

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

+ **CONT. CAS No.901/2009**

% **Date of decision: 3rd December, 2009**

SH KARTIKEYA KAPUR Petitioner

Through: Mr. Prabhjit Jauhar, Advocate.

Versus

SH. KIM SUKH SINHA ... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 the judgment should be reported in the Digest? | Yes |

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.12.2009**

1. Contempt is averred of the order dated 11th November, 2009 in RFA No.400/2009. The trial court had passed a decree for possession against the respondent and in favour of the petitioner herein and the respondent had preferred an appeal there against to this court. During the hearing of the RFA before this court, the parties arrived at a settlement and which was recorded in the order dated 11th November, 2009. The respondent was granted time to deliver possession of the premises and the respondent also agreed to pay enhanced amounts to the petitioner till then. Clause 9 of the settlement

recorded by this court is as under:-

“9. *It is further agreed by the parties that in case the appellant defaults in paying any of the installments as fixed above, the respondent shall be entitled to seek revival of the execution proceedings immediately.*”

2. The respondent also undertook to file an affidavit in terms of the settlement recorded in the order of that date. Affidavit was so filed.

3. The contention of the counsel for the petitioner is that the respondent has defaulted in making the payments which he had agreed to make in terms of the settlement recorded in the order aforesaid of this court. He also contends that the affidavit filed by the respondent in pursuance to the order aforesaid is an undertaking to the court. On the said premise this contempt petition is filed. The counsel anticipating the objections of this court relies upon ***Rama Narang Vs. Ramesh Nargang*** (2006) 11 SCC 114 and ***Bank of Baroda Vs. Sadruddin Hasan Daya*** (2004) 1 SCC to contend that merely because the order is executable is no ground for not initiating proceedings under the Contempt of Courts Act.

4. The order aforesaid was made in a proceeding arising from a suit. The counsel also agrees that merely because a suit has been decreed and/or the judgment debtor fails to comply with the same does not permit the decree holder to invoke the contempt jurisdiction. He however contends that since in the present case a compromise was arrived at before the court and particularly, before the High Court, if such compromises are allowed to be violated it will bring down the majesty of this court. He contends that from all compromises on which the court has put its seal, contempt would lie. Rather than going into generalities, it is deemed expedient to examine the facts of the case. All that was agreed between the parties during the hearing of the appeal against the decree was to extend the time for execution of the decree in the suit and in an attempt to settle the remaining subject matter of the suit, mesne profits were also settled. The court expressly recorded that in the event of the default of the respondent, the remedy of the petitioner would be to revive the execution proceedings which had already been filed. This is not a case where a pre drawn compromise application was filed before this court. This court itself recorded the settlement orally arrived at between the parties during the course of the

hearing and also provided the remedies for breach of the conditions of the settlement by the respondent. From Clause 9 (supra) it is apparent that the court did not intend the compromise to be such breach whereof would be contumacious and/or actionable as such.

5. As far as the plea of the counsel for the petitioner of the respondent having given an undertaking to this court is concerned, the only undertaking was to file an affidavit in terms of the settlement and nothing else. The affidavit has already been filed. The filing of the affidavit appears to have been considered necessary because the terms were dictated in the court itself and with a view to bind the respondent. If the intention on that date had been that the respondent was to give an undertaking to the court, the said undertaking would have been required to be accepted. However, this court did not wait for the affidavit to be filed and disposed of the appeal in terms of the compromise.

6. A compromise decree cannot be said to have an advantage over a decree passed on consent. It cannot be said that while decree on contest is only executable in accordance with law, a compromise decree is enforceable in addition through contempt jurisdiction also. Merely because the court has accepted the compromise as lawful and decreed the lis in acceptance thereof, rather than by returning its own finding, does not give such decree a hue/character of a decree of the court.

7. ***Bank of Baroda*** (Supra) was a case where as part of a compromise, an undertaking to the court was given. Contempt was entertained finding the undertaking to the court to be violated and not because the decree was a consent decree. Reference therein was made to ***Gangadhar Khemker Vs. Kapurchand Ltd.*** AIR 1950 Bom 336 where also it was observed that the party may even in a consent decree, also give an undertaking to the court. Similarly in the facts of that case also consent terms were also found to contain an undertaking to the court. However, as aforesaid in the consent terms submitted in the present case, there was no undertaking to the court; rather the parties expressly provided for revival of execution proceedings in the event of default.

8. ***Rama Narang*** (Supra) of course holds that even in the absence of an undertaking, in appropriate cases defiance of a compromise decree may be contumacious – not always contumacious. It was held that for it to be contumacious, the violation of the decree is to be such as would warrant punishment under Section 13 of the Contempt of Courts Act on

the ground that contempt substantially interferes or tends substantially to interfere with the due course of justice. It was also held that the matter is of courts' discretion, having regard to the facts of the case. In that case, the court held the defiance of consent terms to be contumacious because of the court having directed the consent terms to be "punctually observed and carried into execution by all concerned". It was held for the said reason that the violation of the terms of consent order would tantamount to violation of the courts' order and thus would be punishable under Section 2(b) of the Contempt of Courts' Act. In fact the Supreme Court in the subsequent judgment/order in ***Rama Narang*** case, reported as AIR 2007 SC 2029 held that the parties in that case had given an undertaking to the court. However in the present case, there is no such order of the court. On the contrary, the agreement was of revival of execution proceedings in the event of default.

9. The petitioner admits to have already invoked the execution remedy. The settlement was for payment of monies and the order is not in the form of an injunction, violation whereof could be said to be contumacious. Therefore in the facts, no case of contempt can be said to have been made out. The petition is dismissed as not maintainable.

CM A. No.17503/2009 (u/S 151 CPC for exemption).

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

December 3, 2009

PP