

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (ST) NO. 14382 OF 2017

Rev Dr PB Amolik s/o Balwant Amolik & Anr ...Petitioners
Versus
Shamrao Vithal Co-op Bank Ltd & Ors ...Respondents

Mrs VV Thorat, *with Mr VP Varma, i/b MSB Legal, for the*
Petitioners.
Dr B Saraf, *with Mr Nikhil Rajani, i/b V Deshpande & Co, for*
Respondents Nos.1 and 2.
Mr YY Dabke, *AGP for Respondent No.3/State.*
Mr Mehul Shah, *for Respondent No.4.*

CORAM: G.S. PATEL, J
DATED: 28th July 2017

PC:-

1. Heard Mrs Thorat for the contempt Petitioners, Mr Shah for Respondent No.4, Dr Saraf for Respondents Nos.1 and 2 and Mr Dabke for Respondent No.3, the Assistant Charity Commissioner.
2. The Petitioner alleges contempt of an order of 7th June 2016. This is at Exhibit 'A' to the Petition (RM Savant J). The dispute is a struggle for control of the Bombay Diocesan Trust Association Private Limited ("**BDTA**"), with the Petitioner claiming that Respondent No.4, who is alleged to be a real estate agent associated

with a builder, is attempting to usurp the affairs of the BDTA in order to gain control over its substantial immovable properties. After noting the rival arguments, on 7th June 2016 RM Savant J directed:

"It is clarified that no withdrawal would be made from the accounts of the trust in question except for day to day expenses, any substantial withdrawal until 23-6-2016 would not be made without permission of this Court."

3. The allegation in the Contempt Petition is that in breach of this order of 7th June 2016, the 1st and 2nd Respondents, i.e., the Shamrao Vithal Co-operative Bank and its branch manager acted on a letter from the Assistant Charity Commissioner directing the Bank not to permit even these day to day expenses.

4. This is where we enter a most unpleasant controversy. Exhibit 'C' at page 25 is a photocopy. This is supposed to be the letter from the 3rd Respondent, the Assistant Charity Commissioner, Mr AR Mohane, to Respondents Nos.1 and 2, the Shamrao Vithal Cooperative Bank and its branch manager. Exhibit "C" shows a notarial stamp on it. It shows the signature of Mr AR Mohane, the Administrator and the Assistant Charity Commissioner-7, Mumbai. What it does not show is a date or outward number. There is a diagonal line across the top of the paper, as if it has been folded. There is nothing else.

5. The averment in paragraph 'h' at pages 8 and 9 is this:

"h. Furthermore, in the said "Status Quo" order passed by this Hon'ble Court it was duly clarified that all the day to day expenses of the trust would be allowed and only substantial withdrawals would require the permission of this Hon'ble Court. The Contemnor no.3 has committed contempt by writing a blanket letter to the 1st and 2nd Contemnor not to even allow day to day expenses or for that matter any disbursement without his permission. The act of writing such a letter debarring the Petitioners from day to day expenses which has been categorically allowed by this Hon'ble Court shows the high handedness and utter disregard for this Hon'ble Court orders by the 3rd Contemnor. Hereto annexed and marked as Exhibit C is the copy of the letter by the 3rd Contemnor to the 1st Contemnor."

6. The suggestion therefore is that Exhibit 'C' was written by the 3rd Respondent *after* the order dated 7th June 2016 by Mr Justice RM Savant, a copy of which is at Exhibit 'A'.

7. This turns out to be wholly untrue. Mr Dabke has tendered an Affidavit in Reply of Mr Mohane. It is affirmed on 26th July 2017. To this is annexed a photocopy of the 6th May 2016 letter. It is materially different from Exhibit 'C'. First, it has a typed date in the top right hand corner "**06.05.2016**". It has an outward number: "**3679 of 2016**". It has the rubber stamp in Devnagri below which is again the date of 6th May 2016, but rubber-stamped as would be done with a common office stamping instrument. All this is entirely missing in the photocopy at Exhibit 'C' to the petition. Even more

peculiarly, the receipt endorsement of 7th May 2016 at 10.47 am is not visible.

