1966 *Present :* **T. S. Fernando, J., Tambiah, J., and Alles, J.**

L. ARUMUGASAMY, Petitioner, and **L. KATHIRKAMANPILLAI,** Respondent

S.C. Application 118 of 1965-In the matter of a Rule for Contempt of Court under section 47 of the Courts Ordinance

Contempt of Court-Testamentary action-Administrator's position as officer of Court- Order to pay into Court income from the estate-Meaning and effect of such order-Courts Ordinance, s. 47

In a testamentary action, the administrator of the deceased person's estate is an officer of the Court. Wilful disobedience by him to a direction to pay into Court the income from the properties of the estate is punishable as contempt of Court, more especially if he has consented to the direction.

When two appeals preferred by the administrator of a deceased person's estate came up for hearing before the Supreme Court on 1st April 1963, an agreement of Counsel was recorded in the presence of the appellant and the orders appealed from were set aside. The agreement of Counsel, as recorded in the judgment of the Court, read as follows :-

" Counsel on both sides now agree that this matter can be settled on the following terms : namely, that the appellant who is the present administrator is directed to file a final account together with vouchers and receipts on or before 31st October 1963, and that the accounts be judicially settled thereafter. Until the final settlement of the accounts the administrator is directed to bring into court the income from the properties in his charge. "

Held, that the consent order imposed the duty on the administrator to bring into Court the net income from the properties in his charge, after deducting from the gross income nothing more than the expenses of production of the income. He was not entitled to deduct expenses of administration except with leave of Court obtained after depositing the net income. Wilful disobedience to the consent order amounted to contempt of Court.

RULE for Contempt of Court under section 47 of the Courts Ordinance.

A. C. Nadarajah, for the petitioner.

G. E. Chitty, Q.C., with A. S. Vanigasooriar and D. S. Wijewardene, for the respondent.

J. G. T. Weeraratne, Crown Counsel, with N. B. de S. Wijesekere, Crown Counsel, as amicus curiae.

Cur. adv. vult.

November 26, 1965. **T. S. FERNANDO, J.-**

The respondent comes before us on a Rule which this Court issued on him on a motion and affidavit presented by the petitioner calling upon him to show cause why he should not be punished in terms of section 47 of the Courts Ordinance for the offence of contempt committed against. or in disrespect of the authority of this Court, in that

(a) having been directed by the order of this Court in Application No. 128 of 1962 made on the 3rd August 1962 to bring into court to the credit of testamentary case bearing No. 14879 of the District Court of Colombo all the income of the properties forming the estate of Muthu Vairan Ladamuthu Pillai, deceased, of Chilaw, pending the determination of the appeals bearing Nos. 29 (Interlocutory) and 110 (Final) of 1962 ; and

(b) having through his Counsel agreed in settlement of the abovemen-tioned appeals to abide by the direction of this Court made on 1st April 1963 to file, in his capacity of Administrator of the Estate of the said Muthu Vairan Ladamuthu Pillai, a final account of his administration together with vouchers and receipts on or before the 31st day of October 1963, in order that the accounts may be judicially settled thereafter, and having also agreed to bring into court the income of the properties in his charge until the final settlement of the said accounts.

he has, in total disregard of those orders

(1) failed to bring into court the income of the properties forming the Estate of the abovenamed deceased or any portion of such income up to the date of the determination of the said appeals Nos. 29 and 110, namely, the 1st day of April 1963 ; and

(2) failed to file a final account of his administration, together with vouchers and receipts, on or before the 31st day of October 1963, and to bring into court the income of the properties in his charge up to that date.

The respondent is the eldest son of the deceased who died intestate so long ago as 8th April 1951 leaving a widow and six children, two of whom were minors. The respondent was, on his own application, granted letters of administration on 9th March 1953 to enable him to administer the estate of the deceased which is a considerable one and the value of which in 1951 was assessed at Rs. 711,198. The widow and three of the children, of whom the petitioner was one, moved the District Court in September 1960 for an order revoking the grant of letters on grounds of (a) failure to file inventory, valuation and accounts ; (6) neglect to bring into court monies received by the administrator to which the heirs were entitled ;

(c) purchase by the administrator of properties in his own name with profits of lands forming the estate ;

(d) deliberate delay in duly administering the estate with a view to depriving the other heirs of their lawful rights.

The District Court, after inquiry, made order on 18th January 1962 revoking the letters of administration granted to the respondent and making a grant in favour of the widow. The respondent appealed to this Court against this order of revocation-Appeal No. 110 (Final), as well as against a later order of the District Court refusing a stay of execution- Appeal No. 29 (Interlocutory). In addition to the filing of the appeals, the respondent made an application to this Court (Application No. 128 of 1962) for a stay of all proceedings in the Testamentary Case No. 14879 during the pendency of the appeals and for an advancement of the hearing of the main appeals. This application came up for hearing before this Court on 3rd August 1962 when the

Court made order directing (1) a stay of further action in the District Court and (2) " that all the income of the properties forming the estate of the deceased be brought into court to the credit of the testamentary case ". It made further order that " should in the meantime any taxes or rates fall due in respect of the properties forming the estate of the deceased, the petitioner (i.e. the present respondent) will obtain the sanction of the District Court to pay them out of the monies brought into court ".

