

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT. CAS. (CRL.) NO. 10 OF 2009**

Reserved On : 14.10.2009

% Date of Decision: 06.11.2009

COURT ON ITS OWN MOTION

- A G A I N S T -

AJAY YADAV

... RESPONDENT

Through : Mr. Subodh K.Pathak,
Mr.S.P.M.Tripathi and
Mr.B.Patnaik, Advocates.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

SANJAY KISHAN KAUL, J.

1. A company petition was filed by M/s. Shaheed Memorial Society (Regd.) ('the Society' for short) through its Secretary against M/s. Capital Land Builders Private Limited ('the Company' for short) before the Company Law Board under Sections under Sections 100 & 111 of the Companies Act, 1956 (hereinafter referred to as the said Act) in the year 1997. The Society claimed that it was a shareholder of the company and its name had been

wrongfully removed as a member. The original authorized capital of the company was stated to be one lakh divided into 1000 equity shares of Rs.100 each and paid up capital of Rs.56,000/- with two subscribers Shrimati Satya Chaudhary wife of Chaudhary Brahm Prakash holding 10 shares and Mr. Kishor Lal Sachdeva holding 5 shares. Chaudhary Brahm Prakash is stated to have acquired 500 shares out of the total share capital of 560 shares in the year 1962 for which three certificates were issued and these 500 shares held by Chaudhary Brahm Prakash in the Company were transferred to the Society of which he continued to be the President till his death. The Society claimed allotment of 150 additional shares apart from these 500 shares.

2. The pleadings before the Company Law Board showed that the fight was really between two groups which arose after the demise of Chaudhary Brahm Prakash in the year 1989.
3. Mr.Kishor Lal Sachdeva and his family members claimed that all the shares were transferred during the period 1968-1989 and the Society and family of Chaudhary Brahm Prakash was left with no interest while the Society pleaded to the contrary. The details of the transactions were given by the Company. It is during the pendency of the petition, that in the year 2006 on the letter head of the Company, Mr.Ajay Yadav/respondent addressed a letter to Mr. Ajay Chaudhary allegedly in the capacity of the President of the Society with regard to 500 equity shares. The letter

referred to a meeting of the Board of Directors of the Company and a Board Resolution being passed on 25.05.2006 where failure of the past management about transfer of shares not being supplied was noted and a decision was taken to take on record shares of the Society in the register of members of the Company after adhering to the provisions and procedures of the said Act along with applicable rules and regulations.

4. Mr. Ajay Yadav is the brother-in-law of Mr. Ajay Chaudhary. Mr. Ajay Yadav issued this letter during the pendency of the petition under Section 111 of the said Act with Ajay Yadav's address being shown as the Company's address. This letter was placed before the Company Law Board on 29.05.2006 and the Society sought to withdraw the petition which permission was granted and the petition was dismissed accordingly.
5. It appears that *inter se* the Society there were also some disputes for an application came to be filed on behalf of the Society by Mr. Sidharth Chaudhary, who had filed the original petition, seeking recall of the order dated 29.5.2006 permitting the petition to be withdrawn. It was averred in the application that Shri Ajay Chaudhary had fraudulently changed the constitution of the Society and has shown himself as President of the governing body for the year 2004-2005. Some persons were inducted as shareholders of the Company and Mr. Ajay Chaudhary had an ulterior motive of disposing of the assets of the Society.

The petition having been filed originally by the applicant, it was alleged that Mr. Ajay Chaudhary had no right to extinguish the cause of action of Company petition. There was no opposition to the restoration of the petition by the Company and on 29.6.2006 the Company Law Board passed an order restoring the petition and directed it to be listed for final arguments on 23.8.2006.