8. It appears *prima facie* that Exhibit 'C' to the Petition is a partial copy of the original.

9. Now Mr Shah for Respondent No.4 alleges that the Petitioner deliberately masked out the date of the letter and the receipt number because these would show that the letter was sent and delivered one month before Savant J's order of 7th June 2016 and therefore could never constitute an act of contempt. There could never have been any such contempt as alleged by Respondent No.3, the Assistant Charity Commissioner. To this, there is simply no answer except to say that this being a document between Respondent No.3 and Respondent No.1, the contempt Petitioners had no knowledge of it and Exhibit 'C' was a copy that the Petitioner obtained from Respondents Nos.1 and 2. Even if I assume this to be true, this still means that there is no contempt of the order of 7th June 2016.

10. The allegation against the Bank is that they did not permit the fullness of the withdrawal sought by the contempt Petitioners but only permitted a withdrawal of Rs.24,000/- per day. Leaving everything else aside, even that would not constitute an act of contempt.

11. What is more disturbing is this. On 8th June 2017, i.e. before I was shown a complete copy of the original of Exhibit 'C', i.e. the document with its date and outward number, I given to believe that

Exhibit 'C' was in fact written after Savant J's order of 7th June 2016. I passed the following order;

- "1. Issue notice returnable on 5th July 2017.
2. There will be an ad-interim order in terms of prayer clauses (a) and (b), which read as follows:

"(a) The order of this Hon'ble Court dated 7 June 2016 calling for a status quo and allowing day to day expenses be enforced and acted upon forthwith.

(b) The Court be pleased to direct the Contemnor nos. 1 and 2 to disburse Rs.50,000/- a week to the Petitioners to maintain the day to day expenses of the trusts right from December 2006 till the final judgment and disposal of the present Appeal."

3. In addition, Respondents Nos. 1 and 2 will by the next date file a comprehensive Affidavit setting out all withdrawals that have been permitted to be made since 30th October 2015 till date and in particular setting out what withdrawals have been permitted at the instance of the 4th Respondent and to whom these disbursements have been made.
4. For his part the 3rd Respondent will file an Affidavit explaining whether he has given instructions to the 1st and 2nd Respondent to make any disbursement to the 4th Respondent and attaching authenticated copies of his orders, if any.
5. The Contempt Petition is kept pending. It is pointed out that the trustees of the Petitioners have in the

meantime, been required to make periodic disbursements out of their own personal funds or sources. The Petitioners will prepare a detailed statement and file this Affidavit by the next date.

6. List the Contempt Petition on 5th July 2017."

12. There is an obvious typographical error in paragraph 2(b); the date should read "December 2016". But it is clear from almost every line of this order that it was an ad-interim order pending the final disposal of the Petitioner's substantive First Appeal. This is *inter alia* evident from paragraph 2(b) itself, apart from the use of the word ad-interim and so on.

13. I am told that the Appeal itself has been disposed of by an order of Mr Justice Sonak passed on 14th June 2017. My order of 8th June 2017 could not and did not survive the final disposal of the Appeal. So that there is no misunderstanding it is clarified that 8th June 2017 order that I passed in the contempt petition came to an end on that date.

14. I am especially disturbed to find that the Petitioner has for reasons that are entirely unclear to me, gone on record *inter alia* by his letter of 7th July 2017 to the Charity Commissioner saying that by my order dated of 8th July 2017 I "accepted" him and his group as authenticated Directors / Trustees of the BDTA, and that I allowed them to operate the bank accounts of Respondent No.1 Bank. I did no such thing. I did not accept the Petitioner or his group in any capacity, shape, fashion or form. I did not permit them in the manner suggested to operate the accounts, i.e. on an

acceptance of their position. I passed an ad-interim order and I did so before it was disclosed that Exhibit 'C' actually pre-dated the order of which contempt is alleged, something that has come to light just now. Had the Petitioner, Dr Amolik, cared to disclose that date, there is every likelihood that I would not have passed that such an order at all and in all likelihood would have dismissed the Petition on that very date. It surprises me very greatly that the Petitioner did not think twice to enquire about the date of Exhibit 'C'. That is supposed to be a communication from a government office, namely the Charity Commissioner's office. No communication leaves an office of that kind without a date and an outward number. It cannot. Those protocols are rigid and inflexible — which is as they should be. No Charity Commissioner is in the habit of issuing official communications without indication of his office, date and outward number. It is therefore clear that there is no question of my having "accepted" Dr Amolik as an authenticated Director or Trustee of the BDTA.

