—काश्त भूमि पर समर्पण आदेश दिनांक 05.01.2021 निष्पादित करवाया गया है। इस प्रकार अप्रार्थीगण द्वारा न्यायालय के स्थगन आदेश की अवमानना की गई है। अतः उक्त आधारों पर प्रकरण में समर्पण आदेश दिनांक 05.01.2021 को निरस्त कर मौका यथास्थिति पुनः बहाल कर अप्रार्थीगण को प्रार्थी के कब्जा काश्त भूमि से बेदखल करते हुए प्रार्थी को पुनः कब्जा सुपुर्द करते हुए अप्रार्थीगण को दण्डित करने का निवेदन किया।

5. प्रकरण दर्ज रजिस्टर किया जाकर प्रतिवादीगण को तलब किया गया। प्रतिवादीगण असालतन—वकालतन उपस्थित न्यायालय हुए। प्रकरण में वादी द्वारा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के अन्तर्गत प्रस्तुत प्रार्थना—पत्र को खारिज करने का अनुरोध करते हुए सीधे बहस कर निम्न प्रकार निवेदन किया—

    - कि प्रतिवादी द्वारा न्यायालय के स्थगन आदेश की अवमानना नहीं की गई है। प्रतिवादी केवल अपने खातेदारी आराजी पर ही काबिज है। इस आधार पर वादी का प्रार्थना—पत्र चलने योग्य नहीं होने के कारण काबिल—ए—खारिज है।

Provision

6. प्रकरण में पत्रावली का अवलोकन किया गया व बहस पर मनन किया गया है। प्रकरण में हाजा न्यायालय पर विचाराधीन न्यायालय की अवमानना पर अवमानना करने वाले आरोपी के विरूद्ध कार्यवाही चाहने हेतु सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के तहत प्रार्थना पत्र प्रस्तुत किया गया है। प्रकरण में विश्लेषण से पूर्व सर्वप्रथम सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान का प्रकरण में अवलोकन किया जाना उचित प्रतीत होता है। अतः सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए एवं अन्य संबंधित प्रावधान का उद्धरण इस प्रकार हैः—

ORDER XXXIX
TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

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> ***2A. 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.*
> *(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.*

Interpretation

7. प्रकरण में विश्लेषण से पूर्व सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की माननीय न्यायालयों द्वारा की गई व्याख्या के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा FAO No.518/2016 में उनवान *Tagore Education Society vs Complete Education Society* में दिनांक 10.08.2017 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *6. The provision of Order XXXIX Rule 2A CPC gives a discretionary power to the court. It is not mandatory for the court in every case to pass orders giving directions by allowing the application under Order XXXIX Rule 2A. The discretion under Order XXXIX Rule 2A may or may not be exercised by the court for taking action against the alleged contemnors under Order XXXIX Rule 2A CPC. The application under Order XXXIX Rule 2A CPC is essentially for enforcement/execution, and more so in a case such as the present, the application under Order XXXIX Rule 2A is in the nature of recovery proceedings. Once therefore an independent suit being recovery proceedings are filed by the appellant/plaintiff with respect to the same relief which is the subject-matter of the application under Order XXXIX Rule 2A CPC, then, the trial court was justified in passing the impugned order dismissing the application under Order XXXIX Rule 2A CPC.*

8. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा AIR 1998 SUPREME COURT 2765 में उनवान *Samee Khan vs Bindu Khan* में दिनांक 01.09.1998 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *Order 39 Rules 1 and 2 of the Code deal with powers of the Court to grant temporary injunction. Rule 2A has been inserted in the order as per Act 104/1976. Rule 2A reads thus:-*
>
> *" Consequence of disobedience or breach of injunction - (1) In the case of disobedience of any*

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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 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.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, If the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court, may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the property entitled thereto."

Along with the insertion of the said Rule, legislature has deleted the erstwhile corresponding provision which was sub-rule (3) to Rule 2. It was worded as follows:-

" In case of disobedience, or of breach of any such terms, the Court granting an injunction 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 six months, unless in the meantime the Court directs his release."

It can be noted from the "Objects and Reasons" for the aforesaid amendment in 1976 that it is intended to make the provision applicable also to cases where injunction orders passed under Rule 1 are disobeyed, and for empowering a transferee court also to exercise such powers. Otherwise the deleted provision is the same as the present sub-rule 2A(1).

Learned Single Judge Considered the said Rule in juxtaposition with Order 21 Rule 32(1) of the Code and has observed that the latter provision deals with execution of a decree of injunction against a judgment debtor while the former deals with ad-interim or interlocutory order of injunction by providing remedies for disobedience or breach of such orders.

Learned Judge pointed out that under Order 21 Rule 32 the wording is that the "decree may be enforced by his detention in the civil prison or by the attachment of his property or by both". The use of the words "or both"

according to the learned Judge must be understood differently from the words "and may also" as used in the case of interlocutory order of injunction as the former definitely indicated that either of the alternatives or both of them can be resorted to. The following are the reasons adverted to by the learned judge:

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> *"This distinction between the two remedies, therefore, suggests that the conjunction 'and' used in the language of sub-rule 1 of Rule 2A of Order 39 CPC should not be read as 'or' as has been used in the language of sub-rule 1 of Rule 32 of Order 21. It may further be noted that the use of the words 'and may also' in the latter part of sub-rule 2-A(1) clearly suggests that the remedy of civil imprisonment of the contemner is not an alternative remedy but an 'additional remedy'. Alternative remedies give option to choose one or he other remedy from amongst the remedies provided and such remedies are no co-existent unless specifically provide as has been done in Order 21 Rule 32 by use of the words 'or both'. In the language of Order 39 Rule 2A(1) the use of the words 'and may also' indicates the intention of the Legislature that the order of detention of the contemner in civil imprisonment may be passed in 'addition to' the order of attachment of his property and not 'in lieu' thereof."*

Learned Judge then proceeded to consider it from another angle, for which the main distinction between civil contempt and criminal contempt was highlighted and observed that enforcement of the order in civil contempt is for the benefit of one party against another, while the object in criminal contempt is to upheld "the majesty of law and the dignity of the Court". In that context the High Court added thus:

> *" Viewed from the above angle also I am of the opinion that the punishment of civil imprisonment in the case of violation or disobedience of the order of an injunction of a Court is to be awarded 'in addition to' and not 'in lieu of' or 'in the alternative' of the punishment of attachment of his property. Rule 2A(1) gives an "additional" power to the Court, as is indicated by the use of the words " and may also" and not an "alternative" power, as would have been indicated if the word "or" had been used, to punish the contemner by his sending to civil prison besides attaching his property. In my opinion the legislature cannot be attributed with an intention of using the words "and may also" in the latter part of sub- rule (1) of Rule 2A of the Order XXXIX CPC unnecessarily, superfuously and without any purpose. Those words, to my mind, necessarily suggest that the order of sending the contemner to civil prison may be passed only in addition to the order of attachment of his property."*

At the first blush the above interpretation appeared attractive. But on a closer scrutiny we feel that such interpretation is not sound and it may lead to tenuous results. No doubt the wording as framed in Order 21 Rule 32(1) would indicate that in enforcement of the decree for injunction a judgment-debtor can either be put in civil prison or his property can be attached or both the said courses can be resorted to. But sub-rule (5) of

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Rule 32 shows that the court need not resort to either of the above two courses and instead the court can direct the judgement- debtor the perform, the act required in the decree or the court can get the said act done through some other person appointed by the court at the cost of the judgement-debtor. Thus, in execution of a decree the Court can resort to a three fold operation against disobedience of the judgment- debtor in order to compel him to perform the act. But once the decree is enforced the judgment-debtor is free from the tentacles of Rule 32. A reading of that Rule shows that the whole operation is for enforcement of the decree. If the injunction or direction was subsequently set aside or if it is satisfied the utility or Rule 32 gets dissolved.

But the position under rule 2A of Order 39 is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if he order is subsequently set aside. for what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus even under Order 39 Rule 2A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience.

The words "and may also" appearing in R.2A were sought to be given a meaning that the course suggested thereafter in the Rule has to be resorted to as an optional additional step, a resort to which would be impermissible without complying with the first course suggested in the Rule. The word "also" has different attributes and its meaning is not to be confined to "further more". In legalistic use, the word "also" can be employed to denote other meninges as well. In Black's Law Dictionary the word "also has the following variety of meanings:

> *Also. Besides as well in addition; likewise, in like manner; similarly; too; withal. Some other thing, including, further, furthermore, in the same manner, moreover; nearly the same as the word "and" or "likewise".*

Since the word "also" can have meaning as such "as well" or "likewise", can not those meaning be used for understanding the scope of the trio words "and may also"? Those words cannot altogether be detached from the other words in the sub-rule. Here again the word "and" need not necessarily be understood as denoting a conjunctive sense. In Stroud's judicial Dictionary it is stated that the word "and" has generally a cumulative sense, but sometimes it is by force of a context read as "or" Maxwell on "interpretation of Statutes" has recognised the above use to carry out the interpretation of the legislature.

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This has been approved by this Court in Ishwar Singh vs. State of UP {AIR 1968 SC 1450}. The principle of Noscitur A Sociis can be profitably be used to construct the word "and may also" in the sub-rule.

Hence the words "and may also" in Rule 2-A cannot be interpreted the context as denoting to a step which is permissible only as additional to attachment of property of the opposite party. If those words are interpreted like that it may lead to an anomalous situation. If the person who defies the injunction order has no property at all the court becomes totally powerless to deal with such a disobedient party. he would be immuned from all consequences even for any open defiance of a court order. No interpretation hall be allowed to bring about such a sterile or anomalous situation (vide Constitution Bench in Vidya Charan Shukla vs. Khubchand Baghel [AIR 1964 SC 1099]. The pragmatic interpretation, therefore, must be this: It is open to the court to attach the property of the disobeying party and at the same time the court can order him to be detained in civil prison also if the court deems it necessary, Similarly the court which orders the person to be detained in civil prison can also attach the property of that person. Both steps can be resorted to or one of them alone need be chosen. It is left to the court to decide on consideration of the fact situation in each case.

It is pertinent to point out that Rule 2(3) of Order 39 of the Code before that sub-rule was deleted by Act 104 of 1976, has been interpreted by different High Courts in India and in almost all such decisions the High Courts have adopted a similar construction as we have made above. (that sub-section has been quoted earlier). It is almost the same as Rule 2A and the slight distinction is not material for us in this case. Vide, a Full Bench of the Madras High Court in Ottapiurakkal Thazath Suppi & ors. vs. Alabi Mashur Koyanna Koya Kunhi Koya (AIR 1917 Madras 448) a Single Judge of the Patna High Court in Nawal Kishore Singh & ors. vs. Rajendra Prasad Singh & Ors. (AIR 1976 Patna 56) which was subsequently approved by a Division Bench of the same High Court. Kapildeo Upadhyay vs. Raghunath Pandey [AIR 1978 Patna 212].

9. इसी प्रकार माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 715/2022 में उनवान *Global Music Junction Pvt. Ltd vs Annapurna Films Pvt. Ltd* में दिनांक 24.05.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

8. A plain reading of this provision indicates that the Court has the authority to take punitive measures against a party that disobeys an injunction or breaches the terms of such an order. However, it is crucial to note that this provision is not party-specific, meaning thereby that if the Court issues an order that operates equally on both parties such as maintaining the status quo, or to third parties, either party can potentially invoke contempt proceedings against the other if there is a breach of the order. This is because such an order applies reciprocally, and both parties are under an obligation to comply with it. Thus, in such situations where the order affects both parties

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Date: 2025.10.14 16:57:41 IST
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(plaintiff and defendant), any breach by either party, or of a third party specifically directed, can be grounds for contempt, if it can be shown that the breaching party was aware of the order and had the capacity to comply with it. Consequently, the mere fact that the present application has been filed by Defendant No. 6 invoking Order XXXIX Rule 2A would not render the same not maintainable.

10. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा आपराधिक अपील संख्या 1798/2009 में उनवान *Kanwar Singh Saini vs High Court Of Delhi* में दिनांक 23.09.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

9. Application under Order XXXIX Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by the court under Order XXXIX Rules 1 & 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order.

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically.

Scope

11. अब प्रकरण में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की माननीय न्यायालयों द्वारा बताये गये दायरा के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय कर्नाटका उच्च न्यायालय द्वारा WP No. 54219 of 2018 उनवान *Smt. T. Geetha vs Sri. Ranganath* में दिनांक 05.02.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के क्षेत्र की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

11. A bare reading of Order XXXIX Rule 2A of CPC refers to disobedience or breach of injunction by 'any person'. There is no reference to the parties to the suit, but specific reference is to 'the person guilty of such disobedience or breach.

12. इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 380/2007 उनवान *Food Corporation Of India vs Sukh Prasad* में दिनांक 24.03.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के क्षेत्र की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

24. The power exercised by a court under order 39, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the `order', on surmises

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

suspicions and inferences. The power under Rule 2A should be exercised with great caution and responsibility.

13. इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा आपराधिक अपील संख्या 1798/2009 में उनवान ***Kanwar Singh Saini vs High Court Of Delhi*** में दिनांक 23.09.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के क्षेत्र की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

14. In Samee Khan v. Bindu Khan, AIR 1998 SC 2765, this Court explained the distinction between a civil and criminal contempt observing that enforcement of the order in civil contempt is for the benefit of one party against another, while object of criminal contempt is to uphold the majesty of law and the dignity of the court. The scope of the proceedings under Order XXXIX Rule 2A CPC is entirely different. It is a mode to compel the opposite party to obey the order of injunction by attaching the property and detaining the disobedient party in civil prison as a mode of punishment for being guilty of such disobedience. Breach of undertaking given to the court amounts to contempt in the same way as a breach of injunction and is liable to be awarded the same punishment for it.

14. इस संदर्भ में माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच)द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के क्षेत्र की विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

8. So far as the scope of Order XXXIX, Rule 2A is concerned, the same has been considered by different Courts from time to time. The said provisions are of a different nature altogether. A Constitution Bench of the Supreme Court, in State of Bihar v. Rani Sana Bati Kumari, AIR 1961 SC 221, has categorically held that the said provisions deal with the wilful defiance of the order passed by the civil court. The Apex Court held that there must be wilful disobedience of the injunction passed by the Court and order of punishment be passed unless the Court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order. The proceedings are purely quasi-criminal in nature and are, thus, punitive. Even the corporate body like municipality/Government can be punished though no officer of it be a party by name. A similar view has been reiterated by the Supreme Court in Aligarh Municipal Board and Ors. v. Ekka Tonga Mazdoor Union and Ors., AIR 1970 SC 1767.

9. In Tayabbhai M. Bagasarwalla and Ors. v. Hind Rubber Industries Put. Ltd., AIR 1997 SC 1240, the Supreme Court dealt with a case of disobedience of an injunction passed under Order XXXIX, Rules 1 and 2 of the Code, wherein the contention was raised that the proceedings under Order XXXIX, Rule 2A cannot be initiated and no punishment can be

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

imposed for disobedience of the order because the civil court, which granted the injunction, had no jurisdiction to entertain the suit. The Apex Court rejected the contention holding that a party aggrieved of the order has a right to ask the Court to vacate the injunction pointing out to it that it had no jurisdiction to approach the higher court for setting aside that order, but so long the order remains in force, the party cannot be permitted to disobey it or avoid punishment for disobedience on any ground, including that the Court had no Jurisdiction, even if ultimately the Court comes to the conclusion that the Court had no jurisdiction to entertain the suit. The party, who willingly disobeys the order and acts in violation of such an injunction, runs the risk for facing the consequence of punishment.

