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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 22nd February, 2018

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CONT.APP.(C) 2/2016 and CM Nos. 4144/2016 & 5186/2017

MAHESH CHAND MOHNANI & ANR. Appellants
Through Mr. R. L. Kohli, Adv.

versus

MANOHAR BHASIN HAZOORIA Respondent
Through Ms. Shalini Kapoor with Ms. Ruhini
Dey and Mr. Dikshant Khanna,
Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Appellant No.1 Mahesh Chand Mohnani has not appeared and medical certificate is produced stating that he is unwell.

2. On 29.01.2018 by a detailed order, we had decided the contentions and issues raised by the appellants in this contempt appeal against conviction. We had however adjourned the matter to enable the counsel for the appellants to obtain instructions on the question of payment. For convenience, order dated 29.01.2018 is reproduced below:-

“Mahesh Chand Mohnani and Vasari India Pvt. Ltd. have filed the present appeal under Section 19 of the Contempt of Courts Act, 1972, impugning order dated 15th January, 2016 deciding CCP (O) No.9/2012 and I.A. No.700/2016 filed by Manohar Bhasin Hazooria, the respondent before.

2. The impugned order holds that the appellant No.1 is guilty of contempt for failing to abide by the undertakings given and recorded in the order dated 4th November, 2011, disposing of CS (OS) No.1917/2011 and I.A. No.17294/2011 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908. The operating portion of the impugned order directs that the appellant No.1 be committed to civil prison for a period of one month from the date of arrest. Costs of Rs.50,000/- has been imposed.

3. The appellants submit that the appellant No.2 is under liquidation and the appellant No.1 is not personally liable. The second submission is that there was no undertaking to the Court and, therefore, the contempt proceedings for violation of order dated 4th November, 2011 are bad and contrary to law.

4. Appellant No.1, it is accepted and admitted, was the Managing Director of M/s. Vasari India Pvt. Ltd. The said company had filed Civil Suit No.1917/2011 against Manohar Bhasin Hazooria, the respondent before us. Appellant No.2 company had taken property No.60, Ring Road, Lajpat Nagar-III, New Delhi on rent from the respondent. The suit filed by the appellant No.2 was for perpetual injunction, restraining the respondent from physically dispossessing the said appellant from tenanted property.

5. During pendency of the said suit, a compromise application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, I.A. No.17294/2011 was filed. The said application was disposed of vide order dated 4th November, 2011, after recording statement of the appellant No.1 and the respondent. The relevant portion of the order and the statement of the appellant No.1 and the respondent read as under:-

“Order dated 4.11.2011

CS(OS) 1917/2011 & IA 17294/2011 (O.23
R.3 CPC)

Statement of Mr. Mahesh Chand, Managing
Director of plaintiff Company as well as

statement of defendant recorded. In view of their statements, the suit is decreed in terms of the settlement contained in IA 17294/2011 which is signed by Mr. Mahesh Chand on behalf of the plaintiff Company by the defendant as well as by their respective counsels. The parties shall remain bound by their respective obligations under the settlement and the undertaking given by them in this regard is accepted. Additional court fee shall be paid by the defendant within four weeks from today. Decree sheet be drawn accordingly. IA 17294/2011 shall form part of the decree. Since the suit has been withdrawn pursuant to a settlement between the parties and the trial is yet to commence, the plaintiff is entitled to refund of half of the Court fee paid on the plaint in terms of Section 16A of Court Fees Act. The Registry is directed to issue requisite certificate to the plaintiff in this regard within four weeks. The suit and all the pending applications stand disposed of accordingly.

Statement of Mr. Mahesh Chand, Managing Director of M/s. Vasari India Private Limited, on S.A.

The matter has been amicable settled between the parties and the terms of the settlement are contained in IA 17294/2011 which is signed by me and defendant as well as by our respective counsels. The plaintiff Company undertakes to remain bound by the terms and conditions as contained in I.A 17294/2011. The suit may be decreed in terms of the settlement contained in IA 17294/2011 which may form part of the decree.

