

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th February, 2015.

+ **CONT.CAS(C) 117/2015**

NIZAMUDDIN

..... Petitioner

Through: Mr. R.K. Sharma and Ms. Dezy Gaur,
Adv.

Versus

RAMZANI

..... Respondent/Alleged contemnor

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.2982/2015 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CONT.CAS(C) No.117/2015 & CM No.2981/2015 (for stay)

3. The respondent, in this petition under Sections 10 and 12 of the Contempt of Courts Act, 1971, is averred to be in civil contempt (within the meaning of Section 2(b) of the said Act) for the reason of, inspite of having arrived at a settlement with the petitioner that both will withdraw cases filed against each other and in terms of which settlement the petitioner withdrew complaints (pending in the Court of Metropolitan Magistrate (MM)-11, Central Delhi, Additional Chief Metropolitan Magistrate (ACMM)-01,

Central Delhi, MM-06, Central Delhi and MM-08, Central Delhi) having not withdrawn the cases filed by the respondent against the petitioner.

4. At the time of withdrawal of the complaints filed by the petitioner in each of the cases, the statement of the petitioner was recorded *inter alia* to the effect that he had entered into a settlement with the respondent and whereunder both had agreed to withdraw all the cases pending against each other and praying to the Court to dispose of the complaint as withdrawn or seeking liberty to withdraw the complaints.

5. In some of the aforesaid cases, the statement of the respondent was also recorded to the effect that he had entered into settlement with the petitioner, whereunder both had agreed to withdraw all cases pending against each other and either also praying to the Court to dispose of the subject complaint as withdrawn or giving no objection to the complaint filed by the petitioner being dismissed as withdrawn. In other cases, though the statement of the respondent was not recorded but the respondent was present, when the statement of the petitioner was recorded.

6. The said complaints (filed by the petitioner) were dismissed as withdrawn or disposed of as settled.

7. Section 2(b) supra defines civil contempt as meaning wilful

disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

8. Not finding any judgment, decree, order or direction of any Court directing the respondent to withdraw the complaints / cases filed by him and also not finding the respondent to have given any undertaking to any of the aforesaid Courts from which the petitioner had withdrawn the complaints, to the effect that the respondent shall also withdraw the cases / complaints filed by him, I have at the outset enquired from the counsel for the petitioner, as to how a case for entertaining this contempt case, is made out.

9. The counsel for the petitioner has contended that since the respondent, in each of the Courts from which the petitioner withdrew his complaints, affirmed the settlement on the basis of which the petitioner withdrew his complaints and which thus led the petitioner into withdrawing his complaints, the action of the respondent of not, in accordance with the said settlement, withdrawing the cases / complaints filed by him against the petitioner, is contumacious. A bunch of following judgments has been handed over:

(I) *National Agricultural Co-Operative Marketing Federation of India Vs. Lalit Mohan* 151 (2008) DLT 99;

(II) *Santosh Kapoor Vs. Apex Computers P. Ltd.* 157 (2009) DLT 125;

(III) *D.K. Attery Vs. Kanwal Singh Mehra* 159 (2009) DLT 764;

(IV) *Poonam Khanna Vs. V.P. Sharma* 170 (2010) DLT 680; and,

(V) *R.P. Malik Vs. Anil Sharma* 154 (2008) DLT 647 (DB),

though specific attention invited only to para 3 of *Poonam Khanna*.

10. *Poonam Khanna* was not a contempt case but a petition under Article 227 of the Constitution of India against the order of the Guardianship Judge holding a second petition in respect of guardianship of child to be maintainable because of non-compliance of the settlement arrived at between the parties in an earlier similar petition. A learned Single Judge of this Court, while reversing the order of the Guardianship Judge for the reason that the remedy was to enforce the settlement arrived at in the earlier petition and not a second petition, observed in para 3 of the judgment on which reliance is placed that where a suit / petition is disposed of in terms of compromise arrived at between the parties, the compromise is enforceable like a decree of the Court and has the same force and that merely because one of the parties fails to comply with the terms of the compromise would not give a fresh cause of action to either party to institute another suit on the

same cause of action. It was further observed that “the only course available to the parties is to go for execution or for contempt of the Court”. The counsel for the petitioner contends that thus whenever there is any order, besides seeking execution, contempt jurisdiction can also be invoked.

11. In my opinion, the aforesaid passage cannot be read as a precedent for the proposition that the contempt jurisdiction can also be invoked where the remedy of execution is available. The said question, I reiterate, did not arise for adjudication in the said judgment which was concerned only with maintainability of a second petition on the ground of the other party having not abided by the compromise arrived at in the earlier petition on the same cause of action. What this Court held is that the remedy against such non-compliance is execution of the compromise and not filing of another petition.

