

**1964 Present : Basnayake, C.J., Abeyesundere, J., and  
Sri Skanda Rajah, J.**

**C. J. F. DE ALWIS**, Petitioner, and **L. C. RAJAKARUNA**,  
Respondent

*S. G, 415 of 1983-Application under sec-ion 47 of the Courts Ordinance to take  
cognizance of and to try in a summary manner an offence of contempt  
committed against or in disrespect of the District Court of Colombo*

*Contempt of Court-Consent order-Failure of a party to honour it-Effect-Courts Ordinance, s.  
47.*

According to the terms of an interim settlement recorded by Court in an action the plaintiff agreed to hand over certain motor vehicles (tractors) and undertook not to make use of them. The plaintiff, however, failed to honour his undertaking.

**Held** (by the majority of the Court), that the plaintiff was guilty of contempt of Court. The failure of a party to honour an undertaking given by him to the Court is a contempt of Court.

**APPLICATION** Under section 47 of the Courts Ordinance. Mackenzie Pereira, with P. Nagendran, for 1st Defendant-Petitioner.

*Colvin R. de Silva, with D. J. Tampoe and M. T. M. Sivardeen*, for Plaintiff- Respondent.

*Cur. adv. vult.*

July 27, 1964. **BASNAYAKE, C.J.-**

The respondent to the rule for contempt of Court was the plaintiff in D. C.Colombo Case No. 1059/Z. The 1st defendant in that case petitioned this Court that an offence of contempt had been committed by the respondent. Upon hearing that petition a rule nisi for contempt was issued. The material portion of the rule reads as follows :-

" It is ordered that the abovenamed respondent, Leslie Conrad Raja-karuna of 10 Hotel Road, Mount Lavinia, do appear in person before the Supreme Court at Hultsdorp, Colombo, on the 18th day of December 1963 and, if necessary, on each succeeding day at 11 o'clock in the forenoon, and show cause, if any, why he should not be punished for the offence of contempt committed against or in disrespect of the authority of the District Court of Colombo, in that, he being the plaintiff in Case No. 1059/Z of the District Court of Colombo and being enjoined and restrained, until the final determination of the said action, by an interim injunction issued by that Court dated the 11th day of June 1963 from causing any damage to or disposing of the four tractors referred to therein and/or being further a party to the agreement

entered of record on the 4th day of July 1963 whereby he undertook to hand over all the tractors in his possession to the United Motor Finance Co. (Ceylon) Ltd. by the 12th day of July 1963 and/or being further a party bound by the order of the said District Court entered of consent on the 4th day of July 1963 that he should not make use of those vehicles thereafter, did and does in defiance, contravention, and disobedience of the aforesaid injunction, agreement, and order damage, retain in his possession, and make use of the aforesaid vehicles."

The respondent appeared in response to the rule and showed cause. At the conclusion of the hearing the majority of us were satisfied that the offence of contempt of Court had been established and we imposed a fine of Rs. 500 and in default of payment of the fine we ordered the respondent to undergo a term of one year's rigorous imprisonment, and reserved our reasons to be delivered on a later date. We accordingly do so now.

The facts shortly are as follows :-The respondent Leslie Conrad Rajakaruna of No. 10 Hotel Road, Mount Lavinia, instituted in the District Court of Colombo on 8th January 1963 against the petitioner Charles Jesse Frederick de Alwis of No. 123/1 De Alwis Avenue, Averi-watte, Wattala, and Patabendi Maddumage Lenty de Silva of No. 46 Norwood Bazaar, Norwood, an action for the termination of the business the respondent claimed he had been carrying on in partnership with the defendants under the name of Esac Tractor Company. The respondent stated-

- (a) that the 1st defendant was appointed the Managing Partner,
- (b) that the objects of the company were the purchasing of tractors and employing them for the purpose of the partnership business,
- (c) that the respondent had contributed a share capital of Rs. 18,000 in cash,
- (d) that the 1st defendant accepted that sum of money though he had not paid his share capital,
- (e) that he had reasons to believe that the 1st defendant acted in defraud of the other partners, and unlawfully and wrongly brought the partnership to an end, and
- (f) that on 4th January 1963 the 1st defendant advertised for immediate sale in the Ceylon Daily News all the tractors and other equipment in the custody of the 1st defendant without the knowledge or the consent of the respondent.

