

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

CONTEMPT PETITION NO.29 OF 2016

IN

SUIT NO.2503 OF 2012

Mr. Swaranjeet Singh ... Petitioner

Versus

Melco Technologies India Pvt. Ltd.

And Others ... Respondents

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Sudeshna Guha Roy a/w Pritesh Shetty I/b Vidhii Partners for the
Petitioner.

Mr. Mathews Nedumpara a/w Rohini Amin and Preeti Dambre for the Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 31 OCTOBER 2018

(Oral Judgement) :

Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of a consent order and an undertaking given to the court recorded and accepted in it.

2 The Plaintiff in this suit, who is the Petitioner in the contempt
petition, is a retired senior citizen, who owns three commercial galas,
namely, Gala Nos.915A, 916 and 917 in Sagar Tech Plaza, Andheri,
Mumbai. In the present petition, we are concerned with Gala No.915A.
Originally Respondent No.1 was the licensee of the Petitioner in respect of
all three premises, under a registered leave and licence agreement dated 29
September 2006 (hereinafter referred to as “the first leave and licence

agreement”). It is the Petitioner's case that Respondent No.1 defaulted in payment of licence fees, but continued to occupy the premises till expiry of the licence term under the first leave and licence agreement. In March 2009, Respondent No.1 vacated all three premises and handed over the keys to the Petitioner. It is the Petitioner's case that the Respondents, however, did not remove their furniture and fixtures and requested the Petitioner to allow these to be kept in the premises till a suitable offer from a third party to take over their business was received. It is the Petitioner's case that in July 2009, Respondent No.1 forcibly entered into the premises and illegally started occupying the same, raising various false and frivolous contentions in an effort to occupy the premises without payment of compensation to the Petitioner. It is the Petitioner's case that the Respondents finally handed over possession of the premises along with the keys of the premises to the Petitioner in lieu of the Petitioner's foregoing the arrears of compensation, and yet did not remove their movables from the premises and instead started creating nuisance. In the premises, the Petitioner filed the present suit, being Suit No.2503 of 2012, seeking a perpetual injunction against the Respondents, restraining them from interfering with or disturbing the Petitioner's possession of the three premises. During the pendency of the suit and the notice of motion taken out by the Petitioner therein for interim reliefs, the parties arrived at a compromise. The compromise was recorded by the court in the form of a consent order passed on 27 September 2012. Under this order, the Petitioner agreed to give all three galas to the Respondents on leave and licence basis for a period of three years from the date of the order against monthly compensation as provided in the order. The compensation was payable by on or before 27th day of each month. In the event of any default

in payment, the licence was to stand terminated after a grace period of 10 days and in that case, the Respondents undertook to the court to forthwith hand over possession of the premises to the Petitioner. The undertaking was accepted by the court. The order also provided for renewal of leave and licence at the end of the term exclusively at the discretion of the Petitioner. The order also provided for a suitable agreement to be executed and registered by the respective advocates of the parties on or before 8 October 2012. Accordingly, the suit was disposed of along with the notice of motion.

3 It is an admitted position that after the disposal of the suit, the Respondents informed the Petitioner that they would not require all three premises and would like to execute a leave and licence agreement only in respect of Gala No.915-A, i.e. the suit premises. It is also not in dispute that the Respondents handed over possession of the remaining two galas along with related parking spaces to the Petitioner. Whilst handing over such possession, the Respondents even confirmed that they had no claim or right of any nature in respect of the two galas surrendered to the Petitioner. A fresh leave and licence agreement was thereupon executed between the Petitioner and Respondent Nos.1 and 2 in respect of the suit premises for a period of thirty six months from 27 September 2012, i.e. the date of the order, as contemplated in the order (hereinafter referred to as “the second leave and licence agreement”). It is the Petitioner's case that right from January 2013, Respondent Nos.1 and 2 had started defaulting in payment of licence fees and kept remitting either partial or delayed payments. It is the Petitioner's case that since January 2015, the Respondents failed to pay a single penny towards license fees save and except an amount of

Rs.1,30,787/- paid in March 2015. The Petitioner, in the premises, caused a termination notice dated 17 March 2005 to be served on the Respondents in accordance with the consent order. In spite of this termination notice, the Respondents failed to hand over vacant and peaceful possession of the suit premises to the Petitioner. Sometime in April 2015, Respondent No.1, on the other hand, proceeded to file a suit in the City Civil Court at Bombay, being Suit No.2226 of 2015, against the Petitioner herein, claiming reliefs under the first leave and licence agreement. On 7 August 2015, a comprehensive legal notice was addressed by the Petitioner to Respondent Nos.1 and 2 calling upon them to pay *inter alia* compensation by way of liquidated damages from 17 April 2015 in terms of Clause 11(b) of the second leave and licence agreement. Sometime on 1 October, 2015, the Petitioner received a reply from the Advocate of the Respondents claiming protection of the Maharashtra Rent Control Act, 1999 in respect of the suit premises.