12. Moreover, the settled law is that a decree or order which is akin to a decree and is executable, needs to be executed, as per law relating to execution and cannot be enforced under the contempt jurisdiction of the Court. Supreme Court in ***Babu Ram Gupta Vs. Sudhir Bhasin*** (1980) 3 SCC 47 held that if it were to be held that non-compliance of a compromise decree or consent order amounts to contempt of the court, the provisions of

Civil Procedure Code, 1908 (CPC) related to execution of decrees may not be resorted to at all. It was clarified that the reason why breach of clear undertaking given to Court amounts to contempt of court is that the contemnor by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the Court, thereby obstructing the course of justice and bringing into disrepute the judicial institution; the same cannot however be said of a consent order or a compromise decree where the fraud if any is practiced by the person concerned not on the Court but on one of the parties; in such a case since the offence committed is qua the party and not qua the Court, therefore, the very foundation of proceeding for contempt of Court is completely absent. It was further held that unless there is an express undertaking given in writing before the court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. Not finding either a written undertaking filed or such undertaking impliedly or expressly incorporated in the order of the court, it was held that the question of breach thereof did not arise. Subsequently, though the Supreme Court in *Rama Narang Vs. Ramesh Narang* (2006) 11 SCC 114 held that merely because an order or

decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Contempt of Courts Act but on the condition that the violation of the order or the decree should warrant punishment under Section 13 of the Contempt of Courts Act on the ground that the contempt substantially interferes or tends to interfere with the due course of justice. Thereafter, the Supreme Court in *Maruti Udyog Limited Vs. Mahinder C. Mehta* (2007) 13 SCC 220 noticed both the said judgments and did not hold *Babu Ram Gupta* to be no longer good law in view of *Rama Narang* and rather noted that in *Rama Narang* also an undertaking had been recorded. Mention may also be made of *R.N. Dey Vs. Bhagyabati Pramanik* (2000) 4 SCC 400 holding that the weapon of contempt is not to be used in abundance or misused and that normally it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for.

13. The Supreme Court thereafter also in *Food Corporation of India Vs. Sukh Deo Prasad* (2009) 5 SCC 665 has held that a defendant in a suit who is directed to pay any sum of money, if does not pay the amount, the remedy is to levy execution and not an action for contempt or under Order 39 Rule 2A of the CPC. It was further held that the process and concept of

execution is different from the process and concept of action for disobedience / contempt. The same principle was reiterated in ***Kanwar Singh Saini Vs. High Court of Delhi*** (2012) 4 SCC 307 where it was further held that it is not expedient to invoke and exercise contempt jurisdiction merely because other remedies may take time or are more circumlocutory in character.

14. Mention may lastly be also made of the judgment of T.S. Thakur, J. sitting singly in this Court in ***Anshuman Sharma Vs. Manika Jain*** 114 (2004) DLT 47 where a father was alleging contempt by the mother of an order in guardianship proceedings. It was found that the father had made a statement to the effect that since the parties had arrived at an understanding and had undertaken to abide by the same, he did not wish to press the proceedings and the Court in the light of the said submission had dismissed the proceeding as withdrawn leaving the parties to workout their rights and obligations in accordance with understanding arrived at between them. It was held:

- (i) that though the order of dismissal of the proceeding was undoubtedly passed in the light of the understanding between the parties but that is not the same thing as the Court

incorporating the terms of understanding in the order or affixing its imprimatur on the same.

- (ii) The parties having resolved their differences amicably had not considered necessary any order in the proceeding which was dismissed as withdrawn.
- (iii) If the parties intended, they could and ought to have insisted upon disposal of the proceeding in terms of the settlement; this was not done obviously because the father was not keen to have the settlement incorporated in the order of the Court.
- (iv) The proceeding having been dismissed as withdrawn the reference in the order to the settlement / under settlement arrived at could not be termed as incorporation of settlement / understanding in the order of the Court.

15. The aforesaid judgment is found to be applying squarely to the facts of the present case. I have also, in ***Kartikeya Kapur Vs. Kim Sukh Sinha*** MANU/DE/3293/2009 (SLP(C) No.1858/2010 whereagainst was dismissed *in limine* on 25th January, 2010) and ***Vimal Kumar Vs. Ramesh Negi*** MANU/DE/2041/2011 (SLP(C) No.14025/2011 whereagainst was dismissed *in limine* on 4th July, 2011) though without noticing ***Anshuman***

Sharma, taken the same view.

