

IN THE HIGH COURT OF DELHI

CONT.CAS(C) NO.564/2007

National Agricultural Co-op.
Marketing Federation of India Petitioner
! through: Mr.T.K.Ganju, Senior Advocate with
Mr.A.K.Thakur, Mr.R.K.Mishra and
Mr.Bharat Gupta, Advocate.

VERSUS

\$ Shri Lalit Mohan Respondent
^ through: Mr.Ravinder Sethi, Sr. Advocate with
Mr.Raman Kapur, Mr.Dhiraj and
Mr.Rajiv, Advocates with
respondent in person.

% DATE OF DECISION: 13.05.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**

1. Petitioner seek action to be taken against the respondent for having committed contempt of this court.
2. The petitioner has not made any specific reference in the prayer clause to any order, contempt in relation whereto

is alleged to have been committed by the respondent.

However, in para 18 of the petition it is pleaded as under :-

“18. The Petitioner herein and being the Respondent in the aforesaid OMP is filing the present petition to initiate contempt proceedings against the Respondent herein, as the Respondent is guilty of willfully disobeying the order and direction passed by the Division Bench of this Hon'ble Court on 27.04.2007 in FAO(OS) No.384/2006 reaffirming and restoring the order dated 30.03.2006 of the learned Single Judge of this Court in the said OMP.”

3. Indeed, during arguments Shri T.K.Ganju, Senior Advocate who represented the cause of the petitioner alleged that the contempt committed by the respondent is of willful disobedience to the order dated 30.3.2006 passed by a learned Single Judge of this court in OMP.No.118/2006 as also the order passed by the Division Bench on 27.4.2007 in FAO(OS) No.384/2006, effect whereof was the modification of an earlier order dated 2.6.2006 passed by the Division Bench and as a consequence operation of the order passed by the learned Single Judge on 30.3.2006 was restored.

4. Briefly stated, case of the petitioner is that the firm M/s Roshan Lal Lalit Mohan of which the respondent is a sole proprietor owed approximately Rs.50 crores to the petitioner as business dues and the matter was referred to arbitration since respondent disputed its liability. Two cheques in sum of Rs.30

crores and Rs.11 crores respectively had been issued by the respondent drawn on the account of his sole proprietary firm in favour of the petitioner. That the respondent filed a petition under Section 9 of the Arbitration & Conciliation Act,1996 which was registered as OMP.No.118/2006. Prayer made in the said OMP was to restrain the petitioner from encashing the two cheques in sum of Rs.30 crores and Rs.11 crores respectively. That taking cognizance of the said petition, a learned Single Judge of this Court directed the respondent to deposit a sum of Rs.15 crores with the petitioner by means of a pay order within 4 weeks as a condition to injunct the petitioner from not only encashing the two cheques in question but even proceeding ahead to sell the stocks by way of auction.

5. That the respondent filed an appeal against the order dated 30.3.2006 which was registered as FAO(OS) No.384/2006 in which, treating the order dated 30.3.2006 passed by the learned Single Judge as a consent order, the Division Bench recorded the offer of the respondent that his property bearing No.6, Alipur Road, Civil Lines, Delhi be sold.

6. According to the petitioner, the Division Bench was mislead into passing the order dated 2.6.2007 since the respondent made the court to understand that the property at

Alipur Road would fetch Rs.15 crores. That when put to auction, the property did not receive a bid in excess of Rs.2 crores. That on an application filed before the Division Bench, vide order dated 27.4.2007, the Division Bench restored the order passed by the learned Single Judge, meaning thereby, the respondent was obliged to pay Rs.15 crores.

7. With reference to the conduct of the respondent it was pointed out that the order dated 27.4.2007 passed by the Division Bench was challenged by way of a Petition for Special Leave to Appeal before the Hon'ble Supreme Court wherein vide order dated 18.5.2007 the respondent was granted a stay but on a condition requiring the respondent to deposit Rs.4 crores with the Registration (Judicial) of the Hon'ble Supreme Court by 10.7.2007. That the respondent failed to deposit Rs.4 crores resulting in the interim order granted by the Hon'ble Supreme Court in favour of the respondent being vacated vide order dated 21.9.2007.

8. It was brought to the notice of this court that vide order dated 2.5.2008, Hon'ble Supreme Court directed continuance of the present contempt proceedings notwithstanding the Hon'ble Supreme Court being seized of the leave sought to challenge the order passed by the Division Bench on 27.4.2007 in FAO(OS) No.384/2006.

