



Cont. P.No. 2836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024

PRONOUNCED ON : 19.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

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1.M/s.Maya Appliances Private Limited
No.10 / 5, Royal Enclave,
Besant Avenue, Adyar,
Chennai – 600020
Also having factory at
#3/140, IT Highway,
Oggiyam, Thoraipakkam,
Chennai – 600 097.

2.Vijay Srinivasan

3.N.D.Venkatesan

... Petitioners

Vs.

1.Butterfly Gandhimathi Appliances Ltd.
143, Pudupakkam Village,
Kelambakkam – Vandalur Road,
Kancheepuram District – 603 103.



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2.Sriram Rangarajan

3.Srinivasan Tanjore Ramamurthy

4.Balasubramanian

5.Sunder Maheswari Mohan

6.Meleveetil Padmanabhan

7.Gnanasekhar Sukumar Samuel

8.Pangulury Mohan Murty

9.Smita Anand

10.Shantanu Maharaj Khosla

...

Respondents

Prayer: Contempt Petition is filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for contemptuous and willful breach of the memorandum of Compromise dated 13.07.2023 and the decree dated 14.07.2023 passed by this Court.

For Petitioners : Mr. Arun C. Mohan

For Respondents : Mr. M.S.Bharath.



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ORDER

The Contempt Jurisdiction of the Court has become a new ammunition to settle corporate battles. Though lengthy pleadings have been set out by both parties, this Court does not propose to traverse through these pleadings. The issue that engages the attention of this Court is whether the respondent is guilty of having violated the terms of the compromise entered into between the plaintiffs and the defendant.

2. The accusation is that there has been a violation of clause 7 (a) of the terms of the said compromise in as much as the respondent herein / the defendant in the suit has violated the terms by manufacturing a frameless gas stove which they had undertaken not to manufacture.



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3. The allegation against the respondent has been set out in paragraph Nos.5 and 6 of the affidavit filed in support of the contempt petition which reads as follows:

“5.While things stood thus, in August, the 1st petitioner company while doing its usual due diligence in the market for infringing products came across a model of frameless gas stove under the brand “Butterfly Magnum”. To the utter shock and surprise of the Petitioner, the said frameless gas stove was manufactured in the month of July 2023. The said stove was purchase by the Petitioner on 14.08.2023. This was in total contravention of the memo of compromise signed by the 1s Respondent and specifically the undertaking given before this Hon’ble Court through the memo of



compromise.

6. Aggrieved by the above, the Petitioners also issued a notice dated 24.09.2023 to the 1st Respondent pointing out the flagrant breach of the terms of compromise by the Respondent and requested that the same be cured within a maximum period of 4 weeks from the receipt of the notice as is the condition mentioned in the memo of compromise. However, all the efforts of the Petitioners went in vain as the same availed no response from the 1st Respondent.

4. Along with the contempt petition, the petitioner has annexed the invoices to prove the breach of the terms of the compromise and the images of the offending product and the comparison between the petitioner's product and the respondent's product.



5. The petitioner's gas stove is Vidiem Tusker and the offending gas stove of the respondent is called the Butterfly Magnum. The petitioner and the respondent had entered into a compromise in and by which the respondent had undertaken that neither themselves nor their affiliate would manufacture frameless gas stoves and that they have stopped manufacturing and selling frameless gas stoves under the brand name "Butterfly" or any other brand name. The respondent had further stated that they had a total quantity of 2521 stoves in their possession which were manufactured in the year 2019 and they had promised that they would liquidate the same within a period of 6 months.

6. The petitioner therefore would contend that the Butterfly Magnum which is being sold now in the open market is a frameless gas stove and a copy of the frameless gas stove of the petitioner called Vidiem Tusker. Since the invoice is dated 14.08.2023 it clearly proves that the respondent is selling frameless gas stoves after the

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signing of the compromise. It is a clear case of committing contempt of the orders of this Court in as much as there has been a violation of the undertaking given to the Court.