The two appeals came up for hearing before this Court on 29th March 1963 and after argument on that day and on 1st April 1963, an agreement of Counsel was recorded and the orders appealed from were set aside. The agreement of Counsel is recorded in the following way in the judgment of this Court which reads :-

" Counsel on both sides now agree that this matter can be settled on the following terms; namely, that the appellant who is the present administrator is directed to file a final account together with vouchers and receipts on or before 31st October 1963, and that the accounts be judicially settled thereafter. Until the final settlement of the accounts the administrator is directed to bring into court the income from the properties in his charge. "

The respondent in his affidavit of 17th July 1965 states that the terms on which the appeals were decided were agreed to by his counsel without reference to him. I pointed out to Mr. Chitty that the appellant was present throughout the argument on both days (29th March and 1st April 1963). That the appellant was present in court when the appeals were argued was not denied or disputed before us. We are quite unable to accept as true the respondent's statement to which I have referred above.

The rule charges the respondent with disobedience to the directions contained in both orders made by this Court, viz. that of 3rd August 1962 and that of 1st April 1963. It is not denied that no payment of any kind

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into court has been effected since the first of these two orders was made. In fact, it is not disputed that the last payment into court by the administrator was made on 9th February 1961 when the District Judge made the following order :-

" I find from the accounts filed that there is a sum of Rs. 157,022/71 in the petitioner's hands. First of all this amount must be brought into court. Issue deposit order for Rs. 157,022/71 which must be deposited immediately. "

Mr. Chitty has contended that as the appeals were disposed of on 1st April 1963 on an order being made of consent, a complaint by the present petitioner made two years later (26.3.1965) that the respondent is guilty of a contempt of court in that he has disobeyed this Court's order of 3rd August 1962 was quite stale, and that in any event that order made, as it was, pending the determination of the appeals must not now be pursued for purposes of contempt proceedings. There is substance in this contention and we are disposed to accede thereto. We propose therefore to consider only the matter of the alleged disobedience to the order of this Court made on 1st April 1963.

It is beyond question that the latter order contains a clear direction given by this Court. It does not embody merely an intention of the parties to do certain specified things. We have been referred to a case decided in India, Badri Doss v. Labhu Mal[1 (7959) 60 Cr. L. J. of India, p. 889.], where the Punjab High Court has decided that where, in a suit for money, the defendant accepts the claim of the plaintiff and makes a statement promising to pay the amount in instalments and promises not to alienate any part of his immovable property till the payment of the claim, and it appears that the statement was based upon a private compromise between the parties, the

undertaking contained in the statement is not one given to the Court. It is no more than a solemn promise by the defendant to the plaintiff and the nature of that promise or undertaking can never be changed by reason of the compromise being accepted by the Court and a decree passed in its terms. The breach of such an undertaking or promise does not amount to contempt of Court. This decision, in my opinion, has no application to the facts of the case before us. Here is no mere private undertaking between parties, nor is this an ordinary private suit between parties. This is a testamentary action where the administrator is an officer of the court. Moreover, as I have already stated, the breach is of a direction given by a court, not of an undertaking which the respondent hoped he would be able to fulfil. In principle, the situation is not different to that in Botticelli v. Ribeira[2 (1872) Ramanathan's Reports, 12.], where this Courtcommitted for contempt a defendant (a trustee who had fraudulently appropriated money) who had been ordered by court to pay the money into court, and who instead of obeying the order, got himself made an insolvent on his own petition, and then set up his own insolvency as a reason why the order of the court should not be enforced by attachment for contempt.

It was next contended that the expression " income from the properties in his charge " means not the gross income, but the net income. The petitioner pointed to the earlier order of the Court, namely, that of 3rd August 1962 which too directed that " all the income of the properties " be brought into court and which contained an express direction as to the nature of the disbursements in respect of which money could be drawn out from the sums deposited in court. Apart from the fact that it is not open to us, particularly in proceedings of a criminal nature, to interpret one order in the light of another and an earlier order, we find that when the District Judge by his order of 18th January 1962 revoked the grant of letters to the respondent in favour of a grant to the widow of the deceased, the latter was directed to deposit quarterly only the net income from the properties. A deposit in court of the gross income is impractical and as the accounts have ultimately to be judicially settled, the court will be burdening itself unduly in having to make payment orders frequently without any significant advantage to any party. I shall therefore deal with the question before us on the basis that the direction this Court made on 1st April 1963 was to bring into court the net income from the properties.

There is no denial that the gross monthly income was about Rs. 50,000. Thatwould appear to be the position even from the accounts that have now been filed in the District Court by the respondent himself. He however contends in his affidavit that the average net monthly income is Rs. 9,623/64. Therefore, evenif the order of the Court made on 1st April 1963 is looked at only prospectively, the respondent should today have in his hands a sum in excess of Rs. 9,623 X 30 or Rs. 288,690/-. He has stated in his affidavit of 17th July1965 that he has only a balance of Rs. 24,695/45 which balance, as his affidavit of 15th November 1965 shows, has since increased to about Rs. 40,000/-. In spite of his admission of having in his hands at least these much reduced sums, he has not brought a single cent of that money into court.