R.O. & A.C.
CS(OS) 1917/2011

November 4, 2011

Statement of Defendant-Ms. Manohar Bhasin Hazooria, on S.A.

The matter has been amicable settled between the parties and the terms of the settlement are contained in IA 17294/2011 which is signed by me and Mr. Mahesh Chand, Managing Director of the plaintiff company as well as by our respective counsels. I undertake to remain bound by the terms and conditions as contained in I.A 17294/2011. The suit may be decreed in terms of the settlement contained in IA 17294/2011 which may form part of the decree

R.O. & A.C.”

6. The compromise application I.A. No. 17294/2011 records that the tenancy period had come to an end by efflux of time and that the appellant No.2 was in arrears of rent of Rs.16,45,000/- as also service tax. The respondent on terms had allowed the appellant No. 2 to remain in possession of the tenanted premises up to 31st December, 2011. Paragraphs 8, 12, 13, 14, 15 and 16 of IA No.- 17294/2011 are relevant and read:-

“8. The Plaintiff is not in a position to pay the rent/damages for use and occupation and wishes to vacate the premises provided the Defendant given some concessions and allows the plaintiff to remain in the premises upto 31st December, 2011 on the plaintiff giving solemn undertaking to the court for complying with the terms and conditions of the settlement.

9. The parties with the intervention of the common friends and well wishers, and without prejudice to their respective pleas and contentions, in order to save time and litigation expenses have arrived at the following settlement;

(a) The plaintiff admits that they were the tenants of ground floor of property No.60, Ring Road, Lajpat Nagar-III, New Delhi-1100124 on a

monthly rent of Rs.9,50,000/- besides electricity, water charges and service tax which the Plaintiff admits that he was in arrears of rent, service tax etc.

(b) The Plaintiff admits that its tenancy has already expired by efflux of time and by notice dated 20.12.2010. Even otherwise the Plaintiff does not want to remain as tenant of the suit premises and the Defendant also does not want to keep the Plaintiff as tenant and longer.

c) The Plaintiff has requested the Defendant to allow the Plaintiff to remain in possession upto 31st December, 2011 provided the Plaintiff pays to Defendant the following amounts by way of bank drafts:-

“i) The Plaintiff shall give to the Defendant TDS Certificates of Rs.9,78,486/- on or before 10th November, 2011.

ii) A sum of Rs.19,00,000/- after deduction of TDS on account of user charges for October and November, 2011 shall be paid by the Plaintiff to the Defendant on or before 25.11.2011. This amount is inclusive of Service Tax. The Plaintiff shall give TDS Certificate to Defendant.

iii) A sum of Rs.9,50,000/- after deduction of TDS on account of user charges for the month of December, 2011. This amount is inclusive of Service Tax and shall be paid by Plaintiff to Defendant by 10th of December, 2011.

iv) All arrears of Statutory Service Tax levied by the department whatever payable shall be paid by the plaintiff to the Defendant by 31.12.2011 after verification by the accountants of the parties.

v) The plaintiff shall be entitled to deduct TDS from the amounts of rent paid and in lieu of TDS deducted issue TDS certificates.”

12. On the plaintiff's aforesaid assurance and undertaking, the Defendant-landlady has waived her right to receive the rent for the earlier period and is confining her claim only to the aforesaid mentioned amounts.

13. If the Plaintiff commits any single breach/default, the Defendant will be within her right to execute the aforesaid compromise including initiation of contempt proceedings.

14. On the Plaintiff complying with all the terms and condition of the settlement recorded above, the Defendant would withdraw the criminal complaints whatsoever filed for dishonour of cheques and all the cheques drafts, whatever given to the Defendant to the Defendant shall be returned by the Defendant to the Plaintiff.

15. The Plaintiff given solemn undertaking to this Hon'ble Court to comply with all the aforesaid terms and conditions of the application and pay the amounts mentioned therein on due dates. The plaintiff also undertake to deliver actual vacant possession of the suit premises to the Defendant on or before 31.12.2011."