4 In the premises, on 16 October 2015, the present contempt petition was filed by the Petitioner. It was served on the Respondents at the address of the suit premises the very next day. On 9 December 2015, when the contempt petition came up for admission, after hearing the parties, this court expressed its *prima facie* satisfaction that the Respondents had committed a willful breach of the undertaking contained in paragraph 1(iii) of the order dated 27 September 2012 and issued a show cause notice to the Respondents under Rule 1035(1) read with Rule 1036 (1) of the High Court (Original Side) Rules, 1980, making it returnable on 18 January 2016. This order is the subject matter of a review petition as well as an appeal filed by the Respondents, both of which are said to be pending

before this court. On 28 April 2016, the Respondents even proceeded to file a declaratory suit before the Court of Small Causes at Mumbai, being R.A.D. Suit No.1372 of 2016, seeking a declaration of their purported tenancy rights in respect of the suit premises. In the backdrop of these facts, the present contempt petition has come up for hearing before this court.

5 Mr. Nedumpara, learned Counsel for the Respondents, argues that the order passed by this court on 27 September 2012 is a consent order. Learned Counsel submits that a consent order merely records an agreement between the parties. Learned Counsel submits that merely because in its body, the word 'undertaking' is included, the order does not undergo any change; it is still a consent order passed on a compromise between the parties. Learned Counsel submits that no contempt can be alleged of any such order; such order can only be executed by the court. This controversy has finally been laid to rest by the Supreme Court in case of **Rama Narang Vs. Ramesh Narang**¹. The definition of civil contempt under Section 2(b) of the Contempt of Courts Act, 1971, as noted by the court in that case, provides for two categories of cases, first, any willful disobedience to a process of court, and second, any breach of an undertaking given to a court. The Supreme Court held that the word 'any' indicated the wide nature of the power. No distinction could be statutorily drawn in this behalf between an order passed after adjudication and an order passed by consent. Any wilful violation of any order or decree would be tantamount to contempt. A compromise decree or order is as much a decree or order as a decree or order passed on adjudication, and not merely an agreement

1 (2006) 11 Supreme Court Cases 114

between the parties; in passing a decree by consent, the court adds its mandate to the consent so that the consent decree may be said to be composed of both command and contract. A consent decree, in other words, is a contract with the imprimatur of the court added to it. By passing a decree in terms of consent terms, the court authorises and approves the course of action consented to. Just as an order or decree passed on adjudication is executable under the Code of Civil Procedure, even a consent order or decree is of course executable, but merely because of that, it does not take away the jurisdiction of the court to deal with its violation or breach under the Contempt of Courts Act, provided the court is satisfied that the violation or breach complained of is such as would warrant a punishment under Section 13 of that Act. The present consent order is no different. Besides, the breach alleged in the present case is not merely of the consent order, but of an express undertaking given to the court and which was recorded and accepted by it in the consent order. A willful breach of an undertaking given to a court clearly and unequivocally attracts its contempt jurisdiction.

6 Mr. Nedumpara alternatively submits that the word 'undertaking' used in the order dated 27 September 2012, does not mean an undertaking given to a court. Whatever this submission may mean (it is difficult to fathom the meaning), there is no reason why the undertaking submitted to, and accepted by, this court in the present case should not mean an undertaking as naturally and plainly understood by Judges and lawyers alike. Every Counsel appearing in this court as much as every Judge presiding over it very well knows the meaning and effect of recording and accepting of an undertaking in an order. And this order is no exception.

7 Alternatively, learned Counsel submits that the suit itself was not maintainable, since the jurisdiction to evict any licensee of a property in Mumbai is with the Court of Small Causes at Mumbai and not with any other civil court. It is too late in the day to advance this submission. That may have been permissible at the hearing of the suit, that is to say, before the consent order compromising the suit was passed by this court on 27 September 2012. Having obtained an order by consent whilst disposing of the suit, it is no longer open to the Respondents to question the jurisdiction of this court. Anyway the present consent order has admittedly not been the subject matter of any challenge as of date. Learned Counsel, however, refers to the judgment of **Kiran Singh Vs. Chaman Pawan**², and, relying on paragraph-6 of that judgment, submits that a decree passed by a court without jurisdiction is a nullity and its invalidity may be set up whenever and wherever it is sought to be enforced or relied upon, that is to say, even at the stage of execution or other collateral proceedings; there is no need to challenge such decree in an appeal. The observations in the case of **Kiran Singh** (supra) do not apply to a case where jurisdiction is a matter of contest on facts and it was not raised or pressed before the court when the decree was passed. The present suit was filed on the basis that the Respondents were trespassing upon the suit premises. The original licence, i.e. the first leave and licence agreement, according to the Plaintiff, had come to an end, when the Respondents surrendered possession of all three premises including the suit premises herein, and the suit was, accordingly, properly instituted before this court. This plea involved a question of fact. The Respondents not only did not join issue with the plea or the question of fact forming its ingredient, but even consented to an order of disposal of

2 AIR 1954 S.C. 349

the suit on that basis. It is no longer open to them in that case to question the order on the ground of want of jurisdiction.

