

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 188

District Court Appeal No 14 of 1995

Between

Harkishandas S/O Ratilal
Doshi

... Plaintiff

And

Aaval Investments (Pte) Ltd

... Defendant

GROUND OF DECISION

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Harkishandas S/O Ratilal Doshi v Aaval Investments (Pte) Ltd

[1996] SGHC 188

District Court Appeal No 14 of 1995
S Rajendran J
30 August 1996

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Judgment:

2 JUDGMENT

3 1. On 17 September 1994, the respondents, Aaval Investments
(Pte) Ltd, applied for and obtained leave to commence contempt
proceedings against the appellant, Harkishandas s/o Ratilal Doshi
("HD") for the alleged breach of an ex-parte interim
injunction that the respondents had obtained on 15 June 1994. The

injunction restrained the defendant, Kamlesh Doshi, and in particular HD as the representative of the defendant, from removing the goods from jurisdiction or otherwise dealing with the goods. The contempt action was heard on 11 and 12 November 1994 and again in December 1994 before a District Judge. The District Judge found HD guilty of the contempt alleged and on the basis that HD would procure the issue of a third party guarantee on terms acceptable to the respondents for any judgment that the respondents might obtain against the defendant in respect of the goods, the District Judge ordered HD to pay a fine of \$6,000. In addition, he ordered HD to pay to the respondents costs, which he fixed at \$10,000. This appeal is against those orders of the District Judge. The facts that gave rise to these proceedings were as follows:

4 2. HD had no commercial interest in the transaction relating to the goods. He came into the picture at the request of Kamlesh Doshi to try and resolve differences that Kamlesh Doshi had with the respondents and one CM Shah of J&P Impex (who was also the respondents' auditor) in respect of payment for the goods. On 19 May 1994, HD met the respondents' representative, Yunus Valibhoy ("Valibhoy"), and Shah at the office of Shah and they discussed the terms on which the respondents would release the goods to the defendant. The terms were then typed out in a document headed "Draft Invoice" addressed to M/s HB Trading Co, Bombay, India, a firm in which Kamlesh Doshi was a partner. The draft invoice was to the following effect:

5 DRAFT INVOICE

6 It is to be noted from this draft that the balance of \$161,557.56 payable to the respondents was to be paid by a Bank

of India cheque for \$104,207.56 on behalf of HB Trading Co, Bombay, and the balance of \$57,350 was to be paid by Shah also on behalf of HB Trading Co, Bombay. The 104,207.56 was the Singapore dollar equivalent of a sum of US\$65,000 that Kamlesh Doshi had, on 15 March 1994, remitted to the account of Doshi Brothers (HD's firm) at the Bank of India.

7 3. The terms in the draft invoice were acceptable to Kamlesh Doshi and HD was asked by Kamlesh Doshi to settle the matter on those terms and take delivery of the goods. Kamlesh Doshi also asked HD to obtain from the respondents a note stating that the respondents had no further claims in respect of the goods. Kamlesh Doshi confirmed those instructions in two faxes both dated 10 June 1994. One fax was in English while the other was in Gujarati. In the fax, Kamlesh Doshi asked HD to "kindly take

Declaration Note from Aaval Investments" and to hand the goods to Vijaykumar of HB Trading Co, Bombay "who will may be meet you on 14.6.94". Kamlesh Doshi concluded by telling HD that after the goods are handed to Vijaykumar he (Vijaykumar) will look after this matter "so there will be no responsibility to you". I will revert to these faxes later as the learned trial judge accepted the submission of Counsel for the plaintiffs that these faxes were fabricated in order to lend credence to HD's defence.

8 4. On 14 June 1994, Valibhoy went to the office of HD to and collected from HD the cheque for the \$104,207.56. At that time HD handed to Valibhoy a draft of the "Declaration Note" and asked Valibhoy to give a note, on the respondents' letterhead, as per the draft. Valibhoy signed a payment voucher

acknowledging receipt of the cheque. The voucher contained the entry: "Goods will taken delivery tomorrow 15.6.94".

