

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

+ CCP(CO.) 6/2005 in CP No.67/1999

Date of Decision: 27th August, 2010

COURTS ON ITS OWN MOTION Petitioner

versus

VM TREHAN & ORS. Respondent
Through Mr. H.L. Tiku, Sr. Adv. with Mr. Mohit Khanna,
Mr. Thakur Sumit, Advocates

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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. (Oral)

1. In February 1999, Co.Pet.No.67/1999 was moved by M/s Sokkia Singapore Pte. Ltd. praying that M/s Mekaster Telematics Ltd. be wound up. After a preliminary hearing on 16th February, 1999, notice was issued by this Court to the respondent company to show cause as to why the petition be not admitted. Some other interim orders were also passed on that date. Ultimately, on 16th November, 1999, following order came to be passed by this Court:

"C.P.No.67/99 and C.A.Nos.196-197/99

The parties have arrived at amicable settlement and according to the settlement, the respondent shall remit 7,000 US\$ per month. The petitioner and the respondent shall complete necessary formalities. The respondent undertakes to obtain necessary permission from the R.B.I. Let the balance amount be paid in instalments on or before 15th day of each calendar month. The first instalment shall be paid by 15th December, 1999. Learned counsel for the respondent undertakes to file undertaking before this Court within two weeks from

today.

In case of any two defaults, the entire amount shall become due and payable forthwith with 12% interest. The petition is given liberty to revive this petition, in case of any default by the respondent.

The Company petition and applications are accordingly disposed of."

2. Since there was no other record of a settlement and nor was any application with regard to the same, setting down the terms and conditions therein, moved by either party, the above order constituted the terms of the mutual settlement between them.

3. A perusal of these terms shows that the respondent, i.e. the contemnors herein, had agreed to remit US\$ 7,000 per month to the petitioner. However, the amount due, or the number of instalments are not mentioned. Presumably, in the event of two defaults, the entire amount mentioned as outstanding in the petition, was to become due and payable, along with interest. Since the amount was to be remitted in foreign currency, both parties were required to complete all the necessary formalities. Obviously, since the respondent was to remit the money to the petitioner in foreign exchange, it became the duty of the respondent to obtain the necessary permission from the Reserve Bank of India and, to that extent, the respondent undertook to do so. Counsel for the respondent also undertook to file an undertaking before this Court, in terms of the aforesaid settlement recorded in the order dated 16th November, 1999. That undertaking, filed on 14th December, 1999, is in the form of the affidavit of Sh. Ravi Gandhi, Director of the respondent company, admitting the liability on the part of the respondent to pay US\$ 2,19,468.29 and ₹ 1,88,572 to the petitioner, in full and final discharge of

its liability towards the petitioner. The aforesaid amount was undertaken to be paid at the rate of US\$ 7,000 per month, from 15th December, 1999 onwards. The latter part of the aforesaid order dated 16th November, 1999 is also noteworthy. It states that in case of two defaults, the entire amount would become due and payable forthwith with 12% interest thereon. In addition, the petitioner was also granted liberty to revive the petition in case of any default on the part of the respondents.

4. Looking to the facts and circumstances of this case, there is nothing in the order dated 16th November, 1999 to suggest that a specific undertaking was given by the respondent to this Court to abide by the terms and conditions mutually agreed between the parties. The relevant terms of the agreement between the parties are spelt out in the first three sentences of the order of 16.11.1999 reproduced above. There, the first sentence is most significant, it says, *“the parties have arrived at amicable settlement and according to the settlement, the respondent shall remit 7,000 US\$ per month”*. The two sentences that follow merely state that the necessary formalities shall be completed by the parties and the respondent will obtain the necessary permissions. It was easy enough to say that according to the settlement, the respondent undertakes to this Court to remit US\$7,000 per month. That this was not said is obviously because parties did not have any such intention at that time. Further down in that order, the word, “undertakes” has been used by the Court in the expression, “respondent undertakes to obtain necessary permission”, to denote a binding commitment that has been accepted by the respondents qua the petitioner and nothing more. It is an undertaking given by the respondent to the petitioner to apply for and to obtain the necessary permission from the Reserve Bank of India. It forms

part of the mutual settlement and was an obligation accepted by the respondent qua the petitioner, and not that the respondent had undertaken to this Court that it would obtain the necessary permissions.

