

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

CONTEMPT PETITION NO.601 OF 2014

The Loot (I) Pvt.Ltd.

.. Petitioner

Vs.

Houseful International Ltd. And Ors.

.. Respondents

Mr.Subhash Jha with Mrs.Rushila Jain i/b M/s.Law Global for the petitioner

Mr.Rakesh Agrawal for the respondent nos.1 to 4

CORAM : K.K.TATED, J.

DATED : 28/04/2015

PC:

1 Heard the learned counsel for the parties.

2 By this petition, petitioner alleges that the respondent nos.1 to 4 have committed wilful default/breach of the undertaking given by them in Suit No.2869 of 2013 as per Order dated 11.04.2014 and therefore, action may be taken against them under the Contempt of Court Act.

The facts giving rise to the present Contempt Petition are briefly stated:-

3 The respondent original plaintiff filed S.C.Suit No.2869 of 2013 in the Bombay City Civil Court at Bombay for an order of perpetual injunction restraining the petitioner original defendant from dispossessing the plaintiff's physical possession of the suit premises i.e. Unit No.001/A admeasuring about 6000 sq.ft. carpet area in the basement and 3 specified car parking on the ground floor in the building known as Poonam Chamber, B-Wing, situated on the plot of land bearing C.S.no.1/3 of Worli division, Worli, Mumai 400 018.

4 The aforesaid premises were taken by the respondents on leave and licence basis from the petitioner for five years on as is where is basis and entered into Leave and License agreement dated 27.7.2011. The disputes having arisen, the plaintiff filed the aforesaid suit. The parties amicably settled the matter and filed consent terms dated 10.04.2014. The clauses 5, 6 and 7 of the Consent Terms read thus:

“5. The plaintiff agrees and undertakes to this Hon'ble court to pay to the defendant regularly the licence fees of Rs.6,00,000/- from May 2014 and strictly in compliance with the terms of the Leave and Licence Agreement dated 27.7.2011.

6. Acceding to the requirement of the plaintiff, the defendant has agreed to waive the interest on the accrued licence fees in respect of the suit premises and has further agreed not to claim any compensation / damages from the plaintiff provided the plaintiff honoured all the aforesaid

cheques on their due dates without causing any impediment in the cheques been honoured upon being presented by the defendant for encashment on their due dates and similarly the plaintiff making payment of the monthly compensation of Rs.6,00,000/- to the defendant strictly in compliance with the terms and conditions of the Leave and Licence dated 27.7.2011.

7. The defendant agreed to furnish copies of the following documents to the plaintiff at the time of execution of these consent terms.

- i. Old Occupancy Certificate of the building.
- ii. New Occupancy Certificate of the building.
- iii. Basement floor Plan
- iv. The sale deed”

5 In terms of the said consent terms, Bombay City Civil Court at Bombay passed order on 11.4.2014 which reads thus:

“ORDER

1. The suit is decreed in terms of Consent Terms below Exh.4.
2. Undertakings given by the parties in the Consent Terms are accepted.
3. Decree be drawn accordingly.”

6 As the defendant failed and neglected to comply with the clause

5 of the said Consent Terms i.e. payment of licence fees of Rs.6,00,000/- lacs per month from May, 2015, petitioner original defendant filed present Contempt Petition.

7 The learned counsel for the petitioner submits that the respondent willfully disobeyed the terms and conditions of the Consent Terms dated 10.04.2014 and the order dated 11.04.2014. Hence, they preferred the present Contempt Petition. He submits that the respondent failed and neglected to pay the license fees of Rs.6,00,000/- per month towards suit premises regularly in terms of clause (5) of the Consent Terms. He submits that the respondent gave undertaking in the said Consent Terms for complying the same. That undertaking was accepted by the Trial Court by order dated 11.04.2014. In spite of the undertaking given by the respondent, they failed and neglected to make the payment of license fees for the months of May 2014, June 2014, July 2014 and August 2014 which aggregates to more than Rs.24.0 lacs. He submits that before filing the present Contempt Petition, petitioner sent a notice dated 20.6.2014 to the respondent and placed the aforesaid facts on record and called upon the respondent Company to pay arrears of licence fees for the month of May and June aggregating to Rs.12,00,000/- and interest, additional compensation, mesne profit etc. within 7 days from the date of receipt of the said letter by the respondent Company, failing which petitioner will take appropriate action including the contempt proceeding.