9 5. On the morning of 15 June 1994, HD went to the premises of the respondents to collect the goods. Valibhoy, after ensuring from the bank that the cheque for \$104,207.56 would be cleared, released the goods to HD. After releasing the goods Valibhoy handed to HD the respondents' signed invoice dated 13 June 1994 in respect of the goods. HD, at Valibhoy's request, acknowledged receipt of the goods on the respondents' copy of the said invoice. The invoice which was addressed to HB Trading Co, Bombay, India, gave details of the payment terms for the goods. The terms were:

10 Valibhoy however refused to give to HD the note that HD had asked for. According to HD, Valibhoy asked him to be at Shah's

office at 6pm that evening when he (Valibhoy) would consider giving the note after discussing the matter with Shah.

11 6. The summary of the events that I have given above is culled from the affidavits of HD tendered as evidence-in-chief in the contempt proceedings. It is relevant to note that HD's evidence about the meeting on 19 May 1994, the meeting on 14 June 1994 and, save as to the time when the loading was completed, the events that occurred at the respondents' office on the morning of 15 June 1994 were not challenged.

12 7. Immediately after handing the goods to HD, Valibhoy left for the offices of his solicitors and the solicitors, that same afternoon, acting on behalf of the respondents, applied for the ex- parte interim injunction in the terms noted earlier. In the affidavit filed in support of the application, Valibhoy claimed that in December 1993 Kamlesh Doshi, the defendant, had through

Shah arranged for the respondents to finance the purchase of goods secured by the defendant's agents, M/s J&P Impex of Singapore, from Sing Tung Lee Enterprises Ltd of Hong Kong. He claimed that, in consideration, the defendant was to reimburse all disbursements incurred plus a commission of 5% of the total value of the goods. He stated that the goods arrived in Singapore on 4 February 1994 but remained uncollected as the defendant failed to pay to the respondents the sum of \$199,504.94 due to the respondents under the said arrangements. I will quote verbatim the rest of his affidavit:

13 10. Finally on 13th June, 1994, the Defendant arranged for one Mr Harkishandas s/o Ratilal Doshi of M/s Doshi Brothers to collect the Goods on the Defendant's behalf. The business profile of M/s Doshi Brothers is at page 34 of Exhibit A. The Goods have

been or are now being taken by Defendant from the Plaintiffs. Mr Harkishandas s/o Ratilal Doshi had asked me to produce an invoice in favour of M/s HB Trading Co, Bombay, India. Neither the Plaintiffs nor I have ever heard or dealt with this entity before. A copy of the invoice which I have been asked to produce is at page 35 of Exhibit A.

14 11. The invoice does not reflect the true account of expenses incurred and monies due. For instance, trust receipt interest and the Plaintiffs' 5% commission have been omitted. It also includes a sum of \$24,800.00 which neither the Plaintiffs nor I have ever received. I have asked Mr CM Shah in respect of the sum of \$57,350.00 which I am told he would pay. Mr CM Shah has refused to give the Plaintiffs any written undertaking or confirmation that he would pay this amount.

15 12. In addition, I have also been asked to type a letter on the Plaintiffs' letterhead in terms of the copy which was handed to me by Mr Harkishandas s/o Ratilal Doshi. Mr Harkishandas s/o Ratilal Doshi has asked me to hand him the letter at the time he collects the Goods which the Plaintiffs refused to give. Mr Harkishandas s/o Ratilal Doshi informed me that he was acting on the Defendant's instructions to request for the letter on the Plaintiffs' letterhead to be supplied upon taking delivery of the Goods. Copies of the letter the Plaintiffs are asked to produce, the cheque for \$104,207.56 and the payment voucher of Mr Harkishandas s/o Ratilal Doshi are at pages 35 to 37 of Exhibit A.

16 13. I would like to give a breakdown of the total amount originally due from the Defendant and the balance that is still

outstanding (assuming the Defendant's cheque for \$104,207.56 is honoured):

17 The captioned amount excludes Trust Receipt interest from 15th June, 1994 to the date of payment. I have not been able to ascertain this from the Plaintiffs' bank at short notice.

18 14. I have been informed by Mr Harkishandas s/o Ratilal Doshi that he has been asked by the Defendant to make arrangements to immediately ship all the Goods to India. The Defendant has no other assets or properties in Singapore that I or the Plaintiffs know of. The Defendant has failed to make payment of the Goods when they arrived in Singapore. The Defendant has evinced an intention to avoid making payment to the Plaintiffs by instructing Mr Harkishandas s/o Ratilal Doshi to ship the Goods to India without making payment of the balance amount due to the Plaintiffs or to provide for the amount due.

