

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO.54 OF 2011
IN
SUIT NO.2077 OF 2008
WITH
NOTICE OF MOTION NO. 2408 OF 2008
IN
SUIT NO. 2077 OF 2008**

Reliance Industries Ltd. ...Petitioner
VS
Anil Kumar Poddar & Swatvadhikari Anla
Publication Pvt. Ltd. ...Respondents.

.....
Mr Firdosh Pooniwalla a/w Ms Melanie D'souza i/b Junnarkar & Associates for
the Petitioner.
Mr Chittaranjan Das for Respondent Nos.1 and 2.
.....

CORAM : S.C. GUPTE, J.

DECEMBER 01, 2015

P.C. :

Contempt Petition No. 54 of 2011 seeks punishment of the Respondents for contempt of court by willful disobedience of the ad-interim order passed by this Court on 16 July 2008 and continued from time to time. The short facts of the case may be stated as follows.

2 Respondent No.1 is the editor and publisher of a Hindi / English weekly newspaper "**Hamara Kaam**". The second Respondent, which is a company registered under the Companies Act, 1956, is the owner of this newspaper. In the years 2007 and 2008, the Respondents published articles in various editions of the newspaper "**Hamara Kaam**", the contents of which, according to the Petitioner, were false, malicious and defamatory. The Petitioner, accordingly, filed a suit seeking various reliefs against the Respondents including reliefs by way of injunction restraining the Respondents from further defaming the Petitioner, its officers and directors. The Petitioner took out a Notice of Motion in

the suit, being Notice of Motion No.2408 of 2008, seeking ad-interim injunction *inter alia* in terms of the main relief sought in the suit. Prayer clause(a) of the Notice of Motion, which is relevant for the purpose of the present petition, was in the following terms:

“(a) that, pending the final hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the Defendants, by themselves, their servants, agents, officers and subordinates, from further publishing, or causing or authorizing to be published, the defamatory statements contained in the said articles published in the **Hamara Kaam** newspaper, as set out in Exhibits “C” and “D” to the suit, or any other statement or article defaming the Plaintiff or its officers or directors”.

By an order dated 16 July 2008, a learned Single Judge of this Court was pleased to grant ad-interim relief in terms of prayer clause (a) quoted above. That order has since been continued by further orders passed by this Court in the Notice of Motion on 11 September 2008 and 23 September 2009. In spite of these interim orders, it is the Plaintiff's case that in willful disobedience of these orders, the Respondents have published in the editions of 2 July 2011, 9 July 2011 and 30 July 2011 of the newspaper “**Hamara Kaam**” articles containing material, which is malicious and defamatory and which is in breach of the ad-interim order referred to above. The Petitioner has, in the premises, approached this Court invoking its contempt jurisdiction seeking committal of the Respondents.

3 At the outset and before the defences offered to the Petition are considered, it is important to note the manner in which the Respondents have conducted themselves in this Petition. In the first place, by its order dated 7 October 2011, a learned Single Judge of this Court, upon being satisfied *prima facie* that the Respondents had breached the orders passed by this Court, issued a show cause notice to the Respondents under Rule 1035(1) r/w 1036(1) of the High Court (Original Side) Rules, 1980 returnable on 25 November 2011. On 25 November 2011, Respondent No.1 appeared in person for self and for

Respondent No.2. No affidavit, however, was filed on the pretext that one page was missing in the synopsis. This Court thereupon admitted the Petition and placed the same for final hearing on 27 January 2012. The service of the Petition was waived by Respondent No.1 for self and on behalf of Respondent No.2. The matter thereafter appeared before this Court for final hearing at least on four occasions, when none appeared for the Respondents. This Court, in the premises, by its order dated 3 July 2014 directed issuance of a bailable warrant against Respondent No.1. Thereafter, on 25 August 2014, Respondent No.1 appeared in person and sought to tender his reply to the Petition. When the matter appeared before this Court on 10 December 2014, counsel for Respondents stated that he had received instructions in the matter on telephone and undertook to file a Vakalatnama. He also made a categorical statement that Respondent No.1 would remain present in court on the next date. This Court thereupon directed the matter to stand over to 16 December 2014, making it clear that if Respondent No.1 did not remain present in court on the next date, a non bailable warrant would be issued against him. On the next date, i.e. on 16 December 2014, Respondent No.1 along with his counsel appeared before the Court. His counsel undertook to file an affidavit in reply and serve a copy thereof on the Petitioner on or before 18 December 2014. When the matter reached before this Court on 15 January 2015, the Respondents had failed to file their reply. The matter was thereupon stood over to the next date. After a couple of dates, on 1 October 2015, when the matter reached hearing, the Respondents' advocate once again stated before this Court that he had been instructed to appear in the matter for the Defendants (i.e. Respondents to the Contempt Petition) only the day before and undertook to file his Vakalatnama within one week. Thereafter, when the matter reached hearing on 21 October 2015, the same Advocate for the Respondents stated before the Court that due to personal difficulties he was unable to prepare for the matter and requested for an indulgence. As a last chance, the matter was stood over to the next date, the Court making it clear that the Contempt Petition would be heard first and the contemnor should remain present in the Court. The Contempt Petition along with the Notice of Motion thereafter appeared on 20 November 2015, when Respondent No.1 did not remain present. The hearing of the Contempt Petition

along with Notice of Motion was stood over to 30 November 2015. On the next date, i.e. 30 November 2015, once again Respondent No.1 did not remain present in the Court. The matter was argued by the learned Counsel for both the parties. (In the meantime, a reply was filed by the Respondents to the Contempt Petition on 18 December 2014.) The only submission made by learned Counsel for the Respondents at the hearing of the Petition was that the Respondents had challenged the order passed by this Court admitting the petition. Secondly, it was submitted that the Notice of Motion taken out by the Plaintiff in the suit ought to be heard first after determining the preliminary issue and the Contempt Petition should be taken up for hearing thereafter.