He has attempted to make out that the difference representing a sum in excess of(Rs. 288,690 less Rs. 40,000) Rs. 248,690 has been spent by him in litigationand other expenses. The correctness of this claim of his will no doubt be examined in the appropriate court. I am unable to conclude that the net income from the properties means anything other than the gross income from the properties less the expenses of producing that income in the sense this last expression is ordinarily understood. I entertain no reasonable doubt that the Court intended and the respondent understood that income from the properties was the gross income less the expenses of producing that income ; I cannot infer that the respondent could reasonably have understood or interpreted the Court's order made of consent to mean that the expenses of litigation with third parties who are alleged to have claimed the properties or, to use the words of his Counsel, the expenses of duly administering the estate were to be c deducted from gross income without an order of court. Every administrator knows that he is entitled to apply to court to draw out monies

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from the estate of the deceased as and when required for due administration. The respondent himself was not slow to apply to the District Court to obtain further time when he was unable to file final accounts on or before 31st October 1963 as decreed by this Court. The record shows that the District Judge granted him time on several occasions even after 31st October 1963. Final accounts were filed only on 28th May 1964. As he himself puts it in his affidavit of 21st August 1965, " whenever I found that I was unable to do certain acts on the dates fixed by Your Lordship's Court, I made application to the District Court in the Testamentary proceedings for extension of dates and the Court granted me such time ", On the other hand, no application was even attempted to be made to court in respect of any relief against the order to deposit the income from the properties, even if the court were to decide ultimately that it had no power to vary the order of the Supreme Court. It is significant that after the disposal of the appeals by this Court, the District Judge made two specific orders, the first on 6th November 1963 and the second on 19th August 1964, for the cash in the hands of the respondent to be deposited to the credit of the case. These orders have also been completely disregarded by the respondent.

In his affidavit of 17th July 1965, the respondent, while stating that the balance cash in his hands is only Rs. 24,695/45, asserts that " this money cannot be brought into court as money is required daily for current expenditure including expenses in pending litigation ". This assertion he repeats in another affidavit dated 15th November 1965, the day before the hearing by us, where, after stating that the amount now in his hands is about Rs. 40,000, he adds " I have been compelled to retain this comparatively small amount in my hands for the due discharge of the duties as administrator". I feel constrained to observe that the due discharge of his duties as administrator plainly required him to deposit the net income in court and then to apply to draw out such sums as the court thought reasonable to enable him duly to perform his function of .administrator.

I must add that in computing that the balance in his hands in July 1965-vide paragraph 15 of his affidavit of 17th July 1965-was Rs. 24,695/45, he has accounted for a sum of about Rs. 157,000 as being lost through thefts by the present petitioner and two other brothers. The respondent's position in regard to these thefts is set out in paragraph 5 of that same affidavit. The losses are alleged to have taken place on 26th March 1961, i.e. within two months of the deposit by the respondent of another sum of Rs. 157,022/71 in court, as already mentioned. As to this allegation of theft by his brothers, the petitioner states-see paragraph 5 of his affidavit of 3rd August 1965-that he and his brothers were acquitted in criminal proceedings, the trial judge holding that the allegation of theft was " a fabrication by the respondent, his sister and his brother-in-law ". That the District Judge acquitted the petitioner and his brothers and made the observation quoted above is not denied. If this sum of Rs. 157,022/71 was indeed not stolen-and I wish to say

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nothing myself here in respect of the truth or otherwise of the allegation -then the respondent should obviously have brought this sum too to the credit of the testamentary case long ago.

In view of all that I have stated above, leaving out of account the failure of the respondent to file a final account by 31st October 1963 (an account which has now been filed after extensions of time obtained from the District Court), I am satisfied that the respondent has failed to bring into court the income from the properties in his charge, by which I understand the net income from the properties after deducting the expenses of production thereof. I hold that the respondent could not reasonably have understood, and did not in fact understand, that the direction was to bring into court the income after deduction of expenses and all other expenses of due administration. Such an interpretation of this Court's order of 1st April 1963 would virtually have constituted the respondent the judge of what amount, if any, he should deposit in court. Even on an assumption that the only money now in his hands as administrator of this estate is about Rs. 40,000, he has on his own showing been guilty of the offence of contempt of this Court by failure to deposit at least

this sum admittedly in his hands. The respondent's failure, in my opinion, has been wilful and contumacious; the wilful disobedience of the direction of this Court, a direction to which he in fact consented, makes the contempt the more heinous.

I find the respondent guilty of the offence of contempt of court on the findings set out above. I order that he be committed to jail for a period of twelve months, there to undergo rigorous imprisonment.

TAMBIAH, J.-I agree.

AXLES, J.-I agree.

Rule made absolute.

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