

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont. Cas (C) No.741/2014**

Decided on : 23rd December, 2014

TANU GOEL AND ANOTHER Petitioners
Through: Mr. Sudhir Talwar, Advocate.

Versus

GIRISH CHOPRA & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present petition, the petitioners are claiming action for wilful disobedience of the orders dated 31.3.2011 and 6.4.2011 passed by the learned single judge in C.S. (OS) No.669/2011 titled *Tanu Goel & Anr. Vs. Girish Chopra & Ors.*

2. Briefly stated the facts of the case are that the petitioners filed a suit for specific performance against the respondents. Along with the suit, an application bearing No.4427/2011 under Order 39 Rule 1 & 2 CPC was filed for an ex parte ad interim injunction in respect of the third floor of property No.9, Sukhdev Vihar, New Delhi and terrace rights

thereon, as it was alleged by the petitioners that the respondents had agreed to sell the same to them.

3. After hearing the arguments on the application under Order 39 Rule 1 & 2 CPC, the learned single judge passed an order restraining the respondents from creating any third party interest in respect of third floor of property No.9, Sukhdev Vihar, New Delhi and its terrace rights. The main order on the interim application was reserved which was pronounced on 6.4.2011 confirming the aforesaid order. Ultimately, the suit was decreed on merits in favour of the petitioners by the learned single judge of this court vide order dated 16.5.2014. The decree for specific performance was passed in respect of an agreement dated 15.6.2010 by the court on 16.5.2014 with the following directions :-

(i) The defendants No.1&2 to within three months hereof, after having the third floor along with terrace of property No.9, Sukhdev Vihar, New Delhi constructed over land admeasuring 450 sq. yds, freed from mortgage, execute a Sale Deed thereof in favour of the plaintiffs on the terms and conditions contained in the Agreement to Sell dated 15th June, 2010 against receipt of balance sale consideration of Rs.3.25 crores from the plaintiffs; the amount of Rs.34 lakhs deposited in this Court shall then form part of the sale consideration and be paid to the defendants No.1&2; if the defendants No.1&2 so voluntarily execute the Sale Deed, the

interest accrued there on shall also be released to the defendants No.1&2 besides the sale consideration;

(ii) If the defendants No.1&2 do not get the property freed from mortgage within the said three months and do not so execute the Sale Deed, the plaintiffs shall be entitled to negotiate with the mortgagee Bank for settling the dues of the said Bank; the mortgagee Bank i.e. Bank of Baroda is directed in this context to so deal with the plaintiffs insofar as the mortgage of the third floor and terrace is concerned; and to after having the property freed from mortgage, have the Conveyance Deed of the said property executed in their favour through the process of the Court; in such eventuality, if the amount paid by the plaintiffs to the mortgagee Bank is more than the balance sale consideration, the plaintiffs shall be free to institute proceedings for recovery of the excess amount so paid from the defendants and in such an eventually, the plaintiffs shall also be entitled to withdraw the amount of Rs.34 lakhs deposited in this Court together with interest accrued thereon;

(iii) In the event of the defendants No.1&2 complying with the decree in terms of one above, no costs; else, the defendants shall also be liable for costs.

Sd/- ”

4. It is the case of the petitioners that after the decree was passed, the petitioners had paid the amount to the bank with whom the documents of title were alleged to have been pledged by the respondents. It is further stated that when the petitioners requested the respondents, by issuance of a notice, to perfect the title of the present petitioners, they learnt about the

fact that there was a matter pending before the Debt Recovery Tribunal under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, inasmuch as the petitioners had sold the aforesaid property to a third party during the subsistence of an ad interim order. It is alleged by the petitioners that this fact was learnt by them only after passing of the decree and consequently as the aforesaid sale transaction, done by the respondents during the pendency of the ad interim order in the year 2012, was in violation of orders dated 31.3.2011 and 6.4.2011, they have filed the present petition for initiation of contempt action.

