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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 808/2014****RAJIV KAPOOR**

Through

..... Petitioner

Mr. Anubhav Chowdhury with
Mr. Ashish Jha, Mr. G. Panmei and
Mr. A. Siddhartha, Advocates

versus

PRAVEEN AGGARWAL

Through

..... Respondent

Mr. Ankit Jain, Advocate

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Date of Decision : 18th August, 2015**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present contempt petition has been filed alleging wilful disobedience of the respondent's undertaking as well as the order dated 12th February, 2013 passed by learned Single Judge of this Court in OMP No. 100/2013.
2. Learned counsel for the petitioner states that the respondent-builder has not obtained a lift fitness certificate as undertaken by him within three months in accordance with the consent decree dated 12th February, 2013.
3. The relevant portion of the consent order dated 12th February, 2013 is reproduced hereinbelow:-

“6. With the consent of the parties, the petition is disposed of with the following terms and conditions:-

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b) The respondent has informed the Court that he has applied for lift fitness certificate. The same has not been received by the respondent from the concerned authority. The electricity and water testing of the building have also not been got done by the respondent. He shall provide full cooperation in this regard and do the needful with the concerned authorities within a period of three months. The respondent undertakes not to claim payment of additional work if done at basement (cabin and storage) or towards the construction work of shaft.”

(emphasis supplied)

4. At the outset, learned counsel for respondent raises a preliminary objection to the maintainability of the present contempt petition on the ground that it is barred by limitation. He states that even if all the averments in the petition are to be believed, then also cause of action for filing the present contempt petition arose on 12th May, 2013 as the lift fitness certificate had to be obtained within three months. He points out that present contempt petition has been filed, for the first time, on 5th November, 2014 which is beyond the period of limitation of one year.

5. Learned counsel for petitioner submits that violation of the undertaking for obtaining a lift fitness certificate is a continuous wrong and in support of his contention, he relies upon judgment passed by this Court in ***Santosh Kapoor Vs. Apex Computers P. Ltd., ILR (2009) III Delhi 628i*** wherein it has been held as under:-

“26. Moreover, I am of the view that failure to pay the amount undertaken, amounts to a contempt which in a situation of this nature is a continuous wrong. Therefore, in my view, the present

contempt petition is not barred by limitation as prescribed in Section 20 of the Contempt of Courts, Act.....”

6. Having heard learned counsel for parties, this Court is of the view that present contempt petition is clearly barred by limitation. Section 20 of Contempt of Courts Act, 1971 states as under:-

“20. Limitation for actions for contempt.-No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

7. Since in the present case respondent had to furnish lift fitness certificate within three months from the date of the order dated 12th February, 2013, the limitation for filing the present contempt petition expired on 22nd May, 2014.

8. Moreover, petitioner certainly cannot deny knowledge of the fact that he had not received the fitness certificate within a period of three months.

9. In ***Pallav Sheth vs. Custodian and Ors., (2001) 7 SCC 549*** the Supreme Court has observed as under:-

“32. The Contempt of Courts Act, 1971 inter alia provides for what is not to be regarded as contempt; it specifies in Section 12 the maximum punishment which can be imposed; procedure to be followed where contempt is in the face of the Supreme Court or in the High Court or cognizance of criminal contempt in other cases is provided by Sections 14 and 15; the procedure to be followed after taking cognizance is provided by Section 17; Section 18 provides that in every case of criminal contempt under Section 15 the same shall be heard and determined by a Bench of not less than two Judges; Section 19 gives the right of appeal from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. There is no challenge to the validity of any of the provisions of the Contempt of Courts Act as

being violative or in conflict with any provisions of the Constitution. Barring observations of this Court in Supreme Court Bar Assn. case[(1998) 4 SCC 409] where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power, this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 215 of the Constitution. In Sukhdev Singh Sodhi case [AIR 1954 SC 186 : 1954 Cri LJ 460 : 1954 SCR 454] it recognised that the 1926 Act placed a limitation on the amount of punishment which could be imposed. Baradakanta Mishra case [(1975) 3 SCC 535 : 1975 SCC (Cri) 99] was decided on the interpretation of Section 19 of the 1971 Act, namely, there was no right of appeal if the court did not take action or initiate contempt proceedings. In the case of Firm Ganpat Ram Rajkumar case [1989 Supp (2) SCC 418 : 1989 Supp (1) SCR 223] the Court did not hold that Section 20 of the 1971 Act was inapplicable. It came to the conclusion that the application for initiating contempt proceedings was within time and limitation had to be calculated as for the purpose of limitation date of filing was relevant and furthermore that was a case of continuing wrong. In Kartick Chandra Das case [(1996) 5 SCC 342] the provisions of the Limitation Act were held to be applicable in dealing with application under Section 5 in connection with an appeal filed under Section 19 of the Limitation Act. A three-Judge Bench in Dr L.P. Misra case [(1998) 7 SCC 379] observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article 215 of the Constitution. It would, therefore, follow that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided.

33. The question which squarely arises is as to what is the meaning to be given to the expression “no court shall initiate any proceedings for contempt ...” occurring in Section 20 of the 1971

Act. Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different.

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41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

42. The decision in Om Prakash Jaiswal case [(2000) 3 SCC 171] to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be

warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal case [(2000) 3 SCC 171] is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.”

10. This Court is also of the view that the judgment in **Santosh Kapoor Vs. Apex Computers P. Ltd.** (supra) offers no assistance to the petitioner as in the present case there was no violation to pay any amount undertaken which was construed in **Santosh Kapoor Vs. Apex Computers P. Ltd.** (supra) as a continuous wrong in that particular situation.

11. Since in the present case the breach or violation of the undertaking happened on 12th May, 2013, the limitation for filing the present petition expired on 12th May, 2014. As the present petition has been filed beyond the said period, this Court is of the view that present contempt petition is

barred by limitation. With the aforesaid observations, present petition is dismissed. However, petitioner is given liberty to file appropriate proceedings in accordance with law. Rights and contentions of all parties are left open.

MANMOHAN, J

AUGUST 18, 2015
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