9. Learned counsel for the petitioner urged that the order dated 30.3.2006 passed by the learned Single Judge of this Court in OMP.No.118/2006 was a consent order as held by the Division Bench vide order dated 2.6.2006 in FAO(OS) No.384/2006 and that on the Division Bench passing order dated 27.4.2007, stay granted to the respondent on 2.6.2006 being vacated, respondent has to comply with the consent requiring the respondent to pay Rs.15 crores to the petitioner. This not having been done the respondent is in willful breach of his undertaking to the court. To bring home the above, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported as AIR 2008 (SC) 309, M/s. Maruti Udyog Ltd. Vs. Mahinder C.Mehta & Ors.

10. It is settled law that a decree or an order which is akin to a decree and is executable, for satisfaction, needs to be executed as per law relating to the execution of a decree. Even a decree of injunction, be it mandatory or prohibitory is executable under Order 21 Rule 32 CPC and on proving that the judgment debtor had an opportunity to obey the decree but has willfully failed to do so, the decree can be enforced by the detention in civil prison or attachment of the property of the judgment debtor.

11. Thus, a mere order, direction or a decree under

which a party is obliged in law to pay money to the opposite party would require execution thereof and enforcement cannot be under the contempt jurisdiction of the court.

12. But, where a party gives an undertaking to pay money to the opposite party and obtains benefit pursuant to the said undertaking more so where the undertaking is to the court and accepted by the court, breach of said undertaking, subject to it being proved to be willful, would attract the contempt jurisdiction of a court.

13. Further, where a party misleads a court into passing an order, the party concerned would be liable for action under the contempt jurisdiction of the court for the reason such a party is guilty of polluting the stream of justice.

14. With the afore-noted legal position, which to my mind is well crystalized and for which I need not waste my time citing decision, I proceed to consider the nature of the orders passed by the learned Single Judge of this court and the Division Bench. But, before that a word on the decision of the Hon'ble Supreme Court in Maruti Udyog's case relied upon by the petitioner.

15. The said case also relates to an action commenced under the arbitration law. Mahalaxmi Motors Ltd. of which Mahender C.Mehta and others (respondents before the

Supreme Court) were Directors were selling motor vehicles manufactured by Maruti Udyog. There was a dispute with respect to money payable by Mahalaxmi Motors Ltd. to Maruti Udyog Ltd. Mahalaxmi Motors Ltd. admitted liability to the extent of RS.7.63 crores. Pertaining to the appointment of an arbitrator, the matter reached the Supreme Hon'ble Court wherein, by consent, it was agreed between the parties that the dispute would be referred to arbitrator, inter alia, on the condition that the respondents shall deposit the amounts or furnish security or comply with directions which may be issued by the arbitrator. One of the term of the consent order reads as under:-

“4. All the parties to this S.L.P. Shall by way of affidavit give undertaking to this Hon'ble Court to furnish the security and/or comply with the directions of learned arbitrator in case the learned arbitrator directs any of the parties to furnish the security and/or comply with any other interim order of the learned arbitrator.”

16. Thereafter, vide order dated 6.9.2002 the learned arbitrator directed the respondents to furnish a bank guarantee in the sum of Rs.763.22 lakhs within four weeks. The said order was sought to be undone by filing interim applications before the Hon'ble Supreme Court which were withdrawn; followed by unsuccessful attempts before the learned arbitrator and the High Court to have the order dated

6.9.2002 got vacated. Maruti Udyog Ltd. filed a contempt petition before the Hon'ble Supreme Court alleging that by not complying with the undertaking given to the Hon'ble Supreme Court the respondents were in contempt. It was urged that the undertaking given to the Hon'ble Supreme Court was to comply with the interim orders to be passed by the learned arbitrator.

17. In the contempt proceedings initiated before the Hon'ble Supreme Court, as noted by their Lordships, a proposal for settlement was made by the respondents which inter alia included a proposal to sell certain immovable properties in respect whereof a price was disclosed to the Hon'ble Supreme Court. During pendency of the proceedings before the Hon'ble Supreme Court, since settlement proposal emanated from the respondents, various interim orders were passed by their Lordships. Finally, no money flowed to the coffers of Maruti Udyog Ltd. In said scenario, their Lordships of the Hon'ble Supreme Court held that the respondents were guilty on two counts. Firstly, by misleading the Hon'ble Supreme Court with respect to the value of their assets and secondly by not complying with the undertaking given by them to the Hon'ble Supreme Court.

18. Their Lordships of the Hon'ble Supreme Court noted the law crystallized in the decision reported as R.N.Dey & Ors.

Vs. Bhagyabati Pramanik & Ors. (2000) 4 SCC 400 to the effect that the weapon of contempt is not to be used in abundance or misused. That normally it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for.

19. The order passed by the learned Single Judge of this court on 30.3.2006 in OMP.No.118/2006 reads as under :-

“Let the petition be registered.

It is alleged by learned counsel for the plaintiff that the plaintiff had issued cheques in question worth Rs.41 crores to the respondent under duress and coercion. Nonetheless, counsel has made an offer to pay a sum of Rs.7 crores to the respondent by way of a demand draft or a pay order in lieu of the two cheques.