Object

15. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की माननीय न्यायालयों द्वारा बताये गये उद्देश्य के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली डिस्ट्रीक्ट न्यायालय द्वारा RCA No. 61195/16 उनवान *Sneh Lata Saini vs Sh. Krishan Kumar Saini* में दिनांक 08.05.2018 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के उद्देश्य (Object) के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

6. It was held in case titled Rachhpal Singh v. Gurdarshan Singh AIR 1985 P H 299 on 6 November, 1984 that Rule 2A are meant for enforcing an ad-interim injunction and not for punishing the person guilty of such disobedience. The relevant para no. 4 is reproduced as under:

4. Sub-rule (1) of R. 2-A provides that in the case of disobedience of any injunction granted under R. 1 or R. 2 or breach of any of its terms on which the injunction was granted or order made, the court may order the property of the person guilty of such indiscipline 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.

Sub-rule (2) lays down that no attachment made under the said rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured part and shall pay the balance, if any, to the party entitled thereto. From the combined reading of the provisions of these two sub-rules, it appears that their purpose is the enforcement of the injunction and not the punishment for its disobedience. From the phraseology used in the said rule, it is further evident that detention in the civil prison and attachment of the property are to continue for a specified period and that too only during the continuance of the disobedience or the breach. In the case of detention in the civil prison, the court is empowered to release the person guilty of disobedience or breach even prior to the expiry of the maximum period of three months and obviously it can be ordered only if the disobedience or breach discontinues. Similarly, attachment of the property

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

can not remain in force for more than one year and has to be withdrawn if any time prior thereto the disobedience discontinues.

It would not be possible for the court to order the sale of property if the disobedience or breach comes to an end prior to the period of one year. Similar are the provisions contained in R. 32 of O. 21 which relates to the enforcement of a decree for a permanent injunction. It cannot be disputed that the measures contained in Rule 32 are intended only to enforce the decree and not for awarding any punishment to the judgment-debtor for its disobedience. The conclusion, therefore, appears to be irresistible that the provisions of Rule 2-A are meant for enforcing an ad interim injunction and not for punishing the person guilty of such disobedience. We are fortified in our view from the following observations of the Supreme Court in Rani Sonabati Kumari's case (AIR 1961 SC 221) (supra):

> *"Though undoubtedly proceedings under Order 39, Rule 2(3) Civil Procedure Code, have a punitive aspect as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure code for the execution of a decree for a permanent injunction O. 21, R. 32 sets out the method by which such decrees could be executed and Clause (1) enacts `where the party against whom a decree..... for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree..... for an injunction by his detention in the civil prison, or by the attachment of his property or by both Cls. 2 and 3 of this rule practically reproduce the terms of clauses 4 and 3 respectively of O. 39, R. 2, and the provisions leave no room for doubt that the O. 39, R. 2(3) is in essence only the mode for the enforcement of effectuation of an order of injunction".*

Once it is held that the provisions of R. 2-A are not meant to punish the person guilty of disobedience and instead their purpose in substance is only to enforce an injunction, the answer to the question involved has to be that no intimation or continuation of the proceedings under the aforementioned rule would be competent after the ad interim injunction has been vacated.

7. It was held in case titled as Smt. Jagannathiya v. State of U.P. And Ors. 2006 (3) AWC 2600 on 25 May, 2006 that Order XXXIX Rule 2A CPC is to compel a person to obey the injunction and the purpose is not to punish the man but to see the decree or order is obeyed and the wrong done is remedy. At para no. 10 in the citation relied upon therein it is laid down that during pendency of application u/Order XXXIX Rule 2A CPC the suit itself is withdrawn then the Court is not justified to pass order of punishment at that stage. The relevant para no.

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

10, 11 are reproduced as under:

10. In Md. Jamal Paramanik and Ors. v. Md. Amanullah Munshi AIR 1989 (NOC) 50 (Gau), the Gauhati High Court held that it is not permissible for a court to impose a fine or compensation as one of the punishments, for the reason that the provisions of Order XXXIX, Rule 2A do not provide for it. In Thakorlal Parshottamdas v. Chandulal Chunnilal AIR 1967 Guj 124, Hon'ble Mr. Justice P.N. Bhagwati (as His Lordship then was) held that the punishment for breach of interim injunction could not be set aside even on the ground that the injunction was ultimately vacated by the appellate court. In Rachhpal Singh v. Gurdarshan Singh , a Division Bench of Punjab and Haryana High Court held that if an interim injunction had been passed and is alleged to have been violated and application for initiating contempt proceeding under Order XXXIX, Rule 2A has been filed but during its pendency the suit itself is withdrawn, the Court may not be justified to pass order of punishment at that stage. Thus, it made a distinction from the above referred Gujarat High Court's decision in Thakorlal Parshottamdas (supra) that contempt proceedings should be initiated when the interim injunction is in operation.

11. In Sitaram v. Ganesh Das, the Court held as under:

The purpose of Order XXXIX, Rule 2A, C.P.C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order, XXI, Rule 32, C.P.C. which provide for the execution of a decree for injunction. The mode of execution given in Order XXI, Rule 32 is the same as provided in Rule 2A of Order XXXIX. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari ; while dealing with Order XXXIX, Rule 2 (iii), C.P.C. (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of Order XXI, Rule 32 and of Order XXXIX, Rule 2 (iii), C.P.C. which is similar to Order XXXIX, Rule 2A. This curative function and purpose of Rule 2A of Order XXXIX, C.P.C. is also evident from the provision in Rule 2A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary.

8. In the circumstances of the case the appellant has already withdrew her suit on 07.07.2015 during pendency of application u/Order XXXIX Rule 2A CPC and therefore the injunction order has already stood vacated on the date of passing of order on application u/Order XXXIX Rule 2A CPC. In such view of the matter the remedy u/Order XXXIX Rule 2A CPC is not available to the appellant herein. Accordingly the

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

appeal stands dismissed. Parties to bear their own costs.

16. इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 27/2020 उनवान *Bristol-Myers Squibb Holdings Ireland vs Bdr Pharmaceuticals International* में दिनांक 18.11.2022 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के उद्देश्य (Object) के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *14. Discussing the purpose of Order XXXIX Rule 2A CPC in the decision cited as 1973 SCC OnLine All 296 Sitaram v. Ganesh Das, it was held:*
>
> > *"2. ... The purpose of Order 39, Rule 2-A of the CPC is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21. Rule 32 of the CPC which provide for the execution of a decree for injunction The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison.*
> >
> > *3. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari, AIR 1961 SC 221: while dealing with O. 39, Rule 2(iii) of the CPC (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of O. 21. R. 32 and of O. 39, R. 2(iii) of the CPC which is similar to Order 39. R. 2-A. This curative function and purpose of Rule 2-A of Order 39 of the CPC is also evident from the provision in Rule 2-A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil Neutral Citation No.2022/DHC/004948 imprisonment, he would have been released on the tinshed being removed, and it would therefore now, serve no purpose to send him to prison. For the same reason the attachment of property is also no longer needed. The order of the Court below has lost its utility and need no longer be kept alive".*

17. इसी प्रकार माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 715/2022 में उनवान ***Global Music Junction Pvt. Ltd vs Annapurna Films Pvt. Ltd*** में दिनांक 24.05.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के

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प्रावधान के उद्देश्य (Object) के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *9. Be that as it may, the main purpose behind Order XXXIX Rule 2A vesting the Court with power of attachment of property or detention of a person in civil prison in cases of disobedience, extends beyond mere enforcement of court orders. When a party disobeys a court order, the Court's ability to function effectively and uphold the rule of law is challenged. Contempt powers act as a deterrent against non-compliance, ensuring that court decisions and directions are respected and implemented. Contempt powers also help in maintaining the authority and dignity of the judiciary. Courts must be seen as institutions where laws are applied consistently and fairly, and whose orders are followed. By penalizing disobedience, the Court reaffirms its authority and the respect it commands. Contempt powers are also essential for protecting the rights of parties involved in legal proceedings. For instance, if a Court orders one party to pay alimony or child support and the party fails to comply, attaching property or imprisonment can be necessary to safeguard the financial rights and well-being of the intended beneficiary of such an order. These powers also help expediting the legal process by encouraging timely compliance with directions and rulings, thereby avoiding prolonged litigation and additional court resources being spent on enforcement.*

18. इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के उद्देश्य (Object) के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *15. The primary object of Rule 2A of Order 39 of the Code is not to punish a person, who has disobeyed the order of injunction, but to enforce the order. The willful disobedience, no doubt, invites wrath of penal action as envisaged in the said provision, hence, where any action is done in violation of a order or stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not to allow perpetuation of the wrong doing. These provisions are intended to maintain majesty of judicial order, to preserve rule of law and to ensure the faith of litigants in the administration of justice. It is a curative provision and its purpose is to ensure that the direction of the Court is implemented, disobedience of order is remedied and status quo ante is restored.*

Limitation

19. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की परिसीमा अवधि के बारे में विस्तार से समझना उचित प्रतीत होता है। इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की परिसीमा अवधि (Limitation) के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

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19. Issue of limitation:

19.1 This issue is no longer res-integra in view of the decision of this Court in the case of Bharatbhai Jivrajbhai (supra). A learned Single Judge (Coram: M.R. Shah, J.) (as his Lordship then was) had the occasion to consider whether there is any period of limitation, governing the proceedings under Order 39 Rule 2A of the CPC. I may quote the relevant observations:
"It is the case on behalf of the contesting respondents that as observed by the Honble Supreme Court in the case of Pallav Seth (Supra), the proceedings under Order 39 Rule 2A of the CPC breach of injunction are akin to the proceedings under the Contempt of Courts Act, the period of limitation as prescribed under the Contempt of Courts Act would be applicable. In support of his above submission, he has also relied upon the decision of the Division Bench of this Court in the case of Dinesh A. Parikh (Supra). The aforesaid has no substance and cannot be accepted. Merely because the proceedings under Order 39 Rule 2A of the CPC for breach of injunction are considered to be akin to the proceedings under the Contempt of Courts Act, the period of limitation as prescribed under Section 20 of the Contempt of Courts Act would not be applicable. The Honble Supreme Court in the case of Pallav Seth (Supra) has not held that the period of limitation prescribed under Section 20 of the Contempt of Courts Act would be applicable in a proceeding for breach of injunction under Order 39 Rule 2A of the CPC.
Similarly, even no such view has been expressed by the Division Bench of this Court in the case of Dinesh A. Parikh (Supra). Under the circumstances, the contention on behalf of the contesting respondents that the present application is barred by law of limitation i.e. beyond the period of one year either from the date of alleged breach of injunction i.e. execution of the Agreement to Sell or even from the date of knowledge i.e. from the date of issuance of the notice upon the defendants alleging breach of injunction cannot be accepted. No such period of limitation is prescribed for initiation of the proceedings for breach of injunction under Order 39 Rule 2A of the CPC which is provided under Section 20 of the Contempt of Courts Act. Under the circumstances, the contention on behalf of the contesting respondent Nos.2, 4 and 5 that even for initiating the proceedings for breach of injunction under Order 39 Rule 2A of the CPC, the application is to be submitted within a period of one year as provided under Section 20 of the Contempt of Courts Act cannot be accepted. 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 injunction under Order 39 Rule 2A of the CPC."
19.2 The aforesaid decision of this Court was later followed by a Division Bench of the Delhi High Court in the case of Caravan Commercial Co. Ltd. vs.Yashashwi Aggarwal, reported in (2017) 238 DLT 643. Justice Indira Banerjee (as her Ladyship then was), speaking for the Bench, observed as under:

"Insofar as the plea of limitation is concerned, there is no dispute that IA 22682/2012 was filed under Order 39 Rule 2A CPC only without any reference to or under the provisions of

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

the Contempt of Courts Act. The limitation becomes relevant in view of the provisions of Section 20 of the Contempt of Courts Act and not when an application under Order 39 Rule 2A CPC is filed. Even otherwise, when the allegation is of violation of an interim order of the Court, the application would not be hit by delay and laches. We may note in this regard the judgment of the Gujarat High Court in the case of Bharatbhai Jivrajbhai v. Chaganbhai Samabhai and Anr. passed in Miscellaneous Civil Application No. 1751/2011 decided on December 14, 2012, wherein Gujarat High Court, on an identical plea of limitation raised by the respondents 2, 4 and 5 therein and has rejected such a plea and observed that merely because the proceedings under Order 39 Rule 2A of the CPC for breach of injunction are considered to be akin to the proceedings under the Contempt of Courts Act, the period of limitation, as prescribed under Section 20 of the Contempt of Courts Act would not be applicable. The Court also held that the Supreme Court in the case of Pallav Sheth v. Custodian and ors (2001) 7 SCC 549 has not held that the period of limitation prescribed under Section 20 of the Contempt of Courts Act would be applicable in a proceeding for breach of injunction under Order 39 Rule 2A CPC. We are in agreement with such a conclusion. Suffice to state, no period of limitation is prescribed for initiating proceedings for breach of 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 injunction under Order 39 Rule 2A of the CPC. That apart, it must also be held that Order 39 Rule 2A CPC being a special provision inserted in the Code, shall prevail over the general law of contempt contained in the Contempt of Courts Act."

20. Whether the appellant remained unaware of the registered sale deeds for a period of almost 13 years is a question of fact.

21. To a large extent, Mr. Parikh, the learned counsel appearing for the appellant is right in his submission that under the Limitation Act, no period is advisedly prescribed within which an application under the provision of Order 39 Rule 2A of the CPC for disobedience or breach of injunction must be filed. Mr. Parikh is right in his submission that the court may take suo motu cognizance of such a breach or disobedience at any stage in exercise of its power under section 151 of the CPC. According to Mr. Parikh, the case is one of collusion between late Saraswatiben and the purchaser. Mr. Parikh pointed out that it is only after the purchaser was permitted to implead as a party in the suit proceedings, the appellant was able to prefer the application, Exh.211. According to Mr. Parikh, the very right to file the application, Exh.211 crystalised on the purchaser being joined as a party defendant in the suit on 23rd November, 2010.

22. It is evident from the impugned order that the Trial Court has placed strong reliance on Article 137 of the Limitation Act. Coming to the aspect of limitation, Mr. Joshi submitted that by virtue of the residuary Article 137 of the Limitation Act, the

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

application is barred by limitation as it was not filed within three years from the date of knowledge acquired by the aggrieved party in relation to the existence of the sale deed. Let me say something on Article 137 of the Limitation Act. The Schedule to the Limitation Act is divided into three divisions. The Third Division pertains to the application and consists of two parts, the first part being the "APPLICATIONS IN SPECIFIED CASES" and the second part being "OTHER APPLICATIONS" under which Art. 137 falls. It reads thus :--

"137. Any other application Three years When the right to for which no period of apply accrues."
limitation is provided elsewhere, in this Division.

23. The law on the point can be explained thus:

(A) Under the Limitation Act, no period is advisedly prescribed within which an application for disobedience or breach of injunction under the provision of Order 39 Rule 2A of the CPC must be made.
(B) The assumption that under Article 137, the right to apply necessarily accrues on the date of the breach or disobedience of injunction is unwarranted. At the same time, once the plaintiff comes to know about the breach, then he must necessarily prefer the application within three years thereof.
If there is gross or inordinate delay, then the same must be satisfactorily explained.

(C) Such delay must be explained, but cannot be equated with the absolute bar of limitation.

(D) The inherent powers of the Court under Section 151 to punish for disobedience or breach of the order of injunction has nothing to do with Article 137 of the Limitation Act. In the interest of justice, if the Court deems fit, then it is always open for the Court to exercise its inherent powers at any point of time because it is the duty of the Court, as a policy, to set the wrong right and not to allow perpetuation of the wrong doing.

(E) If there is gross delay, then it is for the Court concerned to decide whether to exercise its inherent powers under Section 151 of the CPC or not.