6. The Society and Mr. Ajay Chaudhary thereafter filed a writ petition under Articles 226 & 227 of the Constitution of India on 27.4.2007 seeking to challenge the order of the Company Law Board dated 29.6.2006 restoring the Company Petition to its original number. In the meantime subsequent orders had also been passed by the Company Law Board numbering six on the later dates which were also sought to be challenged in this writ petition. The writ petition, however, was directed to be registered as a Company Appeal and assigned a Company Appeal number, being Co.A. (SB) No.9/2007. In the Company appeal, an application being Co.A. No.723/2008 was filed. The said application in the appeal came up for consideration before the learned Company Judge on 30.4.2009. In the said proceedings, it was recorded that on the previous date of hearing the counsel for the Society urged that it was not concerned with *inter se* disputes between the Directors of the Company and that irrespective of the status of Shri Ajay Yadav as to whether or not he was or is a Director of the Company and whether the letter dated 26.5.2006 was

issued under the authority of the Company or not, the Society was not interested in prosecution of the case filed before the Company Law Board and it cannot be compelled to do so. The counsel representing the Company submitted that Mr. Ajay Yadav was never a Director of the Company nor he had any lawful authority to represent the Company at any point of time which position was disputed by Mr. Ajay Yadav. However, in view of the stand of the counsel for the Society that it did not want to prosecute the petition before the Company Law Board filed under Section 111 of the said Act for rectification of register irrespective of the authority of Shri Ajay Yadav to have issued the letter dated 26.5.2006, learned counsel for the Company gave no objection to withdrawal of the appeal. The result was that the learned Company Judge taking note of the statement made by the counsel for the Society that the Society cannot be compelled to prosecute the petition before the Company Law Board directed that Company Petition No.15/111/97 would stand dismissed as withdrawn and as a consequence thereof nothing survived for adjudication in the appeal. The upshot of this was that the Society withdrew the proceedings before the Company Law Board in which it could have got adjudicated the right of the Society to get its name recorded in the register of members of the Company.

7. The matter, however, did not rest at this since the learned Company Judge took a serious view of the conduct of Mr.

Ajay Yadav. This conduct was a consequence of an order passed on 6.10.2006 in an interlocutory application filed in CS (OS) No.1906/2006 by the Company in terms whereof the Society, Mr. Ajay Chaudhary and other members of that group who were defendants in the suit had been restrained from representing themselves as shareholders/representatives of the Company till further orders. This order is stated to have been breached and applications under Section 39 Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) were filed in the suit proceedings which culminated in an order dated 20.4.2009 being passed holding that respondent Nos.3 to 6 herein had violated the injunction order and their act amounted to civil contempt. The learned Company Judge came to the conclusion that in the light of the prohibition it was not open to Shri Ajay Yadav to represent the Company and this fact had not been informed to the court by the counsel representing Mr. Ajay Yadav. The *vakalatnama* filed by the counsel on behalf of Shri Ajay Yadav as if he was representing the Company was found to be in teeth of the order of injunction and the action of Shri Ajay Yadav in signing the *vakalatnama* was observed to be a blatant attempt to lower the authority of the court in violation of the order dated 6.10.2006 passed in CS (OS) No.1906/2006. The conduct of Shri Ajay Yadav was held to be an effort to prejudice due course of judicial proceedings and would fall within the definition of criminal

contempt and the matter was thereafter directed to be placed before the appropriate Bench after registering the petition as such.

8. On the present criminal contempt case being registered in pursuance to the said order, notice was issued on 13.05.2009 to Mr. Ajay Yadav to show cause as to why he should not be punished for having committed contempt of court and the order passed of learned Company Judge on 30.04.2009 in Company Appeal No.723/2008 was directed to be read as an Order indicting Mr.Ajay Yadav of misdemeanor found against him vide the said Order. Mr. Ajay Yadav entered appearance through counsel and after two opportunities being granted, filed his reply. Thereafter arguments were heard and concluded on 14.10.2009.
9. A reply running into 54 pages with supporting documents resulting in a compilation of over 500 pages has been filed. We specifically put to learned counsel for the respondent as to whether he had even vetted the reply to which his answer was in the negative since the reply had already been prepared and brought to him to be signed and filed. We cautioned the learned counsel on adopting such a course of action and lending his signatures to such a reply.
10. We may note that arguments were simultaneously concluded in the appeals directed against the order of the learned Single Judge in the interlocutory applications filed in the suit as well as the order convicting four respondents

for civil contempt for violating the injunction order and sentencing them to 15 days imprisonment. The orders on these appeals are being pronounced simultaneously with the present order.