19 15. The letter the Defendant has required the Plaintiffs to give as well as the inconsistent invoice and payment voucher the Defendant required to be signed support the Plaintiffs' and my belief that the Defendant is seeking to avoid making payment of the balance amount due. If the Defendant removed the Goods from the jurisdiction of this court, the Plaintiffs would have no means to secure payment from the Defendant. I would emphasise that the Plaintiffs are not the sellers of the Goods but the financier for the purchase of the Goods. The Goods are now probably in the possession and control of the Defendant and are about to be moved out of the country. < Emphasis added. >

20 8. That same afternoon the solicitors for the respondents secured from District Judge (Miss) Yap Siew Yong, an ex-parte interim injunction in the terms prayed. As the defendant was an

Indian national residing in Bombay, the solicitors also obtained an order for service of the writ and the injunction order out of jurisdiction. At about 4.45pm the same afternoon the solicitors served the injunction order on HD at HD's office in Haig Road.

21 9. Within an hour of the service of the injunction order, the respondents' solicitors followed up with a letter faxed to HD's office asking HD to confirm that the goods were in his possession and to let them know where the goods were stored. On 20 June 1994, by another letter sent by fax, the respondents' solicitors again demanded that HD inform them of the whereabouts of the goods. On 22 June 1994, solicitors acting for HD informed the respondents' solicitors that they were filing an application for the discharge of the injunction on the grounds that HD was not in possession of the goods at the time the injunction was served on

him.

22 10. The respondents' solicitors immediately responded asking for details of when, how and to whom the goods were delivered. In that response, the respondents' solicitors stated "for the record" that although HD had spoken to their client on numerous occasions after the injunction has been served, HD had, "at no time, informed (their) clients that the goods were not in his possession".

23 11. The details of when HD had parted with the goods were contained in an affidavit of HD affirmed on 21 June 1994 filed with the application HD made for the discharge of the injunction. HD's solicitors forwarded this affidavit to the respondents' solicitors on 22 June 1994 and in their covering letter, informed the respondents' solicitors that it was on their advice that HD

had not discussed the matter with the respondents.

24 12. The effort(s) by HD to have the interim injunction set aside is not directly material to the issues in this case and in any event form part of the subject matter of a separate appeal. Suffice it to say that the respondents opposed HD's application on the grounds, inter alia, that HD had no locus standi and that the proper party to make such an application was the defendant. It would appear that in the light of HD's claim that he did not have the goods with him at the time the injunction was served on him, the District Judge who heard the first application took the view that there was not much point in pursuing with the application. He therefore made no order on the application without going into its merits.

25 13. The application by the respondents, on 17 September 1994,

under O 52 of the Rules of the Subordinate Courts, for leave to commence committal proceedings against HD for alleged breach of the terms of the interim injunction, was supported by an affidavit of Valibhoy. The grounds set out in that affidavit were as follows:

26 HD failed to respond to either the order or the Plaintiffs' solicitors' telefax message which was also sent by post to HD's two addresses. However, on the evening of 15th June, 1994, HD met up with CM Shah and I at CM Shah's office. At this meeting HD represented to me that he had the Goods mentioned in the order. HD told me that the Plaintiffs' action had put him in a predicament. HD also told me that the Plaintiffs' action would jeopardise the good trading relationship and mutual trust he had built up with the Defendant herein. Further, HD asked me to delay

service by 3 days while he spoke to the Defendant to secure repayment of monies due for the Goods to the Plaintiffs. At no point in time during this meeting on the evening of 15th June, 1994, lasting some 3 hours did HD say that he had parted with the Goods before the order was served on him. < Emphasis added.

>

27 14. The hearing of the committal proceedings commenced on 11 November 1994. Under cross-examination, Valibhoy stated that Shah was present at the meeting at Shah's office on the evening of the 15th and would support his evidence. He told the court that although no affidavit from Shah had been filed, Shah had agreed to testify and the respondents' solicitors had been instructed to issue a subpoena on Shah. Despite what Valibhoy stated, the respondents closed their case without calling Shah.

