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

+ **CO.A(SB) 45/2013**

R.P. KHOSLA & ANR

..... Appellants

Through Mr. Deepak Khosla in person.

versus

HON'BLE COMPANY LAW BOARD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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11.07.2014

SANJEEV SACHDEVA, J (oral)

CA No.2117/2013

The application stand allowed by order dated 19.01.2014.
Registry is directed not to show the application in the cause list.

CA No.2086/2013

This application was filed by the petitioner seeking stay of the operation of the impugned order challenged in the main company appeal. The company appeal stands withdrawn with certain liberties on 19.11.2013. The application does not survive and has become

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infructuous.

Accordingly, the application is disposed of.

CA No.2087/2013 (exemption)

Exemption allowed subject to all just exceptions.

CA No.2088/2013 & CA No.2118/2013 (service by e-mail)

The present application was filed by the appellant seeking exemption from serving hard copy as an advance notice to the respondent. Perusal of the order sheet shows that the respondent had appeared in the matter and had not raised any objection as to the service by e-mail.

Accordingly, no further orders are called for in the present application.

The application is disposed of as infructuous.

CA Nos.2089/2013 & 2119/2013

This is an application for enlargement of time to pay the court fees as was then payable in terms of Court Fees (Delhi Amendment) Act, 2012. Since the amendment act has been quashed by the judgment of the Division Bench of this Court dated 09.10.2013, no further orders are required in the present application.

The application is accordingly disposed of.

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CA Nos.417/2014 & 2122/2013

Learned counsel for the applicant submits that in view of the quashing of the Court Fees (Delhi Amendment) Act, 2012, the applications do not survive.

Accordingly, the same are dismissed as infructuous.

CA No.2121/2013 (exemption from serving hard copy as advance service)

The applicant has sought exemption from serving hard copy as advance notice. The applicant is seeking initiation of contempt proceedings. Since the notice has not yet been issued in the application seeking initiation of contempt proceedings no further orders are called for in this application.

Accordingly, the application is dismissed as infructuous.

CA No.2120/2013

1. The appellant has filed the present application seeking initiation of criminal contempt proceedings against the respondent whose names have been mentioned in CA No. 416/2014.
2. The allegations of the appellant are that the respondents/contemnors are guilty of suppression and

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manipulation of the Company Law Board proceedings on 11.11.2013. The allegation is based on the premise that the respondents/contemnors had filed an application before the Company Law Board being CA 134/2014 seeking the relief of dismissal of the petition filed by the appellant and, in the alternative, seeking deletion of the respondents from the array of respondents and for discharge from the company petition filed by the appellant before the Company Law Board.

3. The appellant contends that the effect of the filing of the application by the respondent was that the respondents did not wish to be heard before the Company Law Board or in the proceedings arising therefrom. It is contended that despite the filing of the application, the respondents sought to appear in the appeal filed by the appellant before this Court. It is contended on behalf of the appellant/applicant that the appearance by the respondents through counsel in the appeal filed by the appellant amounts to criminal contempt as they had already filed an application i.e. CA 134/2013 before the Company Law Board, the effect of which was that they had chosen not to be heard in the proceedings. It is further contended by the appellant that when this factum was pointed out to the Court on 11.11.2013,

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the respondent denied the fact that they had chosen not to be heard in the matter and had even orally denied the existence of any such application.

4. It is further contented by the appellant that on 11.11.2013, when the appeal was being heard before this Court, liberty was sought by the respondents to mention the matter before the Company Law Board as an application was listed at 2:30 pm before the Company Law Board on the same date. It is contended that instead of seeking an adjournment before the Company Law Board on 11.11.2013, the respondents pressed their application being CA No. 134/2013 and got noticed issued to the appellant in the matter.
5. It is further contended by the appellant that on receipt of the advance copy of the application, the appellant had sent e-mails to the respondents asking them not to proceed with the application till the appellant comply with the requirements of order dated 08.10.2009 passed by the Division Bench of this Court.
6. It is further contended by the appellant that the appellant had filed an application before the Company Law Board on

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13.11.2013 for enlargement of the order dated 13.11.2013 to elaborate in the said order as to what transpired before the Board on the said date. It is contended by the appellant that the said application which was filed with diary No.6537/2013 was dismissed by the Company Law Board and the order dated 13.11.2013 was not modified. It is further contented that no further appeal was filed against the order dismissing the said application. However, the dismissal of the application has been taken as a ground to contend bias or prejudice stemming from discrimination by the Company Law Board.