15. I should have expected Dr Amolik him to know better. Not only should he ought to have known that a Charity Commissioner's letter always has a date and an outward number, but he could not, being himself sufficiently learned and a man of the cloth, at that have been under any sort of misapprehension or misunderstanding about what my own order of 8th June 2017 said or did not say. He had no business writing to the Charity Commissioner as he did on 7th July 2017 saying that I had approved him as an authenticated Director. He knew that I had no occasion to do so since I did not have the Appeal before me. I had only a Contempt Petition, his own, in which this question could not and did not arise.

16. The Charity Commissioner's office will ignore all communications making such assertions from Dr Amolik or the contempt Petitioners.

17. Dr Saraf is correct that the amount withdrawn by Dr Amolik should be brought back. This is a total of Rs.11,76,000/-. Mrs Thorat says Rev. Dr Amolik has spent all of it and disbursed it to his employees. This is hugely disappointing. In order to balance this, while dismissing the Petition, Dr Amolik is directed to bring back into Court the amount withdrawn of Rs.11,76,000/-. Once he has submitted the necessary documents showing disbursements, he may then apply to Court either in this contempt Petition though it is today disposed of, because I am granting separate leave, or in any other proceedings as may be appropriate, for withdrawal of the amounts actually disbursed.

18. I am making it clear however that while seeking a withdrawal a second time, the Court will expect to see a complete set of records including bills, invoices, wage bills, receipts and so on, so that there is not the slightest element of doubt about how these amounts withdrawn have been spent.

19. The amount of Rs.11,76,000/- has to be brought back to this Court by 29th September 2017. If no application for withdrawal is made by 10th November 2017, the entire amount deposited will be returned to the Shamrao Vithal Co-operative Bank.

20. Respondent No.3 is not permit the Petitioner to contest the elections that are ordered in respect of the Trust and Respondent No.3 and may independently initiate action for recovery of the amounts due to the Trust and reimbursable to the Trust funds.

21. Mrs Thorat expresses the apprehension that this order may conflict with Sonak J's order regarding the elections to be held. It does not. Sonak J's order about the elections was passed without it being pointed out to him that there was an incorrect document annexed to a Contempt Petition and that my order of 8th June 2017 had been incorrectly reported or interpreted by the contempt Petitioners. I have every confidence that had Mr Justice Sonak been told of this he might have had a very different view about letting Dr Amolik contest the election without conditions. In any case, if a person has withdrawn amounts from a registered Trust's funds without having the authority or the backing of a Court to do so, I do not see how he can be allowed to contest elections to that very Trust. The question about responsibility for bringing back the funds and contesting election is restricted to Dr Amolik since it is he who wrote on 7th July 2017 to the Charity Commissioner. This is also not a permanent disbarment from contesting the elections, but only until such time as Dr Amolik effects restitution and a restoration of the *status quo ante*, his having obtained an order of a court on a document now shown to be demonstrably incorrect; on allegations that do not withstand the slightest scrutiny and are *ex facie* incorrect; and for then using the ad-interim order of 8th June 2017 in a thoroughly improper and inappropriate manner, attributing to it a finding it did not contain. Dr Amolik cannot be allowed to have the withdrawals and yet contest the elections, while, at the same time,

escaping the consequences of his actions noted above. That would be a travesty of justice.

22. So far as Respondents Nos.1 and 2 are concerned, it is sufficient to note that the withdrawals that they permitted were not on their own but were under orders of the Court including the order of 8th June 2017. They are therefore not liable to account for any alleged loss caused by these withdrawals after 8th June 2017.

23. The Contempt Petition is dismissed. It is without costs — this time.

(G. S. PATEL, J.)