11. The relevant paragraph of the reference order dated 30.04.2009 regarding the findings against the respondent are as under:

“10. Unfortunately, the matter cannot rest here. Mr. Viraj R. Datar, Advocate has brought to my notice a copy of the order dated 6th October, 2006 passed in IA No.11235/2006 in CS (OS) No.1906/2006 on the Original Side of this court. By this order, the court restrained defendant no.1 M/s Shaheed Memorial Society; defendant no.2 Mr. Ajay Chaudhary, son of Late Ch. Braham Prakash; defendant no.3 Mr. Arjun Chaudhary, son of Late Ch. Braham Prakash; defendant no.4 Mr. Ajay Yadav, son of Shri Narender Singh Yadav; defendant no.5 Mr. Abdul Haque Farhan, son of Late Shri Tasneem Ul-Haque; defendant no.6 Mr. Surender Pal, son of Shri Ram Kishan; defendant no.7 Mr. Sidharth Chaudhary, son of Late Ch. Braham Prakash & defendant no.8 Mrs. Satya Chaudhary, wife of Late Ch. Braham Prakash from representing themselves as shareholders/representatives of the plaintiff company till further orders.

11. As there was breach of this order passed, four applications being I.A. Nos.4764/2008, 3329/2008, 10609/2007 & 6938/2007 under Section 39 Rule 2-A C.P.C. came to be filed in the suit proceedings. Mr. Datar has placed a copy of the judgment dated 20th April, 2009 passed on those applications holding that Shri Arjun Chaudhary (defendant no.3); Mr. Ajay Yadav (defendant No.4); Mr. Abdul Haque Farhan (defendant no.5); & Mr. Surinder Pal (defendant no.6) in the suit have brazenly violated the injunction order dated 6th October, 2006 passed by this court and their acts amounted to civil contempt. The court has listed the matter for 24th April, 2009 to enable the guilty persons to make their submissions on the question of punishment.

12. In the light of this prohibition, it is certainly not open to Shri Ajay Yadav to represent respondent No.1.

13. This court was not informed that Mr. Nitin Soni was a counsel who had argued Crl.M. (Co.) No.142/2008 on behalf

of Mr. Ajay Yadav in this Court. In answer to a query by the court, Mr. M.Z. Chaudhary submits that he had made a statement that he was instructed by Mr. Nitin Soni as he had given a no objection certificate in his favour to appear in the present matter.

14. The record shows that a vakalatnama dated 6th October, 2007 in favour of Shri Nitin Soni and Rishi Kapoor, Advocates is available on record.

15. In the present proceedings today, a vakalatnama dated 23rd April, 2009 has been filed by Mr. M.Z. Chaudhary, learned counsel who contends that he was authorised by Shri Ajay Yadav, who represents the respondent No.1. This vakalatnama is in the teeth of the injunction order dated 6th October, 2006 whereby the court had specifically restrained Shri Ajay Yadav from representing to the respondent No.1-Company.

16. The action of Shri Ajay Yadav in signing the vakalatnamas purportedly on behalf of the respondent No.1, is a blatant attempt to lower the authority of the court in violation of order dated 6th October, 2006 passed in CS (OS) No.1906/2006. As a result a dispute was raised by Mr. Chaudhary, Advocate in the present proceedings as to who is to represent the company. Such vakalatnama has been signed even as late as on 23rd April, 2009 despite the judgment dated 20th April, 2009. Despite specific prohibition, Shri Ajay Yadav has made an effort to prejudice due course of the present judicial proceedings. There can be no manner of doubt that the action is wilful. These acts on the part of Shri Ajay Yadav would clearly fall with the definition of "criminal contempt" as defined under sub-clauses 1 & 2 of sub-section of section 2 of the Contempt of Courts Act, 1971.

17. In this view of the matter, the Registry is directed to place a copy of the orders dated 6th October, 2006 and 20th April, 2009 passed in CS (OS) No.1906/2006; copy of the order dated 1st April, 2008 passed in Crl.M. Case No.142/2008; copy of the vakalatnama dated 6th October, 2007 signed by Shri Ajay Yadav authorising Shri Nitin Soni to appear on behalf of the respondent No.1 in these proceedings; the vakalatnama dated 23rd April, 2009 executed by Shri Ajay Yadav in favour of Shri M.Z. Chaudhary, Advocate and the order passed today before Hon'ble the Chief Justice for placing the same before the appropriate Division Bench for drawing up contempt of court proceedings against Shri Ajay Yadav."

