

**BATA SHOE COMPANY LTD.,  
VS.  
GANESHARAJAH AND OTHERS**

COURT OF APPEAL.  
BALAPATABENDI., J(P/CA).  
BASNAYAKE. J.,  
CA 748/2005.  
HC (WRIT) 242/2001(1).  
FEBRUARY 16, 2006.  
JUNE 2, 2006.

*Civil Procedure Code - Section 408 Settlement - Consent decree ? - Failure to honour and or disregard an undertaking given - Is it contempt of Court? - Constitution Article 155(3).*

The parties entered into a settlement and of consent judgment was entered in favour of the plaintiff with writ not to issue till 31.08.2003. If writ was to issue after 31.08.2003 it would be without notice even though one year has passed, Contrary to the express undertaking given by the respondents, the respondents failed and neglected to pay any sum of money whatsoever to the petitioner. The petitioner while applying for the execution of the writ, contended that, the respondents have committed contempt of Court - under Article 155(3).

The respondents raised a preliminary objection that the consent decree does not provide for contempt proceedings.

**HELD:**

- (i) Law of contempt is based on the broadest of principles namely that the Court cannot and will not permit interference with the due administration of justice.

Contempt of Court is a genuine term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of Court may take many forms.

- (2) It behoves the Court to look into the terms to which the parties have consented and the terms of the consent decree.

- (3) According to the terms in the consent decree, if the respondent fails or neglects to perform or carry out the terms of the "consent decree" both parties have consented for writ to be issued after 31.08.2003 without notice even though one year has passed.
- (4) So that the "Consent decree" itself provides for an alternative action for the petitioner if the terms of the decree are not obeyed and carried out by the respondents.
- (5) The above terms of the consent decree do not provide for an alternative movement towards pleading "a contempt of Court" as the decree contains specific action of "Writ of execution" to be provided with - parties have agreed to the issue of writ rather than resort to contempt proceedings.

Complaint of contempt of Court - Preliminary objection.

*Nigel Hatch PC with K. Geekiyanage* for plaintiff - petitioner  
*Mohan Peiris PC with Kumaran Aziz* for respondents.

November 13, 2006.

### **BALAPATABENDI, J. (P/CA)**

The Plaintiff - Petitioner (hereinafter referred to as the Petitioner) instituted an action bearing No. HC (Civil) 242/2001 in the Commercial High Court of Colombo against the Defendant - Respondents (hereinafter referred to as the Respondents) claiming *inter - alia* the sum of Rs.20,010,902.23 cts. together with the interest and costs of the suit. (Plaint marked as "X").

The Respondents filed Answer denying the Petitioner's claim and sought a dismissal of the Petitioner's action. (Answer marked as "X1"). On the trial date namely, 15.10.2002, the case was settled between the parties in the following terms.:

*"Of consent judgment for the Plaintiff as prayed for against the three Defendants. Of consent writ not to issue till the 31st August, 2003. If Writ to issue after 31st August 2003, Writ to issue without notice even though one year has lapsed".*

(Terms of settlement as appearing in document marked as "X2",)

Later the decree was entered according to the aforesaid terms of settlement.

The Petitioner states that contrary to the express undertaking given by the Respondents as set out in the consent decree, the Respondents failed and neglected to pay any sum of money whatsoever to the Petitioner. Thus, the Petitioner has now made an application for the execution of the Writ and notwithstanding the above application for the execution of the Writ, the Petitioner states hence the Respondents failed to honour and/or disregard an undertaking given by them as appear in the consent decree, they (the Respondents) have committed contempt of Court. Therefore, a cause of action has accrued to the Petitioner to charge the 1st, 2nd and 3rd Respondents for contempt of Court under Article 155(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Wherefore the Petitioner had prayed to make an order that the 1st or 2nd and or 3rd Respondents have committed contempt of Court.

At the outset I must discuss the nature of a "consent decree". Section 408 of the Civil Procedure Code indicates an adjustment of actions between the parties as follows :

*"if an action be adjusted wholly or in part by lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to all the parties concerned, and the court shall pass a decree in accordance there with, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction."*

It is an accepted fact that, "The law of Contempt is based on the broadest of principles, namely that the Courts cannot and will not permit interference with the due administration of justice."

Also "The provision of a system for the administration of justice by Courts of Law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. "contempt of Court" is a generic term descriptive of conduct in relation to particular proceedings in a Court of Law which tends to undermine that

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system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of Court may thus take many forms.”

So that there are twin aspects of the “Law of Contempt” its ancient origin and its contemporary importance of its relevance to the due administration of justice, must be clearly emphasized.

It behoves the Court to look into the terms to which the parties (the Petitioner and the Respondents) have consented and the terms of consent decree. Thus, “of consent judgment for the Plaintiff as prayed for against the three Defendants. Of Consent Writ not to issue till 31st August, 2003. If Writ to issue after 31st August, 2003. Writ to issue without notice even though one year has lapsed”. The decree was entered accordingly.

According to the terms in the “Consent decree”, if the Respondents fail or neglects to perform or carry out the terms of the “consent decree”, both parties have consented a Writ to issue after 31st August, 2003 without notice even though one year has expired. So that the above “consent decree” itself provides for an alternative action for the Petitioner if the terms of the decree are not obeyed and carried out by the Respondents. The above terms of the “consent decree” does not provide for an alternative movement towards pleading “a Contempt of Court” as the decree contains specific action of “Writ of Execution” to be provided with.

I am of the view that both parties had not considered Contempt of Court as a principle method of obtaining satisfaction of the decree. In fact the decree as it stands every way namely, that the parties have agreed to the issue of Writ rather than resort to contempt proceedings.

For the reasons aforesaid the preliminary objection raised by the Respondents is upheld. Accordingly the Petition is dismissed.

**BASNAYAKE, J. — I agree.**

*Application dismissed.*