He further stated that if the 1st defendant was not restrained from disposing of the assets of the partnership and incurring any debts, the respondent would suffer irreparable damage and loss. He prayed an interim injunction restraining the 1st defendant from disposing of or damaging the property or incurring debts on behalf of the partnership property, and asked-

- (i) that a receiver be appointed to take charge of the partnership assets, and
- (ii) that the 1st defendant be ordered to pay back the sum of Rs. 18,000.

On the 7th June 1963 the 1st defendant filed answer stating that the object of the partnership referred to by the respondent proved abortive owing to the respondent's incapacity and the 2nd defendant's unwillingness to co-operate with the 1st defendant to provide the necessary assets to commence the business. He further said that he acquired certain tractors on his own from two finance companies, namely, " The United Motor Finance Company " and " The Sathiyawadi Stores and Transporters Limited ". The tractors were acquired on hire purchase agreement by the 1st defendant for and on his own behalf and he claimed that they are the property of the finance companies and had nothing to do with the partnership alleged by the respondent.

While admitting that he received from the respondent two payments amounting to Rs. 18,000 (one of Rs. 8,000 and the other of Rs. 10,000) towards the capital of a partnership that was to be established, he denied that they were contributions towards the share capital of an existing partnership. He stated by way of further answer-

"(a) that soon after the institution of this action the plaintiff called on this defendant and made the following representations, to wit:- (1) that the plaintiff had made arrangements to obtain a loan of Rs. 100,000 from the People's Bank in order to equalise his share capital and thus liquidate the balance due to the two Finance Companies ; (2) that in order to obtain the said loan it was necessary for the plaintiff to show the Bank : (a) the number of tractors in his possession, (6) that the plaintiff was actually engaged in business, and (c) an estimate of the prospective returns from the business.

(b) in order to achieve the aforesaid object the plaintiff requested this defendant temporarily to hand over to him four of the six tractors in this defendant's possession, the copies of the hire purchase agreements relating thereto and a letter appointing one Steuart whom the plaintiff introduced to be General Manager on a salary of Rupees Four Hundred (Rs. 400) per month and that the plaintiff would withdraw this action against this defendant and requested him to take no steps and that he would enter into a partnership agreement excluding the 2nd defendant in view of his failure to subscribe his share capital. In order to give colour to these representations the plaintiff accompanied this defendant to the United Motor Finance Company and assured them that the claims owing to them would be settled soon after the Bank loan was obtained."

and he prayed that the respondent's action be dismissed and for the dissolution of the interim injunction, and prayed a decree for the restoration of the tractors to him and an interim injunction restraining the respondent from causing any damage to the tractors.

On the same day the 1st defendant was examined by the Court and the District Judge made the following order :-

" I find that on plaintiff's application an interim injunction had been issued on the 1st defendant restraining him from disposing or damaging the partnership property, whatever it may mean, or incurring debts.

---

183

On the other hand the answer filed by the 1st defendant and the application supported by his affidavit for an interim injunction against the plaintiff sets out inter alia that at the best there was only a discussion and certain negotiations for the formation of a partnership and that as a matter of fact such a partnership has not been formed, but that by such representations plaintiff had secured the custody of the four tractors which the 1st defendant says is his property having been purchased by him on credit with loans obtained from a certain Finance Company. His complaint is that the plaintiff has prevented him from accepting jobs or contracts which he had hitherto been accepting and performing by the use of these four tractors and that plaintiff is now seeking to dispose of them. His application now is for an interim injunction to restrain the plaintiff from damaging or disposing of the four tractors, till this action is finally decided.

