

\$~54

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 515/2017**
HALDIRAM (INDIA) PVT LTD Petitioner/Relator
Through: Mr. Varun Goswami, Mr. Naveen
Grover & Mr. Rahul Sinha, Advs.
Versus
ASHOK KUMAR AGARWAL Respondent/Alleged
Through: None. Contemnor
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **03.08.2017**

CM Nos.26250-51/2017 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CONT.CAS(C) 515/2017

3. Contempt is averred by averring breach of undertaking given to the Court.
4. The counsel for the petitioner / relator has been heard.
5. Though the counsel for the petitioner / relator has not filed a copy of the plaint in the suit in which undertaking which is alleged to have been breached was given but informs that it was a trademark suit being TM No.02/2011 which was decreed vide order dated 9th May, 2016 of the Court of Additional District Judge (ADJ): 06 (Central), Tis Hazari Courts, Delhi in terms of the compromise arrived at between the parties to the suit and as recorded in the Settlement Agreement dated 3rd May, 2016. Attention is invited to Clauses 8 and 12 of the said Settlement Agreement and which were as under:

“8. Sh Ashok Aggarwal and his nuclear family shall not have any authority in any manner to grant / sub grant the permission, as granted to him by First Party under present settlement to use the Trade Mark / Trade name, to any third party/ies. Sh Ashok Aggarwal and / or his nuclear family members (his Wife, his Son and their successors in interest / heirs) shall never appoint any franchisee directly or indirectly in the “Region of the First Party” or abroad.

12. Sh Ashok Aggarwal and his nuclear family can do their business in self owned shop / rental shop or premises taken on revenue sharing basis (subject to paying revenue share not more than 15% of the gross sales to owner / licensor / landlord as rental/license fee). The showrooms / restaurants so opened by Sh Ashok Aggarwal under revenue sharing basis shall be self-managed by Sh Ashok Aggarwal and / or his nuclear family members as partner / proprietor / director only.”

6. It is argued that the alleged contemnor, in violation of the said Clauses, has appointed an indirect franchisee in Mumbai. The counsel for the petitioner / relator has further informed that the petitioner / relator, on coming to know of the said violation by the alleged contemnor, has lodged an FIR against the alleged contemnor in Mumbai and also instituted a suit in Mumbai.

7. However while this order is being dictated, it is stated that the FIR is about manipulation of documents and it is informed that the petitioner / relator has since withdrawn that suit at Bombay.

8. Upon being asked to show where the undertaking is so recorded, attention is invited to the statement of the alleged contemnor recorded in Court on 5th May, 2016 as under:

“I am the Proprietor of defendant no.1. This matter was referred by the Hon’ble Court on an application to that effect to Mediation Centre, Tis Hazari Courts and the Ld. Judge Mediator has made report regarding the settlement to which I was also a party. I have heard the statement of plaintiff for himself and also on behalf of other plaintiffs as well as the plaintiff company. Same is correct. I shall remain bound by the terms of ExC-1 and ExC-2. Its contents have been understood by me before signing the same and that none of the contents recorded therein are under any coercion or pressure etc. The settlement recorded by the Ld. Judge Mediator in the form of ExC-1 and ExC-2 is absolutely voluntary.

I have signed the settlement agreement which is part of report of Ld. Mediator and is ExC-1 duly signed by me at points B & B1. My Advocate has also signed on ExC-1 at point B2. The settlement agreement ExC-2 also bears my signature at point B3 to B14. My thumb impression is at point B15.

My above statement is correct.”

and to the order disposing of the suit as under:

“Connected case between the parties has been permitted to be withdrawn. So far as this matter is concerned, statement of parties has been already recorded in accordance of ExC-1 and ExC-2 which is as per law. Parties shall remain bound by ExC-1 and ExC-2.

In result thereof, let a compromise decree under Order 23 Rule 3 CPC in terms of ExC-1 and ExC-2 be accordingly drawn. Mediation proceedings shall be part of the decree sheet.

Since the matter has been settled by way of mediation in accordance of Order 89 CPC the plaintiff shall be entitled to refund of Court fee as per Section 16 of the Court Fees Act.

Original documents of parties shall be returned as per rules.

In view of this order, since the main suit itself stands decreed, all pending applications including the petition of the defendants / Sh Ashok Kumar Aggarwal registered as C.O.4/92 becomes infructuous and dismissed accordingly.

After appropriate compliance, file shall be consigned to record room.”

9. Reliance is placed on ***Rama Narang Vs. Ramesh Narang*** (2006) 11 SCC 114.

10. I have enquired from the counsel for the petitioner / relator, whether the petitioner / relator has sought execution of the compromise decree.

11. The counsel for the petitioner / relator states that the compromise decree is inexecutable.

12. I have enquired from the counsel for the petitioner / relator that if the compromise was not enforceable and the decree obtained in terms thereof was inexecutable, what was the point of entering into the compromise and obtaining the compromise decree.

13. The counsel for the petitioner / relator states that only the terms aforesaid of the compromise are inexecutable and else the compromise decree is executable.

14. I am unable to agree that the terms aforesaid of the compromise decree are inexecutable.

15. If the alleged contemnor has acted in violation of the restraint on himself to which he had agreed, then the compromise decree qua the said terms is in the nature of a decree for permanent injunction and which is executable under Order XXI Rule 32 of the CPC.

16. As far as the judgment of the Supreme Court in ***Rama Narang*** supra is concerned, though undoubtedly the Supreme Court in the said judgment has held that contempt, for non-compliance with the decrees of the Court also, lies but the contempt jurisdiction is a discretionary jurisdiction and it appears that the questions, whether the alleged contemnor has violated the decree for permanent injunction in terms of the aforesaid clauses or not is not a question which cannot be adjudicated without detailed examination of documents and facts and which cannot be conveniently done in contempt jurisdiction and can best be done in execution of the decree.

17. I may in this regard also notice that neither in the statement recorded of the alleged contemnor nor in the order dated 9th May, 2016 decreeing the suit is there anything to suggest that the parties had intended undertakings to be furnished to the Court or acceptance thereof by the Court or the said undertakings to be actionable. Ordinarily, when the compromise envisages such a position, care is taken to have the undertaking recorded and to have the same accepted by the Court. The word “undertake” is to be found only at one place in the Settlement Agreement but that too in Clause 5 thereof and in the context of withdrawal of other proceedings against each other.

18. Thus no case for invoking the contempt jurisdiction is made out.

19. The petition is dismissed. However the petitioner / relator shall have liberty to execute the decree.

RAJIV SAHAI ENDLAW, J

AUGUST 03, 2017

‘gsr’..

CONT.CAS(C) 515/2017

Page 5 of 5