28 15. The cross-examination of Valibhoy at the hearing below was very brief. Counsel for HD alleged that this was because Counsel for the respondents objected to any question being asked of Valibhoy that touched on the events leading to the respondents applying for the interim injunction. The position Counsel for the respondents took at the hearing below, as indeed he took before me, was that these circumstances and all questions relating to the propriety or otherwise of the application for the injunction were irrelevant to the issue before the court, namely, whether HD had breached the injunction. In the Record of Appeal there is a note of the District Judge upholding the objection of respondents' Counsel to Valibhoy being asked why immediately after releasing the goods to HD he had proceeded to obtain an injunction to stop HD from dealing with the goods. Although the

order made by the District Judge was for Counsel to re-phrase the question, the record shows that, after that ruling, Counsel for HD confined himself to questioning Valibhoy on whether the respondents would be calling Shah to support Valibhoy's evidence of what was said on the evening of 15 June 1994 and in challenging Valibhoy's evidence that the goods were loaded by about 1pm and not by about 10.30am. Oddly enough, although Counsel for the respondents had objected to Valibhoy being questioned about the events prior to the issue of the injunction, no objection was taken, at the trial below, to HD telling the court (in the affidavits produced) about such prior events.

29 16. HD's defence to the allegation of contempt was that on the morning of 15 June 1994, while he was at the respondents' premises collecting the goods, Vijaykumar had contacted HD's

office and made arrangements with HD's son (also called Kamlesh Doshi) to collect the goods from the warehouse of Doshi Brothers that afternoon. At about 2.30pm the son had accompanied Vijaykumar to the warehouse and Vijaykumar had taken the goods away. Accordingly, at the time the interim injunction was served on HD the goods were no longer under HD's control.

30 17. HD denied that he had told Valibhoy, when he met Valibhoy on the evening of 15 June 1994, that he still had the goods with him. HD's evidence was that the service of the court papers on him came to him as a shock. He immediately tried to contact Valibhoy to try and get an explanation but could not reach him.

31 18. Later that evening HD proceeded to the office of Shah as arranged and waited for Valibhoy. Valibhoy turned up at about 7.30pm. HD asked Valibhoy why he had commenced the legal action. According to HD, Valibhoy told him that when the writ is served

on Kamlesh Doshi in India, Kamlesh Doshi would get into greater trouble because of violations of the Foreign Exchange control laws of India, and Valibhoy offered to delay the service of the writ to give HD time to speak to Kamlesh Doshi about paying the additional amounts that Valibhoy wanted. In cross-examination, HD was asked why he did not, at that meeting, tell Valibhoy that he had already parted with the goods. HD's response was that he did not see any point in telling that to Valibhoy.

32 19. HD had filed affidavits from five persons, including Vijaykumar, to support his defence. Save for Vijaykumar, the other four persons who filed affidavits gave evidence for the defence. Vijaykumar was present in court at the hearings on 11 and 12 November 1995 in order to testify but by the time the hearing resumed in December 1995 he had returned to India.

33 20. Abdul Rashid bin Abdul Wahab ("Abdul Rashid"), an employee of Doshi Brothers, and Rosli bin Abdul Rahman, an employee of a transport company, confirmed that on the morning of 15 June 1994 at the respondents' premises, at the request of HD, they loaded 66 cartons on to a lorry. Loading, they said, was completed at about 11am and they transported the goods to the warehouse of Doshi Brothers at Jalan Eunus. There the cartons were unloaded. The unloading was completed at about noon.

34 21. Abdul Rashid further testified that at about 2.30pm, Kamlesh Doshi (HD's son) and a few others arrived at the warehouse. On the instructions of Kamlesh Doshi, the cartons were taken from the warehouse back to the loading bay and loaded onto (another) lorry which then took the cartons away. Abdul Rashid was cross-examined on the system maintained by Doshi Brothers

recording the movement of goods in their warehouse. It would appear that no proper system was in place. Abdul Rashid did not keep a record in respect of the goods in question.

