

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

% Judgment reserved on: 19th May, 2014
Judgment pronounced on: 12th August, 2014

+ **Cont. Cas(C) 959/2013**

DEEPAK KHOSLA

.....PETITIONER

Through: In person

Versus

HON'BLE COMPANY LAW BOARD & ORS RESPONDENTS

Through: Mr. Rajeeve Mehra, Additional
Solicitor General with Mr.
Aditya Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The Petitioner has filed the present Contempt Petition alleging contempt of order dated 08.10.2009 passed by the Division Bench of this Court in W.P. (C) No. 7651 of 2009 titled Deepak Khosla & another Versus Union of India & others.
2. It is contended that by order dated 8.10.2009 had directed the Registry of this Court, the Courts

subordinate to this Court and the Tribunals and Foras in Delhi that proper scrutiny of vakalatnama filed should be effected and vakalatnama which are not properly executed be not taken on record. None of the Respondents herein were parties to the said Petition.

3. It is contended by the Petitioner that the Respondents wilfully and deliberately violated the order dated 08.10.2009 and as such have made themselves liable for being proceeded with under the Contempt of Court Act.
4. The Petitioner has arrayed the Company Law Board through its Secretary as Respondent No.1. Respondents No. 2 to 4 are corporate entities against whom the Petitioner has various litigations. Respondents No. 5 to 10 are Directors of one or the other corporate entities arrayed as Respondents No. 2 to 4. Respondents No. 11 to 20 are advocates who are either partners or advocates of law firms representing one or the other parties arrayed as Respondents No. 2 to 10.
5. It is contended by the Petitioner that Respondent No.1, the Company Law Board is a Tribunal, subordinate to

the Delhi High Court and despite service of the order dated 08.10.2009, no steps were taken by the Respondent No.1 to comply with the directions contained in the said order. Qua Respondents No. 2 to 10, it is contended that despite being aware of the directions contained in order dated 08.10.2009, they filed vakalatnama not in accordance with the directions contained in order dated 08.10.2009 and as such have violated the said order.

6. Respondents No. 11 to 20 have been arrayed in the Petition in their capacity as advocates for the Respondents 2 to 10. It is contended that Respondents No. 11 to 20 appeared before the Court without filing an appropriate vakalatnama and as such their conduct amounted to contempt of Court.
7. During the submissions it was contended that Respondents No. 11 to 20 were also liable as they are stated to have given legal advice and the said Respondents should have known the law and should have advised correctly. It is further contended that the Respondents despite being put to notice by the Petitioner to annex the Board resolution authorizing the

vakalatnama failed to do so and as such the same amounted to wilful breach of order dated 08.10.2009, thus, they be liable for having committed the contempt of said order.

8. The Petitioner has contended that Co. Pet. No. 130/2013 was filed before the Company Law Board by the Petitioner seeking investigation into the affairs of various companies.
9. It is contended that an application was filed by Respondent No. 2 being CA No. 134 of 2013. The Petitioner requested for return of the said application on the ground that the vakalatnama was not appended with the authority of the executant of the same. It is contended that another company application was filed by the other Respondent in similar fashion.
10. This Court before considering the question of issuance of notice to any of the Respondents directed the Bench Officer of the Company Law Board to file an affidavit explaining the practice and procedure adopted in the Company Law Board in relation to the issues raised by the Petitioner in the Petition.

11. The Bench Officer of the Company Law Board has filed an affidavit dated 22.01.2014. The Bench Officer in the said affidavit has placed on record the procedure in respect of the filing of memorandum of appearance and vakalatnama in terms of regulation 18(3) of the Company Law Board Regulations, 1991. In the affidavit, it is stated that whenever an objection is raised by the management of the company or the party to the proceedings or where it feels necessary, the Bench of the Company Law Board insists upon filing of the Board Resolution to substantiate the authority of the person executing the vakalatnama.
12. It is further contended that in the affidavit filed by Respondent No. 2 with CA No. 134 of 2013 the said Respondent sought dismissal of the company Petition filed by the Petitioner or in the alternative for being deleted from the array of parties.
13. It is further stated in the affidavit that by order dated 02.12.2013 passed by the Company Law Board, the Respondents No. 1 to 43 in the company Petition were deleted from the array of parties. It is further stated in the affidavit that the Co. Pet. No. 130/2013 filed by the

Petitioner was dismissed by the Company Law Board by order dated 18.12.2013 on the ground that the said company Petition was found misconceived.