7. The defense to the above by the respondent is that the respondent's product is not a frameless gas stove and is a stainless steel gas stove.

8. The respondent would state that petitioner's description of a frameless gas stove as set out in the plaint is as follows:

“(a)a unique frameless body.

(b)construction with respect to the frameless design and burners fitment along with its colourful knobs and legs.

(c)thermally treated toughened glass.

(d)frameless construction that provides enhances



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safety with a 360 Degree visual feedback, enhancing cleaning ability, reduced complexity.

9. However, the respondent's product that is now claimed to be frameless gas stove and a violation of the terms of the compromise has the following features:

(a) Respondent's product has a broad metal frame covering the front and back of the product.

(b) The knobs are placed on the metal frame on the front side of Respondent's product.

(c) Respondent's product is a stainless-steel gas stove where the metal frame is bent on two sides and does not have any toughened glass.

(d) The construction of Respondent's product obviously contains two frames on the front and back and



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therefore does not have a 360 Degree visual feedback

akin to the Petitioner's product.

10. The respondent would also submit that though this gas stove had been manufactured much before the signing of the compromise the same has not been included and does not form the subject matter of the compromise. Therefore, the respondent would submit that there has been no breach of the undertaking given by them.

11. Extensive written submissions have been given by both the parties, where the petitioner would reiterate that the respondent's product is a frameless gas stove and the same clearly violates the patent given in favour of the 2nd petitioner.

12. The petitioner would rely upon the patent mapping and



infringing analysis to buttress their claim. They would also briefly put out the deposition of their expert who has adduced the evidence as

P.W.1 as follows:

“(a)A gas stove which does not have an external structure or frame is called a frameless gas stove;

(b)A frameless gas stove gives a wide choice for the designer to make different combinations of frameless gas stoves;

(c)Framless gas stoves also give the consumer additional visual feedback on what is happening underneath the gas stove;

(d)A frame less gas stoves can have 3 sides or two sides covered;”

13. To support their argument that a compromise could also include issues or disputes which are not the subject matter of the suit,



they would rely on the Judgement of the Hon'ble Supreme Court reported in *2006 (5) SCC 556 – Pushpa Devi Bhagat Vs. Rajinder Singh and others.*

14. The petitioner would submit that the petitioner and the 1st respondent have consciously included the aspect of patent in terms of the memorandum of compromise though the same is not the subject matter of the suit. The petitioner would further submit that having signed the compromise decree and being aware about the patent and the claims made by the petitioner with reference to frameless gas stove the respondent cannot argue that the patent cannot be the subject matter of the contempt petition.

15. The petitioner would further state that consent decrees are equally efficacious as estoppels like other Judgements, orders or



decision. In support of this contention the petitioner would rely upon the Judgement of the Hon'ble Supreme Court reported in **1992 (1)**

SCC 31 – Byram Pestonji Gariwala Vs. Union Bank of India.

16. The other arguments that have been set out in the written submissions are neither the subject matter of compromise nor set out in the affidavit filed in support of the contempt petition or the oral arguments advanced.

17. The respondent in their written submissions in response has set out the description of their product ***“Butterfly Magnum”*** as follows:

““Butterfly Magnum” is a Stainless-Steel as stove.

The Respondent's product is crafted out of a 2 mm mirror finish single steel sheet, which is bent on two ends, acting as a front facia and a back facia / frame of



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the gas stove. The Respondent comes equipped with an adjustable leg stand that is fixed underneath its front frame, a 360-degree nozzle that is fixed at the back frame; dura forged brass burners and detachable spill trays mounted at the top of the gas stove. The knobs of the gas stove are also placed on the front side of Respondent products.

18. The respondent would further submit that the petitioner had filed the suit in respect of infringement of the following copyright of the petitioner, namely, design Nos.272882, 272883, 276080, 272567 and 264344 and 264343 granted on 19.06.2015, 19.06.2015, 28.09.2015, 05.06.2016 and 30.07.2014, 30.07.2014. While so the design No.304676 which was not a part of the either plaint or the compromise memo has been introduced in this contempt petition in the guise of it being frameless gas stove. Further, the question of



patent was neither the issue in the suit nor in the compromise memo.

