

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 29 OF 2017
IN
CHAMBER SUMMONS NO. 819 OF 2017
IN
EXECUTION APPLIATION NO. 1271 OF 2015
IN
SUMMARY SUIT NO. 334 OF 2012**

Sailam B.V.B.A.	...Petitioner
<i>Versus</i>	
Helious Jewellery Pvt Ltd & Ors	...Respondents
<i>And</i>	
Dhanvir Jogani & Anr	...Respondents

**IN ITS COMMERCIAL DIVISION
CONTEMPT PETITION (L) NO. 36 OF 2018
IN
CHAMBER SUMMONS NO. 819 OF 2017
IN
EXECUTION APPLIATION NO. 1271 OF 2015
IN
COMMERCIAL SUIT NO. 54 OF 2012**

Mr Archit Jayakar, *with Shruti Bordia, I/b Jayakar & partners, for
the Petitioner.*

**Mr Sharan Jagtiani, with Kauser Banatwala, I/b Tushar Goradia, for
the Respondents.**

CORAM: G.S. PATEL, J
DATED: 10th July 2018

PC:-

Contempt Petition (L) No. 36 of 2018:

1. The Contempt Petition seeks leave against the Respondents in respect of my order dated 14th December 2017. This needs some explanation. This is how the order of 14th December 2017 reads:

"1. The defendants are admittedly in breach of their commitments and undertakings to the Court to bring in amount of Rs 1 crore. Every latitude was shown to them. The only amount brought in is Rs 35 lakhs. The plaintiffs have filed contempt proceedings and these have been stood over to 5th January 2018, perhaps the last bit of fortune for these defendants. They certainly cannot continue to violate their undertakings given to Court and expect not to face the consequences. The first and most immediate consequence is that the amount of Rs. 35 lakhs deposited will be allowed to be withdrawn.

2. There will, therefore, be an order in terms of prayer clause (d) to the extent of Rs 35 lakhs.

3. The undertakings given to this Court are reflected in orders dated 25th April 2017 and 21st March 2017.

4. I am making it clear that independent of any order that is passed in the contempt proceedings, from this point on the judgment debtors will not be entitled to be heard on

any execution application unless they have purged the contempt and complied with the undertakings to the Court.

5. The entire dispute in execution was in regard to an amount of Rs. 1,25,36,894/- that, according to the judgment creditor, have been fraudulently transferred to defeat the execution. The undertakings given and which I have mentioned earlier were to bring the amount of Rs. 1 crore to show the defendants *bona fides*. These *bona fides* have conspicuous by their absence and there must be an order against the defendants not only to honour the previous undertakings but to bring the balance amount of Rs 25,36,894/- and this is to be done within three weeks from today."

2. Evidently breach is alleged of the latter portion of paragraph 5 but this is being read, in my view, out of context. It needs to be read in the context of previous orders including the orders of 21st March 2017 and 25th April 2017. The allegation was that the Respondent had fraudulently diverted an amount of Rs. 1.25 crores to defeat and delay the decree holder. The order of 21st March 2017 notes a statement made on behalf of the Respondents that they would deposit in this Court an amount of Rs. 50 lakhs by 21st April 2017 and make further payment of Rs. 50 lakhs by 9th June 2017. I left all contentions open in regard to the balance amount of Rs. 25 lakhs.

3. It is not in dispute that even this amount of Rs. 1 crore was considerably delayed and several extensions were both sought and granted.

4. This is the context of paragraph 5 of my order of 14th December 2017. It was in the context of undertakings to show the

bona fides that I allowed the Respondents time to make payment of the amount of Rs. 1 crore. I will note that there was no requirement that these amounts be brought into the Court but the direction was that these amounts will be paid to the Decree Holder. It is because on 14th December 2017 I found that the amount had not been paid in full that I made the observation that the Respondents have to bring in the amount of Rs. 25,36,894/-. This was not part of any undertaking or commitment made by the Respondents.

5. If, therefore, the Petitioners sought at any point to contend after 14th December 2017 that all further payments would be subject to payment of the entire amount, i.e. balance of Rs. 1 crore plus Rs 25,36,894/-, this should have been stated and found place in some order of the Court. That is not the case. All subsequent payments and instalments paid by the Respondents were accepted by the Petitioners as being in fulfilment of the initial obligation to bring in the amount of Rs. 1 crore.

6. Our contempt jurisdiction is not to be exercised in matters like this. The Decree Holder has remedies under the Code of Civil Procedure 1908 and it is at liberty to pursue them for the entire decretal amount. It is sufficient to note that the Respondents had filed no appeal against the order dated 14th December 2017. Indeed, given the nature and contour of the contempt jurisdiction, it is in my view a power that is wide, severe and extreme, and for these very reasons, is to be exercised sparingly and with great circumspection.

7. I do not think that sufficient cause is made out. The Contempt Petition is dismissed.

Contempt Petition No. 29 of 2017:

8. The amount of Rs. 1 crore having been paid, the Respondents have demonstrated their *bona fides* and can be said to have purged with the contempt. This is to be read with the previous apologies tendered.

9. The Contempt Petition is disposed of accordingly.

10. List all other Chamber Summons and Execution Applications for directions on 30th July 2018.

(G. S. PATEL, J)