8 The learned counsel for the petitioner submits that in spite of having received the legal notice dated 20.6.2014, the respondent failed

and neglected to make payment of requisite amount and or respond to the said legal notice dated 20.6.2014. He submits that the Consent Terms filed by the contemnor are in the nature of undertaking to the Bombay City Civil Court at Bombay to pay the petitioner regularly license fees of Rs.6,00,000/-per month from May 2014 strictly in compliance with the terms and conditions of the Leave and License Agreement dated 27.7.2011.

9 The learned counsel for the petitioner submits that inspite of issuing legal notice, respondent Contemnor failed and neglected to comply the terms and conditions of the Consent Terms dated 10.4.2014 and order passed by the Bombay City Civil Court at Bombay dated 11.4.2014. The respondent rendered themselves liable for action under section 2(b) of the Contempt of Courts Act 1971 and for which they are liable to proceed with in this High Court in accordance with law and in exercise of the powers vested with this court under Article 215 of the Constitution of India.

10 The learned counsel for the petitioner further submits that the respondent Contemnor intentionally and wilfully made a false and misleading statement on oath in the form of filing Consent Terms in the Trial Court and invited orders from the Trial Court in their favour. After disposal of the suit filed by them in pursuance of the order dated 11.4.2014 by which the Trial Court disposed of the suit filed by the Respondent by accepting the undertaking given by them and subsequently thereto, deliberately failed and neglected to pay monthly compensation of Rs.6,00,000/-. Hence, they are liable for action under

section 2(b) of the Contempt of Courts Act, 1971.

11 The learned counsel for the petitioner submits that the past and present conduct of the respondent shows that intentionally they are violating the order passed by the Trial Court on 11.4.2014. The learned counsel for the petitioner submits that they have to receive Rs.3,05,13,741/- from the respondent upto 31.4.2015. He submits that if the person violates the order passed by the court and commits breach of the undertaking, this court to take action against him as per the Contempt of Courts Act. He further submits that though alternate remedy is available to the petitioner to prefer execution proceeding then also, the Contempt Petition is maintainable. He submits that the Apex Court in the matter or *Bank of Baroda vs. Sadruddin Hasan Daya and Another*¹ held that if efficacious alternate remedy is available to the decree holder to execute the decree, cannot be a defence to defeat the action under the Contempt of court Act. He specifically relies on para 12, 13 and 14 which read thus:

“12. The submission of Shri R.F. Nariman, learned counsel for the respondents, that this Court having passed a consent decree, the remedy of the petitioner lay in executing the same and there was no occasion for initiating contempt proceedings against the respondents has hardly any merit. The willful breach of an undertaking given to a Court amounts to "civil contempt" within the meaning of Section 2(b) Contempt of Courts Act. The respondents having committed breach of the undertaking given to this Court in the consent terms filed on 28.7.1999, they are clearly liable for having committed contempt of Court. The fact that the petitioner can execute the decree can have no

1 (2004) 1 SCC 360

bearing on the contempt committed by the respondents. The law in England on the subject of breach of undertaking given to Court is same. In Volume 9(1) Halsbury's Laws of England Para 482, it has been stated as under :

"An undertaking given to the court in pending proceedings by a person or corporation (or by a government department or Minister of the Crown acting in his official capacity) on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt."

13. An identical argument was considered and repelled in *Bajranglal Khemka v. Kapurchand Ltd.*, [MANU/MH/0014/1950](#): AIR 1950 Bom 336. Here a suit for specific performance of an agreement of sale was filed wherein parties entered into a compromise and the consent terms were reduced to writing and were signed by counsel for the parties. One of the terms was with regard to execution of a lease within a period of two months by the defendants in favour of the plaintiff in respect of property in suit and the defendants further undertook to have Paradise Cinema Ltd. to join as a confirming party to the lease. The defendants having failed to execute the lease as agreed, execution proceedings were taken out. The plaintiffs called upon the defendants to get the Paradise Cinema Ltd. to join as a confirming party to the lease and the defendants having failed to comply with that requisition, a Motion was taken out for contempt of Court. The Trial Judge (Justice N.H. Bhagwati) held that there was a willful default on the part of the defendants and thereupon he ordered that the defendants should carry out their undertaking within one month from the date on which the order was passed, otherwise a warrant was to issue for the committal of the defendants to prison. In appeal

against the said order Chagla, CJ and Gajendragadkar, J, after a detailed consideration of the law on the subject, held as under :

"There is no reason why even in a consent decree a party may not give an undertaking to the Court. Although the Court may be bound to record a compromise still, when the Court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the Court; and it would be open to the Court, before it did so, to accept an undertaking given by a party to the Court. Therefore, there is nothing contrary to any provision of the law whereby an undertaking cannot be given by a party to the Court in the consent decree, which undertaking can be enforced by proper committal proceedings."