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19. The respondent would further submit that the petitioner have themselves described the product, namely, Vidiem Tusker as stainless steel body frame and not as a frameless gas stove. They would also rely upon the contradictions in the evidence of P.W.1, which is clear from the answers to question Nos.37, 38, 41 and 42. The respondent would therefore submit that they have not committed any breach of the terms of compromise thereby making them liable for contempt.

20. As set out in opening paragraphs the corporate warfare has entered the contempt arena of this Court.

21. In the Judgement reported in *AIR Online 2009 CAL 6 – Cold Gold Syntex Private Limited and another Vs. Sri Gautam Mohan Chakraborti and others*, the former Chief Justice of this



Court had observed as follows:

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“The jurisdiction in contempt is not to massage any judicial ego; it is far less a tool for a litigant to settle scores. The principal objective is to uphold the primacy of a constitutional order and the rule of law. High authorities speak of diffidence and temperance in the invocation of this jurisdiction and the sparing use of the punitive measures available. The non-compliance of an order has to be wilful and deliberate and not mere accidental or unintentional. A contumacious act involves an element of defiance. But to begin with there must first be a violation before an assessment is called for as to whether it was wilful or deliberate defiance.”

22. The Chief Justice has also stated as follows:

“Contempt of Court is understood in common law



as an act or omission calculated to interfere with the due administration of justice. A civil contempt, of the kind that is alleged here, would arise upon the disobedience of an order made in a civil cause. Contempt of Court is disobedience of the Court, by acting in opposition to the authority and dignity thereof. It signifies a wilful disregard of the Court's order such that it tends to bring the authority of the Court and the administration of law into disrepute. The constitutional scheme of things recognised in this country provides for a certain order and it is in furtherance of the preservation of such order that the power of dealing with contempt is vested in the judiciary.

23. The respondent has filed a typed set of papers containing the various brands of gas stove manufactured by the petitioner herein



which are as follows:

S.No	Brand	Body / Frame / Specification
1	Vidiem AIR Pride 3 Burner Gas Stove	Frameless
2	Vidiem AIR Pride 4 Burner Gas Stove	Frameless
3	Vidiem AIR Silver 3 Burner Gas Stove	Frameless
4	Vidiem AIR Silver 4 Burner Gas Stove	Frameless
5	Vidiem AIR STILE 3 Burner Gas Stove	Frameless
6	Vidiem AIR STILE 4 Burner Gas Stove	Frameless
7	Vidiem AIR Plus 2 Burner Gas Stove	Frameless
8	Vidiem AIR Plus 3 Burner Gas Stove	Frameless
9	Vidiem Gas Stove G3 140 A Air Oro (Blue) 3 Burner	Frameless
10	Vidiem Gas Stove G2 120 A Air Plus (Orange and Black) 2 Burner	Frameless
11	Vidiem Gas Stove G3 121 A Air Plus (Orange and Black) 3 Burner	Frameless
12	Vidiem Tusker 3 Burner Gas	Body / Frame Material



S.No	Brand	Body / Frame / Specification
	Stove	Stainless Steel. Burner – Stainless Steel.
13	Vidiem Tusker Gold 2 Burner Gas Stove	Galvanized Iron Powder Coater Body
14	Vidiem Tusker Gold 3 Burner Gas Stove	Galvanised Iron Powder Coated Body
15	Vidiem Tusker Gold 4 Burner Gas Stove	Galvanised Iron Powder Coated Body
16	Vidiem Tusker Gold 4 Burner ZZ Gas Stove	Galvanised Iron Powder Coated Body

24. Therefore, from a very perusal of the above tabulated statement it would clearly indicate that the Tusker Brand Gas Stove has not been described as frameless gas stove by the petitioners themselves but has been described as stainless steel gas stove.