8 Mr. Nedumpara next submits that the consent order requires the parties to enter into an agreement of licence. Learned Counsel submits that the parties have since entered into such agreement, whereafter the relationship between them can only be governed by that agreement and not the original consent order which required the agreement to be executed. Learned Counsel submits that the order cannot be seen as a command in perpetuity so that all subsequent disputes between the parties arising out of actions taken by them in pursuance of it may have to be determined with reference to the order and any infringement may have to be treated as a matter of breach or disobedience to be punished under the Contempt of Courts Act. The submission has no force whatsoever. The consent order not only requires the parties to enter into an agreement of licence but also records and accepts unequivocally the Respondents' undertaking to vacate the premises and hand over possession thereof to the Petitioner in the eventuality referred to in the consent order. Besides, even the second leave and licence agreement, arrived at in pursuance of the order dated 27 September 2012, expressly provides that the agreement (which must include the Respondents' commitment for delivery of vacant possession) would be subject to that order.

9 Learned Counsel lastly submits that the dues of the Petitioner under the second leave and licence agreement have been duly paid through adjustment. Learned Counsel submits that there have been deposits of the Respondents lying with the Petitioner and which the former had required

the latter to adjust against the licence fees payable for the suit premises. There is no reference to any such deposit or adjustment in the reply to the contempt petition. The plaint in the Small Causes Court at Mumbai, which is annexed to the affidavit in reply, is also silent on this aspect. Be that as it may, any such case of outstanding security deposits calling for an adjustment is a pre-suit plea, that is to say, a plea arising before the filing of the suit, and cannot now be urged in the face of the consent order and obligations of the parties provided for therein.

10 What is conspicuous by its absence in the present case is an offer on the part of the Respondents to comply with the consent order even now or express remorse for its non-compliance so far. It is palpably clear, and there is no answer whatsoever to it, that the consent order records a solemn undertaking on the part of the Respondents to hand over vacant and peaceful possession of the suit premises in case of termination of the licence upon any single default with a grace period of 10 days. There is a clear and indefensible case of default. A notice calling upon the Respondents to hand over peaceful possession as a result of such default has been duly received by the Respondents. In response, the Respondents not only do not offer to pay the outstanding dues or surrender the possession but infact proceed to file a declaratory suit before the Court of Small Causes, Mumbai, claiming tenancy in respect of the suit premises. It is difficult to conceive a more astonishing level to which a party may go in defiance of a court order and an undertaking forming an intrinsic part thereof.

11 In the premises, there is a clear and overwhelming case of contumacious defiance of an order of this court and undertaking given to it. There is no attenuating circumstance - no offer to undo the wrong, no expression of remorse - nothing at all, to allow the court to take a lenient view.

12 At the stage of passing of the order, learned Counsel for the Respondents objects to the order being passing without framing of a formal charge. Learned Counsel submits that without framing such charge and conducting a full blown trial, no order can be passed under Sections 12 and 13 of the Act. Contempt of Courts Act, 1971 read with High Court Rules, not only provides for the punishment, but also the manner of taking cognizance of a complaint of commission of contempt of court and its procedure. A formal contempt notice issued by the court under Rules 1035(1) and 1036(1) of the High Court (Original Side) Rules, 1980, fulfills the requirements of a formal notice of the charge against the contemnor/respondent. The contemnor/respondent is thereby given a full opportunity to show cause. There is nothing in this case to suggest that the Respondents were in any way prejudiced in availing this opportunity to show cause. The Respondents have filed their complete response and have been extensively heard by this court and, as I have noticed above, have not shown any reason whatsoever why they should not be held guilty of a willful breach or disobedience of an order of this court and an undertaking furnished to, and accepted by, it.

13 In the premises, the Contempt Petition is allowed by ordering committal of Respondent No.3, who is admittedly the Managing Director of

Respondent No.2 and Proprietor of Respondent No.1, and who is responsible for the conduct of their business and affairs, including, in particular, the present matter of delivery of possession of the suit premises, to simple imprisonment for a term of six months and also a fine of Rs.2,000/-. A warrant of arrest may accordingly be issued against Respondent No.3.

14 At the request of learned Counsel for the Respondents, execution of the warrant is stayed for a period of four weeks from today.

(S.C. GUPTE, J.)