35 22. Kamlesh Doshi (the son) testified that at about 11am on the morning of 15 June 1994 he was at the office of Doshi Brothers in Haig Road when he received a call from Vijaykumar. Vijaykumar wanted to know when he could come to pick up the goods. Kamlesh Doshi, who knew that the goods were being picked up that morning, invited Vijaykumar to come to the office. Vijaykumar arrived about half an hour later. At about 2.15pm Kamlesh Doshi went with Vijaykumar to the warehouse in Eunus and arranged for the goods to be released to Vijaykumar. Loading, on to a lorry hired by Vijaykumar, was completed at 3pm. On completion of the loading Kamlesh Doshi asked Vijaykumar to sign

a delivery order. Vijaykumar did so and then left with the goods.

36 23. The delivery order signed by Vijaykumar was produced in evidence. Kamlesh Doshi told the court that that delivery order was not in the standard form used by Doshi Brothers. This was because their standard form was used only for goods in which Doshi Brothers had a financial interest and would therefore not be appropriate for the goods in question.

37 THE SUFFICIENCY OF THE EVIDENCE 24. The only positive evidence

adduced by the respondents in support of their allegation that HD was in contempt was the admission allegedly made by HD on the evening of the 15th. The learned trial judge in accepting Valibhoy's evidence that HD had made such an admission said:

38 On the whole, I found the plaintiffs' case to be very credible. The description given by Valibhoy as to what transpired

on the evening of 15 June 1994 was very likely to be what had happened, having regard to the natural course of events and human conduct in the surrounding circumstances. (Emphasis added.)

39 If HD, that evening, had in fact said to Valibhoy that the goods were still with him, then the case against HD would be very strong indeed. But could it be said "having regard to the natural course of events and human conduct in the surrounding circumstances", to use the words of the learned trial judge, that HD did make such an admission? Counsel for HD submits that if one looks at all the surrounding circumstances it will be apparent that Valibhoy was not a witness of truth and further that an adverse inference should have been drawn by the respondents failure to call Shah to support Valibhoy's testimony on the admission.

40 25. An important circumstance in this case is the invoice of June 13. It is clear from the evidence that the terms contained therein were discussed between HD, Shah and Valibhoy as early as 19 May 1994. The invoice was signed on behalf of the respondents and, quite obviously, the goods were released to HD that morning on the terms contained therein. Yet Valibhoy, in seeking the ex-parte injunction, did not disclose this fact. All he said about the invoice was:

41 HD had asked me to produce an invoice in favour of HB Trading Co, Bombay. Neither the plaintiffs nor I have heard or dealt with this entity before. A copy of the invoice which I had been asked to produce is at page 34, Exhibit A.

42 To leave the matter at that and say nothing of the fact that the respondents had agreed to and released the goods on 15 June 1994, on the terms contained in the invoice dated June 13, was,

to put it mildly, less than frank. Valibhoy's affidavit leaves the impression that the respondents had not agreed to and had not issued the invoice asked for. Also, for Valibhoy to say that he had not heard of HB Trading Co before is surprising. The draft invoice typed out on 19 May 1994 made reference to HB Trading Co in two places and, in addition, was addressed to HB Trading Co, Bombay. Valibhoy therefore knew or ought to have known of HB Trading Co as early as 19 May 1994.

43 26. Another disturbing aspect of Valibhoy's affidavit is that in the copy of the "invoice" that he exhibits, the signature of the authorised representative of the respondents (and the signature of HD acknowledging receipt of the goods on the terms contained in the invoice) does not appear. It is, of course, possible that Valibhoy, and/or his solicitors, in their

hurry to prepare the affidavit were less than careful in using the photo-copying machine and the lower half of the invoice containing that information could have been inadvertently omitted. But, bearing in mind that disclosure of the signed invoice of the respondents covering the delivery of the goods to HD would be inconsistent with the tenor of Valibhoy's affidavit, it is also possible that Valibhoy deliberately excluded the lower half of the said invoice.

44 27. If the true position had been disclosed in clear language in the affidavit, the question that would immediately arise is why Valibhoy, after voluntarily handing over the goods to HD on the agreed terms contained in the invoice of June 13, would immediately thereafter seek to injunct HD from delivering the goods to the defendant. As noted earlier, Counsel for HD, at the

hearing below, tried to ask this question but Counsel for the respondents had objected.