25. Therefore, the petitioner knowing fully well that their product in respect of which the contempt has been filed is not a



frameless gas stove has moved this contempt petition and engaged this Court's time on deciding this frivolous contempt petition. The petitioner who has apparently omitted to include this product in their terms of the compromise is trying to include the same by contending that the respondent had represented that they would not manufacture or sell frameless gas stove under the brand “butter fly” or ***sell any gas stove with features identical to the petitioner's frameless gas stove.*** This highlighted claim is not found in the memorandum of compromise.

26. The language adopted by the petitioner in clause 7 (a) of the terms of compromise are as follows:

“The Defendant confirms that the Defendant has stopped manufacturing and selling frameless gas stoves under the brand “Butterfly” or any other brand name and undertake that neither it nor its affiliates shall manufacture frameless gas stove. The Defendant confirms that it does not have any intention to manufacture and



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sell frameless gas stoves in future. The Defendant states that the total quantity of frameless stoves lying in the possession of the Defendant is 2521 stoves last manufactured on 2019. The Defendant confirms that the frameless stoves in its possession shall be liquidated within a period of 6 months.”

27. The product of the petitioner by their own description is not a frameless gas stove. Further, in the order in Sub App (OS).No. 190 of 2024 in this contempt petition, this Court had set out follows:

“7. As pointed out by the learned counsel for the respondents, the petitioners have introduced patent numbers 452008 and 463327 which did not find place in the Memorandum of Compromise and by way of an astute drafting, it appears that the petitioners are trying to introduce a new case in the contempt petition relating to patents. That apart, the patent numbers which are referred in the instant application are not referred to in



the contempt petition.

8.1. In paragraph no.3 of the affidavit filed in support of this application, the petitioners have introduced the following terms:

"3) The respondents clearly and unequivocally represented that they would restrain themselves from manufacturing and selling frameless gas stoves under the brand "Butterfly" or selling any gas stoves with features identical or any manner similar to the applicant's patented frameless gas stoves and related designs..."

When this is compared with the terms of compromise set out in the paragraph no.7 (a), it is clear that the words "or selling any gas stoves with features identical or any manner similar to the applicant's



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patented frameless gas stoves and related designs" is an addition and not found in the earlier compromise. As far as this Court could garner from a perusal of the Memorandum of Compromise, the reference to the word 'patent' in the entire compromise is only with reference to the application made before the Controller of Patents and Designs. This Court is alluding to the above, only on the account of the fact that the respondents have raised objections to the introduction of patent made by the petitioners in the application.

Therefore, they cannot allege breach of the terms of compromise. The Contempt Petitioner has not made out any grounds for punishing the respondent for contempt.

28. At this juncture the Court would once again draw from the Judgement cited supra, namely, ***AIR Online 2009 CAL 6 – Cold Gold***



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Chakraborti and others, where the learned Judge has held as follows:

“The very essence of the contempt jurisdiction is to ensure that public confidence in the administration of justice and its efficacy is not eroded. If Courts have to exercise utmost restraint in exercising the power to punish for contempt, the Bar should exercise circumspection in invoking the jurisdiction. The rat race has become so frenzied and all-consuming that we hardly take time off to ponder where the system is headed; whether we give enough respect to command respect. The structure of values that is supported by the Constitution mandates that the contempt jurisdiction is neither invoked in frivolity nor exercised in a feudal manner.”

The present petition in the light of the above description is not only frivolous one but also an abuse of the process of law.



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29. Therefore, the contempt petition is dismissed imposing cost of Rs.25,000/- on the petitioner. The sum of Rs.25,000/- shall be paid by the petitioner to CANCARE FOUNDATION, No.82, Dr.Radhakrishnan Salai, Mylapore, Chennai, within a period of 3 weeks from the date of receipt of a copy of this order.

30. Post the matter on 23.08.2024 under the caption “*For Reporting Compliance*”.

19.07.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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