14. It is further stated in the affidavit that in terms of judgment dated 08.10.2009, the Company Law Board has issued a circular No.1/2014 dated 13.01.2014 mandating all companies to necessarily file the duly executed vakalatnamas along with supporting Board resolutions and to comply with all other directions in terms of circular dated 26.10.2009 issued by the Delhi High Court. It is further stated that from the date of the issuance of the circular, strict scrutiny of the vakalatnama is being carried out by the Bench Officers of the Company Law Board.
15. It is further stated in the affidavit that there was no deliberate violation of any orders of this Court and if there was any omission in discharge of duty, the same was not intentional. Unconditional apology has also been tendered to this Court for any inadvertent/unintentional lapse on the part of the Bench Officer.

16. The Petitioner has contended that the applicants in CA No 134 of 2013 and CA No. 149 of 2013 have filed the same without proper authority in as much as the vakalatnama filed was not supported by a resolution of the Board of Directors.
17. For the purposes of clarity and to understand the controversy it would be appropriate to examine the connection between the applicant and the signatory and the Petitioner.
18. The CA No. 134 of 2013 was filed on behalf of Respondent No. 2, i.e., M/s McDonalds India Private Limited on 7.11.2013. The vakalatnama in support of the application is stated to have been signed by Ms. Aysel Melbye. Ms. Aysel Melbye has been arrayed by the Petitioner himself as Respondent No. 17 and has been described as the nominee director of McDonalds India Private Limited in Connaught Plaza Restaurant Private Limited.
19. CA No. 149 of 203 filed in Co. Pet. No. 110/2013 was an application filed by Vikram Bakshi for himself and as director and authorized signatory of M/s Bakshi Holdings Private Limited.

20. The application CA (unnumbered) /2013 dated 22.11.2013 in Co. Pet. No. 130/2013 was an application on behalf of one M/s Escort Hotels & Resorts Limited, Vikram Madhurima Bakshi, Anshuman Dutta and Devika Bakshi. The applicants in the said application Anshuman Dutta and Devika Bakshi have been arrayed by the Petitioner as Respondents No. 27 and 28 and described as member of the executive management of M/s Escorts Hotel & Resorts Limited.
21. The Petitioner is not claiming to be in any way connected with the management of the said corporate entities that are applicants in the said three applications. The signatories on behalf of the said statutory corporations in the said three applications have been arrayed and described by the Petitioner himself as having some connection with the management of the said companies.
22. There is no allegation on behalf of any person connected with the management of the said three corporate entities that the applications have been filed unauthorisedly and without authority.

23. Since the Petitioner himself is not claiming to be a person connected with the management of the said applicant corporate entities, the Petitioner would not be aware of the internal management of the said corporate entities and cannot thus from his personal knowledge state that there is no resolution of the Board of Directors. The denial by the Petitioner of the authority of the signatory is a presumption and not based on facts in the knowledge of the Petitioner. The Petitioner himself has stated that “.....*the Petitioner has no means of knowing whether there is a Board Resolution to support the entry of Contemner-Respondent Company No. 4.....*”.....“*However they have not denied allegations that they have not filed the Resolution, which gives rise to the reasonable presumption that they have not.*”
24. It is thus apparent that that the objection with regard to the authority of the authorized representatives signing on behalf of the corporate entities is not based on personal knowledge but is based on assumption and presumption.

25. Further the Petition being Co. Pet. No. 130/2013 filed by the Petitioner was dismissed by the Company Law Board by order dated 18.12.2013 on the ground that the said company Petition was found misconceived. The Board noticed the fact that the Petitioner was neither a member, nor a creditor nor any other person affected by the affairs of Connaught Plaza Restaurant Pvt. Ltd. The Board held that the Petitioner was not qualified under any of the clauses of section 237 of the Companies Act to maintain the Petition.
26. The submission of the Petitioner that filing of a vakalatnama that is deficient and not in conformity with the conditions as laid down in Order dated 08.10.2009 in W.P.(C) No. 7659 of 2009 amounts to contempt of court is misconceived.
27. The Division Bench by Judgment/Order dated 08.10.2009 has laid down that defect in the vakalatnama or non-filing of the authority by the executant of the vakalatnama would be treated as a deficiency in the execution of the vakalatnama making liable the said vakalatnama to be returned.

