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

+ **CONT.CAS.(CRL) 2/2017**

TIMEX GROUP INDIA LIMITED & ANR Petitioners
Through: Mr. K.K. Sharma, Sr. Advocate
with Mr. Suwarn Rajan, Mr.
Sanjay Mehrotra & Mr.
Gagandeep Chauhan,
Advocates

versus

MAHESH KUMAR & ORS Respondents
Through: Mr. Neeraj Malhotra, Sr.
Advocate with Mr. Shantanu
Malik & Ms. Nanki Arora,
Advocates
Mr. Joseph Aristatic and
Mr. James Danee David,
Advocates for Respondents
No.5 & 6

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
16.07.2018

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Dr. S. Muralidhar, J.:

1. The circumstances under which this present petition has been filed are that in a suit being TM No. 23/2017 filed by Petitioner No.1 Timex Group India Limited, an order dated 22nd February 2017 was passed by the learned

Additional District Judge-02 (ADJ) in an application filed under Order XXVI, Rule 9 CPC and Order XXXIX, Rules 1 and 2 CPC whereby Mr. Lovedeep Gaur, Advocate was appointed as a Local Commissioner ('LC') to visit the premises of, *inter alia*, M/s. Counfreedise (Defendant No.2 therein) at 14, New Timber Yard Layout, Mysore Road, Bengaluru - 560026.

2. By the same order, certain other LCs were also appointed to visit the premises of third-party establishments. For the purposes of the present petition, however, it is sufficient to note that the tasks entrusted to the LCs by the aforementioned order of the learned ADJ were as under:

"I. Inspect the premises and search and seize all infringing goods/packaging material including stationery, packaging material, cartons, display boards, sign boards, advertising material, dies or blocks, unfinished, packed, unpacked impugned goods, documents, wrappers etc. having the impugned Trademark/Labels "TIMEX", which may be identical with and/or deceptively similar to the plaintiff's said Trademark/name/Labels "TIMEX" of the plaintiff in relation to wrist watches, watch straps and bands and parts thereof and other allied/related products including their packaging.

II. Search and seize all other material used in manufacturing, sale and distribution of the infringing packaging bearing the falsified getup or deceptively and confusingly similar to the getup of products having the impugned Trademark/Labels "TIMEX", which may be identical with and/or deceptively similar to the plaintiff's said Trademark/name/Labels "TIMEX" of the plaintiff in relation to wrist watches, watch straps and bands and parts thereof and other allied/related products including their packaging.

III. Sign the account books including ledgers, cash register,

stock register, invoices, books etc. of the said defendants.

IV. Ld. Local Commissioners will also take along with them photographer/videographer to record their visit through photos/videos and shall also indicate the full details of the defendants and on ascertaining the identity he/she shall serve a complete set of papers and copy of notice and summons etc.

V. Prepare an inventory of all such goods/material seized by him. Thereafter, the goods/material shall be handed over to the attorney/plaintiff on superdari after taking photographs of the seized material.”

3. The learned ADJ also directed that the LCs would seek police aid through the Station House Officer (‘SHO’) of the local Police Station (‘PS’) and that the “SHO shall provide the police aid immediately and in case of inconvenience through the office of DCP/SSP of the concerned jurisdiction, in case of requirement and shall break up the locks of the premises, if required”. The police was directed to maintain the secrecy of the raid. The LC was asked to file a report within three weeks of the execution of the commission.

4. It appears that pursuant to the above order, Mr. Lovedeep Gaur filed a report dated 22nd March 2017 before the learned ADJ in the aforementioned suit TM No.23/2017. He stated *inter alia* in that report that on 27th February 2017, he along with counsel for the plaintiff, i.e. Mr. Akshay Shrivastav and Mr. Sanchay Mehrotra, as well as the authorised representative (AR) of the Plaintiff, Mr. Vipul Sharma, left Delhi for Bengaluru. They reached Bengaluru at around 10:30 pm and stayed there for the night. On the morning of 28th February 2017, the aforementioned

persons went first to the office of the DCP, Upparpet, Bengaluru. It appears that they had to submit an application for police aid. They then went to the concerned PS where they were asked to obtain an authorisation for the same from the DCP's office. They did so and after presenting the DCP's order at the concerned PS, they were provided police aid at around 4:30 pm. Thereafter, the LC along with counsel and the AR of the Plaintiff and supporting staff reached the premises of M/s. Counfreedise at the aforementioned address in Bengaluru.

