IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.1330 of 2015 (O&M)
Date of Decision.01.03.2016

Gurcharan Singh Syal and another ....Petitioners

Vs.

Sonica Malhotra and others ....Respondents

Present: Mr. S.S. Narula, Advocate and
Mr. Sarju Puri, Advocate
for the petitioners.

Mr. Gurminder Singh, Senior Advocate with
Mr. Aman Pal, Advocate and
Mr. Rajan Kohli, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The Revision Petition is against the orders of the Additional District Judge, Jalandhar, dated 05.02.2015 whereby on an application under Order XXI Rule 32 CPC, the petitioners have been ordered to be detained in civil imprisonment for three months for having failed to comply with the Order of the Company Law Board, Principal Bench, New Delhi ("CLB") dated 09.12.2013, insofar as complete records of the company Krishna Real Estate Enterprises Pvt. Ltd. have not been supplied by them to the respondents in pursuance of that order. The petitioners shall be interchangeably referred to defendants, Sayals and judgment-debtors. The respondents shall be referred interchangeably as decree holders and Malhotras.

2. The respondents had filed Company Petition No. 48 (N.D.) of 2012 before the CLB against the petitioner defendants complaining oppression and mismanagement of the affairs of Krishna Real Estate Enterprises Pvt. Ltd., under sections 397, 398, 399, 402 and 403 of the Companies Act, 1956. The said petition was allowed by the CLB by an order dated 09.12.2013 directing the defendants, *inter alia*, to hand over the physical possession of the company's assets as well as all kinds of management of the company, which remained with them, to the Malhotras. It was also held that the defendants were answerable to the Board for the accounts they maintained from the date of A.K. Malhotra's death (on 30.12.2009). Consequently, in pursuance of the CLB order, certain documents and records were handed over to the respondents in the presence of the Administrator-cum-Facilitator. However, it was the contention of the decree holders that the entire records of the company, since inception, were not handed over and that the defendants were still in possession of other records crucial to the company's management, which they were willfully and intentionally withholding. The judgment debtors, on the other hand, state that whatever records they had since the inception of the company (in 1997) which were in their possession have been handed over to the respondents, in line with the CLB Order.

3. The court below, acting as Execution Court of the CLB order, detailed the documents which according to him were still being retained by the judgment debtors, and assessed their conduct to be in disobedience of the direction contained in the CLB order to hand over the management and has ordered the judgment debtors to be arrested for a period of three months. In revision, there has been an interim

order of stay and the matter requires consideration of whether there is any serious fallibility about the factual reference of deliberate non-production for interference in civil revision and also examine if it is true, the non-production of records could constitute failure to hand over the management of the affairs of the company. If yes again, whether the punishment accorded commensurate with the misconduct of disobedience of the decree attributed to the petitioners.

4. On 27.01.2006, after considerable arguments of counsel for both sides, I directed the counsel to take fresh instructions to produce the documents found by the Court below to have retained by them. I had kept in mind that the company's business was to establish a hotel and to that end, develop the necessary infrastructure by purchasing property, award contracts for completion of works, make statutory compliances for moneys spent by production of balance sheets, maintaining several registers for proper management of the company etc. Admittedly, it is a closely held company with the Malhotras contributing about ₹7.95 crores, while the Syals had purported to have contributed ₹43.90 lacs, of which ₹25 lacs was being admitted by the Malhotras.

5. It is an admitted fact that the core asset of the company, which is the land and aborted construction of the edifice of hotel have been handed over to the decree holders. In purported compliance of the directions of CLB order some documents have also been handed over. Since the Executing Court has found that several documents have not been handed over, the petitioners have filed a fresh affidavit explaining the present status, as if to disprove the inference made by the Executing

Court. The documents handed over are detailed in index set forth in the affidavit along with C.M. No.3074-CII of 2016. I am not reproducing them but suffice it to note that they consist of seal of the company, ledgers, journals, vouchers for the financial year ending with 31st March 2010, vouchers for April to December 2009, minutes of shareholders meeting etc.