7. Section 2(c) of the Contempt of Court Act, 1971 defines Criminal Contempt as under:-

In this Act, unless the context otherwise requires -

(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

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

8. In my view, none of the actions as alleged by the appellant are either substantiated by record or amount to criminal contempt of court.
9. The contention of the appellant that by filing CA No. 134/2013, the respondent had impliedly chosen not to represent or be heard in the matter is misplaced. The perusal of CA No. 134/2013 shows that the respondents had filed the application praying for dismissal of the company petition and, in the alternative, from being deleted from the array of parties.
10. It is submitted by the appellant that the prayer of the respondents for being deleted from the array of parties was not allowed by the Court and the main petition was disposed of. However, the respondents were deleted from the array of parties on an application filed by the appellant with the consent of the respondent.
11. Filing of an application by a party for being deleted from the

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array of parties does not tantamount to the situation that the applicant does not want to be heard in the matter. The application for being deleted from the array of parties is filed on the premise that the party is neither necessary nor a proper party. The application for being deleted from the array of parties can never be construed as if the applicant does not wish to be heard in the matter. The effect of such an application is that if the application is allowed, the applicant would be deleted from the array of parties and if the application is dismissed, the applicant would continue to remain a party and would be entitled to be heard in all proceedings.

12. The submission of the appellant that when a notice is issued in a petition and the respondent instead of filing a reply on the merits of the petition, files an application seeking deletion from the array of parties, amounts to opting not to be heard in the matter, in my view, is again meritless. If a party chooses not to respond to the factual averments of the main petition, the court is entitled to deal with the application or the petition as if the facts have gone unrebutted and appropriate orders would be passed. In the present case, the appellant himself had dropped the respondents from the array of parties thereby implying that

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the respondents were neither necessary nor proper parties to the proceedings and had been incorrectly arrayed in the first instance.

13. In my view, the contention of the appellant that the respondent had chosen not to be heard in the matter by filing CA No. 134/2014 is not sustainable.
14. The allegation of the appellant that on 11.11.2013, the respondents had sought liberty from this Court to mention before the Company Law Board where the proceedings were to be taken up at 2:30 is also not borne out from the record. Further contention that on 11.11.2013, the respondent was to seek an adjournment from the Company Law Board since the appeal was pending is also not sustainable because on 11.11.2013, the Company Law Board merely issued notice to the Appellant on the application of the Respondents which was then subsequently taken up on a later date in the presence of the appellant. The order of 11.11.2013 has not been challenged by way of an appeal by the appellant. However, it is contended that a recall application was filed alongwith the main petition. However, it is stated that the order was not recalled till the

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disposal of the main petition.

15. The contention of the appellant that an application was filed on 13.11.2013 before the Company Law Board to elaborate its order dated 13.11.2013 does not help the case of the appellant as admittedly the said order was not modified.
16. The further contention of the appellant that there are certain factual statements mentioned in the application filed by the appellant explaining and contending what had transpired in Court but not recorded in the order of the Company Law Board is also meritless.
17. It is a settled law¹ that parties cannot be permitted to rely on what had transpired orally in Court. The Court has to go by what is recorded in the order and proceedings by the Court. Matters of Judicial Record are unquestionable. Statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of facts so stated and no one can contradict such statements by affidavit or other evidence. Parties cannot be permitted to contradict the

¹ *State of Maharashtra vs Ramdas Shrinivas Nayak: 1982(2) SCC 463; Guruvayoor Dewaswom Managing Committee vs C K Rajan, 2003 (7) SCC 546*

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statement of judges by statement at the Bar or by affidavit or by other evidence. The judicial order and proceedings speaks for themselves. The judges cannot be relegated into a situation where the allegations are permitted to be filed by the parties to contradict or dispute what is recorded in the judicial proceedings. In case, a party is aggrieved by the absence of certain facts or arguments in the order that is allegedly not recorded by the Court, the party has to approach the same Court by way of a review or a clarificatory application promptly. In case the review or clarificatory application is justified and allowed, the order may be modified. In case such an application is rejected, the party cannot thereafter be permitted to file an affidavit or even urge that what is recorded is not complete and fair record of the proceedings of the Court. The appellant, thus in the present case, cannot be permitted to contradict or dispute what is recorded in the various judicial orders.

18. In my view, no ground is made out to initiate any criminal proceedings against the respondents. There is no merit in the application. The application is accordingly dismissed.

CA No.416/2014

The present application has been filed by the appellant on the premise that to ascertain as to who was responsible for the acts of criminal contempt, the applicant had sent e-mail dated 23.11.2013 to various parties and as no reply was received to the said e-mail, in the view of the appellant, it is the respondent in the said application, as mentioned in Annexure-2, who would be liable for being punished for criminal contempt.

In my view, the very premise of the application is incorrect. Merely because reply is not received to an e-mail would not imply that the noticee had committed criminal contempt. Furthermore, since the applicant seeking initiation of criminal contempt i.e. CA No. 2120/2013 has been dismissed by this Court, this application is not maintainable and is, accordingly, dismissed.

SANJEEV SACHDEVA, J

JULY 11, 2014
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