

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION (LODG) 144 OF 2018
IN
ARBITRATION PETITION NO. 218 OF 2018

Mr.Vinod Kantilal Vyas.

...Petitioner

Versus

Mr.Manoj Kantilla Vyas.

...Respondent

Ms.Ratna R. Jaiswal, for the Petitioner.

Mr.Sachin Masurkar, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 17th DECEMBER, 2018

P.C:

1. Heard the learned Counsel for the parties. The petitioner who is original petitioner in Arbitration Petition no.218 of 2018, is before the Court praying that an action be taken against the respondent under the provisions of the Contempt of Courts Act,1971 for having committed willful disobedience of the order dated 23 March 2018 passed by this Court in the above arbitration petition. There is a further prayer in terms of prayer clause (c) by which the petitioner prays that the respondent, his agents, relatives and any person be restrained from creating any obstruction in the affairs and management of the business of the hotel i.e. "Laxmi Prasanna Hotel" situated at Shop bearing No.4B,

Shirin Mansion, Shirin CHS Ltd., Gazdar Road, Andheri (West), Mumbai.

2. The learned Counsel for the petitioner contends that this Court (R.D.Dhanuka, J.) considering the disputes between the parties, has passed an order dated 23 March 2018 whereby the petitioner was permitted to undertake the business in the said premises/hotel as noted above. The relevant extract of the said order passed by the Court reads as under:-

“4. Since the offer made by the applicant is higher than the offer made by the respondent, the applicant is allowed to conduct the business on payment of an amount of Rs.1,20,000/- as royalty to the respondent and shall incur day to day expenses, for running the business separately. The applicant shall maintain the accounts of business during the period when the petitioner is allowed to conduct the business on payment of royalty. The applicant shall furnish a copy of the said account every quarter to the respondent's advocate. This order is passed without prejudice to the rights and contentions of both the parties.

5. The respondent is directed to co-operate with the applicant in running the business smoothly and shall not interfere with the applicant's business till further orders. The impugned award passed by the learned arbitrator is stayed subject to aforesaid arrangement.

6. Notice of motion is disposed of. The applicant is allowed to run the business from 1st April 2018 exclusively during the pendency of this petition.”

3. The learned Counsel for the petitioner states that an appeal came to be filed by the respondent against the said order passed by this Court, which came to be dismissed for non prosecution.

4. The case as made out by the petitioner in this Contempt Petition is that every possible attempt is made by the respondent to disturb the conduct and working of the said hotel by the petitioner which amounts to express breach of the directions as contained in paragraph 5 of the Court's order dated 23 March 2018. It is stated that this Court has categorically directed the respondent to co-operate with the applicant in running the business smoothly and not to interfere with the business of the petitioner with further orders.

5. The learned Counsel for the petitioner states that the said directions of the Court are valid and subsisting as on date and thus there is an obligation on the part of the respondent to comply with the said order in letter and spirit. The learned Counsel for the petitioner has drawn my attention to voluminous correspondence as placed on record of this petition, which according to the petitioner would demonstrate the interference of the respondent in the working of the said hotel and more particularly, the smooth running of the business as directed by this Court in paragraph (5) of the order dated 23 March 2018. The learned Counsel for the petitioner has also drawn my attention to several police complaints which are made to the D.N.Nagar Police Station. A communication issued under the Right to Information Act dated 15 October 2018 (page 110 of the paperback) according to

the petitioner would show that there are so far 19 police complaints made in this regard. Thus according to the petitioner, the orders passed by this Court in the manner as set out in these complaints are violated and an action under the Contempt of Courts Act is required to be initiated.