6. I observe glaring omissions of certain records, which although might not be indispensible for future management, are central to the respondents having full control over, and management of the company without prejudice, which ought to have been handed over to them. There is no mention of vouchers of the years preceding 2010, director's reports are only available for the years 2006 to 2009, auditor's reports for the year before 2007 are missing and proceedings books of the Board meetings before 2008 have also not been handed over. The petitioners also deny that the Company's original PAN and TAN numbers were ever in their possession. The contention of the petitioners is that since they assumed management and control of the company only after A.K. Malhotra expired in 2009, records pertaining to the time before that were never in their possession. The contention cannot be true for the following reasons.

7. In response to a complaint given against Gurcharan Sayal to the Disciplinary Directorate of India, he states making reference to his father Prem Singh Sayal: "It was Sardar Prem Singh Advocate who was at the helm of affairs of the company." This was by way of explanation by the son that he did nothing unethical to flout the disciplinary norms and regulations of the Chartered Accountants Institute and that it was only

his father who was involved.

Elsewhere, he states "Bank operations used to be done by Director Prem Singh. The architects, contractors, consultants and suppliers dealt exclusively with Gunjeet Singh Sayal. Correspondence with various parties associated with construction carried out by Gunjeet Singh Sayal are available on companies record."......Speaking about his own non-involvement, he would state, "Even in the documents related to statutory compliances other directors were involved predominantly. He has also stated: "all the statutory compliances were looked after by Sayal family, mostly under the signature of Prem Singh advocate and A.K. Malhotra. Documents related to all the annual general meetings upto September 2009 evidence these facts." In the same reply, a significant assertion is "The Sayal family was in the custody of most of the records of the company"....."Conspirators (allusion to Malhotras) want to have custody of the statutory records of the company too." Gurcharan Singh Sayal is a Chartered Accountant and he knew what he was stating. He held no interest against the other members of the family and his statement must constitute as admission not only of himself but of the Sayal family connected with the company. In a still later communication to the ICAI, Gurcharan Singh Sayal would state, "The primary responsibility of looking after the construction was with Sayal family"..... All the activities related to the construction were undertaken by Gunjeet Singh Sayal (son) and documentary evidences related to construction prove these facts.

8. As against these admissions, the *volte face* in the reply before the Court below under the following paras are glaring tissues of

lies. To extract the brazen untruths, a few examples would suffice:

> "(iv) The Bank account statements including Bank Books have already been handed over to Dhs. The JDs do not have left over cheque leaves, counterfoils of cheque books, deposit slips, bank reconciliation statements for the period starting from the date of death of Mr. Ashok Kumar Malhotra till 30.09.2011.
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> (v) All documents mentioned under this paragraph which were available or came to the possession of the JDs already stands handed over.
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> (vi) All documents mentioned under this paragraph which were available or came to the possession of the JDs already stands handed over.
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> (vii) The JDs are not in possession of PAN and TAN cards in original.
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> (viii) The JDs have handed over Cash Books. The JDs did not execute any FDRs in the name of the company during the period starting from the date of death of Mr. Ashok Kumar Malhotra till 30.09.2011. As regards physical cash, it is stated that the JDs have submitted 'Detail of expenses from 01.04.2011" at serial No.6 of the Index of documents handed over. The JDs used their own resources for meeting petty expenses which amounted to Rs.66,000/- till 07th October, 2011. There was no cash in hand of the company available with the JDs on that date.
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> (ix) The JDs handed over all the documents and records

which came to their possession after the death of Mr. Ashok Kumar Malhotra till 30th September, 2011. The documents which were filed till 30th September, 2011 by the company are available with the office of Registrar of Companies. In fact, the JDs are not aware about the documents filed by DHs since 1st September, 2011 till date, therefore DHs be called upon to hand over the copy of all the documents as mentioned in this paragraph to the JDs.

