

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO. 3 OF 2013
IN
COMPANY APPEAL NO. 27 OF 2012**

Neelam Deepak Divekar

.. Petitioner

Vs.

Aseem Rajan Wagle & Ors.

.. Respondents

Mr.Kunal S. Vaishnav a/w. Ms. Kirtika S. Kothari i/b M/s. N.N. Vaishnava and Co. for petitioner.

Mr. R.M. Haridas i/b Pratik B. Rahade for respondents.

Mr. Aseem Rajan Wagle-respondent no.1, Ms. Medha Rajan Wagle-respondent no.3 and Mr. Gautam Dhume-respondnet no.4 present.

**CORAM : K.R.SHRIRAM, J.
DATE : 22ND DECEMBER 2017**

P.C.

1 This petition is alleging contempt against respondents. Petitioner was one of the shareholder of a company by the name Metallurgical Laboratories Private Limited. Respondent no.1 and respondent no.2 are the Directors and shareholders of the company. Respondent no.3 and respondent no.4 are also shareholders of the company.

2 In 2011, petitioner had filed a petition under Section 397 and Section 398 of the Companies Act, 1956 before the Company Law Board at Bombay (CLB) being Company Petition No. 54 of 2011. Against an order, at the

interim stage, petitioner had preferred an Appeal in this Court being Appeal (Lodg.) No. 23 of 2012 and also had taken out a Company Application No. 29 of 2012. When the application was taken up for hearing, this Court was pleased to pass on 7th May 2012, the following order :

“1 Heard the Learned Advocate appearing for the parties. The Learned Advocate for the Respondent states on instructions that the Company is functioning and shall maintain status-quo as of today as regards the shareholding, assets and affairs of the Company. The statement is accepted as a undertaking given to the Court.

2. Parties have informed the Court that the Company Petition is placed for hearing and final disposal by the Company Law Board on 5th June 2012 and that all the pleadings are completed. In view thereof, none of the parties shall seek time before the Company Law Board on 5th June 2012 and the Company Law Board shall proceed with the hearing of the Petition on that day and endeavour to dispose of the Company Petition by its final order on or before 15th July 2012. The aforestated statement of the Respondents shall continue until final orders are passed by the Company Law Board.

3. In view thereof, the Company Appeal as well as the Company Application stand disposed of.”

3 Subsequently, the petition pending before the CLB came to be dismissed by an order dated 31st July 2012. Against that order, petitioner preferred an Appeal being Company Appeal (Lodg.) No. 46 of 2012 which came to be dismissed by an order dated 10th September 2014. Petitioner did not carry the matter any further.

4 In the meanwhile, present contempt petition came to be filed and it

came to be admitted on 5th December 2015 and show cause notice came to be issued to respondents. Respondent nos. 1, 3 and 4 are present and Shri Haridas for respondents states respondent no.2 has some personal problem and hence could not remain present in Court today.

5 I have heard the counsel for petitioner and respondents and also considered the petition as well as the affidavit in reply. The basis of this petition is that respondents committed a breach of the order dated 7th May 2012 passed by this Court. According to petitioner, this Court had directed respondents to maintain status-quo as on that date regarding shares, assets and affairs of the company and status-quo was in fact the statement made by the counsel appearing for respondents and the Court accepted the statement as an undertaking to this Court.

6 Shri Kunal Vaishnav appearing for petitioner submitted that at the hearing of the Company Appeal that was pending in this Court, respondent Nos.1 and 2 had filed their affidavit in reply in which it was averred *“It is for this specific reasons that Mrs.Wagle has sold off the shares earlier held by her late husband Mr. Rajan Wagale and generated funds to pay off Bharat Co-operative Bank Ltd. as the company was requiring better banking terms than that of Bharat Co-operative Bank Ltd.”* Mr. Vaishnav

submitted that respondents have admitted that respondent no.3 has sold off shares earlier held by her late husband Rajan Wagale and generated funds to pay off Bharat Co-operative Bank Ltd. as the company was requiring better banking terms than that of Bharat Co-operative Bank Ltd. Mr. Vaishnav further submitted that this sale was contrary to the status-quo order passed by this Court on 7th May 2012 and in breach of the undertaking given to this Court and therefore respondents are guilty of contempt of Court.

7 In the affidavit filed by respondent no.1 on behalf of himself, respondent no.3 and respondent no.4, it is explained that in the paragraph which is quoted in the petition, nowhere it is stated that Mr. Wagale has sold the shares of Metallurgical Laboratories Private Limited which is respondent-company. It is expressed that Ms. Wagale sold other shares which her husband had held in other companies. Therefore, respondents have not committed any contempt/breach of any undertaking given to this Court and consequently there is no contempt. It is settled law that the Court, in its contempt jurisdiction, should exercise powers with caution. Parties also cannot use the contempt jurisdiction of this Court to get back at their opponents. It is true that as quoted in petition, it is stated that that respondent no.3 has sold shares which were held by her late husband. But nowhere it is stated that respondent no.3 had sold shares of respondent-

company. Moreover, it should also be noted that the petition that petitioner filed before the CLB itself, has come to be dismissed and consequently all the interim orders also have come to an end.

8 I am inclined to give benefit of doubt to respondents in this case and in any event, there is nothing on record to indicate that respondents have in fact sold the shares of the company in breach of the undertaking given to the Court.

9 Contempt Petition accordingly dismissed.

No order as to costs.

(K.R. SHRIRAM, J.)