Learned counsel for the respondent is not agreeable to this offer, as according to him, the cheques in question were issued with open eyes and the plaintiff is now estopped from alleging that these cheques were issued under duress or coercion. This statement is disputed by the counsel appearing for the plaintiff who states that the respondent is having stocks worth Rs.26 crores and there is therefore no question of the plaintiff owing a sum of Rs.52 crores. Counsel however has no objection if these stocks are disposed of by the respondents under open auction.

Having heard learned counsel for the parties, I am prima facie of the view that it will be just and fair if the plaintiff is directed to deposit/pay with the respondent a sum of Rs.15 crores by way of a pay order within four weeks from today. It will be open to the respondent to sell the stocks in auction but subject to the

respondent associating the plaintiff in the process of auction. The respondent will not get the two cheques in question encashed, if not already deposited.

The above order has been passed without prejudice to the respective claims of the parties which they may lay before the Arbitrator or any other Forum which is available to them.

With the consent of both the counsel, the petition stands disposed of.

A copy of this order be given DASTI to the counsel for the parties."

20. The order passed by the Division Bench on 2.2.2006 in FAO(OS) No.384/2006 reads as under :-

Caveat No.130/2006

Counsel for the caveator is present in Court. The caveator shall be heard at the time of hearing of the stay application. Caveat stands disposed of in terms of the aforesaid order.

CM No.8202-03/2006 (for exemption)

Allowed, subject to all just exceptions.

FAO (OS) No.384/2006 & CM 8204/2006 (Stay)

Heard learned counsel appearing for the parties on this appeal which is filed by the appellant as against the order dated 30.3.2006 passed by the learned Single Judge disposing of OMP No.118/2006.

A perusal of the said order indicates that the order was passed with the consent of the parties as also their counsel. It is, however, now pointed out by the counsel appearing for the appellant that the appellant is not in a position to deposit with the respondent a sum of

Rs.15,00,00,000/- (Rupees fifteen crore only) by way of pay order in terms of the order passed by the learned Single Judge. Instead, an offer is being given by the appellant for selling the property belonging to the appellant being property No.6, Alipur, Civil Lines, Delhi in a public auction and the sale proceeds therefrom to be retained by the respondent till further orders to be passed during the arbitration proceedings. The aforesaid prayer is not opposed by the counsel appearing for the respondent.

In view of the aforesaid position and particularly in view of the fact that all the documents relating to the said property are already in the custody and possession of the respondent, we allow the prayer of the appellant for selling the aforesaid property in a public auction by the respondent in association with the appellant. An affidavit shall be filed by the appellant in this regard particularly stating that the property is not encumbered in any manner, within two weeks from today, and it shall be kept on the record.

Subject to the aforesaid condition, it is directed that the respondent is permitted to sell the property in question in a public auction and the entire sale proceeds shall be retained by the respondent till further orders are passed in this regard by the appropriate tribunal/court. Ms. Pratibha M. Singh, Advocate is appointed as the Local Commissioner for the purpose of selling the property in a public auction. Her remuneration is fixed as Rs.25,000/- (Rupees twenty five thousand only).

Liberty is also granted to the parties to file appropriate application(s), if any, for modification of this order.

In terms of the aforesaid order, the appeal stands disposed of.

Copy of this order be given dasti to the parties.”

21. The order dated 27.4.2004 passed by the Division Bench in FAO(OS) No.384/2006 reads as under :-

CM No.970/2007 in FAO(OS) No.384/2006

This application is filed by the respondent praying for modification of the order dated 2nd June, 2006, as the order passed by this court could not be given effect to. The present appeal arises out of the order dated 30th March, 2006 passed by the learned Single Judge in OMP No.118/2006 whereby she had directed that the appellant/plaintiff should deposit/pay to the respondent a sum of Rs.15 crores by way of pay order within four weeks and that it would also be open to the respondent to sell the stocks in auction in association with the plaintiff.

In terms of the aforesaid order, the learned Single Judge restrained the respondent from encashing the two cheque, if the same were not already deposited. It was also observed by the learned Single Judge that the aforesaid order would be without prejudice to the rights and the claims of the parties, which they may lay before the Arbitrator or any other Forum which is available to them. The petition was disposed of with the aforesaid observations and with the consent of the counsel for the parties.

The appellant herein, who was the petitioner in the said OMP No.118/2006, filed this appeal. We have also heard the learned counsel for the respondent. It is stated by the counsel for the appellant/petitioner that the petitioner/appellant is not in a position to deposit with the respondent a sum of Rs.15 crore by way of pay order in terms of the order passed by the learned Single Judge and instead an offer was given for selling the property belonging to the appellant being property No.6, Alipur, Civil Lines, Delhi in a public auction.