45 28. I asked Counsel for the respondents the very question to which objection had been taken in the court below. It is, of course, not for Counsel to answer such a question: it is for the witness. In asking Counsel the question, I was asking Counsel to draw my attention to anything on the record that may explain Valibhoy's conduct. The only answer that Counsel could venture was that Valibhoy did so because Shah had refused to pay the balance and Valibhoy was concerned that the goods having been released, the respondents would not have any security if the defendants shipped the goods to India. That was not a satisfactory answer. If Shah had refused to pay, then Valibhoy should not have released the goods until payment was received or

some other acceptable arrangement made. As for the goods being shipped to India, there was an abundance of evidence to show that Valibhoy knew all along that the goods were destined for India and if his concern was that the respondents would have no security should the goods be shipped out, then he should not have released the goods to HD on the terms that he did.

46 29. I entirely agree with the protestation, frequently made by Counsel for the respondents, that the issue before the trial court and this court was not whether the injunction had been properly obtained, but whether, properly obtained or not, HD had breached the terms of the injunction. The reason I asked the question was because the absence of a satisfactory explanation would reflect adversely on the credibility of Valibhoy: it would tend to show that Valibhoy was the sort of person who would

readily suppress and distort facts in order to secure for himself the benefit of the processes of court. If that be so, then the learned trial judge's acceptance of the very damaging testimony of Valibhoy that HD had admitted to him on the evening of 15 June 1994 that the goods were still with him, would be susceptible to challenge.

47 30. This admission was allegedly made to Valibhoy in the presence Shah. Although Valibhoy told the court that Shah would be subpoenaed as a witness, the respondents failed to call Shah. The learned trial judge took a sympathetic view of this failure and declined to draw any adverse inference under s 116(g) of the Evidence Act. Whether, in any fact situation, an adverse inference under s 116(g) should be drawn is a matter left to the discretion of the trial judge. If a trial judge is satisfied with

the explanation given for the failure to call a material witness and declines to draw any adverse inference under s 116(g), an appellate court would be reluctant to interfere. From the Grounds of Judgment it would appear that the learned trial judge declined to draw such adverse inference because he accepted the evidence adduced that Valibhoy, Shah and HD had been trying to settle the dispute until the night before the trial commenced, as a sufficient explanation of why Shah was not called. But such an explanation was really no explanation at all. The fact that Valibhoy had been with Shah up to 10pm the night before does not, with respect, even begin to explain why Shah was not called as a witness. To the contrary, the fact that Valibhoy was in such close contact with Shah would, if at all, be a factor conducive to the call of Shah. The failure to call Shah in support of this

most important allegation by Valibhoy would, in my view, cast doubts on whether HD had in fact made such an admission.

48 31. In his affidavit, Valibhoy categorically asserted that at the meeting "HD represented to me that he had the goods mentioned in the order". One would expect that, if that were so, then the response of Valibhoy when HD, on 22 June 1994, through his solicitors, claimed that he had parted with the goods before the order was served on him would have been an equally categorical assertion of the alleged admission. But that was not so. As noted earlier the response, although stated to be "for the record", was only that HD had at no time informed the respondents that the goods were not in his possession. Failure by the respondents to make that assertion at that stage in a response meant to be "for the record"

would, in my view, also cast doubts on Valibhoy's subsequent assertion that HD had made such an admission.

49 32. HD had, contrary to Kamlesh Doshi's instructions, given the \$104,207.56 to the respondents without obtaining the "Declaration Note". That being so, the commencement by the respondents of legal proceedings against the defendant would clearly put HD in an embarrassing position, vis-a-vis Kamlesh Doshi. According to HD, this is what he said to Valibhoy when he met Valibhoy on the evening of the 15th and they discussed possibilities of settling the dispute. It is also clear from the evidence of Valibhoy that that meeting centred on how to resolve the impasse. In such a context the question of where the goods were then located would be a matter of secondary importance and there does not appear to be anything unusual about HD not having

told Valibhoy that the defendant had already taken the goods from his warehouse.

