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

% *Date of Decision: 03.08.2022*

+ **CONT.APP.(C) 9/2022 & CM Appl. 21764/2022**

MUNISH SONI & ANR. Appellants
Through: Mr D K Rai with Mr Akshay Soni,
Advs.
Mr Harpreet Singh, Adv. (Amicus
Curiae).

versus

NAVIN SONI Respondent
Through: Mr Vikas Arora with Mr Siddharth
Singh, Ms Radhika Arora, Mr Mohit
Dagar and Mr Siddharth Singh, Advs.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This is an appeal preferred under Section 19(1)(a) of Contempt of Courts Act, 1971 [in short, 'Contempt of Courts Act'] against the judgment and order dated 26.04.2022 passed by the Learned Single Judge in Cont. Case (C) No.640/2018. The contempt case arises out of a consent decree dated 21.09.2012 passed by this Court in CS(OS) 2077/2006, titled *Shri Badri Prakash Soni & Another vs. Shri Munish Soni & Others*.
2. The relevant paragraphs of the consent judgment and decree dated 21.09.2012, which have been extracted by the Learned Single Judge in paragraph 6 of his judgment dated 26.04.2022, read as follows:

"6. The said application was disposed of vide Order dated 21.09.2012 and the suit, thereafter, was decreed on the terms of



the compromise and the parties were directed to remain bound by the terms and conditions of the settlement. The relevant portion of the said Order dated 21.09.2012 reads as under:

“The present joint application has been filed by the parties stating inter alia that during the pendency of the present proceedings, they have arrived at an out of court settlement. The terms and conditions of the settlement arrived at between the parties have been reduced into writing and set out in para 8 of the application.

Counsels for the parties state that the aforesaid settlement has been arrived at between the parties of

their own free will and volition and without any undue influence or coercion from any quarters. Counsel for the defendants confirms that a sum of 1 crore, agreed to be paid by the plaintiffs to the defendants, has already been received by his clients and nothing further is due or payable to them by the plaintiffs. He further concedes that the defendants are not left with any right, title or interest in the properties mentioned in sub para (k) of para 8 of the application and that they undertake to vacate the ground floor of the residential premises No.B-2/103, Safdarjung Enclave, New Delhi-110029 on or before 30.09.2017 and hand over vacant peaceful possession thereof to the plaintiffs.

The Court has perused the application. The same has been signed by the plaintiffs and the defendants as also their respective counsels. The application is duly supported by the affidavits of all the parties, who are also present in Court, and they confirm having arrived at the aforesaid settlement. They undertake to remain bound by the terms and conditions thereof. The application is supported by a receipt dated 17.09.2012 executed by the defendants No.1 to 3 confirming having received a sum of 1 crore from the plaintiffs as per the terms of compromise.



In view of the aforesaid position, the compromise application is allowed and disposed of. The suit is decreed in terms of the compromise application. The parties shall remain bound by the terms and conditions of the settlement. The suit is disposed of while leaving the parties to bear their own costs.”

2.1. A perusal of the aforementioned extract would show that the appellants were required to vacate the subject property i.e., the ground floor of the residential premises defined as B-2/103, Safdarjung Enclave, New Delhi-110029, on or before 30.09.2017.

2.2. The consent decree was predicated on the application filed on behalf of the parties under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 [in short, ‘CPC’].

2.3. A perusal of the extract of the judgment and decree dated 21.09.2012 also shows that the parties had undertaken to remain bound by the terms and conditions contained in the application i.e., the settlement.

3. It is also relevant to note that (something which is evident from a perusal of the extract of the order dated 21.09.2012), the plaintiffs in the suit agreed to pay Rs.1 crore to the defendants, perhaps, as consideration for the agreement arrived at between the parties.

4. The record shows that a receipt, to that effect, was signed and executed by the appellants and one, Ms Shristhi Soni [defendant no.3 in the said suit.] We are told that Ms Shristhi Soni is the daughter of appellant no.1 and sister of appellant no.2 i.e., Mr Piyush Soni.

4.1. The contents of the receipt are extracted in paragraph 5 of the judgment rendered by the Learned Single Judge. A perusal of the receipt would show that Rs.20 lakhs out of Rs.1 crore was paid to the appellant *via* a cheque and the



balance amount i.e., Rs 80 Lakhs was received by them in cash from Mr Vikas Soni and Mr Navin Soni i.e., the respondent.

5. To be noted, Mr Vikas Soni and Mr Navin Soni were the plaintiffs in the aforementioned suit.

5.1. It may also be relevant to note that appellant no.1/Mr Munish Soni, Mr Vikas Soni and Mr Navin Soni/respondent are siblings.

6. One of the arguments that was taken before the Learned Single Judge, as well as before us, is that the cash component i.e., Rs. 80 Lakhs out of Rs.1 crore was not received by the appellants.

6.1. The Learned Single Judge has, for the reasons given in the impugned judgment, disbelieved this version set forth by the appellants.

6.2. *Inter alia*, while disbelieving this version, the Learned Single Judge had adverted to the receipts, which admittedly bear the signatures of the appellants i.e., Mr Munish Soni, Mr Piyush Soni as well as that of Ms Shrishti Soni and also the fact that, for some strange reason, this aspect was not flagged till such time the period of five years, accorded to the appellants to vacate the subject property, got over.

