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

CONTEMPT PETITION NO.6 OF 2016
IN
COMPANY PETITION NO.359 OF 2015

Alliance Logistics	...Petitioner
V/s.	
Surendra Engineering Corporation Ltd. & Ors.	...Respondents

Mr.Rashmin Khandekar with Mr.Tushar Gujjar and Ms.Shweta Merchant i/b Kartik Tiwari for the Petitioner.

Mr.Omar Khayyam Shaikh i/b Legal Bond for the Respondent Nos.1 and 2.

Mr.Surendra Parikh – Contemnor present.

CORAM : R.D. DHANUKA, J.
DATE : 18TH JANUARY, 2017.

P.C. :-

1. By this contempt petition filed under provisions of the Contempt of Courts Act, 1971 read with Company (Court) Rules, the petitioner seeks that the contemnor be punished for willfully violating and/or breaching the undertakings given to this Court as recorded in the order dated 12th October, 2015 passed by this Court.

2. Learned counsel appearing for the petitioner invited my attention to the order passed by this Court on 12th October, 2015 and also the order dated 14th July, 2016 passed by this Court. He submits

that the contemnor has rendered an undertaking before this Court and accepted on 12th October, 2015, on 23rd February, 2016 and 14th July, 2016. He submits that the contemnor has deliberately and willfully violated the undertakings rendered to this Court from time to time and thus shall be punished in accordance with the provisions of the Contempt of Courts Act, 1971 read with Company (Court) Rules.

3. Learned counsel for the petitioner invited my attention to the bank account of the respondent no.1, Mrs.Urvashi Parikh and the contemnor himself for the recent period. Insofar as the contemnor is concerned, it is not in dispute that he has personal account with Dena Bank and Axis Bank. He submits that the summary of the bank account would itself indicate that crores of rupees are deposited in the bank account of the respondent no.1, and the contemnor during this short span of one year and the amounts are withdrawn in cash.

4. Learned counsel appearing for the contemnor on the other hand submits that the undertakings were rendered by the contemnor with a view to save the respondent no.1 company and in view of the default committed by the respondent no.1, Company Petition (369 of 2015) has been already admitted and is pending before this Court for hearing and final disposal. He submits that the contemnor had expected certain payments from a third party in the sum of rupees one crore, which however, was not received by the contemnor and

thus the payment could not be made.

5. It is not in dispute that the contemnor had rendered an undertaking before this Court thrice as recorded in the order dated 14th July, 2016 i.e. first of which was on 12th October, 2015, by which the contemnor had undertaken to pay a sum of Rs.3.00 crores to the petitioner in partial discharge of his claim latest by 28th November, 2015 and thereafter on 23rd February, 2016, the contemnor had again undertaken to pay a sum of Rs.1.00 crore on or before 3rd March, 2016 and thereafter on 14th July, 2016 when the contemnor agreed to pay a sum of Rs.1.00 crore to the petitioner on or before 20th August, 2016. Learned counsel for the contemnor does not dispute that such undertakings were rendered by his client to this Court, which undertakings were accepted by this Court.

6. Even today, the contemnor is not willing to purge the contempt committed by him inspite of the opportunities given by this Court.

7. The only submission of the learned counsel for the contemnor is that the undertaking was rendered before this Court to save the respondent no.1 company and for such undertaking, his client shall not be punished under the provisions of the Court of Courts Act, 1971 read with Company (Court) Rules.

8. Insofar as the bank statement submitted by the learned

counsel for the petitioner is concerned, learned counsel for the respondent does not dispute that crores of rupees were deposited in last one year in the accounts of the respondent no.1 company and the Directors including the contemnor and those amounts were withdrawn in cash by the contemnor, the company as well as the other Directors.

9. I am thus not inclined to accept the submission made by the learned counsel for the contemnor that the undertakings were rendered by the contemnor before this Court to save the respondent no.1 or that he should not be punished for committing the breach of such undertakings rendered before this Court. It is not in dispute that the undertakings rendered by the contemnor are accepted by this Court.

10. This Court after recording the detailed reasons had directed the office to issue a show cause notice upon the contemnor to show cause for committing the breach of the undertakings rendered by the contemnor before this Court. Though the respondent no.2 has rendered an unconditional apology in the affidavit in reply has not bothered to purge the contempt inspite of various opportunities given by this Court. Even today, the respondent no.2 is not willing to comply with the undertakings given before this Court. A perusal of the bank statements produced by the learned counsel of

the petitioner clearly indicates that crores of rupees are withdrawn by the respondent no.1 as well as the other Directors, including the contemnor in cash in last one year, which amounts could have been utilized by the contemnor for complying with the undertakings rendered before this Court, which deliberately and intentionally he has failed.

11. In my view the conduct of the contemnor more particularly described above, clearly shows not only complete disregard of the authority of this Court but also discloses the casual approach on the part of the contemnor. In my view, it is thus clear that the contempt is required to be proceeded with against the contemnor under the provisions of the Contempt of Courts Act, 1971 read with Company (Court) Rules. The contemnor has willfully disobeyed the undertakings rendered before this Court and is guilty of contempt within the meaning of Contempt of Courts Act, 1971 read with Company (Court) Rules. The contemnor is accordingly ordered to undergo simple imprisonment for a period of three months. The warrant of contempt shall accordingly be made against the contemnor under the signature of Prothonotary & Senior Master of this Court.

12. The Contempt Petition is disposed of in aforesaid terms. The contemnor is also directed to pay a sum of Rs.1.00 lakh to the petitioner within one week from today..

13. The contemnor had given the undertakings to this Court not once but thrice and have deliberately failed to comply with the said undertakings, which were accepted by this Court. Since the contemnor has no respect and regard to the undertakings given to this Court, I am not inclined to grant stay of this order. The application for stay is rejected.

14. Place the Company Petition No.369 of 2015 on board for hearing and final disposal after four weeks.

15. All concerned authorities, including the Prothonotary & Senior Master to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)