12. A reading of the aforesaid shows that Sh.Ajay Yadav continued to represent the Company and signed vakalatnama on behalf of the Company despite interim orders of injunction passed by the learned Single Judge on the Original Side of this Court in the civil suit. The same has given rise to conviction for civil contempt and we have upheld that order. We have also found merit in the case of the original plaintiff in the suit insofar as the grant of interim injunction is concerned.

13. A perusal of the reply filed by the respondent shows that Sh.Ajay Yadav has justified his conduct of putting an appearance on behalf of the Company through advocates despite the injunction order. He has sought to raise preliminary objections that no consent of Advocate General or any State Law Officer has been obtained for initiation of contempt proceedings against him which plea is without any basis in view of the proceedings having been initiated *suo moto* by the Court. The respondent has thereafter proceeded to set down the complete civil dispute which is again not germane though prima facie findings have been arrived at against the respondents in the appeal. The order dated 29.06.2006 passed by the Company Law Board whereby the earlier order dismissing the petition under Section 111 of the said Act as withdrawn has again been sought to be challenged despite the fact that in the order from which this reference arises the Company appeal stands withdrawn as also the company petition without

adjudication about the validity of the letter dated 26.05.2006.

14. A grievance is made about the orders being pronounced on the application under Order 39 Rule 2A of the said Code while Order on interim application for stay and vacation of stay were pronounced later though heard simultaneously. A reference has been made to Ajay Yadav filing a FIR under Sections 420/419/34/120B of IPC against the opposite group for which no action was being taken prompting Mr.Ajay Yadav to file Crl.M.C. No.142/2008. This petition was dismissed by one of us (Sanjay Kishan Kaul, J.) on 01.04.2008 with costs on account of non disclosure and mis-disclosure of relevant facts in the petition. The order dated 01.04.2008 was not challenged by Mr.Ajay Yadav any further and accepted. The costs is also stated to have been deposited. Mr.Ajay Yadav has thereafter in reply pleaded that the order passed by the learned Single Judge on the Original Side, learned Company Judge and in the criminal miscellaneous case are erroneous. The order of learned Single Judge granting ex parte injunction has also been labelled as erroneous.

15. We have already noticed that the appeal against the order of learned Single Judge by the opposite side has succeeded and the order of civil contempt has been affirmed today. Surprisingly, the order passed in Crl.M.C. No. 142 of 2008 dated 01.04.2008, which was never

challenged by Mr.Ajay Yadav, is sought to be labelled as erroneous.

16. We find that the respondent has shown no regret. After setting forth 26 grounds of challenge, in the last paragraph it is stated that the respondent has the highest regard for the Court and does not want to lower its dignity or authority willfully or otherwise and that the respondent is prepared to tender unconditional apology in the event of the court considering the present reply as not being sufficient to drop or discharge the notice. We find this apology as no apology at all. The respondent has defended his action.

17. The orders passed by us in the appeals separately show that the respondent and his group have used every tactic to undermine the proceedings before the Court and over-reach the Court. The Society wanted to claim that it was a shareholder of the company for which proceedings were launched after eight years since the last transaction was of the year 1989 after the death of Chaudhary Brahm Prakash. The documents filed in the suit show that returns were filed from time to time showing the Society not being a member. The transfer deeds and share certificates have been filed by the Company. The Society claimed that it was in possession of the original share certificate but that original share certificate has not seen the light of the day.

18. Despite being fully conscious that the right of the group depended on the Society being entered as a

shareholder of the Company for which proceedings were pending, meetings were sought to be called by Mr. Ajay Yadav when he was not even a Director of the Company. Letters were issued to his brother-in-law Mr. Ajay Chaudhary showing the address of the Company as that of Mr. Ajay Yadav and false return forms were filed with the Registrar of the Company whereafter the proceedings were sought to be withdrawn on the basis of acceptance of letter dated 26.05.2006 seeking to recognize the Society as a shareholder. Such efforts to obfuscate justice cannot be condoned.

