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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONTEMPT CASE (C) No. 51 OF 2008

Date of Decision : December 11, 2008

Mrs. Manju Saxena Petitioner
Through : Petitioner in person.

Versus

Ms. Naina Lal Kidwai & Ors. Respondents
Through : NEMO

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | No |

SUDERSHAN KUMAR MISRA, J.

1. Mrs. Manju Saxena, the petitioner, has moved this court under Sections 10 and 12 of the Contempt of Courts Act, 1971, praying that since the respondents have willfully suppressed documents and have misled the court, they be tried and punished for committing contempt.

2. The petitioner was working with the M/s. Hong Kong & Shanghai Banking Corporation Ltd. Respondents No.1 and 2 are the officers of the said Banking Corporation and respondent No. 3 is its Authorized Representative. Pursuant to a dispute between the petitioner and the bank with regard to the status of

the petitioner, a reference was made to the Central Government Industrial Tribunal (CGIT). Before the CGIT, while the petitioner contended that she was working as a Senior Confidential Secretary in the Secretarial Cadre, the Management contended that she was a Staff Officer and hence not a workman under the Industrial Disputes Act. The CGIT passed an interim award in favour of the petitioner. Consequently, a Writ Petition No.12602/2006, challenging the interim award passed by the CGIT along with a CM No. 9752/2006 for stay, were preferred by the management in this court. In that matter, the following order came to be passed on 11.8.2006;

“CM No. 9752/2006 (stay)

Notice for the date fixed.

Till further orders operation of the impugned interim award shall remain stayed. Dasti.”

3. The petitioner alleges that a “great and serious”, contempt has been committed, as the above stay order has been obtained by respondent No.3, by willful suppression of material facts. According to the petitioner, before the CGIT, to substantiate her claim that she is a workman whose services were illegally terminated in violation of the provisions of the Industrial Disputes Act, and that her termination letter had described her incorrectly as BSV Officer, i.e., Banking Service Officer, Business Development Officer, NRI Officer and Custom Service Officer; she relied on a copy of an e-mail dated 9.9.2005, annexed as Annexure R-2 before the CGIT. That e-mail spells out

the fact that she is a senior secretary, and in reply to question No.1 therein, asking about the new job title and reporting lines in case she is made Banking Service Officer, it is stated that she will be formally converted to a Staff Officer by signing an agreement and will no longer continue in the secretarial cadre. The petitioner states that contrary to the above, in paragraph 5.17 of the Writ Petition No.12602/2006, filed by the management before this court, the following is averred;

“5.17. For that the Ld. CGIT in its interim award at page 9 has referred to Annexure R-2. It states – ‘It further transpires from Annexure R-2 letter of Mr. Shishir Aggarwal, Human Resource Development, that various jobs have been handled by the Claimant as a self-starter and mid-term appraisal will be done on the current MPIs.’ In fact, there is no such document available on the record before the Ld. CGIT.”

4. According to the petitioner, the aforesaid statement in paragraph 5.17, to the effect that, “in fact, there is no such document available on the record before the Ld. CGIT” is incorrect. The petitioner refers to Annexure C-2 of the instant petition, which is a copy of the index dated 20.6.2006, filed by the petitioner before the CGIT, to show that Annexure R-2, i.e. the e-mail dated 9.9.2005, formed part of the records before the CGIT. The petitioner also states that on 20.6.2006 a copy of this e-mail was also sent by speed post to respondents No.1 and 3. Furthermore, it is also pointed out by the petitioner that after the stay order was passed by the High Court on 11.8.2006, the management itself filed the copy of the aforesaid e-mail dated

9.9.2005 as a part of the list of documents before the CGIT which was filed before this Court on 2.4.2007.

5. The law of contempt is one of the many ways in which the due process of the law is supported and furthered. Essentially, contempt of court is a matter which concerns the administration of justice and the dignity and authority of the Courts. In ***Halsbury's Laws of England, (4th Edition, Volume 9)***, there is a brief discussion of when abuse of the process of the Court may be a punishable contempt. It says;

“38. Abuse of process in general. The Court has power to punish as contempt any misuse of the court's process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court or the court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt....”

6. It is trite that if a wrong or misleading statement is deliberately and willfully made by a party during litigation, with a view to obtain a favourable order by influencing the court, it constitutes a fraud on the court and will thus amount to contempt of court. However, it is equally well settled that the rule of contempt is not to be lightly invoked and is not to be used as a cloak by one party against another to cow him down into submission by making some fancied claim. In this context, in ***Naraindas Vs. Government of Madhya Pradesh and Ors, (1975) 3 SCC 31***, a Constitution Bench of the Supreme Court held that although a wrong and misleading statement

deliberately and willfully made by a party with a view to obtain a favourable order would amount to contempt of court, but the petitioner must establish satisfactorily that any deliberate and wrong statement was made and there was a favourable order in consequence of the statement.

7. In ***Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Anr. (1974) 1 SCC 374***, while discussing the general principles applicable to the contempt of courts, a Constitution Bench of Supreme Court held that the benefit of doubt, if any, belongs to the contemnor in this jurisdiction.

8. In the case at hand, apart from paragraph 5.17, a number of other grounds of challenge have also been urged by the respondents before this court in Writ Petition No.12602/2006, inter alia, challenging jurisdiction of the CGIT to entertain the reference, ignoring the compliance of the respondents with the provisions of the Industrial Disputes Act and so on. The interim order of stay passed by this Court states, "Till further orders operation of the impugned interim award shall remain stayed." There is nothing in this order to indicate that the interim stay was granted by this Court only because of the averments made by the respondents in paragraph 5.17, or even that the contents of that paragraph played any significant part in persuading the court to grant interim stay. Therefore, to

my mind, even if it is assumed that the petitioner is correct in her stand, it does not call for initiation of contempt proceedings.

9. Under the circumstances, and for the reasons stated, I do not find any ground for initiating contempt proceedings against the respondents. The contempt petition is dismissed.

10. It is made clear that since a very limited jurisdiction is being exercised by this Court, the petition is being dismissed only on the short ground that initiation of contempt proceedings against the respondents is not warranted under the circumstances, and I am not expressing any opinion on the merits of the respondents' pleadings in para 5.17 of their Writ Petition.

December 11, 2008

Sudershan Kumar Misra, J.