9. Furthermore, the petitioner Prem Singh Syal has stated in his affidavit that no written agreements or contracts for expenditure incurred with respect to the construction, maintenance or safeguarding of any property were entered into with anyone. This only seems to be a ploy to not let the respondents get their hands on such contracts, since in the FIR filed by the first petitioner on 04.11.2011 he has categorically stated that he and his father Prem Singh Syal, on behalf of the company, entered into several contracts and agreements in routine, and placed orders for the supply of valuable material for the hotel project. Additionally, it has also been stated in the affidavit that there was no Fixed Assets Register prepared since the inception of the company. It seems absurd that no such register existed in a company which owns fixed assets amounting to ₹7 crores. Six of the seventeen sale deeds pertaining to the Company's land have also not been handed over to the respondents. The petitioners state that the originals have been filed in a civil case. The respondents deny this assertion and state that only photocopies have been filed. I am not prepared to make an observation one way or other but permit the respondents to move the Court where

the documents are said to have been supplied to apply for their return on production of this order copy after substituting them with certified copies.

10. In the face of such inconsistencies, it will not be prudent to accept that such vital records and documents, most of which are also statutorily required to be maintained, never existed or never came into the hands of the petitioners, who have been effectively managing and controlling the company since the demise of A.K. Malhotra in 2009. It is clear from a perusal of relevant documents and statements that in defiance of the CLB order, the petitioners have willfully and intentionally kept such records and documents from the respondents. They have not come out with these even after ample time was afforded to them by this Court.

11. The statutory registers are quite a handful and there are no references to the following documents in the affidavit. The following Sections of the Companies Act enjoin the maintenance of register:-

Section	Registers/Book/Returns
49(7)	Register of Investment in shares or securities made by a company that are not held in its own name
58A	Register of Deposits
77A	Register of Securities bought back
84	Register of Renewed and Duplicate Certificates
86	Register of shareholders with differential voting rights
136	Copy of every instrument creating any charge requiring registration under Part V.
143	Register of charges (to be kept at registered office of company)
150	Register of members
152(1)	Register of debentures holders
152(2)	Index of debenture holders
157	Foreign register of members and debenture holders under Section 157
158	Duplicate of every foreign register of members and debenture holders
159/160 and 162 and 163	Annual returns
193/196	Minutes books of (a) general meetings; (b) meetings of Board of Directors and (c) Committees of the Board
209	Books of account

Section	Registers/Book/Returns
301	Register of contracts, companies and firms in which the directors of the company are interested.
302(6)	Copies of all contracts related to appointment of manager and managing director
303(1)	Register of Directors, Managing Director, manager and secretary
307	Register of Directors, shareholdings etc.
372A	Register of all investments or loans made, guarantee or security provided

Cleverly, the petitioners now state that all these registers are not with them.

12. Regarding the question of imprisonment, while it is true that arrest and detention in civil matters is extreme, it is an extraordinary remedy provided for by the statute itself. It has been stated by Krishna Iyer J. in *Jolly George Varghese v. The Bank of Cochin, AIR 1980 SC 470* that where there is established an element of bad faith, some deliberate or recusant disposition in the past, or current means to pay the decree (or a substantial part of it), imprisonment as a civil remedy will not be hit by Article 21. The wording of Order XXI Rule 32 of the CPC is clear in providing for enforcement of a decree of specific performance by detention in civil prison, or attachment of property of the person against whom such decree is passed, if such person, having had an opportunity to obey it, willfully fails to do so. What is willful failure or disobedience is a question of fact, to be decided on the merits of each case. In the present fact situation, it is clear that the petitioners were given ample opportunity by this Court to obey the decree, and yet they have still consciously failed to act on it. In such circumstances, according to the language employed by the provision and upheld by Courts on various occasions, it seems just and in accordance with law that the defaulters are ordered to be detained in prison.

13. The Executing Court has ordered the detention in civil prison

for three months. The disobedience proved is the failure to hand over some important documents relating to the company that shall surely hamper the due management of the company. For instance, the failure to hand over document relating to contracts with third parties will require fresh engagements, expose the persons in management for duplication of claims. The management in the present situation is more tenuous and expensive but not impossible. After all, the possession of the property has been handed over to the respondents. Hence, I limit the period of imprisonment ordered by the Executing Court from three months to one month and order along side attachment of properties of the petitioners of value upto ₹5 crores. The respondents may supply the details of properties of the petitioners to secure enforcement of the direction.

14. The impugned order of the Executing Court is modified and the civil revision petition is substantially dismissed with costs assessed at ₹25,000/- in favour of the respondents.

(K. KANNAN)
JUDGE

March 01, 2016
Pankaj*