24. I fail to understand why the appellant had to wait till the time the purchaser came to be impleaded as the defendant No.2 in the suit proceedings. The appellant claims that the alleged breach came to his notice in the year 2005, but it took time before the purchaser was impleaded in the suit proceedings as the defendant No.2. This explanation is not convincing and has not appealed to this Court. In fact, the day, the appellant came to learn about the transfer of the suit land, he could have immediately brought it to the notice of the court concerned. Once such a fact is brought to the notice of the court concerned, then it is for the Court to look into the matter and deal with the person who is prima facie found to be guilty of such breach or disobedience of the injunction. In the case on hand, the breach cannot be termed as a continuing wrong. The execution of the sale deed could be termed as a singular act

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Reason: SelfAttested

and the same was completed on the date of execution of the sale deeds. In such circumstances, it was expected of the appellant to prefer an appropriate application in the year 2005 itself. The question whether the alleged breach committed by the defendant No.1 in collusion with the defendant No.2 can be said to be continuing action has been rightly countered by the defendant No.2 relying on the decision of the Apex Court in the case of Balakrishna Savalram Pujari Waghmare & Ors. vs. Shree Dhyaneshwar Maharaj Sansthan & Ors., reported in AIR 1959 SC 798. It is observed in this decision that section 23 of the Limitation Act refers not to a continuing right but to a continuing wrong. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In the aforesaid context, I may refer to one decision of the Bombay High Court in the case of Mahendra Builders (supra), wherein Justice A.M. Khanwilkar (as his Lordship then was) observed as under:

"Reliance is also justly placed on the decision of the Nagpur Bench in the case of J.H.S. Evangelical German Mission, Superintendent Leprosy Asylum, Chandkhuri v. Mahant Ramsahaigir Chela Sunsergir Gosawi reported in AIR 1939 Nagpur 145. Even in this decision, while considering provisions of Section 23 and Articles 142 and 144 of the Limitation Act, the Court observed that complete usurpation of possession and occupation and consequent dispossession of the owner of the land is a wrong which is complete from the moment of the dispossession. Relying on this observation, counsel for the respondent would contend that the creation of third party interest in the suit premises of any nature as is alleged by the petitioner, the act is completed and period of limitation would reckon in that case from the date of knowledge acquired by the petitioner in relation to the existence of that fact. Counsel for the respondent had rightly argued that the argument which was pressed into service across the bar on behalf of the petitioner that the date on which petitioner acquired knowledge of existence of registered Deed of Assignment, that case is not stated in the petition. Whereas in the Petition the case is one of continuing contempt. Suffice it to observe that in the fact situation of the present case it is not possible to uphold the claim of continuing contempt. Thus, the Petition is barred by limitation."

25. However, at the same time, the issue with regard to limitation should not come in the way of the court concerned if it proposes to take action in accordance with law. I am saying so because it is the duty of the Court, as a policy, to set the wrong right and not to allow perpetuation of the wrong doing. The provisions like Order 39 Rule 2A of the CPC are intended to maintain the majesty of the judicial order, to preserve the rule of law and to ensure the faith of the litigants in the administration of justice. It is a curative provision and its purpose is to ensure that the direction of the Court is implemented, the disobedience of order is remedied and appropriate order is passed. I am saying so keeping in mind Section 151 of the CPC.

Inherent Power Of Court

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

20. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय की सिविल प्रक्रिया संहिता—1908 की धारा—151 के तहत अंर्तनिहित शक्तियों के बारे में विस्तार से समझना उचित प्रतीत होता है। इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान न्यायालय की सिविल प्रक्रिया संहिता—1908 की धारा—151 के तहत अंर्तनिहित शक्तियों के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *26. Section 151 of the Civil Procedure Code confers power to make such orders as may be necessary for the ends of justice or to prevent abuse of process of court. Every court is constituted for the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary, and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo the wrong in the course of the administration of justice. As pointed out by the Supreme Court in N.S. Mills v. Union of India: [1976]1 SCR 803 , the inherent power of the court has its roots, in necessity and its breath is coextensive with the necessity. Section 151 does not confer any powers, but only indicates that there is a power to make such orders as may be necessary for the ends of justice and to prevent the abuse of process of court. As observed by the Supreme Court in Manoharlal v. Seth Hiralal: (1962)1 S.C.R. 450, the inherent power has not been conferred on the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it. As pointed out by the Supreme Court in Padam Sen v. The State of Bihar: 1961CriLJ322 , the inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore, it must be held that the court is free to exercise them for the purpose mentioned in Section 151 of the Code, when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. The language of Section 151 of the Code is wide enough to clothe the civil courts with the inherent powers to do the right and undo the wrong in the course of administration of justice.*
>
> *27. I must bear in mind that when an order of temporary injunction is granted by the court under Order 39, Rule 1 of the Code or when a decree for permanent injunction is passed by the civil court, it involves the following three stages:*
>
> *(A) The first stage is the issue of an order of temporary injunction or passing of a decree for permanent injunction.*
> *When a petition under Order 39, Rule 1 of the Code is filed by a party, the court being satisfied that the conditions prescribed under Order 39, Rule 1 of the Code are satisfied, may issue an order of temporary injunction in favour of the party, who has applied for the same. Similarly, the court after full trial of a suit and upon the merits of the case, may pass a decree for permanent injunction in favour of a party. There is specific provision in the Code namely Order 39, Rule 1 dealing with the*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

grant of the order of temporary injunction. Section 38 of the Specific Relief Act deals with the circumstances under which a decree for perpetual injunction can be passed by the courts.

(B) The second stage is the implementation of the order of temporary injunction or decree granting perpetual injunction. There is no specific provision under the Code dealing with the implementation of the order of temporary injunction or a decree for perpetual injunction.

(C) The third stage is the punishment for disobedience of the order of injunction. Order 39, Rule 2A of the Code deals with the consequences of disobedience or breach of injunction or other orders made under Order 39, Rule 1 of the Code. Order 21, Rule 32 of the Code says that where a party against whom a decree for injunction has been passed, has had an opportunity of obeying the decree but has willfully failed to obey it, the decree for injunction may be enforced by his detention in civil prison or by the attachment of his property or by both. Thus, the Code contains specific provision with regard to the grant of an order of temporary injunction and for punishing the party who disobeys the order of temporary injunction and the decree for perpetual injunction. However, there is no provision in the Code providing for the implementation of the order of temporary injunction or decree for perpetual injunction granted by the courts. When there is no specific provision of law which is sufficient to implement the order of temporary injunction or the decree for perpetual injunction granted by the court, there is no good reason why the provisions of Section 151 of the Code cannot be invoked for the said purpose to render justice or to redress the wrong, because, the courts should not only have the power to pass an order, but also should have the power to implement the said order. Therefore, when a party has obtained an order of temporary injunction from a court under Order 39, Rule 1 of the Code and the other party against whom the order of injunction is passed disobeys the same, the aggrieved party can certainly approach the court invoking the power of the court under Section 151 and also pray in peculiar circumstances for police aid for the enforcement of the order of temporary injunction. When it is brought to the notice of the court that the enforcement of the order of temporary injunction is sought to be prevented or obstructed, the court in exercise of the inherent powers under Section 151, can even direct the police authorities to render all aid to the aggrieved party in the enforcement of the order of the injunction granted by the court in order to render complete justice. It must be remembered, by ordering police help to the party who has obtained an order of temporary injunction, the court merely takes the follow-up steps to implement its earlier order of injunction. In appropriate cases, where the court finds that a party who had secured an order of injunction from the court is not in a position to have its full benefit owing either to obstruction or non-co-operation of the other side, it is always open to the court to direct the police authorities to see that its order is obeyed. As observed by the Full Bench of the Bombay High Court in Century Flour Mills Ltd. v. Suppiah (1975)2 M.L.J. 54, when there is a violation of an order of injunction granted by the civil court, or when something has been, done in disobedience of such an order of

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

injunction, it is the duty of the court as a matter of judicial Policy to undo the wrong done in disobedience of the court's order and the power to enforce the order of injunction by ordering police aid is available under Section 151 of the Code.

Application

21. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत प्रस्तुत प्रार्थना पत्र की अनुप्रयोज्यता के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा आपराधिक अपील संख्या 1798 / 2009 में उनवान *Kanwar Singh Saini vs High Court Of Delhi* में दिनांक 23.09.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत प्रस्तुत प्रार्थना पत्र की अनुप्रयोज्यता के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

10. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. 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.

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12. The proceedings under Order XXXIX Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both. The provision of Order XXI Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing.

Execution of an injunction decree is to be made in pursuance of the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible.

13. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute.
16. The case requires to be considered in the light of the aforesaid settled legal proposition.

Whatever may be the circumstances, the court decreed the suit vide judgment and decree dated 12.5.2003. The said decree was passed on the basis of admission/undertaking made by the appellant on 29.4.2003 and the pleadings taken by him in his written statement.

Therefore, in a case where there was any disobedience of the said judgment and decree, the application under Order XXXIX Rule 2A CPC should not have been entertained. Such an application is maintainable in a case where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree holder-Mohd. Yusuf had been to file application for execution under Order XXI Rule 32 CPC. The procedure in execution of an injunction decree is same as prescribed under Order XXXIX Rule 2A i.e. attachment of property and detention of the disobedient to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted.

17. Application of the decree holder had been for violation of the undertaking which at the most could be civil contempt as defined under Section 2(b) of the Act 1971 as it includes the wilful breach of an undertaking given to a court. Therefore, the Trial Court failed to make a distinction between civil contempt and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear cut case involving private rights of the parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to the High Court for initiating the proceedings for criminal contempt.

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21. In view of the above discussion, as such proceedings were not maintainable, the order of reference itself was not warranted. It also becomes crystal clear that the appellant had been subjected to unfair procedure from the institution of the suit itself. The suit had been "disposed of" in great haste without following the procedure prescribed in CPC. Once the suit has been decreed, the court could not entertain the application under Order XXXIX Rule 2A CPC as the suit had already been decreed and such an application is maintainable only during the pendency of the suit in case the interim order passed by the court or undertaking given by the party is violated.....

xxx

25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.

In Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr., AIR 1969 SC 189, this Court observed as under:

> *"A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."*
>
> *(Emphasis added)*

22. इसी प्रकार माननीय दिल्ली उच्च न्यायालय द्वारा उनवान *Louis Vuitton Malletier vs Capital General Store* में दिनांक 06.02.2023 को दिये गये निर्णय में सिविल प्रक्रिया संहिता–1908 के आदेश–39 नियम–02ए के प्रावधान के तहत प्रस्तुत प्रार्थना पत्र

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

की अनुप्रयोज्यता के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

3. Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.7 however, struck a dissenting note:

> *—61. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not —mere disobedience‖ but —wilful disobedience‖. We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature. When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. This also shows the object of Order 39 Rule 2-A is primarily to enforce orders of interim injunction. Orders passed Digitally Signed (2022) 1 SCC 209 By:SUNIL SINGH NEGI CS(COMM) 469/2021 15:51:20 Neutral Citation Number: 2023/DHC/000810 under Section 17(2) of the Arbitration Act, using the power contained in Order 39 Rule 2-A are, therefore, properly referable only to the Arbitration Act. Neither of the aforesaid judgments are an authority for any proposition of law to the contrary.‖ (Emphasis supplied)*

4. According to the afore-extracted passage from Amazon7, unlike provisions dealing with contempt of court, which are intended to be fundamentally punitive, Order XXXIX Rule 2A is intended to compel and enforce obedience of the order of interim injunction.

5. What happens, then, where the disobedience had taken place but has come to an end?

6. It cannot, quite obviously, be said that Order XXXIX Rule 2A becomes inapplicable once the disobedience has ceased. In such a case, possibly, the gap between the exercise of power

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Date: 2025.10.14 16:57:41 IST
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under Order XXXIX Rule 2A and exercise of power of contempt of Court might stand narrowed considerably as, once the disobedience has ceased, there can be no question of —enforcement of the interim injunction, and all that remains is punishment for having committed the breach.

xxx

22.5 Applying the ratio of Amazon7, proceedings under Order XXXIX Rule 2A are intended to enforce the order of interlocutory injunction and to ensure its compliance. There cannot be compliance CS(COMM) 469/2021 15:51:20 Neutral Citation Number: 2023/DHC/000810 with the order beyond the terms of the order itself. Compliance with the order has strictly to be in the terms in which the order is passed. Where, therefore, the order injuncts the defendant from manufacturing or marketing the goods bearing the LV brand, the Order XXXIX Rule 2A court, which is concerned with ensuring with compliance of the order, cannot take into consideration alleged counterfeiting of other brands. That would go against the very ethos of Order XXXIX Rule 2A, as identified and understood by the Supreme Court in Amazon7.

xxx

28. That, then, leaves the question of the appropriate sentence to be awarded in the present case. Order XXXIX Rule 2A, if it is read strictly, does not provide much latitude to the court in such cases. It empowers the court, consequent on finding the injunction having been breached, to attach the property of the person guilty of the breach and also to order detention of such person in civil prison for a term not in excess of three months. At the same time, the Supreme Court has, in Samee Khan v. Bindu Khan14, held that, where properties of the alleged violator are attached, the attachment has to cease with the Digitally Signed (1998) 7 SCC 59 By:SUNIL SINGH NEGI CS(COMM) 469/2021 15:51:20 Neutral Citation Number: 2023/DHC/000810 cessation of act of disobedience. In a situation such as the present, where the breach already stands committed, but is no longer continuing, the court does not have, with it, the option of attaching the defendant's property.

23. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 380 / 2007 उनवान *Food Corporation Of India vs Sukh Prasad* में दिनांक 24.03.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत प्रस्तुत प्रार्थना पत्र की अनुप्रयोज्यता के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

24. The power exercised by a court under order 39, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. <u>While considering an application under order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the `order', on surmises suspicions and inferences. The power under Rule 2A should be exercised with great caution and responsibility.</u>

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Date: 2025.10.14 16:57:41 IST
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Nature Of Provision

24. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा आपराधिक अपील संख्या 1798/2009 में उनवान *Kanwar Singh Saini vs High Court Of Delhi* में दिनांक 23.09.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *11. In Food Corporation of India v. Sukha Deo Prasad, AIR 2009 SC 2330, this Court held that the power exercised by a court under Order XXXIX Rule 2A is punitive in nature, akin to the power to punish for civil contempt under the Act 1971. Therefore, such powers should be exercised with great caution and responsibility. 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.*

25. इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 27/2020 उनवान *Bristol-Myers Squibb Holdings Ireland vs Bdr Pharmaceuticals International* में दिनांक 18.11.2022 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *10. In the decision reported as (2010) 3 SCC Sahdeo v. State of U.P., with respect to the contempt proceedings, it was held by the Hon"ble Supreme Court:*
>
> > *"15. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt. [Vide B.K. Kar v. Chief Justice and Justices of the Orissa High Court [AIR 1961 SC 1367]".*
>
> *xxx*
>
> *13. However, correctness of the decision in U.C. Surendranath (supra) was doubted by the Hon"ble Supreme Court in the decision cited as (2022) 1 SCC 209 Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. Hon"ble Supreme Court noted that the addition of the word "wilful" in U.C. Surendranath (supra) is not correct and requires review by a larger bench. It was held:*
>
> > *"61. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971.*

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Date: 2025.10.14 16:57:41 IST
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It is quite another thing to say that Order 39 Rule 2-A requires not "mere disobedience" but "wilful disobedience". We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature [When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. This also shows the object of Order 39 Rule 2-A is primarily to Neutral Citation No.2022/DHC/004948 enforce orders of interim injunction.] . Orders passed under Section 17(2) of the Arbitration Act, using the power contained in Order 39 Rule 2-A are, therefore, properly referable only to the Arbitration Act. Neither of the aforesaid judgments are an authority for any proposition of law to the contrary".

26. इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(OS) 206/2016 उनवान *Pamela Manmohan Singh vs Harnam Kaur* में दिनांक 24.03.2017 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

21. From the aforesaid, it follows that the power of the Civil Court under Order XXXIX Rule 2A of the CPC is in the nature of contempt of court to the extent of violation of its own orders under Order XXXIX Rules 1 & 2 of the CPC. Order XXXIX Rule 2A of the CPC empowers the Civil Court to, in exercise of the said power, order the property of the person guilty of disobedience or breach to be attached and to order such person to be detained in civil prison for a term not exceeding three months. Sub-rule (2) of Order XXXIX Rule 2A of the CPC empowers the Court to sell the attached property and out of the proceeds, award such compensation as the Court thinks fit to the injured party. Per Section 12 of the Contempt of Courts Act, civil contempt also is punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2,000/- or with both.

22. It will thus be noticed that the power to punish, under Order XXXIX Rule 2A of the CPC and under the Contempt of Courts Act are also similar, with the length of imprisonment

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

under the Contempt of Courts Act being double the length of imprisonment in Order XXXIX Rule 2A of the CPC.

Role/Approch of Court

27. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय की भूमिका के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 27/2020 उनवान *Bristol-Myers Squibb Holdings Ireland vs Bdr Pharmaceuticals International* में दिनांक 18.11.2022 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *15. As to the burden of proving contempt in terms of Order XXXIX Rule 2A, it was held by the Hon''ble Supreme Court that the complainant must prove the same beyond doubt. In the case of (2009) 5 SCC 665 Food Corpn. of India v. Sukh Deo Prasad, it was held:*
>
> > *"38. The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2-A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the "order", on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility".*

28. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा आपराधिक अपील संख्या 1798 / 2009 में उनवान ***Kanwar Singh Saini vs High Court Of Delhi*** में दिनांक 23.09.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की प्रकृति के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *19. ....In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him. (See: Niaz Mohammad & Ors. v. State of Haryana & Ors, (1994) 6 SCC 332; Bank of Baroda v. Sadruddin Hasan Daya & Anr., AIR 2004 SC 942; and Rama Narang v. Ramesh Narang & Anr., AIR 2006 SC 1883) Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.

Main Proceeding & O39R2A

29. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय में विचाराधीन मूल कार्यवाही एवं न्यायालय में विचाराधीन सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए की कार्यवाही के मध्य संबंधों के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 27/2020 उनवान *Bristol-Myers Squibb Holdings Ireland vs Bdr Pharmaceuticals International* में दिनांक 18.11.2022 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय में विचाराधीन मूल कार्यवाही एवं न्यायालय में विचाराधीन सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए की कार्यवाही के मध्य संबंधों के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

So far as the instant case is concerned, the question of jurisdiction to entertain an application under Order 39 Rule 2A of the CPC when the main proceeding itself is concluded, in our considered view, may not be appropriate. The question of contempt arises when an order of a court or authority has been disobeyed. It is really of no consequence whether those proceedings are subsequently allowed or dismissed. The contempt would still remain on record. Therefore, the dismissal of the writ petition by the learned Single Judge on the ground that the proceedings itself have been concluded and, therefore, the matter has become infructuous, namely, the application under Order 39 Rule 2A of the CPC, in our considered view, is not what the law intended. The contempt proceedings are maintainable irrespective of the dismissal or allowing of the proceedings under which an application under Order 39 Rule 2A of the CPC has been filed.

Disobedience

30. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 251/2021 उनवान *Cross Fit Llc vs Mr Renjith Kunnumal* में दिनांक 09.10.2023 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

27. There has, therefore, to be strict and irrefutable proof of disobedience, for punitive action to follow under Order XXXIX Rule 2A of the CPC. Proof of contumacious disobedience has to exist, beyond any doubt. The court can not presume or conjecture disobedience. In its zeal to uphold its majesty and ensure implementation of rule of law, the court cannot hold a

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

person guilty of violation of its orders and proceed punitively against him merely because the circumstances give rise to a strong suspicion of the order of the court having been disobeyed. The principle that suspicion, howsoever strong, can be no substitute for proof may, in my considered opinion, be justifiably be invoked, while dealing with application under Order XXXIX Rule 2A of the CPC.

31. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 27/2020 उनवान *Bristol-Myers Squibb Holdings Ireland vs Bdr Pharmaceuticals International* में दिनांक 18.11.2022 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

15. As to the burden of proving contempt in terms of Order XXXIX Rule 2A, it was held by the Hon''ble Supreme Court that the complainant must prove the same beyond doubt. In the case of (2009) 5 SCC 665 Food Corpn. of India v. Sukh Deo Prasad, it was held:

"38. The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2-A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the "order", on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility".

32. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 2910/2016 उनवान *U.C. Surendranath vs Mamballys Bakery* में दिनांक 22.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

7. For finding a person guilty of willful disobedience of the order under XXXIX Rule 2A C.P.C. there has to be not mere "disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

of the court that the disobedience was not mere "disobedience" but a "willful disobedience". As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the Commissioner has noted is that "non removal of the hoarding" displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one.

Standard Proof Of Disobedience

33. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के साक्ष्य के मानक के बारे में विस्तार से समझना उचित प्रतीत होता है। इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना के साक्ष्य के मानक के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

28. The impugned order passed by the Civil Court may not be happily worded. However, what is sought to be conveyed by the Civil Court indirectly in the impugned order, more particularly, on the issue of limitation, is that the proceedings under Rule 2A of Order 39 is a serious matter. The Court is empowered to order to take away the liberty of an individual and order detention in civil prison of the person who violates the order. This power is penal in nature. As discussed above, the burden is heavily on the person who alleges disobedience to prove the ingredients of the offence beyond reasonable doubt. An order under Rule 2A should not be passed on suspicion or as a matter of course. There should be clear proof that the order to be obeyed was clear and unambiguous and with the full knowledge of the content of the order it was disobeyed. In the case on hand, Saraswatiben is dead and gone. Whether the purchaser was hand in glove with Saraswatiben or not is a question of fact and having regard to the materials on record, the Trial Court has arrived at the conclusion that there is nothing to indicate that the purchaser was hand in glove. Suspicion, however, strong cannot take the place of proof. It goes without saying that the order was flouted and the suit land came to be transferred while the injunction was in operation, but for that purpose, Saraswatiben could have been dealt with appropriately in accordance with law. The injunction was against Saraswatiben. It is, no doubt, true that if any collusion or connivance is established with the purchaser, the purchaser would be equally responsible. However, almost more than two decades have passed so far as the breach complained is concerned.

29. Standard of proof required in the case of breach of injunction:-

29.1 The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of proof beyond reasonable

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

doubt and a standard of balance on probabilities. Be it noted, as held by the Supreme Court in Chottu Ram v. Urvashi Gulati:(2001) 7 SCC 530 : 2001 and Anil Ratan Sarkar v. Hirak Ghosh: (2002) 4 SCC 21 that in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self-serving statements of the party seeking the intervention of the Court.

29.2 The proceedings under this Rule are quasi-criminal in nature and have a punitive aspect as is evident from the contemnor being liable to be detained in civil prison. They are in substance designed to effect the enforcement or implementation of the order. This is clearly brought out by their identity with the procedure prescribed by the Code for execution of decree for permanent injunction under Order XXI Rule 32 which sets out the method by which such decree can be executed (State of Bihar V. Sonabati Kumari (AIR 1961 SC221)). The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an order of injunction directing the opposite party to do or not to do something and there was disobedience or breach of such order. (Food Corporation of India V. Sukh Deo Prasad (2009) 5 SCC 665)). The powers under Rule 2A are required to be exercised with great caution and responsibility. It has, therefore, been held that there should be no element of vindictiveness in punishment. It should commensurate with maintaining the dignity of the Court.

Disobedience By Third Party

34. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की न्यायिक कार्यवाही से पृथक पक्षकार द्वारा अवमानना के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय कर्नाटका उच्च न्यायालय द्वारा रिट पिटीशन संख्या 54219/2018 उनवान *Smt. T. Geetha vs Sri. Ranganath* में दिनांक 05.02.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की न्यायिक कार्यवाही से पृथक पक्षकार द्वारा अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:—

11. A bare reading of Order XXXIX Rule 2A of CPC refers to disobedience or breach of injunction by 'any person'. There is no reference to the parties to the suit, but specific reference is to 'the person guilty of such disobedience or breach'. Therefore, the finding of the Trial Court that against the stranger Order XXXIX Rule 2A cannot be invoked, cannot be accepted. In the present case, in view of the peculiar facts and circumstances of the case, the said finding given by the Trial Court that the remedy of the petitioner is to invoke contempt jurisdiction cannot be accepted, in view of the finding NC: 2024:KHC:4874 of the Division Bench of this Court in Rudraiah (supra), where Division Bench has categorically held as under:

> *"That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder, for forcing the party to obey the injunction order. It is a well settled principle of law that when there is special law and general law,*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

the provisions of the special law prevail over the general law and when special procedure and special provision are contained in the CPC itself under Order 39 Rule 2A for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked. If such a course encouraged holding that it amounts to contempt of court, when an order of subordinate court is not obeyed, it is sure to throw open a floodgate of litigation under contempt jurisdiction."

35. इसी प्रकार माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 715/2022 में उनवान *Global Music Junction Pvt. Ltd vs Annapurna Films Pvt. Ltd* में दिनांक 24.05.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की न्यायिक कार्यवाही से पृथक पक्षकार द्वारा अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

10. However, in cases of civil contempt under Order XXXIX Rule 2A, the action for contempt must be directed against the specific party who is subject to the court order or injunction. This rule is specifically designed to address non-compliance with the Court's interim orders for enforcement of the rights of parties, as determined by the Court. Order XXXIX Rule 2A of CPC only applies in case of disobedience or breach of the injunction order, or terms on which such an order is granted. Thus, it can only be invoked by a party in whose favour an injunction order has been granted under Order XXXIX Rules 1 and 2 of the CPC, and against a party injuncted by operation of the said order. In the instant case, the DB Order, passed under Order XXXIX Rules 1 & 2 of CPC, restrained Defendant No. 6 from engaging with third parties for monetizing new songs until September 2025. However, there are no directions issued by the Division Bench that can be interpreted to operate as a restraint on the Plaintiff. As pointed out by Mr. Dave, the only terms imposed on the Plaintiff pertain to making a monetary deposit in Court, which has been duly complied with. In absence of such an injunction or order under Rules 1 or 2 against the Plaintiff, there is no possibility of any disobedience-- wilful or otherwise. Hence, there is no basis for Defendant No. 6 to claim that the Plaintiff has violated the directions issued in the DB Order. We must nevertheless observe that the Court, on a prima facie assessment, initially found the Plaintiff's conduct to be contumacious, however, upon a detailed examination of the facts and applicable law, the Court finds merit in the contention of the Plaintiff that the instant application is not maintainable under Order XXXIX Rule 2A of CPC.

36. इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की न्यायिक कार्यवाही से पृथक पक्षकार द्वारा अवमानना के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

Order 39 Rule 2A of the CPC against a third party:

44. The above takes me to consider the question whether the respondent No.2 (purchaser,) not being a party to the suit at the time of the grant of temporary injunction and claiming to be unaware of such temporary injunction, could be said to have breached the same.

45. The word 'person' as appearing in Sub-rule (1) of Rule 2A of Order 39 is wide enough to engulf a person, who is an agent, a servant and a workman. Rule 2A was introduced by the Amending Act of 1976. It takes the place of Sub-rules (3) and (4) of Rule 2 of Order 39. The said sub-rules have been deleted from rule 2 by the said Amending Act. In addition to reproducing the provisions of Sub-rules (3) and (4) of Rule 2, the new Rule 2A provides for the breach of an order of injunction passed under Rule 1 of the said Order, and it also provides penalty for the breach or disobedience of an order of injunction made under Rule 1 or Rule 2. While considering a case under Sub-rules (3) and (4) of Rule 2, as it existed prior to the amendment, the Supreme Court in The State of Bihar v. Sonabati Kumari, AIR 1961 SC 221, held that the expression 'person' appearing in Order 39, Rule 2A has been employed merely compendiously to designate every one in the group defendant, his agents, servants and workmen and not for excluding any defendant against whom the order of injunction has primarily been passed. If such were not the law, orders of injunction would be rendered nugatory by their being contravened by the agents and servants of the parties, and it could be conveniently defied by setting up a third party. This legal position is brought out by the terms of an injunction order set out in Form 8 of Appendix F to the CPC. Whether a person not impleaded in the suit and not named in the injunction order can be proceeded against under Order 39, Rule 2A for violation of the order depends on the facts and circumstances of the case?. An injunction is an equitable relief and it is trite law that equity acts in personam. Therefore, an injunction is a personal matter.

46. An injunction is a judicial process whereby a person is ordered to be restrained from doing or to do a particular act or thing in a particular manner. The former is called the "restrictive injunction" and the latter a "mandatory injunction". An interlocutory or interim injunction is to preserve matters "in site" until the case can be tried. The ordinary rule, therefore, is that the person disobeying the order of injunction is to be proceeded for contempt as the person named in the writ. Persons who are not parties where order of injunction is passed are normally not to be proceeded against for disobeying the injunction. However, the exception to this general rule is that where it is alleged and proved that the person who violated the order of injunction was an agent or servant or workman of the person against whom the order of injunction was passed, the proceeding can be validly initiated against such person. In such a case the person violating the order can be proceeded against, and also who have acted in abetting the violation of the order of injunction. The violation of an injunction is punishable under the Code itself. The nature of the proceedings and quality of

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

evidence which are required to be proved and established may be of the standard of a criminal proceeding, though the proceeding is punitive in nature. However, stricter proof than civil actions is necessary. Though the proceedings under Order 39, Rule 2A have a punitive aspect as is evident from the contemner being liable to be ordered in civil prison, they are designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with procedure prescribed by Order 21, Rule 32 for the execution of a decree of a permanent injunction. It is, however, to be borne in mind that where a person who is not a party to the suit is proceeded against in order to punish him it is essential that he should be made a party to the proceeding for violation and it should be brought home by sufficient and unimpeachable evidence that he had been guilty of abetting violation of injunction. A party proceeded against for violation of injunction can prove his innocence in the following manner, i.e. by proving that (a) the order was not within his knowledge, or (b) the order was ambiguous and was reasonably capable of more than one interpretation or (c) that in fact he did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. The question whether a party has understood an order in a particular manner, and has conducted himself in accordance with such a construction is primarily one of fact. The party setting up such a plea has to prove it. (see Prafulla Kumar Mohapatra vs. Jaya Krushna Mohapatra, AIR 1994 Ori. 173)

47. In short, to put it pithily, can it be said that for a breach of the injunction by a party or a stranger for aiding or abetting the breach alone, the Court's inherent power can be exercised and not in a case of a third party, who had the knowledge of the order, but decided to violate it, who may be guilty of obstructing the administration of justice still, will not be subject to any restitution order? This I feel needs no detailed discussion. No person can obstruct the path of justice. No one can escape by committing a gross and violent obstruction to the implementation of the order/direction of the Court. The only question relevant in such a situation will be, whether the right which such a person has pleaded has been acquired by the violation of the order or had existed in him independently unaffected by the injunction. There can be no other law than one stated above that no person should be allowed to reap the benefits of a wrong done by him and thus whether he is a guilty of civil contempt or criminal contempt, the wrong doer can always be subjected to the inherent jurisdiction of the Court, which is not different for the civil or criminal contempt. Whether it is a civil concept or a criminal contempt, it is a contempt of Court and the disobedience of the order in any case is an obstruction in the administration of justice.

Section 141 & O39R2A

37. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत सिविल प्रक्रिया संहिता—1908 की धारा—141 तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के मध्य संबंध के बारे में विस्तार से समझना उचित प्रतीत होता है। इसी प्रकार माननीय गुजरात उच्च न्यायालय

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

(अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत सिविल प्रक्रिया संहिता—1908 की धारा—141 तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के मध्य संबंध के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

Section 141 read with Order 23 Rule 1(4) of the C.P.C:-

30. Whether the application, Exh.211 under Order 39 Rule 2A of the CPC is barred by the provisions of Order 23 Rule 1(4) of the CPC?. It is not in dispute that the appellant had earlier filed application Exh.185 under Order 39 Rule 2A of the CPC against the respondents. The said application was withdrawn. Following such withdrawal, a fresh application, Exh.211 came to be filed on the very same day and date. The argument on behalf of the respondents is that Order 23 Rule 1(4) of the CPC precludes the appellant from filing a fresh application in respect of the same subject matter having once abandoned the earlier application or withdrawn the application without any liberty to file a fresh application.