16. That the parties shall be firmly bound by this compromise and undertaking given herein."

The last paragraph i.e. the prayer clause of the application reads:-

"It is, therefore, most respectfully prayed that the undertaking of the parties may be accepted and the suit may be decreed in terms of compromise."

8. In view of the aforesaid position, and also noticing the fact that the appellant No.2 was the plaintiff and the compromise had postulated payment of various amounts including payment of arrears of rent & Service Tax and furnishing of TDS certificates, by the dates specified therein, we are in agreement with the findings of the learned single Judge that this is a case of undertaking to

the Court. The parties intended and wanted given an undertaking to abide by the terms mentioned in the compromise application. The terms and undertaking given had to be complied with by the dates stipulated. The contention of the appellants, therefore, that this is not a case of undertaking to the Court has to be rejected.

9. Counsel for the appellants has drawn our attention to the order dated 4th November, 2011, which states that the suit is decreed in terms of the settlement contained in IA 17294/2011. We do not think that use of the word decree in the order dated 4th November, 2011 is of consequence and would make difference. Pertinently, the third paragraph of the order dated 4th November, 2011, while dealing with the question of refund of the Court fee, states that since the suit has been withdrawn pursuant to a settlement between the parties and as the trial was yet to commence, the plaintiff was entitled to refund of half of the Court fee. The intent and purpose behind moving application under Order XXIII Rule 3 was that the arrears of rent, as agreed, would be paid, TDS certificate would be furnished and service tax arrears would be paid and certificates furnished. Dates for payment and furnishing of certificates were specifically stated and prescribed. The respondent was defendant in the suit and not the plaintiff. The learned single Judge, has rightly held that this is not a case of executable decree but a case of violation of undertaking given to the Court. The compromise was arrived at outside the Court. The respondent had given up arrears of rent to enter into the said compromise. Criminal cases filed by the respondent under the Negotiable Instruments Act were to be withdrawn. The respondent did abide by the terms of the settlement and the undertakings given. Appellants must also abide by their statement and undertaking and not resile.

11. The second contention of the appellants is that the undertaking was given by the company, i.e. appellant No.2, and not by appellant No.1. Appellant No.1, it is accepted, was the Managing Director of the appellant No.2 a company. The compromise was signed by

appellant No.1. The order dated 4th November, 2011 refers to the statement made by the appellant No.1. In fact, it is accepted and admitted that appellant No.1 had made the statement to be bound on oath. Appellant No.2 went into liquidation in October, 2013. This was nearly two years after order dated 4th November, 2011 was passed. Compliance in terms of the order dated 4th November, 2011 was to be made between 10th November, 2011 and 31st December, 2011. On the question of effect and purport of the undertaking and whether the first appellant can be held responsible and liable, we would refer to the judgment of the Supreme Court in **E. Bapanaiah Vs. K.S. Raju, (2015) 1 SCC 451** wherein it was held as under:-

“15. The learned counsel for the respondent K.S. Raju argued that in the undertaking given by K.S. Raju, only this much has been stated that the Company will make the payment, as such it is not the personal liability of said respondent. But needless to say that company functions through its Directors, in its operations. Company is not such person which can be sent to jail. It is the Director controlling the affairs of company through whom it has committed the disobedience, if any, and as such, such Director has to suffer the consequences of disobedience if it is wilful. We have already discussed above that from the affidavits filed before the High Court, it is clear that K.S. Raju was not only the Promoter Director of NFL, but the Managing Director of the said Company, working for a decade, was his nominee, and practically all the powers to run NFL vested with K.S. Raju, the Promoter Director, and his nominees, whom he appointed under Articles 104 and 140 of the articles of association.”

The said appeal before the Supreme Court had arisen from a judgment of the High Court of Judicature, Andhra Pradesh in contempt proceedings. This was a case in which payments were not made in disobedience and breach of undertakings/affidavits filed by K.S. Raju, who was a Promoter Director of the company.