14. The respondents had filed consent terms in this Court but the same contained an undertaking that they would not alienate, encumber or charge the properties to anyone until the decree was satisfied. Acting upon this undertaking and the consent terms, this Court passed the decree whereunder the respondents (defendants) were given the facility of depositing the amount in eight quarterly installments commencing from 1st November, 1999 to 1st August, 2001. This Court, therefore, put its imprimatur upon the consent terms and made it a decree of the Court. The violation or breach of the undertaking which became part of the decree of the Court certainly amounts to contempt of Court, irrespective of the fact that it is open to the decree holder to execute the decree. Contempt is a matter between the Court and the alleged contemner and is not affected in any manner by the rights or obligations of the parties to the litigation inter se."

12 He further relies on the judgment of the Apex Court in the matter

of *Bank of India vs. Vijay Transport and Others*². In this authority, the Apex Court held that the decree holder can proceed under the Contempt of Court Act if there is a breach of undertaking given by otherside. On the basis of these submissions the learned counsel for the petitioner submits this Hon'ble Court be pleased to take appropriate action against the respondent original plaintiff under the Contempt of Court Act for wilful disobeying the Consent Terms dated 10.4.2014, undertaking given before the Trial Court and order dated 11.4.2014 passed by the Trial Court.

13 On the other hand the learned counsel for the respondent vehemently opposed the present Contempt Petition. He submits that the Contempt Petition itself is not maintainable in law. He submits that the petitioner has alternate efficacious remedy to execute the decree dated 11.4.2014 passed by Bombay City Civil Court at Bombay in S.C.Suit No.2869 of 2013. He submits that the petitioner can opt for execution process under the code of Civil Procedure, 1908. He submits that in view of efficacious alternate remedy available to the petitioner by way of execution, petitioner cannot invoke the remedy under Article 215 of the Constitution of India read with Contempt of Court Act, 1971. Hence, there is no substance in the present Contempt Petition and same be dismissed on the preliminary ground about maintainability in law.

14 The learned counsel for the respondent submits that they have not committed contempt in breach of the terms and conditions of the Consent Terms dated 10.4.2015 as well as the order passed by trial

² (2000) 8 SCC 512

court dated 11.4.2014. He submits that as per the Consent Terms dated 10.4.2014 petitioner failed and neglected to provide copies of following documents, as per Clause 7 of the Consent Terms. Those documents are i) Old Occupancy Certificate of the building, ii) New Occupancy Certificate of the building, iii) Basement floor Plan, iv) The sale deed. He submits that for want of those documents, Mumbai Municipal Corporation started taking action against respondents. He submits that because of action from the Mumbai Municipal Corporation it became impossible for the respondent to continue their business from the suit premises. Hence, the respondent by their letter dated 26.5.2014 and as per Clause 28 of the Leave and License Agreement gave (3) months notice in writing for termination of the said Leave and License Agreement. It is also stated in the said notice that respondents are ready and willing to hand over possession of the licence premises on 25.8.2014 as per Leave and License Agreement and subject to refund of security deposit amount lying with the petitioner.

15 The learned counsel for respondent submits that thereafter, respondent issued another letter dated 25.8.2014 calling upon the petitioner to refund the security deposit of Rs.36 lacs and take possession of the suit premises. In the said notice in paragraph 8 the respondent stated that as per clause 24(e) of said Leave and License Agreement, respondent shall be entitled to use License premises without paying any license fee till refund of the security deposit. He submits that both these letters posted by the respondent to the petitioner at their address of Poonam Chambers. Both the letters returned unserved from the postal department stating “not claimed”.