5. Paras 4 and 5 of the LC's report thereafter set out what transpired at the premises as under:

“4. On reaching the spot, the proceedings in compliance of the directions of this Hon'ble Court were taken up, where one Mr. Satish, manager of the defendant was found present in the office of the defendant. Mr. Satish informed the Local commissioner that the owner of the premises, Mr. Abhinandan Jain and the other partner were not there as they were in Dubai. So the local commissioner-asked Mr. Satish to receive the order of this Hon'ble court, which he refused to accept and sign stated -that he was not authorised to do so as he was just an employee and also he had informed the father of the owner i.e. Mr. Mahesh Patara who was on his way to the premises and asked us to wait. In the meantime, in presence of the police officials, we inspected the premises and found the impugned articles i.e. Timex Watches were there. Then, Local Commissioner asked Mr. Satish for the inventory, stock etc of the Timex watches, who replied that there are more than 3000 watches and it will take time to prepare the inventory, so asked us to wait till Mr. Mahesh Patara comes. In order to make the visit more precise, Local Commissioner decided to wait for Mr. Mahesh Patara.

5. After more than half an hour Mr Mahesh Patara reached the premises of the defendant and introduced himself as the father

of the owner of the defendant. Then the undersigned LC requested Mr. Mahesh Patara to receive the order of this Hon'ble Court and cooperate in the execution of the commission lawfully and peacefully. Mr Mahesh Patara replied that he will first speak to his lawyer and then he spoke to his lawyer on phone. After that he refused to receive the order of this Hon'ble court and further stated that he won't allow us to enter into the premises and won't allow us to inspect anything. LC requested Mr. Mahesh Patara to cooperate but he started shouting in his local language and created nuisance. Police officials also asked Mr. Mahesh Patara to cooperate but he did not listen to them and continued shouting in his local language. The LC told Mr. Mahesh Patara that this will be the contempt of the order of this Hon'ble Court to which Mr. Patara replied that he don't care if it is the contempt of the court order and he was ready to face the consequences. He then asked his staff to push us all out of the premises and the staff started pushing us all out of the premises. He continued to shout in his local language and used abusive words as told by the driver of the rented car (hired by plaintiff) who knows the local language. Since the situation was going out of control, police officials asked us to leave the premises and go back to the police station, which resulted into the non- execution of the commission. The application to DCP and SHO for providing the names of the police officials accompanied us for the execution of the commission and details of the Daily Diary entry(D.D. Entry) for 28.02.2017 vide order of the Hon'ble court dated 22.02.2017 along with the receipt of the fees paid for the record of Daily entry register is being annexed as Annexure B(Colly). The certified copy of the daily diary entry register dated 28.02.17 along with translation is being annexed as Annexure C (Colly). A self attested Copy of the identity card of Mr. Vipul Sharma, AR for the plaintiff is being annexed as Annexure D.”

6. The remainder of the report narrates the details of the raids undertaken at the premises of Defendant No.1 in the suit which is not relevant to the present petition.

7. The Plaintiff filed the present petition in this Court on 11th May 2017 under Sections 10/12/13/15 Contempt of Courts Act 1971 ('Act') read with Article 215 Constitution of India for initiation of contempt proceedings against the six named Respondents. Prayer (v) in the present petition is for this Court to consider taking *suo motu* cognizance of criminal contempt Court by the alleged contemnors/Respondents 1 to 3 and proceed to commit and punish them for the same.

8. The petition came up for hearing first before the learned Single Judge on 16th May 2017. Counsel for the Petitioners referred to the decision in ***GE Motors India Pvt. Limited v. Mukesh Kumar 124 (2005) DLT 191*** and after perusing the said decision, the learned Single Judge asked the present petition to be placed before the Division Bench hearing criminal contempt cases after obtaining orders from Hon'ble the Acting Chief Justice. Thus, the present petition came to be place before this Bench.

9. Notice was directed by this Court to be issued to all the Respondents by the order dated 4th July 2017. On 12th October 2017, Respondents 2 and 3 were deleted from the array of parties. It was noted that they were not in the country when the LC visited the premises of Defendant No.2 in TM No.23/2017. As far as Respondent No.4 is concerned, it was noted that he had left the services of M/s. Counfreedise. He, however, undertook to appear before the Court as and when required.

10. It appears that subsequent thereto, on 22nd December 2017, a partnership deed was registered which shows that Mr. B. Mahesh Kumar

(Respondent/Contemnor No.1) and Mr. Satish Kumar Rai (Respondent/Contemnor No.4) have been inducted as partners of M/s. Counfreedise.