31. The moot question that falls for my consideration is whether an application filed under Order 39 Rule 2A of the CPC for breach or disobedience of injunction can be considered as a proceeding within the meaning of Section 141 of the CPC?. Some of the High Courts have held that the "proceedings" referred to in Section 141 of the CPC refers only to the original matters in the nature of suits, such as proceedings in probate, guardianship and so forth. In some cases like Ramgopal v. Shanti Lal, (1941) All. 807 it has been held that the proceedings which do not originate in themselves but spring out from a suit or from some other proceedings or which arose in connection therewith, do not fall within the ambit of Section 141 of CPC.

32. It may however be noted that the applications under certain provisions of CPC itself have been held to be proceedings within the meaning of Section 141 of CPC. For instance, applications under Section 92 of CPC have been held to be proceedings as contemplated under Section 141 of CPC by Madras High Court in B.S. Adityan v, R Kannan Adityan, (1983) 2 MLJ 32. The proceedings in a suit taken under the provisions of the CPC which are independent and original in character have been held to be covered by the 'proceedings' referred to in Section 141 of CPC. For instance, the proceedings under Section 24 of the CPC for transfer of suit have been held to be so by the Madras High Court in the case of Subba Reddy v. Narayanaswamy Reddy, (1949) AM 283. In the case of Prem Singh v. Sal Ram, Das, , petition under Order

33. Rule 1 of CPC has been similarly held to come within the purview of Section 141 of CPC. Similarly, an application under Order 34, Rule 5(3) of CPC has been held to be such 'proceeding' by the Madras High Court in the case of Sri Ramulu v. Sri Ramulu, AIR 1933 Mad. 55. An application under Order 34, Rule 6 of CPC has been held to be covered by Section

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

141 of CPC by the Allahabad High Court in Babulal v. Raghunandhan, AIR 1930 All. 841.

33. The crucial question is whether an application under Order 39 Rule 2A of the CPC can be treated as an independent proceeding which originates in itself or is it a proceeding which is merely ancillary to another proceeding and which springs out from that proceeding.

34. For ascertaining this, it would be necessary to examine the nature of the proceeding under Order 39 Rule 2A of the CPC. At the cost of repetition, I may, once again, quote Order 39 Rule 2A of the CPC. It reads as follows:

"2A:-.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 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.
(2) No attachment made under this rule shall remain in force for more than tone year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

35. It is manifest from the plain reading of the aforesaid provision that:

(I) No proceeding originates with an application under this provision.
(ii) It springs out from the suit proceedings which is already pending before the Court.
(iii) The consequence of application of section 141 of the CPC to any application or proceeding would be that the procedure prescribed in the Code in regard to the suits shall be followed as far as it can be made applicable to such applications or proceedings. The implication is that Section 141 of the CPC would require the Court to follow the procedure prescribed in the Code as regards the withdrawal and adjournments of the suits governing within Order 23 of the CPC. Thus, the thrust is on the following of the "procedure" prescribed by the Code in the suit. Section 141 of the CPC will not apply so far as the substantive rights are concerned. It talks only about the procedure.

xxx

37. Thus, the High Court ultimately held that an application under Order 39 Rule 2A does give rise to a "proceeding" within the meaning of section 141.

38. I am in complete agreement with the view of the Gauhati High Court and I would like to follow the same.

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

39. Once I hold that an application under Order 39 Rule 2A does give rise to a "proceeding" within the meaning of section 141 of the CPC, then the provision of Order 23 Rule 1(4) of the CPC would apply. Once, the provision of Order 23 Rule 1(4) of the CPC is made applicable, then the question would be whether the application in the instant case, i.e., Exh.211 could be said to be maintainable in view of the fact that the application filed first in point of time with regard to the same subject matter, i.e, Exh.185 was withdrawn without any liberty to file a fresh application.

Contemptuous Transactions

38. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना करते हुए किए गए संपति के अंतरण पर सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रभाव के बारे में विस्तार से समझना उचित प्रतीत होता है। इसी प्रकार माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच) द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना करते हुए किए गए संपति के अंतरण पर सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रभाव के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

52. It is too late in the day for the appellant to seek an order from the Court declaring the sale to be invalid in view of the alleged breach of injunction order. In Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd. & Ors., AIR 2013 SC 2389., the Supreme Court observed in Para-52 as under:

> *"52.There is, therefore, little room for any doubt that the transfer of the suit property pendete lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor."*

53. Thus, in the aforesaid decision of the Supreme Court, it has been made explicitly clear that even if the sale deed is executed in breach of any order of injunction, the sale, by itself, will not be invalid. The sale will remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor. At the same time, the Supreme Court clarified that the party,

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

committing breach, may undoubtedly, incur the liability to be punished for the breach committed, but the sale, by itself, may remain valid as between the parties to the transaction.

39. इसी प्रकार इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा में सिविल अपील संख्या 4955/2022 उनवान *Balwantbhai Somabhai Bhandari vs Hiralal Somabhai Contractor* में दिनांक 06.09.2023 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय के स्थगन आदेश की अवमानना करते हुए किए गए संपति के अंतरण पर सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रभाव के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

ARE CONTEMPTUOUS TRANSACTIONS VOID?

79. We now proceed to answer the third question formulated by us as regards the power of the contempt court to declare any contemptuous transaction non est or void.

80. A Three-Judge Bench of this Court in the case of State Bank of India and Others v. Dr. Vijay Mallya reported in 2022 SCC Online SC 826, in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

81. It would be pertinent, in this context, to refer to the decision of the Chancery Division in Clarke and others v. Chadburn and others reported in (1985) 1 All ER 211, wherein it was held that an act done in wilful disobedience of an injunction or court order is not only a contempt of court, but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. Similar view was expressed by this Court in Satyabrata Biswas and Others v. Kalyan Kumar Kisku and Others reported in (1994) 2 SCC 266, wherein the contempt jurisdiction was invoked by the respondents against the appellants, and during the contempt proceedings, it transpired that a sub tenancy was created while the status quo order was in operation. This Court held that creation of sub-tenancy was in violation of the status quo order and parties were relegated to the position as existed on the date of the status quo order. This Court, inter alia, observed thus:

"23. ... Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to contempt proceedings Somani Builders was not a party. It cannot gain advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of 15.9.1988 maintained? Hence, the grant of sublease is contrary to the

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Date: 2025.10.14 16:57:41 IST
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order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal." (Emphasis supplied)

82. We are aware of the two decisions of this Court one in the case of Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others reported in (2013) 5 SCC 397 and T. Ravi (supra). In both these decisions, the view taken is that Section 52 of the Transfer of Property Act, 1882 (for short, "the Act 1882") does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the court.

83. In Thomson Press (supra), T.S. Thakur, J. in his separate judgment while supplementing the judgment authored by M.Y. Eqbal, J., observed as under:

"53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor." (Emphasis supplied)

84. Thomson Press (supra) referred to above has been relied upon in T. Ravi (supra) for the proposition that the effect of Section 52 of the Act 1882 is not to render transfers effected during the pendency of a suit by a party to the suit void; the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

85. This Court in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Another reported in (1996) 4 SCC 622, held that the legal consequences of what has been done in breach of or in violation of the order of stay or injunction should be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction to not let the defaulting party enjoy any undue advantage. This Court while relying upon cases decided by various High Courts held as under:

"The contemner should not be allowed to enjoy or retain the fruits of his contempt Xxx xxx xxx

18. The above principle has been applied even in the case of violation of orders of injunction issued by civil courts.

In Clarke v. Chadburn [(1985) 1 All ER 211] Sir Robert Megarry V-C observed:

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

19. To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Ltd. v. S. Suppiah [AIR 1975 Mad 270 : (1975) 2 MLJ 54] and Sujit Pal v. Prabir Kumar Sun [AIR 1986 Cal 220 : (1986) 90 CWN 342]. In Century Flour Mills Ltd. [AIR 1975 Mad 270 : (1975) 2 MLJ 54] it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. In Sujit Pal [AIR 1986 Cal 220 : (1986) 90 CWN 342] a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.

21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The court must ensure full justice between the parties before it." (Emphasis supplied)

86. This Court in Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others reported

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

in (2012) 8 SCC 384, while deciding on a similar factual scenario held that the sale transactions conducted in teeth of the injunction passed by the Delhi High Court did not have any legal basis. This Court held as under:

"42. ... At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1 and 2 had entered into a binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement. ..." (Emphasis supplied)

87. The decision of Vidur Impex (supra) was relied upon by this Court in the case of Jehal Tanti and Others v. Nageshwar Singh (Dead) THR. LRS. reported in AIR 2013 SC 2235, wherein it was held that:

"13. We may also notice Section 23 of the Contract Act, 1872, which lays down that:
"23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy." In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful." (Emphasis supplied)

88. Thus, although Section 52 of the Act 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

continue to enure to the advantage of the contemnor or anyone claiming under him.

89. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as non est. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14.10.2015 passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as non est or void.

xxx

116. We may summarise our final conclusion as under:

..... (iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

Contempt Of Court Act & O39R2A

40. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय अवमानना अधिनियम तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के मध्य अंतर के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(COMM) 715/2022 में उनवान *Global Music Junction Pvt. Ltd vs Annapurna Films Pvt. Ltd* में दिनांक 24.05.2024 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत यायालय अवमानना अधिनियम तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के मध्य अंतर के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

12. We now turn to the provisions under the CC Act to examine whether the present case attracts any action under the said statute. The CC Act defines "civil contempt" as "wilful disobedience to any judgment, decree, direction, order, writ, or other processes of a court or wilful breach of an undertaking given to a court". In the present case, no judgment, decree, direction, order, writ, or other process of the court has been issued against the Plaintiff. Furthermore, there has been no undertaking given to the Court by the Plaintiff that has been breached. The Supreme Court, in Food Corporation of India (supra), emphasizes that the existence of a specific court order against a party is an essential prerequisite for civil contempt. In the absence of any such explicit direction from the Court that has been wilfully disobeyed, the essential criteria for invoking civil contempt are not satisfied in the present case.

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

13. On the other hand, "criminal contempt" under the CC Act includes any publication or act that scandalizes or tends to scandalize the authority of the court, prejudices or interferes with judicial proceedings, or obstructs the administration of justice. The Court can initiate an action for criminal contempt on its own motion, or on a motion made by or with the consent in writing of the Advocate General of India. These conditions have clearly not been met in the present case. The procedure for initiating criminal contempt proceedings is stringent to safeguard against arbitrary action that could undermine the integrity of the judicial process. The requirement for consent from the Advocate General or initiation by the Court itself ensures that criminal contempt is reserved for serious breaches that genuinely obstruct the administration of justice. The principles laid out in Bal Thackrey (supra) indicate that criminal contempt actions should be reserved for acts that significantly threaten the judicial process, which is not evident in this case. There is no evidence to suggest that the Plaintiff's actions scandalized the court, prejudiced any judicial proceedings, or obstructed the administration of justice in any manner. The miscommunication did not undermine the authority of the court or interfere with its proceedings. Given these considerations, the Plaintiff's conduct, while possibly constituting a breach of ethical standards actionable under different legal principles, possibly inviting tortious action, does not constitute civil or criminal contempt of court as defined under the CC Act.

14. It is pertinent to note that the Plaintiff's actions, though initially erroneous, were corrected in good faith. The Plaintiff took prompt corrective measures, including issuing clarificatory notices and filing a compliance affidavit to that effect, demonstrating an effort to rectify the mistake. This proactive approach mitigates the gravity of their initial misstep, thus aligning with the Court's expectations and procedural integrity. These actions also conform with the principles laid down in Food Corporation of India (supra), where the Court emphasized the importance of corrective measures in mitigating the effects of procedural lapses. Thus, the Court has taken these corrective actions into account in determining the appropriateness of the present contempt proceedings. Furthermore, punitive measures in contempt cases should be reserved for instances of clear and wilful disobedience, which are not apparent in this case.

15. The judgments relied upon by the Defendant No. 6 are distinguishable from the facts and circumstances emerging in the present case. In K.K. Velusamy (supra) and Vidur Impex (supra), the invocation of Section 151 of CPC was based on the unique specifics of those cases. These judgments explicitly state that Section 151 cannot be exercised if there is an applicable specific provision within the CPC. This principle is crucial as it prevents the misuse of inherent powers when explicit procedural rules are available and applicable. Furthermore, in neither Antony Raod Transport (supra) nor All Bengal Excise Licensees' Association (supra) was there any injunction operating against the party that had initiated the contempt proceedings. In both cases, the plea of misinterpretation of the

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

Court's orders was rejected because the breach of the injunction was by the party against whom such an injunction was granted. This is a critical distinction because, in the present case, there is no injunction operating against the Plaintiff.

16. Considering the Plaintiff's initial communications, which were not only inappropriate but seemingly deliberately misleading, it is pertinent to consider whether the Court should exercise its inherent powers to address and rectify the misconduct observed in this case. At this juncture, it is essential to recognize the width and scope of the Court's inherent powers under Section 151 of CPC. This provision confers upon the Court the authority to act ex debito justitiae--to uphold the demands of justice. This provision is often invoked to enable the Court to make orders necessary to meet the ends of justice or to prevent the abuse of its process. It serves as a reservoir of judicial power to ensure that the process of law is not subverted by procedural technicalities, i.e., inherent powers can be invoked to address situations where procedural law falls short in delivering substantive justice. Thus, the Court's inherent powers would not be diminished by the procedural limitations of Order XXXIX Rule 2A. This understanding finds support in the Supreme Court's observations in K.K. Velusamy (supra), which highlights that the inherent powers of the Court are wide and are intended to prevent abuse of process or to meet the ends of justice. Further, as noted in My Palace Mutually Aided Coop. Society (supra), Section 151 of CPC is designed to ensure that justice is served, and the process of law is upheld without being hindered by technicalities.

17. At the same time, the Court must exercise its inherent powers with caution and responsibility. The principles laid out in the aforenoted judgments underscore that the inherent powers under Section 151 CPC should be invoked sparingly and only when no specific provisions apply. Further, as emphasised in Bal Thackrey (supra), the use of inherent powers must be judicious and not excessive, ensuring that justice is served without overstepping procedural boundaries. The Court must balance its inherent powers to correct any wrong committed with the necessity of allowing parties to themselves rectify their errors in good faith. Therefore, while the Court recognizes its inherent powers, yet it is not inclined to invoke the same since the Plaintiff has taken proactive steps to rectify their mistake. However, the Court emphasizes that moving forward, should the Plaintiff engage in the enforcement of court orders through communications with third parties, they must ensure the accurate representation of the court's directions to avoid any potential misrepresentation. This condition is imposed to ensure that the Plaintiff's future actions are transparent and in strict compliance with judicial orders, thereby upholding the integrity of the judicial process.