In terms of the aforesaid prayer made, we allowed the said property to be sold in a public auction by the respondent in association with the appellant. We also directed that an affidavit should be filed by the appellant in that regard particularly stating that the property is not encumbered in any manner. Pursuant to the same, an affidavit was filed by the appellant sworn by Mr.Lalit Mohan, stating, inter alia, that there are five tenants in the said premises for the last about 40 years and that area of about 387 sq.yds. is in their occupation.

We also appointed a Local Commissioner to take steps and to sell the property in a public auction and fixed the reserved price of the property at Rs.10 crores and earnest money at Rupees one crore. But the said Local Commissioner has now submitted a report that none of the parties, who were present at the time of the auction, was willing to bid above the reserve price and that none of them also carried the earnest money of Rupees one crore. Not a single party was willing to pay above Rs.10 crore. Therefore, the aforesaid auction was not executed.

The Local Commissioner made another attempt to put the property to auction on 2nd December, 2006. The said auction again failed as nobody was willing to pay more than Rs.2.02 crores.

It is, therefore, established from the records and the efforts made by the Local Commissioner that the said property, which was offered by the appellant for sale and to realise the amount payable in terms of the order of the learned Single Judge, would not be able to satisfy the amount which is required to be deposited.

In this view of the matter, we modify our order passed on 2nd June, 2006 and hold that in the light of the observations made by the Local Commissioner the property cannot be sold in

public auction. Consequently the order passed by the learned Single Judge dated 2.6.2006, giving direction to the appellant to deposit Rs.15 crores by way of pay order be now given effect to. The said amount shall be deposited by the appellant in terms of the order of the learned Single Judge within four weeks from today, failing which, the aggrieved party will be at liberty to take appropriate action in accordance with law.

In terms of the aforesaid order the application stands disposed of.”

22. A perusal of the order dated 30.3.2006 reveals that the respondent offered to pay Rs.7 crores as a condition to injunct the petitioner from encashing the two cheques totalling Rs.41 crores which were in possession of the petitioner and were issued by the respondent. This offer was not accepted by the petitioner. The learned Single Judge noted the stand of the respondent that the petitioner was having stocks worth Rs.26 crores and there was thus no occasion for the respondent to be a debtor in sum of Rs.52 crores as alleged by the petitioner. After noting the rival submissions the learned Single Judge directed the respondent to pay Rs.15 crores to the petitioner as a condition for an interim injunction.

23. It is no doubt true that the Division Bench, prima facie, construed the order of the learned Single Judge as a consent order and so observed in its order dated 2.6.2006, but a perusal of the order dated 2.6.2007 reveals that there was

not much discussion on the said point and the observations pertaining to the order passed by the learned Single Judge came by way of a passing reference. For if this was not to be so, I do not see as to how the Division Bench could have yet proceeded to entertain the challenge in the appeal and pass the directions putting into abeyance the orders passed by the learned Single Judge and substituting it with the direction that as offered by the respondent, his immovable property bearing No.6, Alipur Road, Civil Lines, Delhi be sold.

24. Submission made by the learned counsel for the petitioner that the respondent misled the Division Bench in believing that his property was worth Rs.15 crores cannot be read by this Court as the foundation of the order dated 2.6.2006, for the reason the Division Bench has not so stated. There is no independent material shown to this court of any representation by the respondent that his property at 6 Alipur Road, Civil Lines, Delhi would fetch Rs.15 crores in the market.

25. The order passed by the Division Bench on 27.4.2007 does no further, other than to note that the property at Alipur Road did not fetch the expected sum of Rs.15 crores with a consequential direction restoring the order passed by the learned Single Judge.

26. It would be interesting to note that the Division

Bench concluded its order by recording that if the respondent failed to comply with the order passed by the learned Single Judge within four weeks the aggrieved party i.e. the petitioner will be at liberty to take appropriate action in accordance with law.

27. The action of the respondent from a commercial angle may appear to be demeaning. But, this would fall short of contumacious action as contemplated by law.

28. Even otherwise, to succeed in contempt, petitioner would have to prove a deliberate and an intentional violation of the order passed by the learned Single Judge in not paying Rs.15 crores. This precisely would be the inquiry which would be conducted under Order 21 Rule 32 CPC for the reason before a person can be detained in a civil prison or his property attached it would have to be proved that the respondent had an opportunity of obeying the order and has willfully failed to obey it. Meaning thereby, in any case, an inquiry would have to be conducted pertaining to the means of the respondent.

29. Contempt jurisdiction being a summary jurisdiction I am of the opinion that the battle would be better debated between the parties under Order 21 Rule 32 CPC.

30. The notice of contempt is discharged.

31. The petition is dismissed.

32. No costs.

May 13, 2008
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(PRADEEP NANDRAJOG)
JUDGE