

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont. Cas (C) No.652/2014**

Decided on : 24th September, 2014

JAMNA DATWANI Petitioner
Through: Ms. Tara Vitasta Ganju & Ms. Preeti G.
Chandel, Advocates.

Versus

KISHIN DATWANI & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a contempt petition filed by the petitioner against her son, respondent No.1, Kishin Datwani. In addition to respondent No.1, there are 11 more parties impleaded as respondents though they are termed as proforma respondents.

2. I have heard Ms. Tara V. Ganju, the learned counsel for the petitioner on the contempt petition. The present petitioner is the mother of four siblings; three sons, Janak, Kishin and Anand and a daughter, namely, Nitya. All these parties are litigating before the judge on the original side with regard to certain properties. The learned single judge

had passed an order on 16.12.2013 making certain interim arrangements which were to be complied with till the next date of hearing. Twelve directions are purported to have been given by the learned single judge on the original side out of which, direction Nos.1 to 6 are concerned with sharing of the property situated in Friends Colony, West. The subsequent directions pertained to providing financial succour to the present petitioner. For this purpose, certain directions were given to all the respondents to pay certain monies to the petitioner in order to provide financial succour. These directions were challenged by way of two appeals.

3. The learned Division Bench while considering the appeals had taken note of the order passed by the learned single judge and modified the directions for payment of monies to the petitioner. The directions which were passed by the learned Division Bench vide its order dated 2.5.2014 were essentially three fold. (i) The first direction was that Janak, Anand and Kishin, the present respondents and their sister, Nitya, were all to pay upfront a sum of Rs.5 lac each to the mother for the purpose of her medical treatment in case of any unforeseen emergency and a part of it was permitted to be spent by her. (ii) The second direction was that

Janak, Anand and Kishin (respondent No.1 in the present petition) were to pay, with effect from the month of May, 2014, a sum of Rs.35,000/- each per month to the petitioner by way of RTGS/ECS directly in the account of the petitioner. So far as the daughter is concerned, she was directed to pay a sum of Rs.15,000/- per month. (iii) The third direction was with regard to making of a onetime payment of Rs.1,50,000/- each to the mother for the purpose of enabling her to buy a car. Directions were also passed that the amount of Rs.1,50,000/- be paid by each of the siblings, including respondent No.1, in the name of the vendor of the car in order to avoid the funds being used by the present petitioner to litigate against her sons.

4. It is the contention of the learned counsel for the petitioner that the aforesaid three directions passed by the court have not been fully complied with by respondent No.1 inasmuch as an amount of Rs.35,000/- which was payable from the month of May, 2014, has not been paid. Similarly, the amount of Rs.1,50,000/- which was to be paid towards the purchase of a car, has also not been paid. So far as payment of Rs.5 lacs was concerned, only a sum of Rs.3,60,000/- has been paid.

5. It was pointed out to the learned counsel for the petitioner that the respondent is stated to have paid a sum of Rs.3,60,000/- out of a sum of Rs.5 lacs and for realization of the balance amount, the petitioner is free to go to the civil court by invoking the provisions of Order 39 Rule 2A CPC or to seek execution of the order passed by the court for recovery of money. However, the learned counsel, instead of accepting the said course had contended that this is a case of gross contempt on the part of the respondent inasmuch as the directions of the court have not been complied. For this purpose, the learned counsel for the petitioner has relied on *Lopaben Patel vs. Hitendra Rambhai Patel*; 2000 Cri. LJ 2709, *Shankerpuri Chanpuri Goswami vs. Abdulhakim Asmadmahamad*; (1985) ILLJ 281 Guj., *Mira Bose vs. Santosh Kumar Bose*; AIR 1973 Calcutta 483 (V 60 C 111), *Jyotirmoyee Debi vs. Assistant Settlement Officer and Others*; AIR 1973 Calcutta 486 (V 60 C 112) and *Sarladevi Bharatkumar Rungta vs. Bharatkumar Shivprasad Rungta & Anr.*; 1988 Cri. L.J. 558.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the judgments cited. The questions which arise for consideration, in the instant case, are firstly, whether a case for initiation of contempt proceedings against

respondent No.1 is made out and secondly, even if it is *prima facie* made out, whether the petitioner has an alternate efficacious remedy available to her in getting the order implemented, then she must, in the first instance, resort to the same. Moreover, the grievance of the petitioner is essentially for recovery of monies which can be resorted to by filing an execution under Order 21 CPC in the court where the suit is pending adjudication. Reliance in this regard can be placed on the judgment of the Apex Court in *Kanwar Singh Saini vs. High Court of Delhi; (2012) 4 SCC 307*.

7. Further, I feel that the very fact that respondent No.1, out of an amount of Rs.5 lacs, has already paid a sum of Rs.3,60,000/- clearly shows his intention to comply with the order. The petitioner has admittedly shown the residence of respondent No.1 to be in New York, U.S.A. Therefore, it is well possible that respondent No.1, though wanted to comply with the order but on account of the fact that he is not available in India, has not been able to comply with the order passed by the Division Bench in its entirety. This could be a possible explanation inferred, keeping in mind the fact that part payment has been made by the respondent, therefore, it cannot be said that there is any willful

disobedience on the part of respondent No.1 though, it may constitute disobedience.

8. The provisions of Order 39 Rule 2A CPC not only deal with a situation where an injunction order has been passed by the civil court but it also deals and contemplates to deal with a situation where an order passed by the court, of which there is alleged to be willful disobedience, can be dealt with.

9. The only difference between the provisions under Order 39 Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the quantum of incarceration which a person can be sentenced to. Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39 Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions. Therefore, one of the remedies which is already available to the petitioner is under Order 39 Rule 2A CPC. She can also seek execution of the order for recovery of monies from respondent No.1 by getting his share in the property in Friends Colony attached or getting his

other properties attached and getting recovery effected. Therefore, there is ample mechanism prescribed under the CPC for the purpose of implementation of an order.

10. The contempt power under the Contempt of Courts Act is not only discretionary but is also to be used sparingly. A trend which has been noticed by this court is that parties invariably try to invoke the provisions of the Contempt of Courts Act in order to get orders implemented while there is machinery provided under the CPC for the purpose of getting orders, decrees or directions executed.

11. So far as the judgments which have been relied upon by the learned counsel for the petitioner are concerned, no doubt in these judgments, various High Courts have taken action under Contempt of Courts Act; however, in all these cases, there is one distinguishable feature, i.e., either maintenance is to be paid by the husband to the wife or wages have to be paid to the workmen and that is the only source of livelihood for the party. The court perhaps was justified in these cases in not relegating the party concerned to the civil court or the trial forum for getting the order executed.

12. In the instant case, admittedly respondent No.1 is not the only person, who is to provide financial succour to the petitioner. There are three other siblings who seem to have already contributed the money in terms of the directions passed by the Division Bench and thereby there is, in my opinion, no pressing urgency where the petitioner would suffer for want of monies in case the contempt notice is not issued to the respondents.

13. For the reasons mentioned above, I feel that as the petitioner has an alternate efficacious remedy available to her in getting the order of the Division Bench dated 2.5.2014 executed under the provisions of the CPC and moreover, respondent No.1 has already paid an amount of Rs.3,60,000/-, which fact *prima facie* shows, even if it is assumed that there is disobedience, it cannot be said to be willful especially in the light of the fact that he is a resident of USA. Accordingly, the petition is dismissed.

V.K. SHALI, J.

SEPTEMBER 24, 2014
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