41. इसी प्रकार माननीय इलाहाबाद उच्च न्यायालय द्वारा AIR1981ALL309 में उनवान *Smt. Indu Tewari vs Ram Bahadur Chaudhari* में दिनांक 07.05.1981 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत यायालय अवमानना अधिनियम तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

नियम—02ए के मध्य अंतर के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *3. 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. He can only inform the Court of the contempt committed by any person and thereafter it is for the Court to deal with the contemner. 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 According to the said provision, a person who disobeys an injunction order can be put into prison and his property can also be attached. The attachment can continue for one year and if the party against whom the order or decree is passed refused to comply, the property can even be sold. 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. In my opinion, 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. The least that can be said is that 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. I am fortified in taking this view by the observations made in Ram Rup Pandey v. R.K Bhargava, (AIR 1971 All 231) and Calcutta Medical Stores v. Stadmed Private Ltd., ((1977) 81 Car WN 209).*

42. इस संदर्भ में माननीय गुजरात उच्च न्यायालय (अहमदाबाद बेंच)द्वारा R/APPEAL FROM ORDER NO. 371 of 2015 उनवान *Jagdishbhai Madhubhai Patel vs Saraswatiben* में दिनांक 29.07.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत यायालय अवमानना अधिनियम तथा सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के मध्य अंतर के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *10. In Samee Khan v. Bindu Khan, reported in AIR 1998 SC 2765, the Supreme Court held that in exercise of the power under Order XXXIX, Rule 2A of the Code, the civil court has a power either to order detention for disobedience of the disobeying party or attaching his property and if the*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

circumstances and facts of the case so demand, both steps can also be resorted to. The Apex Court held as under :

"But the position under Rule 2A or Order XXXIX is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. For what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-
rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus, even under Order XXXIX, Rule 2A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such obedience."

11. Thus, in view of the above, 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 Courts Act, 1972 (for short, "the Act, 1972"). Even the High Court, in such a case, shall not entertain the petition under the provisions of Act, 1972.

12. A Constitution Bench of the Supreme Court in State of Bihar v. Rani Sonabati Kumari, AIR 1961 SC 221, observed that the purpose of such proceedings is for the enforcement or effectuation of an order of execution. Similarly, in Sitarami v. Ganesh Das, AIR 1973 All 449, the Court held as under :

"The purpose of Order XXXIX, Rule 2A, Civil P. C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similaV to the provisions of Order XXI, Rule 32, Civil P. C. which provide for the execution of a decree for injunction. The mode of execution given in Order XXI, Rule 32 is the same as provided in Rule 2A of Order XXXIX. In either case for the execution of the order or decree of injunction attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari, AIR 1961 SC 221 ; while dealing with Order XXXIX, Rule 2 (iii), Civil P. C. (without the U. P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

provisions of Order XXI, Rule 32 and of Order XXXIX, Rule 2 (iti), C.P.C. which is similar to Order XXXIX, Rule 2A. This curative function and purpose of Rule 2A of Order XXXIX, Civil P. C. is also evident from the provision in Rule 2A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil imprisonment he would have been released on the tinshed being removed, and it would therefore, now serve no purpose to send him to prison. For the same reason the attachment of property is also no longer needed. The order of the court below has lost its utility and need no longer be kept alive."

13. In Kochira Krishnan v. Joseph Desouza, AIR 1986 Ker 63, it has been held that violation of injunction or even undertaking given before the Court is punishable under Order XXXIX, Rule 2A of the Code. The punishment can be imposed even if the matter stood disposed of, for the reason that the Court is concerned only with the question whether there was a disobedience of the order of injunction or violation of an undertaking given before the Court and not with the ultimate decision in the matter. While deciding the said case, the Court placed reliance upon the judgment of the Privy Council in Eastern Trust Co. v. Makenzie Mann & Co. Ltd., AIR 1915 PC 106, wherein it had been observed as under :

"An injunction, although subsequently discharged because the plaintiffs case failed, must be obeyed while it lasts....."

14. Thus, it is evident from the above discussion that the proceedings are analogous to the proceedings under the Act, 1971. The only distinction is that as the Legislature, in its wisdom, has enacted a special provision enacting the provisions of Order XXXIX, Rule 2A, it would prevail over the provisions of the Contempt of Courts Act.

Principles of Contempt Jurisdiction

43. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय अवमानना से संबंधित कानूनी सिंद्धांतों के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा में सिविल अपील संख्या 4955 / 2022 उनवान *Balwantbhai Somabhai Bhandari vs Hiralal Somabhai Contractor* में दिनांक 06.09.2023 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय अवमानना से संबंधित कानूनी सिंद्धांतों के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

PRINCIPLES GOVERNING THE EXERCISE OF CONTEMPT JURISDICTION

40. The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice.

41. Any interference with the course of justice is an affront to the majesty of law and the conduct of interference is punishable

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Date: 2025.10.14 16:57:41 IST
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as contempt of court. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and Others reported in (1988) 4 SCC 592).

42. If a party, who is fully in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. To establish contempt of court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a breach of the undertaking.

43. The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court; (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court; and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court must be wilful. [Patel Rajnikant Dhulabhai and Another v. Patel Chandrakant Dhulabhai and Others, reported in (2008) 14 SCC 561]

44. It behoves the court to act with as great circumspection as possible, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights, including benefit of doubt. [Kanwar Singh Saini v. High Court of Delhi reported in (2012) 4 SCC 307].

45. The sanctity to judicial proceedings is paramount to a society governed by law. Otherwise, the very edifice of democracy breaks and anarchy reigns. The Act 1971 is intended to correct a person deviating from the norm and trying to breach the law/assuming law on to himself. It intends to secure confidence of the people in the administration of justice by disciplining those erring in disobeying the orders of the Court/undertaking given to court.

46. This Court in a plethora of cases has explained the true purport of exercise of powers under the 1971 Act. In Mrityunjoy Das (supra), it held that:

> *"13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide Murray & Co. v. Ashok Kr. Newatia [(2000) 2 SCC 367 : 2000 SCC (Cri) 473]). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of this Court in Murray case [(2000) 2 SCC 367 : 2000 SCC (Cri) 473] in which one of us (Banerjee, J.) was party needs to be noticed: (SCC p. 373, para 9) "The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus would forfeit the trust and confidence of the people in general.""

47. The Constitutional Bench of this Court in the case of Supreme Court Bar Association (supra), while discussing the ambit of powers under the Act 1971 and the principles to be followed while punishing a party held as under: "28. An analysis of the above provision shows that sub-section (1) of Section 12 provides that in a case of established contempt, the contemner may be punished:
(a) with simple imprisonment by detention in a civil prison; or
(b) with fine; or
(c) with both.

A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court not to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Dealing with imposition of punishment under Section 12(3) of the Act, in the case of Pushpaben v. Narandas V. Badiani [(1979) 2 SCC 394 : 1979 SCC (Cri) 511] this Court opined: (SCC p. 396, para 6) "6. A close and careful interpretation of the extracted section leaves no room for doubt that the legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus,

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

the sentence of imprisonment is an exception while sentence of fine is the rule."

Xxx xxx xxx

34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.

Xxx xxx xxx

36. In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate.

Xxx xxx xxx

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice." (Emphasis supplied)

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

48. To hold a person guilty of civil contempt, "wilful disobedience" is an indispensable requirement. Whether the conduct of contemnor is deliberate and wilful can be considered by assessing the material on record and attendant circumstances.

Concept of Apology

44. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय अवमानना करने पर न्यायालय में माफीनामा प्रस्तुत करने के बारे में विस्तार से समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा में सिविल अपील संख्या 4955/2022 उनवान *Balwantbhai Somabhai Bhandari vs Hiralal Somabhai Contractor* में दिनांक 06.09.2023 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान के तहत न्यायालय अवमानना करने पर न्यायालय में माफीनामा प्रस्तुत करने के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

CONCEPT OF APOLOGY

98. We must refer to Section 12 of the Act 1971:

*"**12. 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:*
Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.
Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.
(2) Notwithstanding anything contained in any other 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:

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also 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 such director, manager, secretary or other officer. Explanation.—For the purposes of sub-sections (4) and (5),—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

99. Section 12 of the Act 1971 provides for the punishment of contempt. Proviso to this section states that the accused may be discharged or the punishment awarded may be remitted on the apology being made to the satisfaction of the court. Explanation to this says that the apology shall not be rejected merely on the ground that it is qualified or conditional, if the accused makes it bona fide. Therefore, what is requirement of the provision is that the apology which is either qualified or conditional made by the alleged contemner shall also be not discarded if the same in the opinion of the court is made bona fide. It is the discretion of the court whether to accept the same or not and that discretion is required to be exercised judiciously and the accused can be discharged. For preventing interference in the course of justice and to upkeep the authority of law, sparingly, of course, such power contemplated under the constitution warrant its use.

100. We now proceed to consider the question as regards the acceptance of apology. It is pertinent to note at this stage that all throughout the proceedings before the High Court, the stance of the appellants was that they committed a big mistake by executing the sale deeds despite having given a clear-cut undertaking to the court that they would not do so. By and large, from the averments in the various affidavits filed by the appellants over a period of time; referred to by the High Court in its judgment, the stance had been that the appellants should not have defied the order of the High Court and are extremely sorry in that regard. In such circumstances, the appellants pleaded before the High Court that their apology may be accepted and they may be discharged from the proceedings.

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

101. We may take judicial notice of the fact with all humility at our command that over a period of time, the courts have shown undue leniency and magnanimity towards the contemnors. This lenient attitude shown by the courts over a period of time has actually emboldened unscrupulous litigants to disobey or commit breach of the order passed by any court or any undertaking given to the court with impunity.

102. The litigants, proceeded for contempt of court have realised that they have a very potent weapon in their hands in the form of apology. Take for instance, the present case itself. What do the appellants want us to do? The appellants want this Court to accept their apology and set aside the order of punishment and sentence passed by the High Court. There ought not to be a tendency by courts to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

103. In re. Tapan Kumar Mukherjee v. Heromoni Mondal and Another reported in (1991) 1 SCC 397, this Court in a contempt matter has observed:— "9.... we should like to put out a warning that where a case of wilful disobedience is made out, the courts will not hesitate and will convict delinquent officer and that no lenience in the court's attitude should be expected from the court as a matter of course merely on the ground that an order of conviction would damage the service career of the concerned officer".

104. In re. Tapan Kumar (supra), this Court was dealing with a public servant facing an action for contempt.

105. We wonder what could be the ultimate outcome if we accept the apology and allow the appellants to go scot-free. First, they would have to face no legal consequences for the alleged act of contempt and secondly, would continue to enjoy or retain the fruits of their contempt. We say so because they have already pocketed a sizeable amount towards the sale consideration obtained from the purchasers.

106. In the case of Sub-Judge, First Class, Hoshangabad v. Jawahar Lal Ramchand Parwar reported in AIR 1940 Nagpur 407, Justice Bose (as he then was) said that an apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. An apology, which the learned Judge says should be evidence of real contriteness and manly consciousness of the wrong done; it ceases to be so if it is belated, and it becomes instead, to borrow the language of Justice Bose, again the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head.

107. In the case of Patel Rajnikant Dhulabhai (supra), this Court rejected the argument that an apology can be used as a

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

weapon of defence and while relying upon multiple decisions held as under:

"62. In the celebrated decision of Attorney General v. Times Newspaper Ltd. [(1974) AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298 (HL)] Lord Diplock stated: (All ER p. 71f) "There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity;...."

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74. In Hiren Bose, Re [AIR 1969 Cal 1 : 72 Cal WN 82] the High Court of Calcutta stated: (AIR p. 3, para 13) "13. ... It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest.

Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be."

75. It is well settled that an apology is neither a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness (vide M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur [AIR 1955 SC 19 : (1955) 1 SCR 757]; M.B. Sanghi v. High Court of Punjab & Haryana [(1991) 3 SCC 600 : 1991 SCC (Cri) 897 : (1991) 3 SCR 312]).

76. In T.N. Godavarman Thirumulpad (102) v. Ashok Khot [(2006) 5 SCC 1], a three-Judge Bench of this Court had an occasion to consider the question in the light of an "apology" as a weapon of defence by the contemnor with a prayer to drop the proceedings. The Court took note of the following observations of this Court in L.D. Jaikwal v. State of U.P. [(1984) 3 SCC 405 : 1984 SCC (Cri) 421] : (Ashok Khot case [(2006) 5 SCC 1] , SCC p. 17, para 32)

"32. ... We are sorry to say we cannot subscribe to the 'slap—say sorry—and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry—it is another to 'feel' sorry." The Court, therefore, rejected the prayer and stated: (SCC p. 17, para 31) "31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

cringing coward." Similar view was taken in other cases also by this Court.

77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a "tactful move" when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice." (Emphasis supplied)

108. This Court in Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others reported in (2013) 11 SCC 404, held that:

"7. Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the court to accept such apology, if this would not leave a serious scar on the dignity/authority of the court and interfere with the administration of justice under the orders of the Court.

8. "Bona fide" is an expression which has to be examined in the context of a given case. It cannot be understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weigh with the Court in deciding such an issue. Where, persistently, a person has attempted to overreach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings. It is not necessary for us to examine in any greater detail the factual matrix of the case since the disobedience, manipulation of procedure and violation of the schedule prescribed under the orders of the Court is an admitted position. All that we have to examine is whether the apology tendered is bona fide when examined in the light of the attendant circumstances and whether it will be in the interest of justice to accept the same.

9. The facts which will weigh with the Court while considering acceptance of an apology are the contemptuous conduct, the extent to which the order of the Court has been violated, irresponsible acts on the part of the contemnor and the degree of interference in the administration of justice, which thereby cause prejudice to other parties. An apology tendered, even at the outset, has to be bona fide and should be demonstrative of repentance and sincere regret on the part of the contemnor, lest the administration of justice be crudely interfered with by a person with impunity. The basic ingredients of the rule of law have to be enforced, whatever be the consequence and all persons are under a fundamental duty to maintain the rule of law. An apology which is not bona fide and has been tendered to truncate the process of law with the ulterior motive of escaping the consequences of such flagrant violation of orders

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Digitally signed by Keshav Kumar Meena
Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

of the court and causes discernible disrespect to the course of administration of justice, cannot be permitted. The court has to draw a balance between cases where tendering of an apology is sufficient, and cases where it is necessary to inflict punishment on the contemnor. An attempt to circumvent the orders of the court is derogatory to the very dignity of the court and administration of justice. A person who attempts to salvage himself by showing ignorance of the court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law. Tendering a justification would be inconsistent with the concept of an apology. An apology which is neither sincere nor satisfactory and is not made at the appropriate stage may not provide sufficient grounds to the court for the acceptance of the same. It is also an accepted principle that one who commits intentional violations must also be aware of the consequences of the same. One who tenders an unqualified apology would normally not render justification for the contemptuous conduct. In any case, tendering of an apology is a weapon of defence to purge the guilt of offence by the contemnor. It is not intended to operate as a universal panacea to frustrate the action in law, as the fundamental principle is that rule of law and dignity of the court must prevail.

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14. From the above principle, it is clear that consideration of an apology as contemplated under Explanation to Section 12(1) of the Act is not a panacea to avoid action in law universally. While considering the apology and its acceptance, the court inter alia considers: (a) the conduct of the contemnor prior and subsequent to the tendering of apology. If the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which would weigh against the contemnors; and (b) the stage and time when such apology is tendered." (Emphasis supplied)

109. In the case of Sevakram (supra), it was held that an apology neither purges nor washes away the act of contempt and at best it is a mitigating circumstance while considering the consequential order following finding of contempt having been committed. The relevant portion is produced hereunder:

"46. The various decisions referred to by both parties need not detain us for long inasmuch as there is no distinction on principle in the decided cases. An apology is not a weapon of defence. Apology neither purges nor washes away an act of contempt. It is at best a mitigating circumstance while considering the consequential orders to be made, once a person is found to have committed Contempt of Court, civil or criminal. It is a factor relevant to be considered while devising the final order to be made against the contemner. An apology can only be considered which is in real sense remorseful and to the satisfaction of the Court as a contrition by the respondents. Ordinarily, belated apologies are considered to be offered more out of fear of punishment than with a sense of contrition. But merely because the apology has been tendered, not at the first instance, but at a later stage, by itself cannot be a ground for not considering it. Had it been so, proviso to Sec. 12 which

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

makes it possible even after sentence of punishment has been made, to remit the same on considering the apology given thereafter. In short, whether an apology tendered at any stage of the proceedings is to be considered as mitigating circumstances or not depends on facts and circumstances of that case and that principle is not inhibited by any precedent. The precedents serve as guidelines."
(Emphasis supplied)

110. The Constitution Bench of this Court in M.Y. Shareef and another v. Hon'ble Judges of the Nagpur High Court and others reported in AIR 1955 SC 19 observed thus:

"10. The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The appellants having tendered an unqualified apology, no exception can be taken to the decision of the High Court that the application for transfer did constitute contempt because the judges were scandalized with a view to diverting the due course of justice, and that in signing this application the two advocates were guilty of contempt. That decision therefore stands." (Emphasis supplied)

111. Thus, apology is not just a word. The court should not accept the apology when it appears that saying sorry is nothing but a legal trick to wriggle out of responsibility. A true apology must be a deep ethical act of introspection, self-introspection, atonement and self-reform. In its absence, an apology can be termed as farce.

