

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 157 OF 2014

Sanjiv Ramesh Sharma (Decd.)
through hiis LR Surbhi Sanjiv Sharma ... Petitioner
Vs.
Twenty First Century Wire Rods Ltd. & Ors. ... Respondents

Mr. Subhash Jha i/b. , Advocate for the petitioner.
Ms. Neeta Parikh a/w. Mr. Mangesh K. Bhogale, Advocate for respondent
nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 25, 2015**

P.C.:

As the issue involved is short, the petition is heard finally at the
stage of admission.

2. In this Contempt Petition, the petitioner, who is the original
complainant in the criminal case filed by him under section 138 of the
Negotiable Instruments Act, prays that respondent nos. 1 to 3 be
punished, as they have committed contempt of the order of Sessions
Court, Mumbai in Criminal Revision No. 882 of 2013 which is converted
into Criminal Appeal No. 624 of 2014. The facts, in brief, are as follows:

A cheque of Rs.4,50,00,000/- issued by respondent nos. 1 to 3 was
bounced and therefore, the petitioner filed criminal complaint before the
learned Metropolitan Magistrate Court, Vikhroli under section 138 of N.I.

Act. The said case was decided in favour of the complainant and the respondent nos 1 to 3 were convicted for three months and fine of Rs.4,90,00,000/- was imposed on them. Being aggrieved by the said judgment and order, the respondent nos. 1 to 3 filed Criminal Revision No. 882 of 2013 converted into Criminal Appeal No. 624 of 2014 before the Sessions Court, Mumbai. During the pendency of the Appeal, the appellants, i.e., respondent nos. 1 to 3 before this Court, filed consent terms and made representation before the Sessions Court that they are ready to pay the amount due to them and which is the subject matter of the cheque and conviction is to be set aside. The consent terms between the parties dated 20th August, 2013 were filed before the learned Sessions Judge. They were taken on record. The matter was sent before Lok Adalat for settlement, however, the settlement was not materialized and the Appeal was argued, contested and finally dismissed on 4th April, 2015. This Contempt Petition was filed on 7th March, 2015 by the original complainant, as the terms in the consent terms were not fulfilled by respondent nos. 1 to 3.

3. The learned counsel for the petitioner has submitted that the respondent no. 1 to 3 filed their first consent terms before the Metropolitan Magistrate during the pendency of the trial, however, they did not pay any amount. Thereafter they filed second consent terms

before the Company Law Board wherein respondent no. 1 is a company and the complainant was a previous director and there was a issue in respect of transfer of land of 5.46 acres before the Company Law Board. Five consent terms were filed before the learned Sessions Judge. He submitted that the conduct of respondent nos. 1 to 3 before all the three Fora is most objectionable and the respondent nos. 1 to 3 have deviated from the undertaking given by them before JMFC, Company Law Board and Sessions Court. The learned counsel further submitted that in Appeal, the consent terms were filed and undertaking was given by respondent nos. 1 to 3 that they would pay the entire amount of the fine and if not paid, in default they showed their readiness to pay the amount with interest @ 24%. He further submitted that those consent terms were filed and taken on record by the learned Sessions Judge and thereafter on the basis of those consent terms, respondent nos. 1 to 3 obtained bail on 6th September, 2013 without any condition of depositing the amount of fine. He submitted that generally at the Appellate stage, in the conviction under section 138 of N.I. Act in the Magistrate Court, it is necessary for the Sessions Court to direct the convict to deposit the entire amount or a partial amount of fine in the Court. However, without such condition, the order of bail was granted only because the learned Sessions Judge accepted and he was given an impression that respondent nos. 1 to 3 are going to abide by the terms of consent and they are settling the

matter. The learned counsel submitted that there is a gross deviation and respondent nos. 1 to 3 have shown complete disregard to the Court and committed contempt. Therefore, this Contempt Petition is to be allowed.

4. The learned counsel for respondent nos. 1 to 3 have opposed this Petition and submitted that this Petition is pre-matured, as the Appeal was finally argued, heard and decided on merit and dismissed on 4th April, 2015.

5. I have gone through the contents in the consent terms, bail order dated 6th September, 2013 passed by the learned Sessions Judge and roznama of various dates wherein the learned Sessions Judge has taken the consent terms on record and marked the consent terms as 'X' for identification, so also sent the matter for settlement to Lok Adalat. The prayer made in this Petition is in respect of breach of consent terms in Appeal No. 624 of 2014. In the Bail Order, there is no mention that the Court has granted bail to the convicts, i.e., respondent nos. 1 to 3 on the basis of consent terms. Even though such order of bail would have been passed on the basis of the undertaking given by respondent nos. 1 to 3 of the settlement of payment of amount, then in the event of breach of such undertaking, the said order of granting bail would have been recalled and the bail would have been cancelled. Here in the case of contempt, it is

necessary to verify whether there is a breach & total disregard is shown towards the authority of the Court. After perusal of the roznama and the orders passed therein, it is found that the Sessions Court did not mention that it accepted the consent terms and has acted upon the consent terms. The submissions of the learned counsel for respondent nos. 1 to 3 that they wanted to pay off the dues to the original complainant are recorded by the learned Sessions Judge. However, on the basis of the submissions, the Court did not pass any order as such. When the Court has not acted upon the consent terms and subsequently the consent terms are not fulfilled, then it cannot be said that there is contempt committed by respondent nos. 1 to 3. Moreover, despite of filing the consent terms by respondent nos. 1 to 3, as respondent nos. 1 to 3 wanted the conviction to be set aside and they were ready to pay the amount, the learned Sessions Judge heard the Appeal. The appeal was argued, contested and was dismissed and the learned Sessions Judge upheld the conviction. Therefore, I am of the view that the petitioner has failed to prove contempt. Hence, the Contempt Petition is dismissed.

(MRS.MRIDULA BHATKAR, J.)