Admittedly, the liability was of the company for the deposits were made with the company. Nevertheless, keeping in view the fact that the undertakings and affidavits were given by K.S. Raju, he was held to be liable. Paragraph 13 of the said judgment refers to the affidavit of K.S. Raju by which assurance had been given to repay the deposits as per the approved scheme by the Company Law Board.

13. At this stage, counsel for the appellants states that the appellant No.1 has not been able to come to the Court. He prays for some time to obtain instructions on the question of payment.

14. In view of the statement made by the counsel for the appellants, relist on 22nd February, 2018. We make it clear that appellant No.1 must appear in person on the said date. Appropriate order would be thereafter passed.”

3. Learned counsel for the appellants submits that no amount is due and payable as the appellants were entitled to refund of security deposit of Rs.28,50,000/- on vacation of the tenanted premises. This amount could be adjusted towards the dues.

4. Learned counsel for the appellants has also handed over Form No.16A as TDS certificates. The TDS certificates have not been downloaded from the Income Tax Website. Form No.16A is not even signed. TDS Certificates furnished are not as per mandate of law. Clearly, this is an attempt by the appellants to imposture compliance and to further deceive the Court.

5. Plea and contention that security deposit of Rs.28,50,000/- could be adjusted for payment of Rs. 19,00,000 and Rs. 9,50,000 is frivolous and false.

6. As per the compromise, the appellants had agreed to vacate the tenanted premises by 31.12.2011. Appellant had also agreed and

under taken to (i) furnish TDS Certificates of Rs.9,78,486/- on or before 10.11.2011 (ii) pay Rs.19,00,000/- on account of user charges for the months of October and November, 2011, after deduction of TDS, on or before 25.11.2011 (iii) Pay Rs.9,50,000/- on account of user charges for the month of December, 2011, after deduction of TDS, on or before 10.12.2011 and (iv) Pay statutory service tax by 31.12.2011, on verification by accountants of the parties.

7. The application for compromise did not stipulate and permit adjustment of the security deposit of Rs. 28,50,000/- towards payment of Rs. 19,00,000/- and Rs. 9,50,000/- as user charges for the months of October, November and December, @ Rs. 9,50,000/- per month. The appellants had undertaken to pay the amount by the stipulated dates, notwithstanding the undertaking that they would vacate the property by 31.12.2011. It is therefore obvious, that the settlement agreement did not postulate refund of security deposit to the appellants. It is an accepted and admitted position that the appellants were in arrears of rent, payable @Rs. 9,50,000/- per month, for the period prior to October, 2011. It is obvious and clear that the security deposit of Rs. 28,50,000/- was to be adjusted towards arrears of rent for the period prior to October, 2011. The plea now taken by the appellants is a mere pretence and sham excuse to avoid compliance with the undertakings.

8. The order dated 6.11.2013 passed by the Single Judge in the contempt proceedings records identical findings and observes that the pretext of adjustment of security deposit is an afterthought to wriggle out of the undertaking. The order refers to adjournments taken before the Single Judge in contempt proceedings, and that on 16.04.2012, Rs. 5,00,000/- was paid by the appellants with a prayer

that the balance outstanding amount would be paid within three months. Thereafter, on 25.07.2012, the appellant had prayed for further extension of two months and affidavit of the Managing Director was filed. Undertaking to the same effect was also filed on 6.08.2012. Another undertaking given on 1.04.2013 had stated that the entire balance amount would be paid by the first week of May, 2013. On 22.07.13 the appellant had pleaded for 4 weeks further extension of time, which was granted.

9. Thus, even in contempt proceedings, appellant no. 1 had filed undertakings and given solemn assurance of making payment and compliance. There have been repeated breaches, and in spite of opportunities granted, the appellants have failed to abide by their commitment and assurances.

10. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed. Impugned order holding the appellants guilty of contempt and imposing punishment is upheld and affirmed.

11. Appellant No.1 shall surrender within a period of 10 days from today, failing which warrants for arrest would be issued and executed. Appeal is disposed of. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 22, 2018/b