

\$~

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

+ **CONT.CAS(C) 1095/2016 & C.M.Nos.36354-36355/2016**

M/S. ZILLION INFRAPROJECTS PVT. LTD. Petitioner
Through **Mr. Rakesh Tiku, Sr. Advocate with**
Mr. Naveen N.Sharma, Advocate.

versus

GESSAT PASCAL & ORS. Respondents
Through **Mr. Amit Chadha, Sr. Advocate with**
Mr. Akhil Anand and Ms. Avlokita
Rajvi, Advocates.

%
Reserved on : 07th October, 2016
Date of Decision : 04th November, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 23rd September, 2015 passed in FAO(OS)(Comm.) No.83/2016 whereby respondents were restrained from invoking any of the seven bank guarantees.
2. Subsequently, vide order dated 27th September, 2016 the aforesaid FAO(OS)(Comm.) No.83/2016 was disposed of by the Division Bench holding that since two of the seven bank guarantees were conditional, it would be open for the Court to decide whether the said two bank guarantees

should be encashed.

3. Mr. Rakesh Tiku, learned senior counsel for petitioner stated that the dasti notice in FAO(OS)(Comm.) No.83/2016 was received by the petitioner's counsel from the Registry on the afternoon of 24th September, 2016 which was a Saturday and therefore, petitioner's General Manager (Legal and Administration) Mr. Ajit Kumar Srivastav took the early morning flight to Bangalore on Monday and served dasti notice along with photocopy of the order dated 23rd September, 2016 at 10:45 a.m. on 26th September, 2016. He further stated that on 27th September, 2016, the respondents despite having been served with the notice, deliberately did not appear before the Division Bench and the said fact stood recorded in the judgment and order dated 27th September, 2016. He also alleged that during the hearing on 27th September, 2016, the matter was duly watched by the present counsel for the respondents.

4. Mr. Tiku contended that the respondents in wilful and deliberate violation of the orders of the Division Bench dated 23rd September, 2016, as the order dated 27th September, 2016, was still to be passed, furnished letters of invocations dated 27th September, 2016 with the ICICI Bank as well as the Punjab National Bank seeking immediate transfer of payment by RTGS mode.

5. Learned senior counsel for the petitioner further stated that on 28th September, 2016 after having received advance notice of the present contempt petition, respondents wrote to ICICI Bank stating that as the matter was sub judice before the High Court, no further action should be taken by the ICICI Bank. He pointed out that no formal request or letter of withdrawal had been filed or registered till date by the respondents with the Punjab

National Bank. He prayed that the respondents be held guilty of contempt as they had refused to tender an unconditional apology even in their reply affidavit.

6. Per contra, Mr. Amit Singh Chadha, learned senior counsel for respondents stated that on 26th September, 2016 at 10:45 a.m., petitioner had been served only a copy of the appeal totalling 382 pages with three pages of Index along with dasti notice on respondents at its registered office at Bangalore.

7. Mr. Chadha emphasised that no copy of stay order dated 23rd September, 2016 had been served on the respondents. In support of his contention, he relied upon respondents' endorsement at page 19 of the present petition. He stated that the Delhi office of the respondents was informed about the said service only on 27th September, 2016. He contended that it was strange that the respondents had been served in Bangalore even though all dealings between the parties had been done in Delhi and the address of correspondence in the notice for mediation was the Delhi office of respondents.

8. Mr. Chadha stated that on 27th September, 2016, being unaware of the interim order dated 23rd September, 2016, respondents had invoked advance bank guarantee bearing No.0007BGR0083516 issued by ICICI Bank on behalf of the petitioner. He stated that since on 28th September, 2016, the petitioner served respondents at its Delhi office an incomplete copy of the present contempt petition which contained a copy of the interim order dated 23rd September, 2016, respondents immediately informed ICICI Bank on 28th September, 2016 at 11:49 a.m. that, *"no further action shall be taken by you until we give you further instruction"*.

9. Mr. Chadha admitted that on 27th September, 2016, respondents had also sent a letter to Punjab National Bank for invocation of advance Bank Guarantee bearing No.048306BG0000124. He, however, stated that the said invocation letter was not accepted by Punjab National Bank as it had been furnished after banking hours on 27th September, 2016 and therefore, the said invocation letter was not acted upon. He contended that respondents subsequently did not re-submit the invocation letter to Punjab National Bank. He emphasised that at present the original Advance Bank Guarantee as well as the letter of invocation is in possession of the respondents.

10. Having heard learned senior counsel for parties, this Court is of the opinion that contempt proceedings are quasi criminal in nature and the standard of proof required is that of a criminal proceeding. [See: *All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi & Ors., (2009) 5 SCC 417*].

11. In the present case, after seeing the receipt executed by the respondents at page 19 of the paper book, this Court cannot conclude beyond doubt that the petitioner had served a copy of the interim stay order dated 23rd September, 2016 upon the respondents on 26th September, 2016.

12. The respondents subsequent conduct of keeping its own invocation letter addressed to ICICI Bank in abeyance and of not re-presenting the invocation letter to Punjab National Bank, lends credence to the respondents' contention that they were not aware of the interim order dated 23rd September, 2016 when they had invoked the bank guarantees.

13. Consequently, this Court, in the present case, is not convinced that respondents have acted in wilful disobedience of the interim order dated 23rd September, 2016 passed by this Court.

14. It is pertinent to mention that on 27th September, 2016, the interim stay order dated 23rd September, 2016 stood vacated and the respondents were free to invoke all the seven bank guarantees subject to the declaration that two of the seven bank guarantees were conditional in nature. The effect of the conditional bank guarantees would have to be examined in subsequent proceedings to be filed by the petitioner in the event the respondents invoked and/or pressed for encashment of the said two bank guarantees.

15. Accordingly, present contempt petition and applications are dismissed, but with no order as to costs.

MANMOHAN, J

NOVEMBER 04, 2016

js