IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.19 OF 2016
IN
CONTEMPT PETITION NO.200 OF 2015

Mr.Akhilesh Ramkumar Daga ...Applicant
V/s.
M/s.Mansukhlal Hiralal & Co. & Ors. ...Respondents

Mrs.Vaidya A. Mangavade for the Applicant in CAN No.19/16.

Mr.Akash Jain i/by R.V.J. Associates for the Applicant in CAN No.20 of 2016.

Mr.Arun Panicker for the Petitioner in CP No.200 of 2015.

Mr.Akash Jain i/by R.V.J. Associates for Respondent Nos.1 to 4 in CAN No.19 of 2016.

Mr.Kunal Dwarkadas i/by Mr.Dastur Kalambi & Associates for Respondent Nos.9 and 10.

Mr.Rahul J. Gada for Respondent Nos.11 and 12.

Ms.Zahra Padamsee i/by Bharucha & Partners for Respondent Nos. 14 to 16.

CORAM : K.K. TATED, J.

DATE : 21st OCTOBER, 2016.

P.C.

1. Heard the learned counsel for the parties.

2. This application is preferred by Respondent No.5 Shivlal Daga for direction against Respondent Nos.1 to 4 to pay the Income Tax liability for the assessment Year 2014-2015 and 2015-2016 on the escrow amount and income generated by way of interest on that amount.

3. As per earlier order passed by this Court Respondent No.5 filed additional affidavit dated 17th October 2016 placing on record the Income Tax Return acknowledgement for the year 2014-2015 and 2015-2016.

4. The learned counsel for the applicant submits that they have received letters and e-mails for payment of the Income Tax on an amount generated from Escrow account which is with Respondent No.1. She submits that if the Income Tax liability is not paid within stipulated time they have to pay interest at the rate of 24% per month. She further submits that provisions for prosecution also provided, for non-payment of Income Tax.

5. The learned counsel Mr.Akash Jain appearing on behalf of Respondent Nos.1 to 4 with whom the escrow amount is lying has no objection to allow Civil Application.

6. The learned counsel Mr.Kunal Dwarkadas appearing on behalf of Respondent Nos.9 and 10 and the learned counsel Mr.Rahul J. Gada appearing on behalf of Respondent Nos.11 and 12 also makes a statement that they have no objection if the present Civil Application is allowed.

7. On the other hand learned counsel Mr.Arun Panicker appearing on behalf of petitioner as well as Ms.Zahra Padamsee learned counsel for Respondent Nos.14,15 and 16 vehemently opposed the present Civil Application.

8. The learned counsel for the petitioner submits that Respondent No.5 has failed to provide them the Statement of Accounts and other details on what basis they calculated Income Tax liabilities. Hence, it is not possible for the petitioner to allow the Respondent Nos.1 to 4 to pay the Income Tax liability as claimed by Respondent No.5. He further submits that in a Contempt proceedings Respondent No.5 cannot ask the relief which they have claimed in the present Civil Application. He submits that the petitioner filed Contempt Petition for violating the order dated 08th August 2013 passed by the Bombay City Civil Court, Mumbai in

Short Cause Suit No.692 of 2011. He submits that Bombay City Civil Court passed decree in terms of prayer clause (a) as the defendant no.10 i.e. Mansukhlal Hiralal and Company submitted to the decree to the Court. Prayer clause No.(a) of the Short Causes Suit No.692 of 2011 in which term the decree passed reads thus:-

> *"(a) This Hon'ble Court be pleased to pass a permanent Order and injunction restraining Defendant No.10, its' partners, agents, servants or anyone claiming through and/or under them (directly and / or indirectly) from in any manner dealing with the Sale Proceeds /Escrow Amount (including interest thereon) keeping in terms with the Escrow agreement until such time as the written consent of all 4 Groups of the HUF is given to Defendant No.10."*

9. The learned counsel for the Petitioner submits that the Bombay City Civil Court passed order of injunction restraining the Respondent No.1 in the present Civil Application from dealing with the escrow amount which is lying with them. He submits that by the present Civil Application the respondent Nos.1 to 5 are trying to misuse the amount which is lying in escrow account and same is not permitted in Contempt Petition. In support of these contentions the learned counsel for the petitioner relies on the judgment of the Apex

Court in the matter of ***Prithawi Nath Ram V/s. State of Jharkhand and Others reported in (2004) 7 SCC 261***. He relies on paragraph 8 of the said judgment which read thus :-

> *"8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper*

> *perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings."*

10. On the basis of these submissions counsel for the petitioner as well as Respondent Nos.14,15 and 16 submits that there is no substance in the Civil Application and the same is required to be dismissed with cost.

11. I have heard both parties. It is to be noted in Civil Application Respondent No.5 made a statement in paragraph 2 that they have to pay Income Tax liability on the escrow amount and interest accrued thereon. Paragraph 2 of the Civil Application reads thus :-

> *"2. The Respondent No.5 is in receipt of letter/ email dated 09th November 2015 for payment of Tax on the escrow amounts and interest accrued thereon, laying /deposited in HDFC Bank, Fort Branch, Mumbai. Respondent No.1 to 4 for Ass. F.Y.2014-15 and 2015-16 along with interest. As per the said email Respondent No.5 is required to reply on or before 15/12/15 to Income Tax Department. Hereto annexed and marked as Exhibit "A" is copy of the email dated 09/11/15."*

12. Bare reading of the order dated 08th August 2013 passed by the Bombay City Civil Court in Short Cause Suit No.692 of 2011 shows that, Court has not restrained parties for payment of statutory liability like Income Tax as in the present case. Whether the respondent committed a Contempt of Court or not will be decided after hearing both the sides. In the present Civil Application the Respondent No.5 prayed that Income Tax Liability is arised out of the income generated on the escrow account to be cleared. The authorities cited by the petitioner in the matter of *Prithawi Nath Ram* (Supra) is not applicable in the facts of the present case. In matter in hand case is made out by the Respondent No.5 for payment of Income Tax liability. He is not seeking any alteration and/or the review of the order passed by Bombay City Civil Court. He is seeking direction against Respondent Nos.1 to 4 to clear their Income Tax Liability from Escrow amount and interest arising out of that amount. Hence, I am satisfied that the Respondent No.5 made out the case for allowing this Civil Application.

ORDER

(a) Application is allowed in terms of prayer clause (a) which reads thus :-

> *"(a) This Hon'ble Court be pleased to pass necessary direction for payment of Tax due on the*

escrow amount and interest accrued thereon for Ass.F.Y.2014-2015 and 2015-2016 along with penalty if any, out of the escrow amount + interest received thereon; which is lying with HDFC Bank deposited by the Respondent Nos.1 to 4 on behalf of HUF."

(b) Respondent Nos.1 to 4 directed to provide photo copy of the challan to the petitioner as well as other respondents after payment of Income Tax Liabilities as prayer clause (a) of the Civil Application.

(c) Civil Application stands disposed of accordingly.

(K.K. TATED, J.)