11. Be that as it may, as far as the present petition is concerned, it appears from the orders passed that this Court proposed to proceed against Respondents No.1 and 4 and not against Respondents No.5 and 6 who were the police officers assisting the LC.

12. Today, Mr. Neeraj Malhotra, learned Senior Counsel appearing for the Contemnors 1 and 4, first submitted that there is a separate application filed by the Plaintiff under Order XXXIX, Rule 2A CPC before the learned ADJ in the aforementioned suit TM 23 of 2017 praying that the Defendant No.2 in the suit i.e. M/s. Counfreedise must be proceeded against for disobedience of the order dated 22nd February 2017. According to Mr. Malhotra, if such an application is indeed pending, the present petition should not be proceeded with as the scope of both proceedings is more or less similar.

13. The Court has examined Order XXXIX Rule 2A CPC and finds that its scope is limited to examining a complaint regarding wilful disobedience or breach by a party to the suit of an order of injunction granted by the Court. As far as the present petition is concerned, the Court is required to examine whether, by their actions, Respondents No.1 and 4 have committed criminal contempt as defined under Section 2(c) of the Act. In other words, in context of the present petition, this Court is required to examine whether, in terms of sub-clause (iii) of Section 2 (c) of the Act, Respondents No.1 and 4 have interfered with the due course of judicial proceedings or have obstructed or

tended to obstruct the administration of justice in any other manner. The scope of the present petition is, therefore, different from that of the application of the Plaintiff in TM No. 23/2017 under Order XXXIX Rule 2A CPC.

14. Consequently, the preliminary objection of Respondent/Contemnors 1 and 4 about this Court entertaining the present criminal contempt petition is hereby rejected.

15. Mr. Malhotra then sought to distinguish the decision in ***GE Motors India Pvt. Ltd. v. Mukesh Kumar*** (*supra*) by pointing out that in that case, there was actual physical assault of the LC by the Defendants whose premises were directed to be inspected whereas in the present case, the Respondents No.1 and 4 did not even “touch” the LC. Mr. Malhotra relied on the CCTV footage of the premises on the relevant date, i.e. 28th February 2017, taken between 4:15 pm and 5:40 pm. In fact, this footage has been submitted on a compact disc to this Court under three broad headings of the ‘reception’, ‘office premises’ and ‘warehouses’.

16. The Court has viewed the CCTV footage. The footage at the office premises from 5:37 pm up to 5:40 pm clearly shows Respondent/Contemnor No.1, Mr. B. Mahesh Kumar, preventing the entry of the LC, although not physically, by arguing continuously and aggressively with the policemen present who were persuading him to let the LC enter the premises.

17. It must be mentioned at this stage that the LC appears to have reached the office premises last. He first went to the warehouse/godown and then the

reception area and then came to the office premises. The defence taken in the replies filed to the contempt petition is that the two sons of Respondent/Contemnor No.1, who were the actual partners of the firm at the relevant point in time, were out of the country. Respondent No.1 spoke to his lawyer as to what course of action he should follow and thereafter declined to let the LC enter the office premises.

18. Mr. Malhotra has also made reference to the two separate affidavits filed by Respondent Nos.1 and 4 tendering their unconditional apology to this Court and the trial Court for their conduct on 28th February 2017. He urged that Respondent No.4 who was working as a Manager did not himself personally obstruct the LC and therefore, his role should be viewed differently from the role of Respondent No.1.

19. As far as the role of Respondent No.4 is concerned, this Court finds merit in the submission of Mr. Malhotra. Although Respondent No.4 was employed as a Manager, it is evident from the footage viewed by the Court that it was, in fact, Respondent No.1 who was in charge of the office at the relevant time on 28th February 2017. Even accepting that he was only deputing in his sons' absence, he can be seen pacing up and down in the office, shouting at the policemen, arguing aggressively, gesticulating at the LC and the others and clearly refusing to allow the policemen to bring the LC into the office premises.

20. It appears that at some time after 5:37 pm, the LC and those accompanying him were forced to retreat to the reception area and wait there, while the policemen in the office area were trying to persuade

Respondent/Contemnor No.1 to cooperate with the LC who was tasked to carry out the mandate of the trial Court's order dated 22nd February 2017 (as seen in the video clips of the office premises with No. ending 3804 from 17:38:04 hrs to 17:40:15 hrs and with No. ending 4243 from 17:42:43 to 17:44:44). The CCTV footage of the office premises as seen in the video clip with No. ending '4449' from 17:44:45 to 17:47:35 hrs depicts the futile attempts of the policemen to get Respondent/Contemnor No.1 to cooperate. He plainly refused to relent.