5. The learned counsel for the petitioners has relied upon two judgments of the Apex Court in order to substantiate the plea of initiating an action against the respondents under the Contempt of Courts Act, 1971. These two judgments are *Palitana Sugar Mills Private Limited & Another vs. Vilasiniben Ramachandran & Others*; (2007) 15 SCC 218 and *Kanwar Singh Saini vs. High Court of Delhi*; (2012) 4 SCC 307.

6. I have carefully considered the submission of the learned counsel for the petitioners and have gone through the record.

7. The sole question to be decided in the instant contempt petition is as to whether the respondents are guilty of wilful disobedience of the order dated 31.3.2011 which was confirmed on 6.4.2011 and should they be proceeded against under the Contempt of Courts Act, 1971.

8. There is no dispute about the fact that initiation of contempt proceedings against a party is a matter of discretion or in other words, the contempt is between court and the alleged contemnor and it is only the duty of the petitioner to bring this fact to the notice of the court which has the power to initiate an action for contempt. This being the broad basic contours of the power, the question which arises for consideration is as to whether by selling the property in the year 2000 itself to a third party, the respondents have committed wilful disobedience of the two ad interim orders passed by the court on 31.3.2011 and 6.4.2011.

9. I do not agree with the contention of the learned counsel for the petitioners that the respondents deserve to be proceeded against on account of the alleged wilful disobedience of the ad interim orders passed by the court when the suit itself has been decreed. One of the

fundamental principles is that an ad interim order, which a party gets or which a court passes in a suit gets merged ultimately in the final order.

10. No doubt, in the instant case, two ad interim orders were passed on 31.3.2011 and 6.4.2011, which further was reinforced by decreeing the suit in the year 2014. Meaning thereby that the ad interim order ceased to have any existence. After the decree was passed, the petitioners had already gone to the executing court for the purpose of execution of the title itself in their favour. This execution file was also requisitioned and the petitioners are already having their appropriate remedy.

11. The two judgments which have been cited by the learned counsel for the petitioners do not lay down a categorical proposition that in every case where there is a disobedience, it has to be assumed to be wilful and that an action for contempt of court deserves to be taken.

12. On the contrary, it holds a contrary view to the effect that in case some action is to be complied with in terms of the directions passed by the court and if the party defaults, it is not necessary that a contempt action deserves to be taken unless and until some larger public good is sub-served.

13. In the instant case, it is a private litigation between two private parties and initiation of contempt proceedings against the respondents is not going to serve any public good on the contrary, this is only a ploy which is being used by the petitioners to bring to bear pressure on the respondents. In the above two judgments, the learned counsel for the petitioners has relied upon certain passages, which are as under :-

14. In *Palitana Sugar Mills's* case (*supra*), the learned counsel for the petitioners has relied upon the following passage :

“24. The courts have held in a catena of decisions that where in violation of an order of this court, something has been done in disobedience, it will be the duty of this court as a policy to set the wrong right and not to allow the perpetuation of the wrongdoing. In our opinion, the inherent power will not only be available under Section 151 CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest.”

15. In *Kanwar Singh Saini's* case (*supra*), the learned counsel has relied upon the following paragraphs :-

“27. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the

extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt....

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30. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him.”

16. As a matter of fact, one of the judgments cited by the petitioners clearly lay down that if a person has an alternative efficacious remedy available to him then, he must avail of the said remedy, in the first instance, rather than choosing to file a contempt petition. In the instant case, the petitioner has already admittedly gone to the executing court for getting the decree executed. Having done so, the present contempt

petition does not deserve any action to be taken against the respondents. Moreover, the contempt action is punitive in nature and must not be taken against a party on the drop of hat and if a party has an alternative efficacious remedy available to him then, in the first instance, he must resort to the same.

17. In view of the aforesaid reasoning, I feel the present contempt petition does not deserve initiation of any action. So far as the judgments which have been relied upon by the petitioners' counsel are concerned, the facts of those cases are totally different and are not comparable with the facts of the present case. Therefore, I need not refer to the said judgments.

18. Accordingly, the contempt petition is dismissed with liberty to the petitioners to pursue their remedy for getting the decree executed.

V.K. SHALI, J.

DECEMBER 23, 2014
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