112. It is equally well-settled that apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same. Although, the apology may be unconditional, unqualified and bona fide, yet, if the conduct is serious which has caused damage to the dignity of the institution the same need not to be accepted.

113. In the facts of the case, we are convinced that although the appellants might have tendered the apology before the High Court in the first instance, yet such apology does not deserve to be accepted and was rightly not accepted by the High Court. It was nothing but a gamble on the part of the appellants. It is a lame excuse on their part to say that they were left with no choice but to execute the sale deeds. They have also highlighted few circumstances in this regard. However, we are not at all convinced with any such explanations offered by the appellants. They took a calculated risk to transfer the properties and pocketed the sale consideration. If there was any impending urgency to execute the sale deeds, they could have come to the High Court and should have obtained appropriate clarification or permission in that regard. This is the reason why we say that the appellants with a view to gain wrongfully gambled in the hope that ultimately, they would get away by tendering an apology. This is the reason why such fake apologies should not be accepted by the court and allow a person who has no regard

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

for the Majesty of law to get away from the legal consequences. There is no occasion for us to show any compassion as contempt has been committed and proved beyond reasonable doubt and the effect of this contempt has been felt on the Majesty of the High Court. The litigating public cannot be encouraged that such a situation can continue or the court will not rise to the occasion to book people violating its orders. The law is very clear that the court should not get compassionate and dilute an indictment and not follow it with conviction. The fact that the appellants have committed contempt is not in doubt. The law enjoins that a punishment must follow.

Summery

45. इसी के साथ सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की कानूनी व्याख्या का सारांश को जानना उचित प्रतीत होता है। इस संदर्भ में माननीय दिल्ली उच्च न्यायालय द्वारा CS(OS) 206/2016 उनवान *Pamela Manmohan Singh vs Harnam Kaur* में दिनांक 24.03.2017 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की कानूनी व्याख्या का सारांश के बारे में विस्तृत विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:—

The Division Bench of this Court in Dr. Bimal Chandra Sen supra and which as aforesaid remained to be noticed in the judgment dated 22nd May, 2008 held

i) the Court which passes injunction order has the power to commit for contempt in case of breach – this is the unquestioned rule since 1882;

ii) the Code of Civil Procedure, 1908 embodies the same Rule in Order XXXIX Rule 2A of the CPC;

iii) a disobedience of an order of injunction is a contempt of Court;

iv) Sub-rule (1) of Order XXXIX Rule 2A confers on Court the power to punish such contempt and further prescribes the punishment therefor;

v) Sub-rule (1) of Order XXXIX Rule 2A of the CPC provides for the punishment not only of disobedience of the temporary injunction but also of breach of any of the terms subject to which the injunction may have been granted; while High Courts as Courts of record have inherent jurisdiction to commit for contempt, other Courts have no such power apart from the provisions of Rule 2A of the CPC;

vi) the High Court has power under Section 10 of the Contempt of Courts Act but the exercise of that power is discretionary;

vii) Order XXXIX Rule 2A of the CPC is a far more adequate and satisfactory remedy in such cases;

viii) any detailed inquiry must be left to the Court which has passed the order and which is fully acquainted with the subject matter of its own order of temporary prohibitory injunction;

ix) it is clearly more desirable that the Court which made the order of injunction should go into the facts and ascertain the truth of the alleged disobedience and extent to which it is willful;

x) if the order of injunction is disobeyed by a person other than a party to the lis, being agent or servant of

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

the party to the lis, the Court granting the injunction has undoubted powers to punish him;

xi) a person who has got an effective alternative remedy of the nature specified under Order XXXIX Rule 2A of the CPC should not be permitted to skip over that remedy and take resort to initiate proceedings under the Contempt of Courts Act – that would not be a proper exercise ofdiscretion on the part of the High Court to exercise its jurisdiction under the Contempt of Courts Act when such an effective and alternative remedy is available to any person;

xii) when special procedure and special provision is contained in the Order XXXIX Rule 2A of the CPC for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked;

xiii) if such a course is encouraged, it is sure to throw open a floodgate of litigation under contempt jurisdiction; every decreeholder can 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; and,

xiv) however under Order XXXIX Rule 2A of the CPC, action against a non-party to the lis cannot be taken even if he has aided or abetted the violation of the interim order of injunction and against whom no order of injunction was made.

46. उपरोक्त विधिक प्रावधान एवं न्यायिक दृष्टांतों के संदर्भ में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के प्रावधान की कानूनी स्थिति निम्न प्रकार से स्पष्ट होती हैः—

1. *किसी प्रकरण में न्यायालय द्वारा अस्थाई निषेधाज्ञा जारी होना सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के अनुप्रयोग हेतु प्रथम व आवश्यक शर्त है।*
2. *सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए का मुख्य उद्देश्य किसी प्रकरण में न्यायालय द्वारा अस्थाई निषेधाज्ञा की पालना करवाना है।*
3. *किसी प्रकरण में न्यायालय द्वारा जारी अस्थाई निषेधाज्ञा आदेश का स्पष्ट होना अपेक्षित है। न्यायालय द्वारा जारी अस्थाई निषेधाज्ञा के आदेश की व्याख्या को लेकर संशय की परिस्थिति नहीं हो या आदेश की व्याख्या से अनेक निष्कर्ष उत्पन्न होने वाली परिस्थिति नहीं हो।*
4. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही एक आपराधिक प्रकृति की कार्यवाही होती है। अतः न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु आरोपित व्यक्ति को सुनवाई के प्राकृतिक सिद्धांत के अनुसार अपने प्रतिरक्षण हेतु पर्याप्त अवसर प्रदान किया जाना आवश्यक है।*
5. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही एक आपराधिक प्रकृति की कार्यवाही होती है। अतः न्यायालय के अस्थाई निषेधाज्ञा के स्थगन*

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Date: 2025.10.14 16:57:41 IST
Reason: SelfAttested

आदेश की अवमानना हेतु आरोप स्पष्ट, संशय विहिन व पुष्ट प्रकृति के होने आवश्यक है।

6. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही एक आपराधिक प्रकृति की कार्यवाही होती है। यह कार्यवाही न्यायालय एवं अवमानना करने वाले व्यक्ति से संबंधित होती है। अतः न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना के मामलों में अस्थाई निषेधाज्ञा के मूल दावा या अस्थाई निषेधाज्ञा कार्यवाही के न्यायालय में विचाराधीन होने या नहीं होने से अवमानना की कार्यवाही पर कोई प्रभाव नहीं पड़ता है।*
7. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही एक आपराधिक प्रकृति की कार्यवाही होती है। यह कार्यवाही न्यायालय एवं अवमानना करने वाले व्यक्ति से संबंधित होती है। अतः न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना के मामलों में अस्थाई निषेधाज्ञा के मूल दावा या अस्थाई निषेधाज्ञा कार्यवाही के सकारात्मक या नकारात्मक निर्णयन होने या नहीं होने से अवमानना की कार्यवाही पर कोई प्रभाव नहीं पड़ता है।*
8. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही के दौरान अवमानना करने वाले आरोपी द्वारा प्रस्तुत माफीनामा न्यायालय की संतुष्टि में प्रमाणिक (Bonafide) व माफी की मूल भावना से सुसंगत होना आवश्यक है।*
9. *न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही को न्यायालय द्वारा औपचारिक कार्यवाही नहीं मानते हुए गंभीरता से लेते हुए न्यायालय की अवमानना करने वाले आरोपी पर आरोप सिद्ध होने पर आवश्यक रूप से युक्तियुक्त दंड से दंडित किया जाकर न्यायालय व कानून की सर्वोच्चता स्थापित करने का उद्देश्य रखा जाना अपेक्षित है।*

47. प्रकरण में उक्त प्रकार से कार्यवाही किये जाने पर विचारण आरम्भ किया गया। प्रकरण में वादीगण द्वारा साक्ष्य स्वरूप निम्न दस्तावेज प्रस्तुत कर प्रदर्श अंकित किए—

दस्तावेज	संवत/विवरण	प्रदर्श
	मौका रिपोर्ट दिनांक 19.07.2021	प्रदर्श—01
	मौका रिपोर्ट दिनांक 19.07.2021 का नक्शा	प्रदर्श—02
	नामांतरकरण संख्या 608 मौजा सोढों की ढाणी	प्रदर्श—03
	मौका रिपोर्ट फर्द दिनांक 19.07.2021	प्रदर्श—04
	मौका रिपोर्ट दिनांक 19.07.2021 का नक्शा	प्रदर्श—05
	समर्पण आदेश दिनांक 05.01.2021	प्रदर्श—06
	समर्पण आदेश दिनांक 05.01.2021 का नजरी नक्शा	प्रदर्श—07
	उनवान हीराराम बनाम जेठाराम में निर्णय दिनांक 04.10.2012 की प्रतिलिपि	प्रदर्श—08

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	उनवान हीराराम बनाम जेठाराम में डिक्री दिनांक 04.10.2012 की प्रतिलिपि	प्रदर्श—09

48. प्रकरण में वादीगण द्वारा साक्ष्य स्वरूप निम्न गवाह प्रस्तुत किए—

नाम	जाति	निवासी	गवाह
हीराराम पुत्र नगाराम	कलबी	हाजाणियों की ढाणी	पी0डब्ल्यू—1
भूपाराम पुत्र वीरमाराम	कलबी	भावाणियों की ढाणी	पी0डब्ल्यू—2

49. प्रकरण में हीराराम पुत्र नगाराम पी.डब्ल्यू.—01 द्वारा हलफनामा प्रस्तुत कर निम्न प्रकार कथन किये—

- कि वादी द्वारा राजस्व वाद संख्या 253/06 बउनवान हीराराम बनाम जेठाराम अंतर्गत धारा—188 का पेश कर निवेदन किया कि आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुडामालानी में अवस्थित है। उक्त वाद न्यायालय द्वारा दिनांक 04.10.2012 को स्वीकार किया जाकर वादी की आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुड़ामालानी पर प्रतिवादीगण को स्वयं एवं किसी और से हस्तक्षेप नहीं करने बाबत् स्थाई निषेधाज्ञा से पाबंद किया जाकर स्थाई निषेधाज्ञा जारी की गई थी।
- कि उक्त स्थगन आदेश के प्रभावी होने के बावजूद अप्रार्थीगण द्वारा षडयंत्रपूर्वक उक्त स्थगन आदेश की अवहेलना करते हुए हल्का पटवारी रतनपुरा, भू—अभिलेख निरीक्षक रतनपुरा एवं तहसीलदार गुड़ामालानी से मिलकर खसरा संख्या 497 मौजा सोढों की ढाणी में से 0.15 बीघा भूमि का समर्पण करने हेतु कागजात तैयार करवाकर रास्ते के लिये भूमि समर्पण कर दी गई। चूंकि दोनों ग्रामों की सीमा ऑवरलेप होने के कारण उक्त समर्पित भूमि प्रार्थीगण के खसरा संख्या 468 में आती है। प्रार्थीगण को सर्वप्रथम प्रशासन गांवों के संग अभियान खारवा में उक्त समर्पण आदेश का पता चला। प्रार्थीगण द्वारा उसी दिन दिनांक 25.11.2021 को उक्त समर्पण आदेश की प्रति प्राप्त की। तब प्रार्थीगण को स्थगन आदेश के बावजूद उक्त समर्पण का ज्ञान हुआ।
- कि अप्रार्थीगण द्वारा प्रार्थीगण की आराजी पर स्थगन होने के उपरांत भी उक्त समर्पण आदेश दिनांक 05.01.2021 की आड़ में मौके की स्थिति में परिवर्तन कर दिया है। जो कि न्यायालय आदेश की अवहेलना की श्रेणी में आता है।
- इस प्रकार स्थाई निषेधाज्ञा का स्थगन आदेश वर्तमान में प्रभावी है। परंतु न्यायालय के स्थगन आदेश की अवमानना कर अप्रार्थीगण के द्वारा वादग्रस्त आराजी एवं कब्जा—काश्त भूमि पर समर्पण आदेश दिनांक 05.01.2021 निष्पादित करवाया गया है। इस प्रकार अप्रार्थीगण द्वारा न्यायालय के स्थगन आदेश की अवमानना की गई है। अतः उक्त आधारों पर प्रकरण में समर्पण आदेश दिनांक 05.01.2021 को निरस्त कर मौका यथास्थिति पुनः बहाल कर अप्रार्थीगण को प्रार्थी के कब्जा काश्त भूमि से बेदखल करते हुए प्रार्थी को पुनः कब्जा सुपुर्द करते हुए अप्रार्थीगण को दण्डित करने का निवेदन किया।

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Date: 2025.10.14 16:57:41 IST
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50. प्रकरण में भूपाराम पुत्र वीरमाराम पी.डब्ल्यू.—02 द्वारा बयान के दौरान निम्न प्रकार कथन किये—

- कि मैं प्रार्थीगण एवं अप्रार्थीगण को जानता हूं। जो मेरे सेढा पड़ोसी हैं। मैं प्रार्थीगण की भूमि पर काश्त करता हूं। वादी द्वारा राजस्व वाद संख्या 253/06 बउनवान हीराराम बनाम जेठाराम अंतर्गत धारा—188 का पेश कर निवेदन किया कि आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुडामालानी में अवस्थित है। उक्त वाद न्यायालय द्वारा दिनांक 04.10.2012 को स्वीकार किया जाकर वादी की आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुड़ामालानी पर प्रतिवादीगण को स्वयं एवं किसी और से हस्तक्षेप नहीं करने बाबत् स्थाई निषेधाज्ञा से पाबंद किया जाकर स्थाई निषेधाज्ञा जारी की गई थी।
- इस प्रकार स्थाई निषेधाज्ञा का स्थगन आदेश वर्तमान में प्रभावी है। परंतु न्यायालय के स्थगन आदेश की अवमानना कर अप्रार्थीगण के द्वारा वादग्रस्त आराजी एवं कब्जा—काश्त भूमि पर समर्पण आदेश दिनांक 05.01.2021 निष्पादित करवाया गया है। इस प्रकार अप्रार्थीगण द्वारा न्यायालय के स्थगन आदेश की अवमानना की गई है। अतः उक्त आधारों पर प्रकरण में समर्पण आदेश दिनांक 05.01.2021 को निरस्त कर मौका यथास्थिति पुनः बहाल कर अप्रार्थीगण को प्रार्थी के कब्जा काश्त भूमि से बेदखल करते हुए प्रार्थी को पुनः कब्जा सुपुर्द करते हुए अप्रार्थीगण को दण्डित करने का निवेदन किया।

51. प्रकरण में हीराराम पुत्र नगाराम पी.डब्ल्यू.—01 ने प्रतिवादी की जिरह में मुख्य परीक्षण में निम्न प्रकार अभिकथन किया किः—