6. There is a reply affidavit filed on behalf of the respondent. There is denial to the case of the petitioner and it is contended that the respondent in no manner has breached the orders passed by this Court. The respondent states that the petitioner, by making these complaints, is trying to create false record and that there is no disobedience of the order passed by this Court. In paragraphs 17 and 18 of the reply (page 125 of the paperbook) the respondent has made the following averments:-

“17. I say that I have no reason to enter into the premises. I only expect that the order which is passed in good faith should not be misused, which is being misused by the Petitioner, of his own choice. It is evident from the fact that

a) After passing the order the Petitioner has not given any account till date inspite of very directions of this Hon'ble Court dated 23/3/2018 to give the detail inspection of the accounts on each quarterly rest.

b) The Petitioner on his own is not operating the business. He visits the hotel after 9 pm and in the morning it is operated by some third parties.

c) The said business to his knowledge is a partnership business of the petitioner and the Respondent. He is appointed as custodian by the Court. He is bound to behave like trustee by keeping the accounts in legitimate manner and to produce it before the Court and to the petitioner as per the order but he failed. Even the notice is given to his advocate but no inspection given or offered to be given till date.

d) The Petitioner is not paying the GST and other taxes which are statutory payment to maintain the business and to avoid any future complications. I crave leave to refer and rely upon some of the bills which I secured from my known persons who visited the hotel for eating purpose and against the same they paid the amount against the bill. The bill clearly indicates that no GST is paid. No GST number is obtained which is statutory for any hotel eating house.

e) The petitioner has illegally opened a separate bank account in the name of proprietary concern of the same hotel business i.e. Hote Laxmi Prasanna and he is acting as a proprietor. I learnt because when we issued a cheque which is bounced for want of sufficient funds bears the endorsement under cheque that it is issued as proprietor of Laxmi Prasana Hotel which a partnership firm and of which I am a joint partner. I will rely upon the copies of said cheques which are filed in this court.

18. Thus this is a clear case that the petitioner misinterpreting the order to his own choice trying to highjack Hotel business and multiply the complications by not paying the Government taxes etc. I must say that the Petitioner never ever operated the said hotel business. Even when we were together in the said hotel business he used to come late. It is me who has procured the business by my hard efforts. The petitioner will literally ruin the business but still I never interfere I have asked for the accounts and I will deal with all the aspects in accordance with law including my right and entitlement in the partnership business at the proper point of time. But the facts remain that it is the Petitioner who is in breach of the order so far as the contentions and allegations in the petition they are absolutely wayward. No prima facie case or any of the allegations will be proved and they are not at all correct at all. The contempt orders are sought in respect of order dated 23/3/2018 but I have not breached any of the directions in the order. It is otherwise that the Petitioner breached the said order as stated above. “

7. Having heard the learned Counsel for the parties and having perused the record, more particularly the statements in the affidavit in reply, I am of the opinion that the case of the petitioner is not totally unfounded. Once the Court passes an order, the order is required to be adhered and complied by the parties in letter and spirit.

There cannot be an attempt whereby in an indirect manner and by creating certain circumstances, the orders passed by the Court are sought to be breached.

8. As the position stands, I was inclined to consider the material on record and more particularly the averments in the affidavit as sufficient material to proceed further in these proceedings. However, at this stage, the learned Counsel for the respondent states that his client is present in the Court who tenders an unconditional apology. The respondent also makes a statement that the respondent shall adhere and comply the orders passed by this Court and the directions as contained in paragraph (5) of the order dated 23 March 2018 in letter and spirit. The respondents states that in no manner whatsoever he shall interfere in the smooth running of the business of the said hotel. The unconditional apology of the respondent is accepted.

9. Learned Counsel for the respondent further states that if the respondent has any grievance, the same shall only be lawfully asserted and if necessary by moving this Court for any reliefs on the issues/disputes under the present proceedings. The above statements on behalf of the respondent who is present in Court and identified by his Advocate, are accepted as an undertaking to this Court.

10. In view of the above statements of the respondent, further adjudication of this petition is not called for.

11. Keeping all contentions of the parties on merits of the disputes open, the petition is disposed of in the above terms. No costs.

12. It is however clarified that the remedies of the petitioner to pursue the proceedings before the appropriate forum are expressly kept open.

[G.S. KULKARNI, J.]