I allow the interim injunction on 1st defendant giving security in a sum of Rs. 1,000. Issue interim injunction on plaintiff restraining him from damaging or disposing of the four tractors, returnable on 21.6.63. Issue also notice on plaintiff for the dissolution of the injunction issued at his instance. Replication 21.6.63."

The replication was filed on that date praying that the 1st defendant's action be dismissed with costs and the matter came up for inquiry on 4th July 1963, and after hearing counsel the following

terms of settlement were recorded :-

" It is agreed that Messrs United Motor Finance Co. (Ceylon) Ltd. should be added as 1st added defendant as their presence is necessary for the proper determination of this case. It is agreed that tractors-

- (1) 22 Sri 7129 with trailer No. 55 Sri 1965,
- (2) International Tractor No. D 250, 22 Sri 2720,
- (3) International Harvester Tractor-Engine No. TDFN-47084 (Chassis No. TDF-55575),
- (4) International Harvester Tractor-Chassis No. BTD/8/1008, Engine No. BD-281/1501, and
- (5) International Harvester No. TD 9-92 series Engine No. TD 92/3337

are admittedly vehicles of which the absolute owners are the United Motor Finance Co. (Ceylon) Ltd. and they are covered by hire purchase agreement with the 1st defendant.

It is agreed that the Messrs United Motor Finance Co. (Ceylon) Ltd. should be added and added defendant in this case and be permitted to file such papers as its lawyers think necessary to safeguard its rights in regard to these vehicles in this case. In the meantime it is agreed that the United Motor Finance Co.(Ceylon) Ltd. will hold these vehicles giving them every attention necessary and not hire them or dispose of them without an order of this Court until decree is entered in this case.

It is admitted that out of these five vehicles, vehicles No. 22 Sri 7129 and 22 Sri 2720 are with the 1st defendant and the others and the trailer are in the possession of the plaintiff.

---

**184**

It is agreed that the plaintiff will hand over all the tractors in his possession to the United Motor Finance Co. (Ceylon) Ltd. and will inform U. M. F. where they are to be collected and the plaintiff will accompany the representative of the United Motor Finance Co. who goes to take charge of those vehicles.

The expense of bringing those vehicles to Colombo will be charged in due course by the United Motor Finance Co. against the value of the vehicles.

In similar fashion the 1st defendant will inform the United Motor Finance Co. where they can take charge of the two tractors in the possession of the defendant and the 1st defendant will accompany the representative of the United Motor Finance Co. and hand over possession. The cost of bringing these vehicles also will be charged by the United Motor Finance Co. against the value of these vehicles. The handing over of vehicles on each side to be completed by the 12th of July 1963. In the meantime it is ordered by consent that the plaintiff and the 1st defendant must not make use of the vehicles hereafter.

Mr. Samarakoon moving issue notice on Messrs Sathyawadi Stores Ltd., Dambulla Road, Kurunegala, to show cause why they should not be added as a party in this case and take charge of vehicle No. 25 Sri 5 until the determination of this case. Issue this notice returnable 2/8/63. In the meantime the plaintiff is forbidden to make use of this tractor.

It is agreed once the vehicles have been delivered to the United Motor Finance Co. (Ceylon) Ltd. and Messrs Sathyawadi Stores Ltd. the respective parties can apply for dissolution of the interim injunction that has been entered."

The respondent failed to hand over the tractors to the United Motor Finance Company by 12th July 1963 in accordance with the agreement recorded by the Court, and also failed to honour his undertaking not to make use of the tractors. The failure to honour an undertaken given to the Court is a contempt of Court. This Court so decided in the case of In re P. K. Ens[1 (1959) 62 N. L. R. 509.] wherein the following words from Oswald on Contempt are cited with approval:-

" An undertaking entered into or given to the Court by a party or his counsel or solicitor is equivalent to and has the effect of an order of the Court, so far as any infringement thereof may be made the subject of an application to the Court to punish for its breach. The undertaking to be enforced need not necessarily be embodied in an order."

**SRI SKANDA RAJAH, J.-I agree.**

---

***Rule made absolute.***

**- End -**