19. The respondent has been indicted for violation of the interim injunction passed by the Civil Court and though having been restrained to act as a representative of the Company, sought to act as a Director of the Company (which is a representative) and sold valuable pieces of land for which money was collected. The concerned persons have been found guilty of civil contempt. Mr. Ajay Yadav who is in the thick of things, even before the learned Company Judge in an appeal tried to authorize lawyers to appear on behalf of the Company. After having done everything possible to frustrate the orders of the Court by acting in an improper and illegal manner, respondent has tried to justify his conduct. The fact that the stakes may be large on account of the Company owning property is not a licence for Mr. Ajay Yadav to conduct himself in such a manner, the endeavour of which is only to defeat the

orders passed by the Court and bring the court into disrepute by acting with impugnt. We would at this stage like to refer to definition of criminal contempt under the Contempt of Courts Act, 1971 as under:

“(c) "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

(emphasis supplied)

20. We may refer to the judgment of the Supreme Court in Chandra Shashi v. Anil Kumar Verma; (1995) 1 SCC 421 to explain that the word ‘interfere’ in the context of the criminal contempt under the Contempt of Court Act, 1971 means any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty. Thus, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing the legal duties as they are supposed to do. The polluters of judicial firmament are required to be well taken care of to maintain the sublimity of court’s environment. A similar view has been expressed in Dhananjay Sharma v. State of Haryana and Ors; AIR 1995

SC 1795 where false affidavits had been filed. In Ram Autar Shukla v. Arvind Shukla; (1995) Supp (2) SCC 130, it was observed that the Contempt of Court Act, 1971 deals with any acts or conduct of the parties to the litigation or witnesses 'in any manner'. The tendency on the part of the contemner in his action or conduct to prevent the course of justice is the relevant fact. Any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the majesty of law and, therefore, the conduct is punishable as contempt of court. Learned Single Judge of this Court in Court on its own motion v. Kanwaljit S.Sareen & Ors; 138 (2007) DLT 682 has observed that a party taking recourse to fraud deflects course of judicial proceedings and same constitutes interference in administration of justice.

21. We deem it appropriate to also refer to the observations of the Supreme Court in Sudhir Chona v. Shahnaz Husain; 2002(97) DLT 642 that while civil contempt is an offence of private nature depriving a party of the benefit of the court order, criminal contempt is contumacious or obstructive conduct or behavior directed against the court and involves an element of criminality in it. It is despising, undermining and eroding the authority of the court and is punishable to protect and safeguard the public faith in the administration of justice.

22. If the aforesaid principles are applied to the facts of the present case where the respondent, repeatedly and

contumaciously, has continued to represent the company before different forums which shows that not only is there a violation of the injunction order passed by the learned Single Judge on the Original Side, but there are repeated endeavours to prejudice the due course of judicial proceedings and interfere with the administration of justice. The conduct of the respondent sends a signal as if an order of the court can be thrown to the wind and the respondent would continue in his endeavour to appear for the company in various proceedings. It no doubt causes prejudice to the company and its controller shareholders and directors, but it simultaneously sends a signal that court orders are not meant to be respected and no caution seems to work in the case of the respondent.

23. The respondent even after issuance of notice of criminal contempt in the present proceedings referred to irrelevant material to justify his conduct. On the one hand, he withdrew the appeal while on the other hand he challenges the said order as erroneous. The respondent kept on repeating about his grievance on account of what he perceives as illegality of the order passed by the learned Single Judge *ad nauseam* and seeks to rake up the issue of the dismissal of his petition being Crl.M.C.142/2008 vide Order dated 01.04.2008 where cost was imposed on account of non-disclosure and mis-disclosure of relevant facts in the petition. The said order was not challenged by Mr.Ajay Yadav any further and

accepted by the respondent. He thus blows hot and cold and seeks to take conflicting stands with the object of bringing the court into disrepute and has scant regard for the orders passed by the Court.

24. We thus see no reason to show any more indulgence to the respondent and hold him guilty of criminal contempt of this Court. The order passed on 13.05.2009 is an order as to why Mr. Ajay Yadav should not be punished for having committed contempt of this Court.

25. Despite the conduct of the respondent/contemnor, we restrain from taking an extreme harsh view and impose fine of Rs.2,000/- on the respondent/contemnor and sentence him till the rising of the Court.

26. The petition accordingly stands disposed of.

SANJAY KISHAN KAUL, J.

NOVEMBER 06, 2009
dm

AJIT BHARIHOKE, J.