4 As far as the appeal filed by the Respondents challenging the admission order passed in the Petition is concerned, the position is this. The appeal was rejected under Rule 986 of the Bombay High Court (Original Side) Rules as far back as on 15 March 2012. The Respondents' Notice of Motion for restoration of that appeal was also dismissed by this Court on 1 September 2015. The Respondents claim to have challenged that order of dismissal before the Supreme Court. No particulars have been furnished to this Court or to the Petitioner of the purported challenge before the Supreme Court. In the premises, it is not possible to delay the hearing of the Contempt Petition, which has been pending since 2011, merely on the ground that some challenge to the order dismissing the Respondents' Motion to restore a dismissed appeal is pending before the Supreme Court. It is also not possible to defer the hearing of the Contempt Petition to the hearing of the Notice of Motion. This Court by its order dated 21 October 2015 had already made it clear to the Respondents that the Contempt Petition would be heard first.

5 As noted above, Respondent No.1 has chosen to remain absent in spite of specific orders passed by this Court earlier and assurances given to this Court by learned Counsel for the Respondents. When this Court inquired with learned Counsel for the Respondents about absence of Respondent No.1, he tendered across the bar a photocopy of a certificate purportedly issued by one Dr Prakash Palrecha of Mumbai that Respondent No.1 was suffering from viral fever

from 18 December 2015 and was advised rest for 4/5 days. It is unconceivable how such certificate, which is not even put on affidavit, can explain the absence of Respondent No.1 before this Court on 29 November 2015 and 30 November 2015, i.e. more than 10 days after his alleged viral fever.

6 Coming now to the affidavit in reply filed by the Respondent, all that the reply claims is that the articles published by the Respondents (presumably those articles on the basis of which the present Petition is filed) are not defamatory but are based on truth and truth alone, which can be proved with evidence. Besides taking up the plea of truth, the Respondents contend that correspondence between the Petitioner's officers and the Respondents, as also the discussions and meetings between them, between the date of the ad-interim order and filing of the Contempt Petition herein was suppressed by the Petitioner. This without disclosing what that correspondence is or what those meetings and discussions were in connection with. So much for the defence offered to the Contempt Petition.

7 The Respondents do not dispute that in their newspaper "**Hamara Kaam**" they made several sweeping allegations against the Petitioner concerning so called manipulation of the share market and deception of its shareholders by the Petitioner. The allegations also refer to connivance on the part of the Petitioner and SEBI, Stock Exchange and the Finance Ministry for such deception. Notwithstanding the ad-interim order passed by this Court, which restrains the Respondents from further publishing or causing publication of defamatory statements contained in the articles complained of in the suit or any other statement or article defaming the Petitioner or its officers or Directors, the Respondents have published in their newspaper "**Hamara Kaam**" further articles on 2 July 2011, 9 July 2011 and 30 July 2011 making practically the same allegations or allegations in the nature thereof and at any rate allegations defaming the Petitioner and its officers and directors. These latter articles once again talk about the Petitioner's alleged acts of wrongdoing concerning the securities market and the interest of investors. In particular the articles *inter alia* claim as follows:

“Mukesh Ambani is being flaunted as a unique example and important information is being hidden from not only the investors and the public but also from regulatory bodies/ agencies. Not only that, but the company is engaged in such illegal activities and violations as will prove to be disastrous not only for investors but even for the company.”

The articles referred to above are nothing but a clear and deliberate breach of the ad-interim order passed by this Court, which is quoted above.

8 The defence of the Respondents to the Contempt Petition that the articles are based on truth is neither here nor there. We are not here concerned with the merits of the Plaintiff's case in the original suit. Truth or otherwise of the offending articles is besides the point. What is material is that in the face of the ad-interim order passed by this Court, which is quoted above, the Respondents have persisted in publishing offending articles and making allegations which are *per se* defamatory and in breach of the ad-interim order. The Respondents do not dispute having written and published the offending articles. The Respondents clearly had knowledge of the order and could very well be said to be aware of the consequences and implications thereof. Despite such knowledge, in clear breach of the order of this Court, the Respondents have published the offending articles. The Respondents' conduct clearly amounts to willful disobedience to the orders and directions of this Court. The Respondents show no remorse and offer no apology.

9 The Respondents' conduct more particularly described above clearly shows not only contumacious disregard of the authority of this Court but also discloses a casual approach to the processes of this Court.

10 In the premises, there is a clear case for proceeding against the Respondents in exercise of contempt jurisdiction of this Court. The Respondents have willfully disobeyed the order of this Court and are guilty of civil contempt, within the meaning of Contempt of Courts Act, 1971. Respondent No.1 is,

accordingly, ordered to undergo simple imprisonment for a period of three months. A warrant of commitment and detention, shall accordingly be made out against Respondent No.1 under the signature of the Prothonotary and Senior Master of this Court.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.