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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L.) NO.27 OF 2015
IN
APPEAL NO.191 OF 2014
IN
COMPANY PETITION NO.21 OF 2012**

M/s. K.A. Malle Pharmaceuticals Limited	... Petitioners
Versus	
M/s. Joshi Billion Gems & Jewellery Pvt. Ltd. And Ors.	... Respondents

Mr. A.M. Sethna a/w Ms. Raju Thakkar i/by D.P. Singh for the Petitioners.

Mr. Manish Bohra a/w Mr. Tushar Dahibawkar i/by M/s. Dahibawkar & Co. for the Respondent Nos.1 to 4.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 22nd DECEMBER, 2016

PC.

1 Heard the learned counsel appearing for the Petitioners. The breach alleged is of the order dated 7th February, 2014 passed by the learned Single Judge of this Court in a Company Petition. As per the said order, the learned Single Judge directed the Petitioners in the Company Petition namely the first Respondent herein to pay costs quantified at Rs.7 Lakhs which was to be paid on or before 24th

February, 2014. It is pointed out by the learned counsel appearing for the Petitioners in this Contempt Petition alleging breach of the aforesaid direction that the time to deposit costs was extended upto 17th November, 2014. He invited our attention to certificate issued by the Master and Assistant Prothonotary dated 13th January, 2015 which records that the amount was not deposited. He invited our attention to order dated 27th January, 2016 passed by a Division Bench of this Court by which contempt notice was issued. He submitted that thereafter repeated opportunities were granted to purge the contempt to the contemnors as the Contempt Petition was adjourned repeatedly. He submitted that as late as on 16th December, 2016 that a cheque in the sum of Rs.7 Lakhs has been deposited by the contemnors. Inviting our attention to the affidavit in reply, he submitted that the Respondents have shown no remorse and unconditional apology has not been tendered.

2 We have considered the submissions. The Petitioners have invoked jurisdiction of the Court under the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India. The contempt jurisdiction is always discretionary. The role of the Petitioner in such Petition ends by pointing out to the Court the allegations of alleged breach. It is not necessary that in case of every breach or even in case of every willful breach that the Court should take penal action under the

Contempt of Courts Act. It is true that notwithstanding the grant of extension of time by the learned Single Judge, the amount of costs of Rs.7 Lakhs was not deposited by the Respondents. Though contempt notice was issued on 27th January, 2016 only on 13th December, 2016 that the Respondents attempted to deposit the costs in the sum of Rs.7 Lakhs.

3 In the affidavit-in-reply in paragraph 1, the Respondents have come out with a case that the default was due to financial difficulties faced by the first Respondent – Company. In the last paragraph of the affidavit, it is stated by the contemnors that in the event this Court is of the view that they have committed contempt, they tender the unconditional apology.

4 The breach alleged is of the order directing payment of costs. Considering what is stated in the affidavit-in-reply and considering the fact that though belatedly the sum of Rs.7 Lakhs has been deposited in the form of a cheque by the Respondents, this cannot be said to be a case of willful or deliberate breach committed by the Respondents – contemnors. Even assuming that it is a case of willful breach, considering the fact that a cheque has been deposited by the Respondents in the sum of Rs.7 Lakhs with the Registry on 16th December, 2016, this is not a fit case where action should be taken

under the Contempt of Courts Act, 1971 against the Respondents.

5 However, considering the fact that the Petitioners were driven to file a Petition for contempt, we propose to saddle the Respondents with the costs quantified at Rs.15,000/-.

6 Needless to add that if cheque in the sum of Rs.7 Lakhs is dishonoured, the Petitioners will be entitled to apply for revival of this Contempt Petition. Accordingly, we pass the following order :-

ORDER

- (i) Subject to what is observed above, notice of contempt issued on 27th January, 2016 is discharged. The Petition is disposed of;
- (ii) We direct the Respondents to pay costs quantified at Rs.15,000/- to the Petitioners within a period of one month from today;
- (iii) For reporting compliance regarding the cheque in the sum of Rs.7 Lakhs and payment of costs, though the Petition is disposed of, the same shall be listed on 25th January, 2017 under the caption of "Directions".

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)