

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

**APPEAL NO. 369 OF 2007
IN
CONTEMPT PETITION NO. 01 OF 2007
IN
ARBITRATION PETITION No. 543 OF 2004
WITH
NOTICE OF MOTION No. 2137 OF 2007
IN
APPEAL No. 369 OF 2007**

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| 1. Jayesh M. Gandhi |)... Appellants. |
| 2. Vinay D. Balse, |) |
| both of Mumbai, Indian Inhabitants, |) |
| having office at Universal Insurance |) |
| Bldg., Sir P.M.Road, Fort, Mumbai-001. |) |

V/s.

- | | |
|---|-------------------|
| 1. Yogendra N. Thakkar |)... Respondents. |
| 2. Mahendra N. Thakkar, |) |
| Both of Mumbai, Indian Inhabitants |) |
| Residing at 133/134, Chandramani, |) |
| 701/702, 7 th Floor, Telang X Road |) |
| No.3, Matunga Mumbai- 400 019. |) |
| |) |
| 3. Sujal A. Shah |) |
| 4. S. N. Shivkumar |) |
| 5. B.L. Bhanu |) |
| 6. Bank of Baroda, Fort, Mumbai-01 |) |
| 7. Bank of Baroda, Worli Branch, |) |
| A.B.Road, Mumbai-400025 |) |
| 8. Hong Kong and Shanghai Banking |) |
| Corporation Ltd., M.G.Road, Mumbai |) |

9. UTI Bank Limited, Fort Branch,)
Fort, Mumbai-001.)
10. Vijaya Bank, Near Bhartiya Vidya)
Bhavan, Race Course Rd., Bangalore-01.)
11. Bank of Baroda, Hauz Khas Branch,)
New Delhi -110 016.)

Mr. Gauraj Shah i/by Kanga & Co. for the Appellants.
Ms. Priyanka Kothari a/w. Ms. Neha Bhatt i/by Bilawala & Co.
for Respondent No.1.

**CORAM : ANOOP V. MOHTA AND
P. R. BORA, JJ.**

DATE : 31st JANUARY, 2017

ORAL JUDGMENT : (Per Anoop V. Mohta,J.)

1 Heard finally by consent.

2 The Appellants have challenged order dated 24th April, 2007 passed in Contempt Petition No. 01 of 2007 whereby the learned single Judge of this Court, after considering the affidavits and other material on record, has ultimately recorded as under :

“... .. There defence is that the petitioners were extending additional facility to the employees which according to them was not necessary. Now, additional facility to be provided to the employees

can also be merely office equipment. In any case, neither in the affidavit in reply nor in the endorsement on the voucher, it is the case of the respondent Nos. 1 and 2 that they have refused to sign because the petitioners were purchasing internet cards which was not office equipment. Thus, the defence raised by the respondents in my opinion, is clearly an afterthought. The intention of the respondent Nos. 1 and 2 in not signing the cheque was clearly to disobey the order made by the Court and harass the petitioners. It appears from the averments in the petition that previously also the respondent Nos. 1 and 2 have refused to sign the cheque and therefore, contempt petition was required to be filed. In my opinion, the facts disclosed on record clearly show that the respondent Nos. 1 and 2 have wilfully disobeyed consent order made by this Court so far as the aspect of the punishment is concerned, the respondent Nos. 1 and 2 have tendered unconditional apology. It is also stated by them that the cheques subsequently issued by the petitioners are all signed by them. The learned counsel appearing for petitioners also accepted this. In my opinion, therefore, imposing fine on

respondent Nos. 1 and 2 will meet the ends of justice.”

3 In the background of the Appeal, as per the Appellants the events so occurred are as noted under :

i) Appellant Nos. 1 and 2 and respondent Nos.1, 2 and 4 are Chartered Accountants and at present carry on their Profession in the Firm name and style of N. M.Raiji & Co., as Partners thereof. Respondent No. 3 and Respondent No. 5 were partners and have retired. In or about December, 2004, Respondent Nos. 1 to 4 (present Appellant Nos. 1 & 2 and Respondent Nos. 3 & 4 herein) had filed petition no. 543 of 2004 under Section 9 of Arbitration and Conciliation Act, 1996 (for short “Arbitration Act”). On 8.9.2005, petition was disposed off by way of Consent terms.