21. The case of the Petitioners that the staff members of the firm were called out and they physically pushed the LC and others out of the premises is, however, not borne out by the CCTV footage from either the office or the reception. The footage from the reception (as seen in the video clip ending '4536' from 17:45:34 to 17:48:46 hrs) shows the LC, those accompanying him, and the policemen leaving of their own volition.

22. Nevertheless, the Court is satisfied that the CCTV footage produced by the Respondents themselves clearly shows that Respondent/Contemnor No.1 obstructed the administration of justice by unjustifiably preventing the LC appointed by the learned ADJ by the order dated 22nd February 2017 from executing the directions issued. His conduct is unredeemed by any *bonafide* belief that he was not committing an illegality. With a whole posse of policemen trying to persuade him to obey the lawful order of the Court, Respondent/Contemnor No.1 had no justification whatsoever in adamantly refusing to permit the LC to carry out his task, as an officer of the Court. The apology tendered by Respondent/Contemnor No.1 is, in the

circumstances, not convincing and is therefore not accepted. The Court is satisfied that Respondent/Contemnor No.1 has committed criminal contempt as defined under Section 2 (c) (iii) of the Act.

23. In ***Tarun Bharat Sangh v. Union of India 1992 Supp (2) SCC 750***, the Supreme Court was dealing with a PIL filed seeking a ban on illegal mining activities in the Sariska Tiger reserve in Rajasthan. The Supreme Court appointed a Committee to visit the area and conduct a preliminary fact finding. During the visit, Mr. Rajinder Singh, the Secretary of the Petitioner organisation who was accompanying the Committee was physically assaulted by the men deployed by the mine owners. Finding them guilty of criminal contempt and sentencing them to 7 days' imprisonment, the Supreme Court observed:

"The atmosphere of show of force said to have been displayed by the mine-owners at the spot at the time of the visit of the committee, if true, is really disturbing. We should make this case one which will unmistakably tell those like minded with the contemner that this kind of crime against the course of justice and processes of law does not pay and interference with the justice is playing with fire and that those who play with fire cannot complain of burnt fingers."

24. When again after a few years Dr. Rajeev Dhavan, the lawyer appearing for the above Petitioner was intimidated, the Supreme Court in ***Tarun Bharat Sangh v. Union of India (1995) 1 SCC 150*** took a grim view of the attempt and hauled up the contemnor who then tendered an unconditional apology.

25. Having considered the circumstances under which this criminal

contempt has been committed, the Court is of the view that the ends of justice would be served by directing as under:

- (i) Respondent/Contemnor No.1 Mr. B. Mahesh Kumar, shall remain physically present in the successor Court of Mr. Gaurav Rao, learned ADJ-02, before whom the suit TM 23 of 2017 is pending, on 21st July 2018 at 10 am.
- (ii) Respondent/Contemnor No.1 Mr. B. Mahesh Kumar will both orally tender his unconditional apology to the Court and also simultaneously submit a sworn affidavit expressing his unconditional apology together with an assurance to that Court that he will not hereafter do any act that constitutes contempt of Court, whether civil or criminal.
- (iii) Respondent/Contemnor No.1 Mr. B. Mahesh Kumar will continue to remain present in that Court for the whole of 21st July 2018 till the rising of that Court.
- (iv) The contempt notice to Respondents 4, 5 and 6 stands hereby discharged.

26. It is clarified that the Court of the learned ADJ-02 will proceed to decide the suit TM 23 of 2017 and the applications pending therein on their respective merits uninfluenced by anything that has been said in this order.

27. The petition is disposed of with costs of Rs. 50,000/- which shall be paid by Respondent/Contemnor No.1 to Plaintiff No.1 in TM No 23 of 2017 before the Court of the learned ADJ-02 on or before 21st July 2018. The affidavit to be filed by Respondent/Contemnor No.1 before the learned ADJ-02 as directed above will confirm the compliance with this direction.

28. A copy of this order be given *dasti* under the signature of the Court Master. A certified copy be delivered by Special Messenger to the Court of Mr. Gaurav Rao, learned ADJ-02, before whom the suit TM 23 of 2017 is pending forthwith.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 16, 2018

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