50 33. The evidence suggests (and I need put it at no more than that) that having cleared the cheque for \$104,207.56 which he obtained from HD on 14 June 1994, Valibhoy reneged on his promise to give HD the "Declaration Note" and instead procured and served the interim injunction on HD as a ploy to obtain terms more favourable to the respondents than those agreed to in the invoice of June 13. Having regard to the skill with which Valibhoy, in his affidavit seeking the interim injunction, successfully obfuscated the events that led to the goods being handed over to HD, I find it very difficult to support the learned trial judge's ready acceptance of Valibhoy as a credible witness and his consequent reliance on Valibhoy's evidence that,

on the evening of 15 June 1994, HD had admitted that he still had the goods with him.

51 34. Although I am not, in this appeal, dealing with the merits or otherwise of the application for the ex-parte interim injunction that was issued in this case, I am constrained to note that there is a duty on a solicitor drafting affidavits, particularly affidavits in support of ex-parte injunctions, to ensure that he himself has a clear understanding of the relevant fact situation. And, in drafting the affidavit, the solicitor should exercise care that the clearest possible language is used. It is also prudent for a solicitor, whenever possible, to require the client to produce the originals of material documents before copies are annexed to the affidavit.

52 35. If a client is unwilling or unable to give clear

instructions, the solicitor should think twice before advising the client to apply for an ex-parte injunction. Failure to maintain these standards can result in much injustice for, as Counsel for the respondents in this case kept submitting, non-compliance with the terms of an ex-parte injunction would be a contempt regardless of whether that injunction was properly obtained or not.

53 ADVERSE INFERENCE FROM SILENCE 36. The alleged admission by HD

was not the only basis on which the learned trial judge found HD guilty of contempt. The learned trial judge considered HD's failure to inform the respondents or the respondents' solicitors, at or soon after the time the injunction was served on him that he no longer had the goods with him as indicative of HD's guilt.

54 37. The interim injunction only required HD not to part with

the goods. There was no requirement therein for HD to give an account to the respondents as to what he had done with the goods. But the learned trial judge appears to have considered that it was incumbent on HD, if he no longer had the goods, to immediately notify the respondents or their solicitors of that fact. He says in his Grounds of Judgment:

55 Valibhoy's most material and crucial evidence is that at the meeting on the evening of 15 June 1994, the respondent did not mention that the goods were no longer in his possession. This was not denied by the Respondent. Valibhoy also gave evidence that the Respondent represented that the goods were still in his possession. This was denied by the Respondent. Nonetheless, the Respondent would have to give a satisfactory answer for his silence for 7 days with respect to the goods during the meeting

and subsequent thereto. < Emphasis added. >

56 The letter from the respondents' solicitors requiring HD to disclose the whereabouts of the goods does not have the force of law. I cannot see how HD's failure to respond immediately to such a letter can give rise to any inference adverse to HD. Situations can of course arise where a court can, from the failure of a person to respond immediately to a letter, draw an adverse inference. But this is not such a situation. In any event, the explanation proffered by HD that he was apprehensive about telling the respondents' solicitors about what had happened to the goods without first consulting solicitors himself, is a reasonable explanation and ought not to have been rejected.

57 THE BURDEN ON THE DEFENCE 38. An accused person does not have to prove his innocence. There is no burden on him to convince the

trial judge that his version of the facts is the truth. That burden lies on the person alleging the contempt and it is a heavy burden: the contempt will have to be established beyond reasonable doubt (Re Bramblevale Ltd < 1969 > 3 All ER 1062). That being so, even if the judge does not believe the defence, he would still have to consider whether the defence version of any relevant fact in issue could reasonably be true. If the defence version could reasonably be true, the benefit of the doubt has to be given to the defence.

58 39. At no point in his judgment does the learned trial judge appear to have paused to consider the question whether, even though he did not believe the defence, the evidence led by the defence could reasonably be true. Reading the Grounds of Judgment in this case, I am left with the clear impression that the

learned trial judge, despite his reference to and acceptance of the principles in *Re Bramblevale Ltd*, did not apply those principles but expected HD to prove his innocence. There are many instances of this approach in the lengthy Grounds of Judgment. I will detail only one such instance