7. A perusal of the judgment of the Learned Single Judge also reveals that it was sought to be argued on behalf of the appellants that since an alternate remedy was available to the plaintiffs in the said suit by way of execution proceedings, a contempt petition could not lie.

7.1. Learned Single Judge, in our view, rightly rejected this plea and in that behalf, referred to the judgment of the Supreme Court rendered in ***Rama Narang v. Ramesh Narang***, (2006) 11 SCC 114.

8. Before the Division Bench, the appeal was listed in the first instance on 06.05.2022, when permission was sought to file “some additional documents”.



8.1. We may also note that one of the counsels-on-record for the appellants i.e., Mr D. K. Rai, Advocate, was present on 06.05.2022.

8.2. The record shows that although, the presence of Mr Rai was recorded in the proceeding sheet of 14.07.2022, this was not a correct reflection of the record and therefore, the Court corrected this part of the proceedings on the subsequent date on which the matter was listed before it i.e., on 19.07.2022.

8.3. Thereafter, the matter was transferred, and it was listed before this Bench for the first time on 21.07.2022.

8.4. Mr Rai did not appear either on 21.07.2022 or on 29.07.2022. In fact, on 21.07.2022, we were informed by appellant no.2 i.e., Mr Piyush Soni that he had engaged Mr Virender Kumar Sharma, Advocate, to represent him, who could not remain present as he was suffering from fever.

8.5. Taking this aspect into account, we had adjourned the matter for another date. However, while granting the adjournment, we had made it clear that in case Mr Sharma is not able to represent the appellants on the next date of hearing, Mr Soni would need to make alternate arrangements for prosecuting the appeal, as no further accommodation would be granted.

8.6. However, on 29.07.2022, appellant no.2/Piyush Soni informed us that Mr Virender Kumar Sharma had refused to represent the appellants and therefore, he would require further time to engage a lawyer.

8.7. As noted on that date, we were not convinced that the request made was *bona fide*. However, since we were dealing with an appeal arising out of a contempt petition, we granted another opportunity to the appellants to engage a lawyer.

8.8. Anticipating that the appellants may come up with another excuse, we appointed Mr Harpreet Singh, Advocate, as an *amicus curiae* in the matter and also gave liberty to the appellants to confabulate in the matter with Mr



Singh. Besides this, we had also directed, issuance of court notice to Mr D. K. Rai, Advocate, as he was one of the counsels-on-record.

9. Today, Mr D. K. Rai and his other colleague i.e., Mr Akshay Soni are present in Court. To be noted, the *vakalatnama* bears the signatures of both Mr D. K. Rai and Mr Akshay Soni.

9.1. Messrs Rai and Soni say that they have already indicated to the appellants that they would not be representing them in the instant appeal.

9.2. The statements of Messrs Rai and Soni are taken on record.

10. Appellant no.2 i.e., Piyush Soni is present in the Court along with Mr Harpreet Singh i.e., the *amicus*.

10.1. Mr Singh informs us that a conference was held with appellant no.2 yesterday i.e., 02.08.2022.

11. On behalf of the appellants, Mr Singh has submitted that the appellants continue to take the stand that the cash component of Rs. 1 crore i.e., Rs.80 lakhs was not been received by them.

11.1. Furthermore, Mr Singh says that since cash amounting to Rs.80 lakhs was said to have been paid to the appellants, it could violate the provisions of the Income Tax Act, 1961 [in short, 'Income Tax Act'].

12. Insofar as the first aspect of the matter is concerned, we agree with the Learned Single Judge, that there is enough and more material on record to show that the entire amount i.e., Rs.1 crore was received by the appellants.

12.1. As noticed above, not only are the receipts to that effect available on record, which admittedly bear signatures of the appellants as also of Ms Shristhi Soni, but also the interlocutory application (IA NO 17613/2012) with the affidavits, where this aspect of the matter appears to have been adverted to; an aspect which is not disputed before us.



12.2. Therefore, the stand taken by the appellants, in that behalf, lacks credibility and is accordingly rejected.

12.3. What is disconcerting in the matter is that this stand was adopted by the appellants only after the contempt petition was filed, in and about 2018. The dishonesty of the appellants is, thus, palpable which seeks to erode the majesty of law.

13. As regards the argument advanced by the learned *amicus curiae* that since cash is said to have been paid beyond the prescribed limit under the Income Tax Act, this defence is not available in the instant proceedings.

14. The appellants had given an undertaking to the Court, which included the undertaking that they would vacate the subject premises on or before 30.09.2017. That undertaking stands violated.

14.1. The conduct of the appellants shows that there is a wilful violation of the undertaking given by them to the Court.

14.2. Therefore, we are of the view that the Learned Single Judge has correctly concluded that the appellants are guilty of contempt.

15. Before we conclude, we must record our appreciation for the assistance given by the learned *amicus curiae*, in the adjudication of the instant appeal.

16. The appeal is dismissed.

17. Consequently, the pending application shall also stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 3, 2022/pmc

[Click here to check corrigendum, if any](#)