ii) Respondent Nos.1 & 2 herein purchased from Reliance Communication Infrastructure Ltd. 5 Internet Card (Data) for 5 Laptops belonging to the firm for a sum of Rs.10,945/-. Respondent Nos. 1 & 2 herein prepared a payment Voucher for a sum of Rs. 10, 945/- and a cheque bearing No. 768413 was drawn on Bank of Baroda, Personal Banking Branch. Appellant No. 1 by his writing on the Voucher inquired as to the purpose of

Purchasing internet cards. On 18.10.2006, Respondent No. 1 herein, called upon the Appellants to sign the cheque. Some doubts were raised.

iii) On 14.12.2006, Respondent Nos. 1 & 2 herein filed Contempt Petition being Contempt Petition No. 1 of 2006. The parties had filed reply and rejoinder. On 24.04.2007, the impugned order was passed. Therefore, the present Appeal.

4 The learned counsel appearing for the Appellants has relied on some judgments of High Courts and the Apex Court in support that there was no “willful default” and/or “willful disobedience” on the part of the Appellants as contemplated under section 2(b) of Contempt of Courts Act, 1971. He submitted that the learned Judge of this court while passing the impugned order even recorded that the appellants have tendered unconditional apology; but has imposed the penalty, therefore, this Appeal.

5 The term “willful default” or “willful disobedience” as contemplated under the Contempt of Courts Act is well defined and well recognized. The Civil Contempt is, therefore, required to be considered in the facts and circumstances of the case read with the additional foundation of “intentional/ deliberate 'breach' or 'disobedience’ of the order.

6 The settlement of the dispute between the partners of the firm and the consent order so passed, whereby the partners of the firm have decided to continue with the business and day-to-day activities. The joint signatures on 'cheque/ documents' for release of the amount has been agreed. The financial transactions are always required to be executed, after due consideration of documents including the cheques. In a situation like this, if one partner raises any doubts about the transactions, immediately before signing the cheque, that itself cannot be read that there was intention to disobey the order or the compromise. The financial liability, even if related to the consent terms and/or business affairs of the firm, needed to be decided from the point of view of the respective partners of the firm. One of the partners if raises some doubt that itself cannot be a reason to show that his intention was deliberate to disobey the order, merely because the parties have agreed to sign on the cheque and/ or released the amount subject to the joint signatures. There is material on record including the averments whereby the appellants have specifically averred to justify that there was no intentional disobedience of the order. The relevant averments that are made in para 20 of the affidavit filed by Appellant No.2 reads as under :

“20. ... By the time I could attend to the Voucher, the said deadline had already passed. On the 18th day of October, 2006, the Petitioner wrote a letter to the Respondents once again raising the issue of signing of the cheque failing which he threatened to issue contempt proceedings. Subsequently, I signed the cheque and the voucher and the same was handed over to the peon in the ordinary course.”

“Without prejudice to the what is stated in para 21 hereafter, the Respondents even undertake to have the said amount of Rs.10,945/- reimbursed to Petitioner No. 1 by the Firm if the said sum is found to have been paid by him.”

7 The justification so placed on record, in our view, just cannot be overlooked and/or ignored while dealing with the concept of “willfull disobedience”. Ultimately and even recorded by the learned Judge that the cheques were subsequently signed. This position in our view ultimately permitting the parties to continue with the business of the firm based upon the compromise/consent orders till date. There was no breach of any specific undertaking and “deliberate or willful dis-obedience” as contemplated under the provisions of the Contempt of Courts Act. We are inclined to observe that this is not a fit case where even penalty could

have been imposed by holding that the appellants are guilty of the civil contempt of court for non signing of the cheque of Rs.10,945/- on relevant day. This is the case where, according to us, there was no intentional disobedience which required to be punished, as is done in the present case.

8 Taking overall view of the matter, we are of the view that the appellants have made out a case to interfere with the impugned order passed by the learned single Judge. Therefore, impugned order dated 24th April, 2007 passed in Contempt Petition No. 01 of 2007 by the learned single Judge, is hereby quashed and set aside.

9 The Appeal is allowed accordingly. The Notice of Motion stands disposed of accordingly. No costs.

(P. R. BORA,J.)

(ANOOP V. MOHTA J.)

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