59 40. Counsel for the respondents had, in cross-examination, pressed HD to explain why Kamlesh Doshi had written to him in two languages about Vijaykumar picking up the goods on 14 June 1994. HD ventured various possible reasons and finally stated that he really did not know why Kamlesh Doshi had done so. One of the reasons HD gave was that as all his staff did not understand English, Kamlesh Doshi would sometimes send instructions in Gujarati and in English. The learned trial judge ordered HD to prove this by producing such previous instructions. At the

resumed hearing HD produced what he said were examples of some such documents. In cross-examination, Counsel for the respondents managed to elicit from HD that the documents in English that he produced were in fact not full translations of the Gujarati documents but translations of those particulars that had to be inserted into shipping documents. In the light of that statement the learned trial judge held that HD "had utterly failed to corroborate his evidence that it was the Defendant who had on his own initiative sent instructions in the two languages". HD's explanation that he really did not know why Kamlesh Doshi had written the instructions to him in two languages was rejected by the learned trial judge as a "final and convenient way of putting the blame on the defendant". The learned trial judge then went on to say:

60 The Respondent's case was that he was merely a middle man and had no vested interest in the transaction. Hence the words "there will be no responsibility to you" < in the fax from Kamlesh Doshi > after delivery to Vijaykumar would conveniently buttress the Respondent's position as a neutral party. However, even without these words it would be obvious what the responsibility of the Respondent was. These additional words therefore would be redundant in the circumstances. Their presence only added to the overall impression that the documents have been fabricated to substantiate the Respondent's case of delivery on the early part of the afternoon of 15 June 1994.

61 From the fact that the letter from Kamlesh Doshi was in two languages and from HD's inability to state exactly why Kamlesh Doshi had, in this instance, written to him in two languages, the

learned trial judge appears to have accepted the submission of Counsel for the Respondents that the faxes were fabricated to bolster the defence raised.

62 41. This conclusion is the more surprising since it appears from the Notes of Evidence that Counsel, who then appeared for HD, at the request of the learned trial judge, had shown to the trial judge his records. The learned trial judge, after inspecting Counsel's records, had noted that HD had given the faxes in question to his Counsel on 17 June 1994. If fabricated, the faxes would therefore have been fabricated before 17 June 1994. As the goods were delivered only on 15 June 1994, the fabrication, if any, can only have happened on 16 June 1994. Contempt proceedings were, at that stage, not under contemplation. In the circumstances, it seems hardly likely that

HD would have fabricated the two faxes with such great speed. And even if HD did fabricate the faxes, the question would arise why he would want to attract closer scrutiny to the faxes by fabricating them in two languages.

63 42. As for the words "there will be no responsibility to you" in the fax from Kamlesh Doshi, I cannot see any justification for the learned trial judge drawing an adverse inference therefrom when those words are capable of an entirely innocuous construction. By making adverse inferences against HD because HD had "utterly failed to corroborate his evidence - that it was the Kamlesh Doshi who had on his own initiative sent instructions in two languages", the learned trial judge, in my view, had misdirected himself. There was no requirement in law for HD to corroborate his evidence. It would be sufficient if

what HD said could reasonably be true.

64 43. HD was in possession of the goods at about 11am on 15 June 1994. His defence that he had, that afternoon, handed the goods to Vijaykumar, a representative of the defendant, for export to India is consistent with the history of the matter: the goods were all along destined for India and it stood to reason that HD would hand the goods over to the defendant as soon as possible. Valibhoy too knew, at that time, that the export of the goods to India was imminent. That was why he acted with the speed that he did in obtaining and serving the injunction. And Valibhoy, at the time he filed his affidavit, even had doubts whether HD still had the goods with him. This is apparent from the following sentence of his affidavit filed that afternoon where Valibhoy states:

65 The goods are now probably in the possession and control of

the defendants and are about to be moved out of the country.

(Emphasis added.)

66 HD's claim that the goods were handed over to the defendant's representative at 2.30pm that afternoon was not, in my view, a claim that, in the context, was in any way extraordinary or incapable of belief. I am of the view that the learned trial judge erred when he found HD guilty of contempt. This appeal must therefore be allowed.

67 44. The orders made by the District Judge are set aside. The fine of \$6,000 imposed on HD is to be refunded to him and the guarantee given by HD's son is to be treated as cancelled. I will hear submissions on costs.

68 S

Rajendran

Judge

Harkishandas S/O Ratilal Doshi v Aaval Investments (Pte) Ltd [1996] SGHC 188

S Rajendran J

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Scott) for the appellant
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