He further submits that thereafter, the respondent through their Advocate issued legal notice under section 433 and 434 of the Companies Act, 1956 calling upon the petitioner to pay sum of Rs.12,15,331/- with interest @ 24% p.a. from 26.8.2014 within three weeks of receipt of the said notice, failing which respondent shall presume that the petitioners are not able to discharge their legal dues and they are indebted for the amount payable to the respondent, and in that circumstances, respondent shall be constrained to file winding up petition under section 433 read with section 434 of the Companies Act, 1956. He submits that inspite of the said legal notice, the petitioner failed and neglected to comply the terms and conditions of the Leave and License Agreement. Hence, it is not correct on the part of the petitioner to state that the respondent failed and neglected to comply with the terms and conditions on 11.4.2014. He submits that though it is stated in the Leave and License Agreement that all correspondence be done at Mahim address, notices issued at that address returned unserved. He submits that the notices issued to the petitioner at their Poonam Chambers address were duly served whereas notice issued at Mahavir Chambers address returned unserved with remark "left without instruction". In support of this contention, respondent relied on track result report. He further submits that even the legal notice issued by petitioners Advocate Gaurang K.Mehta dated 26.12.2013 in which it is specifically stated in first paragraph that the petitioner is having its registered office at 1-A/002, B-Wing, Poonam Chambers, Dr.Annie Besant Road, Worli, Mumbai – 400 018. Hence, the respondent forwarded notice to the petitioner at their Poonam Chambers, Worli address.

16 The learned counsel for the respondent submits that the Apex Court in the matter of *R.N.Dey and Others vs. Bhagyabati Pramanik & Others*³ held that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of decree or implementation of the order for which alternate remedy is available in law is provided for. He relies on paragraph 7 and 8 which read thus:

“7. We may reiterate that 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 Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceedings, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

3 (2000) 4 SCC 400

8. Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment debtor and hence the court should not normally lend help to a party who refuses to take legally provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree.”

17 The learned counsel for the respondent submits that petitioner has alternate efficacious remedy to execute the decree passed by Trial Court on 11.4.2014. Hence, there is no substance in the present Contempt Petition and same be dismissed with costs.

18 I have heard both the sides at length. Admittedly, in the present proceeding, petitioner and respondent filed Consent Terms dated 10.4.2014 in S.C.Suit No.2869 of 2013 in Bombay City Civil Court at Bombay. Pursuant to the said Consent Terms, the Trial Court passed decree on 11.4.2014 accepting the respondent's undertaking. Clause no.5 of the Consent Terms provides that the respondent should pay license fees of Rs.6,00,000/- from May, 2014 per month in compliance with the terms and conditions of Leave and License agreement dated 27.7.2011. This itself shows that this is nothing but a money decree passed by Trial Court. If alternate efficacious remedy is available to the petitioner to execute decree for recovery of balance outstanding of license fees then there is no question of taking any action against the respondent under the Contempt of Courts Act.

19 The Apex court in the matter of Kanwar Singh Saini vs. High Court of Delhi⁴ held that enforcement of interim or final orders/decrees of the court including undertakings given to the court, proper and advisable first mode for enforcement of the orders, held, is to file an application under Order 39 Rule 2A of the CPC for enforcement of interim orders/undertaking to court when suit is pending, or to file application for execution in case suit has been decreed based on undertaking or otherwise. When the matter relates to the infringement or decree or decretal order embodying rights as between parties, contempt jurisdiction cannot be invoked merely because other remedies may take time or are more circumlocutory in nature.

20 In the present proceeding, the alternate remedy is available to the petitioner to execute Consent Terms, decree passed by the Trial Court and undertaking given by the respondent defendant in S.C.Suit No.2869 of 2013. Considering the recent authority on the point of alternate remedy, I am of the opinion that authority cited by the petitioner in the matters of *Bank of Baroda vs. Sadruddin Hasan Daya and Another* (Supra) and *Bank of India vs. Vijay Transport and Others* (Supra) are not applicable in the facts and circumstances of the present case. Hence, I do not find any reason to entertain the present Contempt Petition. As the Contempt Petition itself is not maintainable on the ground of alternate remedy being available to the petitioner, it is not necessary to discuss and or give finding on other issues involved in the present proceeding.

4 (2012) 4 SCC 307

21 Hence Contempt Petition stands dismissed.

(K.K.TATED, J.)