28. The Division Bench in the Judgment dated 08.10.2009 relied upon the decision of the Supreme Court of India in the case of **UDAY SHANKAR TRIYAR V. RAM KALEWAR PRASAD SINGH, (2006) 1 SCC 75.**
29. The Supreme Court of India in the case of **UDAY SHANKAR TRIYAR'S CASE (SUPRA)** laid down as under:
15. It is, thus, now well settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the appellant, along with the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the memorandum of appeal or the presentation thereof before the appellate court was with the knowledge and authority of the appellant. Such omission or defect being one relatable to procedure, can subsequently be corrected. It is the duty of the office to verify whether the memorandum of appeal was signed by the appellant or his authorised agent or pleader holding appropriate vakalatnama. If the office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at the hearing of the appeal merely by reason of such defect, without giving an opportunity to the appellant to rectify it. The requirement that

the appeal should be signed by the appellant or his pleader (duly authorised by a vakalatnama executed by the appellant) is, no doubt, mandatory. But it does not mean that non-compliance should result in automatic rejection of the appeal without giving an opportunity to the appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the appellant or suo motu, permit the appellant to rectify the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh vakalatnama along with the memorandum of appeal, as the vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 CPC, read with Explanation (c) thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has

always been recognised that if a plaint is not signed by the plaintiff or his duly authorised agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or Petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:
 - (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
 - (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.

30. The settled proposition of law is that procedural defect and deficiencies are deficiencies that can be cured and once the deficiency is cured, the action is ratified and the action relates back to the original filing. Even Where the vakalatnama was not supported by a complete authority, the same would be treated as a deficiency and the party executing the vakalatnama would be called upon to cure the defect. In case, the defect is cured, the irregularity would be regularized and the proceedings will continue. In case, the party fails to rectify the defect, no cognizance would be taken of the defective document or vakalatnama.

31. In the present case, even if it was to be assumed that the vakalatnama was defective and without proper authority, the mere filing of the same and placing of the application by the Bench Officer before the Board would not mean wilful disobedience of the Judgment/order dated 08.10.2009 and would not amount to a contumacious act as would make the Bench Officer of the Company Law Board liable to be punished for having committed Contempt of Court.
32. The filing of a deficient vakalatnama by a party to a proceeding would not make a party or its advocates liable for contempt of Court. In terms of Judgment/order dated 08.10.2009, the defective vakalatnama would be liable to be returned. Even if a party files a defective vakalatnama, the party would not be held liable for having committed contempt of Court. The defective vakalatnama would be liable to be returned and the party would be given an opportunity to cure the defect and in case the defect is not cured, no further cognizance would be taken of the defective vakalatnama and the consequences would follow.

33. The affidavit of the Bench Officer shows that the Company Law Board has issued a circular stipulating therein that vakalatnama have to be filed in compliance with the directions stipulated in the circular dated 26.10.2009 issued by the Registrar General of this Court.
34. The Bench Officer has stated that due care is taken to scrutinize all applications and Petitions before the same are placed before the Board. The conduct of the Respondent Company Law Board does not disclose any intentional or a wilful disobedience of the Order dated 08.10.2009. On the contrary, it shows that the Respondent Company Law Board has issued circular and is making an endeavour to comply with the directions passed by this Court.
35. No ground is made out to initiate any proceedings against the Respondents for any alleged wilful disobedience of the order dated 08.10.2009, the Petition is thus liable to be dismissed.
36. The Petitioner had also filed a similar Petition before this Court being Cont Cas (C) No. 190 of 2010 titled Deepak Khosla Versus Delhi High Court & Others.

37. In the said Petition, Delhi High Court was arrayed as the Respondent No. 1, the Registrar of Delhi High Court was arrayed as Respondent No. 2, three advocates and two private persons were arrayed as Respondents. The said Petition was also based on the Order dated 08.10.2009 and the allegations in the said Petition were also identical.