- मैं खेती करता हूं।
- प्रश्न—क्या आप शुरू से ही खेती करते थे?
- उत्तर पहले में नौकरी करता था।
- प्रश्न—आपने नौकरी कब छोड़ी?
- उत्तर—29 फरवरी 2012
- प्रश्न—नौकरी सरकारी थी या
- उत्तर—सरकारी
- प्रश्न—जब आप सरकारी नौकरी में थे तब आपके खेत की काश्त कौन करता था?
- उत्तर—हमारे पड़ोसी लालाराम पुत्र मदरूपाराम, गणेशाराम पुत्र मदरूपाराम, हीराराम पुत्र पनाराम, भैराराम पुत्र वीराराम, वीरमाराम पुत्र मेहराराम खेती करते थे।
- प्रश्न—आपके खेत के खसरा संख्या रकबा गांव का नाम बताऐं?
- उत्तर—ग्राम हाजाणियों की ढाणी खसरा संख्या 468 रकबा 08—11 बीघा
- प्रश्न—इस खेत का इस प्रार्थना पत्र से पूर्व आपने कोई दावा किया था?
- उत्तर—हां दावा किया था।

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- प्रश्न—पूर्व में आने दावा किया उसमें कितने बीघा की डिक्री जारी हुई थी?
- उत्तर—खसरा संख्या 468 के माठ के स्थाई फैसला एवं डिक्री 04.10.2012 को जारी हुई थी।
- प्रश्न—ये खसरा संख्या 468 है। जिसमें कितने बीघा भूमि की डिक्री आपके पक्ष में जारी हुई?
- उत्तर—न्यायालय का स्थाई स्थगन आदेश दिनांक 04.10.2012 वाद संख्या 253/06
- प्रश्न—खसरा संख्या 468 की कितनी भूमि पर आपने अतिक्रमण किया है?
- उत्तर—न्यायालय स्थाई स्थगन आदेश अनुसार वक्त सेटलमेंट की माठ पर पेड़—पौधे झाड़ियां का स्थगन आदेश है।
- प्रश्न—आपके खसरा संख्या 468 के पड़ोस में कोई गांव हैत्र
- उत्तर—हां, सोढों की ढाणी, रतनपुरा
- प्रश्न—पड़ोसी गांव सोढों की ढाणी के खसरा संख्या मालूम है?
- उत्तर—खसरा संख्या 497, 467 ग्राम सोढों की ढाणी व हाजाणियों की ढाणी के हैं।
- प्रश्न—इन खसरों का रकबा पता है?
- उत्तर—खसरा संख्या 497 का 35—10 बीघा है। दूसरे का पता नहीं।
- प्रश्न—आपका खसरा संख्या 468 व 497 का विवाद कब से है?
- उत्तर—वर्ष 2006 से
- प्रश्न—क्या आने 2006 में वाद पड़ौसी खातेदार के खसरा संख्या 497 की नेखमबंदी की वजह से किया था?
- उत्तर—नहीं, मेरे खसरा संख्या 468 में से बाजरे की खड़ी फसल काटकर चोरी करके ले गये इसलिये किया।
- प्रश्न—आपने पूर्व में 8—10 जने खेती करते थे। ये बताया है। फिर भी आपकी फसल काटकर ले गये?
- उत्तर—एक खेत में 8—10 जने एक साथ काश्त नहीं करते थे। बारी—बारी से करते थे। एक समय में एक ही काश्तकार खेती करता था। बाजरी चोरी करने का मुकदमा भी दर्ज करवाया, चालान भी पेश हुआ।
- प्रश्न—क्या कृष्ण वगैरह का खसरा संख्या 497 रकबा 35—10 बीघा भूमि पर आपका कब्जा है?
- उत्तर—ऑवरलेपिंग खेत है। दोनों गांव की सीमा पर खेत आए हुए हैं। जिनकी मौका फर्द 19.07.2021 है।
- प्रश्न—क्या कृष्ण वगैरह ने खसरा संख्या 497 की नेखमबंदी के आदेश करवाए तब मौका रिपोर्ट बनी थी?
- उत्तर—नहीं, बाद में बनी थी। 19.07.2021 का बनी थी।
- प्रश्न—आपके पड़ोसी खातेदार किस जाति के हैं?
- उत्तर—मेघवाल
- प्रश्न—क्या आप इन सभी को जानते हो?

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- उत्तर—हां
- प्रश्न—आपने यह आवेदन न्यायालय आदेश अवहेलना का किससे कितनी भूमि लेने का किया है?
- उत्तर—स्थाई स्थगन आदेश 04.10.2012 की पालना कराने का पेश किया है।
- प्रश्न—क्या यह सही है कि आपका खसरा संख्या 468 रकबा 08—11 बीघा का है?
- उत्तर—न्यायालय के स्थाई स्थगन आदेश, पुरानी माठों, माठ पर पेड़ झाड़ियों कायम रखने के न्यायालय आदेश की पालनार्थ।
- प्रश्न—क्या यह बात गलत है कि आपके खेत में से फसल काटकर कोई ले गया या नहीं ले गया?
- उत्तर—प्रश्न गलत है।
- प्रश्न—क्या कृष्ण वगैरा के नाम दर्ज भूमि का स्टे आदेश न्यायालय ने आपके पक्ष में दिया था?
- उत्तर—खसरा संख्या 468 का स्थगन आदेश पुरानी माठ दिया था।

52. प्रकरण में भूपाराम पुत्र वीरमाराम पी.डब्ल्यू.—02 ने प्रतिवादी की जिरह में मुख्य परीक्षण में अभिकथन किया कि मैं पांचवीं छठी पढा हूं। पहले के बयान कराने आया उसकी तारीख मुझे याद नहीं है। मैंने पूर्व में बयान मेरी खेती नष्ट की सेढा की माठ तोड़े इसलिये आया था। काश्तकार मैं था। खेती मैंने की थी। मेरी खेती नष्ट हुई। मैं हरीराम जी को जानता हूं। मेरे पड़ोसी हैं। इनका गांव हाजाणियों की ढाणी है और मेरा गांव भी हाजाणियों की ढाणी है। इस वाद के खसरा संख्या 468 है। रकबा 08—11 बीघा है। मैं शुरू से ही खेती बाड़ी करता हूं। हीरा व कृष्ण के आपस में खेत का सेढा लगता है। यह कहना गलत है कि कृष्ण अनुसूचित जाति का व्यक्ति होने से उसकी जमीन हड़पना चाहते हों। प्रतिवादी 17 हैं। धारा याद नहीं है। यह दावा माठ तोड़कर अंदर आ गए इसलिये किया है। हरीराम के नाम 8—11 बीघा जमीन है। मौका रिपोर्ट में मेरे साइन करवाये थे। 29.11.2021 को मौका रिपोर्ट बनी थी। प्रश्न— मौका रिपोर्ट में कृष्ण की जमीन कितनी जमीन पर वादीगण ने कब्जा किया है। उत्तर—कृष्ण की जमीन है ही नहीं। वादीगण की जमीन है। प्रतिवादीगण के नाम कृष्ण, मखणी, राणा, हड़मता, हकमा, दरिया, निम्बा, कविता, बस्ता, दला, धनी, देशपाल, देसू, गणेशा पुत्र जोधा, भंवरा पुत्र गणेशा, लूणा पुत्र रायमल, श्रवण पुत्र रायमल कुल 17 नाम हैं। यह कहना गलत है कि मैंने यह पैसे लेकर दिये हों।

53. प्रकरण में वादीगण साक्ष्य के पश्चात् पत्रावली प्रतिवादी साक्ष्य में नियत की गई। प्रतिवादीगण द्वारा साक्ष्य प्रस्तुत नहीं कर सीधे बहस का निवेदन किया गया।

54. प्रकरण में वादी का अभिकथन है कि वादी द्वारा राजस्व वाद संख्या 253/06 बउनवान हीराराम बनाम जेठाराम अंतर्गत धारा—188 का पेश कर निवेदन किया कि आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुडामालानी में अवस्थित है। उक्त वाद न्यायालय द्वारा दिनांक 04.10.2012 को स्वीकार किया जाकर वादी की आराजी खसरा संख्या 468 रकबा 08—11 बीघा मौजा हाजाणियों की ढाणी तहसील गुडामालानी पर प्रतिवादीगण को स्वयं एवं किसी

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और से हस्तक्षेप नहीं करने बाबत् स्थाई निषेधाज्ञा से पाबंद किया जाकर स्थाई निषेधाज्ञा जारी की गई थी। उक्त स्थगन आदेश मौजा हाजाणियों की ढाणी के खसरा संख्या 468 रकबा 08—11 बीघा पर दिनांक 04.10.2012 को विरूद्ध प्रतिवादीगण जारी किया गया था। प्रार्थीगण के उक्त खसरे की सीमा अप्रार्थीगण के खेत मौजा सोढों की ढाणी के खसरा संख्या 497 रकबा 35—10 बीघा के सेढासेढ अवस्थित है। प्रकरण में दोनों ग्रामों की सीमा ओवरलेप है। इस कारण हाजाणियों की ढाणी के खसरा संख्या 468 के खातेदारों की सीमा मौजा सोढों की ढाणी खसरा संख्या 497 के अंदर तक आती है। प्रार्थीगण द्वारा अपनी आराजी का सीमाज्ञान करवाने पर प्रार्थीगण को सर्वप्रथम ज्ञात हुआ कि प्रार्थीगण की आराजी खसरा संख्या 497 में आती है। दोनों गांवों के बीच में ओवरलेप होने के कारण प्रार्थीगण द्वारा अपनी खातेदारी आराजी खसरा संख्या 468 पर सक्षम न्यायालय से दिनांक 04.10.2012 को स्थाई निषेधाज्ञा का अनुतोष प्राप्त कर लिया था। उक्त स्थगन आदेश के प्रभावी होने के बावजूद अप्रार्थीगण द्वारा षडयंत्रपूर्वक उक्त स्थगन आदेश की अवहेलना करते हुए हल्का पटवारी रतनपुरा, भू—अभिलेख निरीक्षक रतनपुरा एवं तहसीलदार गुड़ामालानी से मिलकर खसरा संख्या 497 मौजा सोढों की ढाणी में से 0.15 बीघा भूमि का समर्पण करने हेतु कागजात तैयार करवाकर रास्ते के लिये भूमि समर्पण कर दी गई। चूंकि दोनों ग्रामों की सीमा ऑवरलेप होने के कारण उक्त समर्पित भूमि प्रार्थीगण के खसरा संख्या 468 में आती है। प्रार्थीगण को सर्वप्रथम प्रशासन गांवों के संग अभियान खारवा में उक्त समर्पण आदेश का पता चला। प्रार्थीगण द्वारा उसी दिन दिनांक 25.11.2021 को उक्त समर्पण आदेश की प्रति प्राप्त की। तब प्रार्थीगण को स्थगन आदेश के बावजूद उक्त समर्पण का ज्ञान हुआ। अप्रार्थीगण द्वारा प्रार्थीगण की आराजी पर स्थगन होने के उपरांत भी उक्त समर्पण आदेश दिनांक 05.01.2021 की आड़ में मौके की स्थिति में परिवर्तन कर दिया है। जो कि न्यायालय आदेश की अवहेलना की श्रेणी में आता है। इस प्रकार स्थाई निषेधाज्ञा का स्थगन आदेश वर्तमान में प्रभावी है। परंतु न्यायालय के स्थगन आदेश की अवमानना कर अप्रार्थीगण के द्वारा वादग्रस्त आराजी एवं कब्जा—काश्त भूमि पर समर्पण आदेश दिनांक 05.01.2021 निष्पादित करवाया गया है। इस प्रकार अप्रार्थीगण द्वारा न्यायालय के स्थगन आदेश की अवमानना की गई है। अतः उक्त आधारों पर प्रकरण में समर्पण आदेश दिनांक 05.01.2021 को निरस्त कर मौका यथास्थिति पुनः बहाल कर अप्रार्थीगण को प्रार्थी के कब्जा काश्त भूमि से बेदखल करते हुए प्रार्थी को पुनः कब्जा सुपुर्द करते हुए अप्रार्थीगण को दण्डित करने का निवेदन किया।

55. प्रकरण में प्रार्थना पत्र के अवलोकन से प्रतीत होता है कि वादी द्वारा अपनी खातेदारी आराजी पर प्रतिवादीगण द्वारा व्यवधान उत्पन्न नहीं करने बाबत् स्थाई निषेधाज्ञा प्राप्त करने हेतु राजस्थान काश्तकारी अधिनियम—1955 की धारा—188 के तहत एक दावा प्रस्तुत किया। उक्त दावा में वादी की खातेदारी आराजी पर व्यवधान नहीं करने हेतु प्रतिवादीगण को स्थाई निषेधाज्ञा से पाबंद किया गया। वादी का अभिकथन है कि उक्त रूप से स्थाई निषेधाज्ञा से पाबंद होने के बावजूद भी प्रतिवादीगण द्वारा वादीगण की खातेदारी आराजी पर व्यवधान उत्पन्न किया गया।

56. इस संबंध में विधि का सुस्थापित सिद्धांत है कि किसी प्रकरण में न्यायालय द्वारा जारी अस्थाई निषेधाज्ञा का आदेश स्पष्ट होना अपेक्षित है। साथ ही न्यायालय द्वारा

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जारी अस्थाई निषेधाज्ञा के आदेश की व्याख्या को लेकर संशय की परिस्थिति नहीं हो या आदेश की व्याख्या से अनेक निष्कर्ष उत्पन्न होने वाली परिस्थिति नहीं हो। साथ ही न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु न्यायालय में विचाराधीन कार्यवाही एक आपराधिक प्रकृति की कार्यवाही होती है। अतः न्यायालय के अस्थाई निषेधाज्ञा के स्थगन आदेश की अवमानना हेतु आरोप स्पष्ट, संशय विहिन व पुष्ट प्रकृति के होने आवश्यक है।

57. प्रकरण में सर्वप्रथम सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—01 तथा राजस्थान काश्तकारी अधिनियम—1955 की धारा—212 के तहत कोई अस्थाई निषेधाज्ञा जारी किये जाने या प्रभाव में रहने का प्रकरण नहीं है। सर्वप्रथम सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के तहत सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—01 तथा राजस्थान काश्तकारी अधिनियम—1955 की धारा—212 के तहत कोई अस्थाई निषेधाज्ञा जारी किये जाने या प्रभाव में रहना आवश्यक पूर्व शर्त है। प्रकरण में सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के तहत सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—01 तथा राजस्थान काश्तकारी अधिनियम—1955 की धारा—212 के तहत कोई अस्थाई निषेधाज्ञा जारी किये जाने या प्रभाव में रहना आवश्यक पूर्व शर्त की पूर्ती नहीं हो रही है। प्रार्थी का प्रार्थना—पत्र स्थाई निषेधाज्ञा की अवहेलना किये जाने से संबंधित है। उक्त स्थाई निषेधाज्ञा की अवहेलना किये जाने हेतु अन्य विधिक प्रावधान बनाये गये हैं। यह प्रकरण सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के तहत नहीं आता है। वादी का प्रकरण सिविल प्रक्रिया संहिता—1908 के आदेश—41 के तहत आता है। वादी उक्तानुसार कार्यवाही करने हेतु स्वतंत्र है।

58. प्रकरण में उक्त आधार पर प्रतीत होता है कि प्रतिवादी द्वारा न्यायालय के आदेश की अवमानना नहीं हुई है। इस आधार पर न्यायालय अपने विनम्र मत में न्यायालय के स्थगन आदेश की अवमानना होना नहीं पाता हैं। अतः

आदेश है कि

प्रार्थी का उक्त सिविल प्रक्रिया संहिता—1908 के आदेश—39 नियम—02ए के तहत प्रस्तुत प्रार्थना—पत्र अस्वीकार किया जाता है।

यह निर्णय मेरे द्वारा आज दिनांक 29.09.2025 को लिखवाया जाकर हस्ताक्षर एवं मोहर युक्त जारी किया जाकर सरे इजलास सुनाया गया।

(केशव कुमार मीना आर.ए.एस)
सहायक कलक्टर
गुढ़ामालानी—बाड़मेर

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