16. As far as the other judgments handed over by the counsel for the petitioner are concerned, having perused the same, I do not find the same also to be supporting the case of the petitioner, in any manner whatsoever. *National Agricultural Co-Operative Marketing Federation of India* supra was a case of the alleged contemnor having not deposited / paid the monies, subject to payment of which he was granted ad-interim order restraining the relator from encashing cheques. It was held that failure to comply with a condition for grant of interim order did not amount to contempt and only resulted in the interim order not coming into force or standing vacated. During the course of holding so, it was held that though from a commercial angle, the action of the alleged contemnor may appear to be demeaning but would fall short of contumacious action as contemplated by law. *Santosh Kapoor* supra was a case of breach of undertaking given to the Court. In the present case, though the respondent in the Courts from which the petitioner withdrew his complaints admitted having reached a settlement with the petitioner and under which settlement, the respondent also was to withdraw the cases / complaints filed by him but neither gave any undertaking to the Court to so withdraw the cases / complaints nor did the Court direct the

respondent to so withdraw the cases / complaints or acted on any such undertaking of the respondent; the said Courts dismissed the complaints filed by the petitioner on the statement of the petitioner withdrawing the same and which the petitioner was entitled in law to do, even without the respondent affirming any statement. I may at this stage record that there is no document of settlement. In fact, the Court did not even put its imprimatur upon any consent / compromise / consensus.

17. ***D.K. Attery*** supra rather than helping the petitioner, is against the petitioner. It, relying on ***Jhareswar Prasad Paul Vs. Tarak Nath Ganguly*** (2002) 5 SCC 352 held that the contempt power must be exercised very sparingly and it is only in cases, where majesty of the law is sought to be lowered on account of the action or inaction of the alleged contemnor that the Court must invoke this power of initiation of contempt proceedings. Similarly, ***R.P. Malik*** supra is a case of criminal contempt (and with which we are not concerned in this petition).

18. Though the counsel for the petitioner has not argued but I have also considered whether any other remedy is available to the petitioner against default, if any, on the part of the respondent in not withdrawing the cases / complaints filed by him against the petitioner and which, according to the

petitioner, the respondent in the settlement arrived at, had agreed to withdraw. The petitioner in para 3 of the petition has pleaded that the respondent has filed one civil suit which is pending in the Court of Additional District Judge and one complaint case which is pending in the Court of the Metropolitan Magistrate. However, from the title of the complaint, the same is found to have been filed by one Mr. Nadeem Ahmed and not by the respondent. The petitioner has not pleaded who is the said Mr. Nadeem Ahmed or as to how the complaint filed by the said Mr. Nadeem Ahmed was also agreed to be withdrawn.

19. In my opinion, the petitioner certainly has remedies against the default, if any of the respondent. The petitioner, in the civil suit, can file an application for recording of the settlement arrived at along with certified copies of the orders of the Courts from which the petitioner, in view of the said settlement, had withdrawn his complaints. In the event of the respondent denying the settlement, the Civil Court under Order XXIII Rule 3 of the CPC is empowered to decide, whether there is any such settlement or not. Though the Court of Metropolitan Magistrate is not so empowered and also does not have any inherent powers but it would always be open to the petitioner to file a petition under Section 482 of the Criminal Procedure

Code, 1973 (CrPC) for quashing of the said complaint, on the basis of the settlement aforesaid and it will be for the Court dealing with the said petition, to determine whether there is any such settlement or not and if such settlement is found, the said complaint case shall be quashed. There is ample authority for such a course of action being available under Section 482 of the CrPC.

20. Supreme Court recently in *Narinder Singh Vs. State of Punjab* (2014) 6 SCC 466 laying down the principles to guide the High Courts, in giving adequate treatment to settlement between the parties and the exercise of powers under Section 482 of the CrPC *inter alia* held that where the parties have reached the settlement and on that basis petition for quashing criminal proceedings is filed, if the Court forms an opinion that ends of justice would be served or abuse of the process of the Court will be prevented, the power will be exercised where the offence is not heinous and where the criminal cases have overwhelmingly civil character.

21. It is thus not as if, invoking contempt jurisdiction is essential for the reason of the petitioner having no other alternative remedy.

22. Before parting with the case, I must record that it is not as if, this Court is not conscious of the predicament in which the petitioner finds

himself. However, the predicament is of the own making of the petitioner. The petitioner, before withdrawing the complaints filed by him, ought to have ensured, either that the application for withdrawal is filed also in the complaint filed by Mr. Nadeem Ahmed against the petitioner or got the settlement recorded in the civil suit filed by the respondent with the undertaking of both the parties to withdraw the respective cases or to have got such an undertaking of the respondent recorded, while having the statement of the respondent recorded in the Court from which the petitioner has withdrawn his complaints. The petitioner did not take this care and has to now suffer for not taking recourse to the remedies, as mentioned hereinabove.

23. I therefore do not find any ground for entertaining this contempt case, which is dismissed. However, the said dismissal will not come in the way of the petitioner taking appropriate remedy.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 20, 2015

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