

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.375 OF 2013

Achievers Mercantile Pvt.Ltd. .. Petitioner

vs.

M/s.Religare Finvest Ltd. and Ors. .. Respondents

Mr.Sean Wassoodew for the petitioner

Mr.Rajiv Narula i/b M/s.Jhangiani Narula for the respondent nos.1 to 4

**CORAM : K.K.TATED, J.
DATED : 24/03/2015**

PC:

1 Heard the learned counsel for the parties.

2 By this Contempt Petition, petitioner alleges that the respondents violated the terms and conditions of the Consent Terms dated 9.5.2013 filed by them before the Bombay City Civil Court, Mumbai in Special Civil Suit No. 1842 of 2013 and particularly clause no.8 and 10 which read thus:

“8. If the balance in the aforesaid loan account is reduced to nil, the Defendant No.1 shall forthwith return any balance securities held by the Defendant no.1 by way of margin to the Plaintiff to it's demant account to be intimated by the Plaintiff.”

“10. In the event of their still remaining an outstanding balance in the loan account of the Plaintiff with the Defendant No.1 on expiry of the period of one month as above, the Defendant No.1 shall be entitled to sell shares or securities remaining with the Defendant no.1 by way of margin out of those mentioned in Annexure “A” without recourse or reference to the Plaintiff till the balance in the loan account is reduced to nil.”

3 The learned counsel for the petitioner submits that it was specifically stated in the Consent Terms that if the balance in the loan account is reduced to nil, the respondent defendant no.1 shall forthwith return balance securities held by them by way of margin to the petitioner to its demat account with intimation to the petitioner.

4 The learned counsel for the petitioner submits that the respondent no.1 sold their securities on 10.6.2013 of Rs.72,877.88 when the outstanding balance in the loan account was only Rs.24,656.50. He further submits that when the petitioner by their notices dated 20.6.2013 and 18.7.2013 called upon the respondents to return their securities they failed and neglected to do so. In this way, they violated the terms and conditions of the Consent Terms and therefore, they should be punished as per the Contempt of Courts Act.

5 On the other hand, the learned counsel for the respondents vehemently opposed the present Contempt Petition. They filed their

affidavit-in-reply.

6 The learned counsel for the respondent submits that as per the Consent Terms respondents were permitted to sell the securities after intimation to the petitioner. He submits that they sold the securities on 10.6.2013, which they intimated in writing to the petitioner. Apart from that, the learned counsel for the respondent submits that the order passed by the trial court in terms of Consent Terms is in the nature of decree and can be executed by preferring appropriate proceeding. He further submits that apart from all those things they returned all the remaining securities to the petitioner by their letter dated 3.12.2013. Hence, there is no substance in the present Contempt Petition.

7 I have heard both the sides at length. It is to be noted that if the terms and conditions of the Consent Terms are violated and if there is no undertaking to that effect, the decree holder can file appropriate proceeding i.e. Execution Application for compliance of the said Consent Terms.

8 This existence of an alternate remedy provided by the Statute itself is indeed a relevant circumstance in deciding as to whether the High Court should exercise the power to punish for contempt. The power of the High Court to punish for contempt is intended to protect the majesty of the law and the dignity of the Court. The power is intended to take within its purview willful or deliberate acts which constitute a defiance or breach of a judgment or order of the Court. The existence of an alternative remedy to seek redressal would be relevant

in cases such as the present one. In such a case, unless the Court comes to the conclusion that there is a clear deliberate or willful breach of the order passed by the Court an attempt to evade compliance by resorting to subterfuge, the Court would be inclined to relegate the party to pursue its alternate remedy. This view is supported by judgments of the Supreme Court and of this Court where, the existence of an alternative remedy has been held to be a sound reason enough not to entertain contempt proceedings. In a similar line of cases the Supreme Court has held that the power to punish for contempt cannot be used as a substitute for the execution of a decree or order of the Court. A brief reference to these decisions may be in order. *In Kapildeo Prasad Sah Vs. State of Bihar*, reported in 1997 (7) Supreme Court Cases 569 the position was summed up in the following words in a Judgment delivered by Mr. Justice D.P. Wadhwa :

“For holding the Respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the Judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court’s order. Since notice of contempt and punishment for contempt is of far reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the Court’s order has been made out. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A Petitioner who complains breach of the Court’s order must allege deliberate or contumacious disobedience of the Court’s Order.”

9 In a Judgment in *R.N. Dev Vs. Bhagyabati Pramanik*, reported in

2000 (4) Supreme Court Cases 400 the Supreme Court held that the power of contempt should be used sparingly and not for the execution of the decree or for the implementation of an order when an alternative remedy in law is provided for. The principle was placed thus in paragraph 7 in the Judgment:

“The weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court’s dignity and majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court.”

10 Similarly the Apex Court in the matter of *Kanwar Singh Saini Vs. High Court of Delhi*, reported in (2012) 4 Supreme Court Cases 307 held that if alternate remedy is available, it is to be exhausted first.

11 Considering these facts and the law declared by the Apex Court, I do not find any substance in the present Contempt Petition. Hence, same is dismissed.

(K.K.TATED, J.)