5. To my mind, the only undertaking to this Court is contained in the first part of the last sentence of the order of 16th November, 1999 which says, "Learned counsel for the respondent undertakes to file undertaking before this Court within two weeks from today." Here all that undertaken to the Court is that a document under the hand of the respondent setting down all the obligations undertaken by him qua the petitioner, shall be filed in Court, and nothing more. Admittedly this has been done.

6. Another factor is that had there been any undertaking given to the Court, and had the Court been of the mind that an undertaking was being tendered to it, then, obviously, the Court would have specifically accepted the same. A reading of the order dated 16th November, 1999 does not show anywhere that this Court specifically accepted any undertaking from the respondent. Furthermore, in the concluding paragraph of the aforesaid order, the consequences of a violation of the mutual settlement are also set down. Significantly, the consequence is limited only to the revival of the petition, and the fact that the entire amount would become due and payable forthwith, i.e. in a lump sum with 12% interest by the respondent, and nothing more.

7. The fact that it is not specifically stated that the respondent is giving the undertaking to the Court either in the aforesaid order or in the affidavit of undertaking that followed; nor is any undertaking stated to be accepted by this Court anywhere; coupled with the fact that likelihood of initiation of contempt proceedings is also not enumerated by this court as

one of the consequences of its breach by the respondent leads to the inference that the undertaking mentioned in the court's order was merely a bilateral one between the parties.

8. Admittedly, the respondent only paid three instalments. On the respondent's default, the petitioner moved Co.Appln.No.448/2003 praying for revival of the main company petition bearing No.67/1999, in terms of the order passed by this Court on 16th November, 1999. Consequently, the main petition came to be revived on 3rd November, 2003. I might notice that on 17th October, 2003, i.e. before the order reviving the petition came to be passed, certain orders were passed by BIFR, as a result of which protection under Section 22 of the SICA was made available to the respondent. Inter alia, this protection would remain available to the respondent till all proceedings under the SICA were completed. Of course, there was always a possibility of the BIFR or the AAIFR also directing the winding up of the company. Be that as it may, whilst the matter remains pending before BIFR or the AAIFR, this petition would have remained on this Court's board without any orders being passed thereon.

9. However, the petitioner itself moved Co.Appln.No.1666/2009 before this Court seeking withdrawal of its petition, and, on 9th December, 2009, this Court passed orders dismissing the petition as withdrawn, after recording the "no objection" of the respondent. The only thing that was urged, even by the petitioner through out, was that a mutual settlement had been arrived at between the parties, and the terms and conditions thereof had been recorded by this Court in its order dated 16th November, 1999.

10. As noticed above, a reading of the order dated 16th November,

1999 does not indicate any specific term whereby the respondent agreed to give a specific undertaking to this Court to pay a certain amount to the petitioner, nor does it mention the fact that a violation would render the respondent liable to face proceedings in the nature of contempt. Such a condition was not urged by either party, nor was any such undertaking accepted by this Court. The consequences of breach of that settlement were also recorded, which were limited to what was stated therein.

11. To my mind, this was merely a bilateral agreement by the parties in the presence of the Court, and duly recorded by the Court. It might be true that the respondent had violated the terms of the settlement, but it was up to the petitioner to enforce its rights under the settlement which were limited to seeking revival of the main petition and to the payment of the entire amount in one lump sum, along with 12% interest. In fact, it is in those very terms that the petitioner sought revival of the main petition, and thereafter, on 9th December, 2009, withdrew the same. Significantly, even the petitioner, who had reason to be aggrieved of the violation of the terms by the respondent, never said that the respondent was also in contempt because it had violated any undertaking given to the Court in this behalf.

12. In any event, contempt is a serious matter and as repeatedly held, inter alia, in the case of **S.R. Ramaraj v. Special Court, Bombay**, AIR **2003 SC 3039**, if two views are possible, the benefit must go to the respondent. To my mind, the interpretation I have placed is certainly plausible. It, therefore, follows that there can be no question of contempt against the respondent in this matter.

13. In that view of the matter, no contempt is made out. The proceedings are dropped.

SUDERSHAN KUMAR MISRA, J.

AUGUST 27, 2010
dr