38. The said Petition was dismissed by this court by Judgment dated 17.01.2011 holding as under:

3. It is obvious from the Petition that the Petitioner has alleged disobedience of the Judgment of the High Court by Registry and filed this Civil Contempt on this basis. However, a perusal of the Judgment, of which disobedience is alleged, would show that in this Judgment Respondent no. 3 to 7 were not parties and only Union of India, Delhi High Court, Registrar of High Court and Arbitration Tribunal were parties. The directions, given by this Court in the Judgment, were given to the Registry of this Court, the Subordinate Courts to the High Court and Tribunals. It was directed that the Registry and the Subordinate Courts and Tribunals shall do proper scrutiny of Vakalatnamas filed along with Petitions and if the Vakalatnamas were not properly executed, the same be not taken

on record. Para 13 of the Judgment specifically directed the Registry of this Court and the lower Courts, Tribunals and Authorities Subordinate to the High Court to give effect to the decision of Supreme Court in *Udai Shankar Triyar Vs. Ram Kalewar Prasad Singh & Anr.* (AIR 2006 SC 269) and if the Vakalatnamas were not found executed in the manner indicated in the Judgment, the same shall be treated as deficiency in execution of Vakalatnama making said Vakalatnama liable to be returned.

4. In order to make out a case of Civil Contempt, it is necessary that there should be wilful disobedience of the Judgment/Decree/Directions/ Order of court by a person to whom directions are given under the Judgment/Decree/ Directions/Order. Since the directions were given only to Respondent No. 1 and 2 in this case, no case of Contempt would lie against other Respondents. If the Vakalatnama was not properly executed by Respondent No. 3 to 7, the Registry was liable to reject the Vakalatnama. It could not be said that non-execution of Vakalatnama in accordance with the directions laid down in the Judgment by an Advocate would amount to Contempt of the Court. Even if the Judgment is treated as Statutory Provision/Direction, non-adherence to the Statutory Provision does not amount to Contempt. The consequence of non-

adherence are always given in the Statute itself and those consequences have to follow. In the present case, the consequence of non-adherence to the directions was given in the Judgment itself and at the most Vakalatnama could be returned. I, therefore, consider that no Contempt was made out as against the Respondent No. 3 to 7 under any circumstance. So far as Respondent No. 1 and 2 are concerned, the issue of Civil Contempt would arise only if there was a “wilful disobedience” of the Judgment. “Willful disobedience” is the basic requirement for Civil Contempt. It has not been even alleged by the Petitioner that Respondent No. 1 and 2 acted in “wilful disobedience”. Word “WILLFUL” signifies a deliberate act showing an intention to disobey. There are no allegations that Registry had any ulterior motive or intention in accepting the Vakalatnama filed in O.M.P. No. 660 of 2009. In the absence of these allegations of “wilful disobedience” by Respondent No. 1 and 2, this Petition for Contempt would not lie. Even otherwise, Department [Registrar (Original), who was handling the O.M.Ps], has filed an affidavit that she had always maintained the Majesty of this Court and if any act of omission/commission was on her part which can be construed as an inaction on her part, she tenders unqualified apology.

5. I consider that since not even an allegation of “wilful or intentional disobedience” of

the directions of the Court in accepting Vakalatnama in OMP was made against Respondent No. 1 and 2, no Contempt was made out.

6. A perusal of Petition would show that the Petitioner had, in fact, narrated all irrelevant facts which were not necessary for the purpose of deciding the Petition. The Petition, itself seems to be mis-use of judicial process and is liable to be dismissed with cost.

The Petition is hereby dismissed with cost of Rs. 25,000/-. Cost to be paid to Delhi High Court Legal Aid Committee.

39. The Petitioner, whose earlier similar Petition seeking similar reliefs was dismissed with costs, was aware of the law as laid down by this court by the Judgment dated 17.01.2011 dismissing his Petition.
40. Despite the Judgment of this court in the Petitioner's own case, the Petitioner chose to file a similar Petition with identical allegations and seeking similar reliefs (though against different Respondents). The Petitioner neither disclosed about the filing of the said Petition nor placed before this court the Judgment dated 17.01.2011 dismissing his earlier Petition. Despite the

earlier Petition being dismissed with costs of Rs. 25,000/-, the Petitioner has filed the present Petition.

41. The present Petition is misconceived and the Petitioner has wasted substantial judicial time. The Petition is thus dismissed with costs of Rs. 35,000/- to be paid to the Delhi High Court Bar Association Employees Welfare Fund.

SANJEEV SACHDEVA, J.

August 12, 2014

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