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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.APP.(C) 9/2016**

VIJAY KUMAR BHATIA Appellant

Through: Mr. Rajesh Banati, Advocate with
Mr. Ankit Banati, Advocate.

versus

SOM DATT ENTERPRISES LTD. Respondent

Through: Mr. Naresh Thanai, Advocate with
Ms. Khushboo Singh and Mr. Tushar
Sharma, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
% **06.12.2018**

Dr. S. Muralidhar, J.:

1. This appeal is directed against an order dated 28th November 2016 passed by the learned Single Judge in CCP (O) No. 146 of 1997 holding the Appellant guilty of civil contempt under Section 12 of the Contempt of Courts Act 1971 ('Act') and sentencing him to three months' simple imprisonment.

2. The background to the present appeal is that the Respondent filed a Suit No. 2482/1995 against Vijay Cable Industries, Mr. V.K. Bhatia, Mr. V.K. Bhatia & Sons (HUF) and Mr. T.K Bhatia for recovery of the monies due to it. In the said suit, an application under Order 23 Rule 3 CPC being IA No.

2872/1996 was filed. The said application referred to an agreement dated 24th July, 1997 between the parties. This agreement was between the Respondent Decree Holder (DH) and Vijay Cable Industries, a partnership firm represented by the present Appellant Mr. V.K. Bhatia as partner. One Priya Cable Pvt. Ltd., against whom the suit was not filed, was also made a party to this agreement.

3. Apparently, with regard to the decision of the executing Court holding that the proceedings in so far as Priya Cable Pvt. Ltd were not maintainable, the DH, i.e. the Respondent herein, had filed EFA No. 2033/2016 which came to be disposed of by an order dated 21st December, 2017 by the Division Bench (DB) of this Court. Since that is not immediately relevant for the present appeal, it need not be discussed further.

4. Relevant to the present appeal is the fact that when the terms of the compromise were not adhered to, the DH filed Execution Petition No. 126/1997 against the Judgment Debtors (JDs), including the present Appellant, for the execution of the compromise decree dated 15th April, 1996 in Suit no. 2482/1995.

5. On 29th May, 1997, an order was passed by the executing Court in Execution Petition 126/1997 attaching various receivables of the JDs from the Director General of Supplies & Disposals (DGS&D) and various Electricity Boards as well as the immovable property at A-111, New Friends Colony, New Delhi. The aforementioned DGS&D as well as the State Electricity Boards were restrained and prohibited from making any payment

to the JDs to the extent of the decretal amount.

6. The JDs then approached the DH and offered to pay the decretal amount in instalments on the condition that the restraint order and attachment be withdrawn. Consequently, a settlement/compromise was entered into whereunder the JDs agreed to pay to the DH a sum of Rs. 46 lakhs forthwith and to pay the balance amount in 40 equal bimonthly instalments with effect from 31st August, 1997 till 31st March, 1999. The JDs also agreed and undertook to the Court that they would abide by the terms and conditions of the settlement and would punctually discharge their liabilities thereunder.

7. In view of the said settlement, both parties filed a joint application being EA No. 233/1997 in Execution Petition 126/1997. The prayer in the application was to take the settlement on the record and lift the attachment which had been directed by the order dated 29th May 1996.

8. EA No. 233/1997 came up for hearing on 30th July, 1997. The Court recorded the undertakings of the JDs that they would be bound by the terms and conditions contained in the compromise application. The Court then passed the following order on 30th July, 1997:

"In view of the above statement given by the learned counsel for both the parties before this Court today the. Execution Petition (Ex.No.126/97) is directed to be disposed of in terms of compromise (Ex.C-1) arrived at between the parties. The parties shall remain bound by the terms and conditions as contained in the application for compromise (Ex.C-1) and also the Agreement executed between the parties on 24th July, 1997 (Annexure A-1). The parties shall also remain bound by the undertaking given by their respective Advocates before this Court today. The attachment order dated the 29th May, 1997, in view of the fact

that the parties have arrived at a compromise, is hereby vacated. As a measure of abundant caution it is clarified that in the event of any default by the Judgment Debtors the Decree Holder is given the liberty to move an application for the revival of the Execution Petition.

A copy of this order be also sent to the garnishees for information.

A copy of the order be also given 'dasti' to the parties."

9. It is not in dispute that pursuant to the aforementioned order, the JDs have paid the DH only Rs. 13 lakhs. Learned counsel for the Appellant states that this was paid sometime in March, 1998. The cheques issued by the JDs thereafter on 4th September, 1997 for Rs. 16 lakhs and 22nd September, 1997 for Rs.15 lakhs were dishonoured.

10. At this stage, it is necessary to refer to some of the Clauses of the settlement agreement on the basis of which the aforementioned order dated 30th July, 1997 was passed. Clauses 7 to 12 of the aforementioned Agreement read as under:

"7. It is further agreed that in the event of default as defined in the original Decree dated April 15, 1996 read with reference to the settlement dated March 18, 1996, (namely, three consecutive defaults) the entire decretal amount of Rs.4.59 crores, minus the instalment amounts already paid by the Judgment Debtors together with costs and interest thereon, shall forthwith become due and payable by the Judgment Debtors, as per the Settlement dated March 18, 1996, as if the Decree Holder has not condoned the defaults on the part of the Judgment Debtors in this regard and accordingly, the Judgment Debtors would be liable to pay the entire Decretal amount in the sum of Rs. 4.59 crore, (minus the instalment amounts already paid) together with

all the costs and the interest thereon at the rate of 2.5% per month for the entire period of default computed with effect from the first default in terms of and under the settlement dated March 18, 1996.

8. That in the event of non-payment of APSEB bills relating to recovery of Rs.15 lacs within 21 days, referred to in para (3) above, the Judgment Debtors shall make payment from their other sources within 7 days (seven) days, filing which their receivables with all the other parties shall get attached with immediate effect.

9. That the injunction/attachment order of movable and immovable properties rendered by the Hon'ble High Court of Delhi on May 29, 1997 in Execution Petition No.126 of 1997 shall be agreed to be lifted.

10. That out of the payment now due and receivable by the Judgment Debtors from the APSEB, any amount received by the Judgment Debtors shall first be paid to the Decree-Holder to the extent of Rs. 15 lacs in terms of clause (3) hereof and towards payment of any monthly instalment that had fallen due for payment and the Judgment Debtors are in arrears in respect thereof.

11. That the Judgment Debtor agree that their liability towards the Decree-Holder under this agreement as well as under the Decree dated April 15, 1996 read with the, Settlement dated March 18, 1996 is both joint as well as several.

12. That in the event of any default or failure on the part of Judgment Debtor to fulfil and discharge their commitments made herein and/or to honour their undertaking before the Hon'ble Court the existing attachment order shall be liable to be revived and re-imposed again in the manner prescribed in the existing order dated May 29, 1997 of the Hon'ble High Court of Delhi.”

11. Therefore, one consequence as a result of the default on the part of the JDs was that the attachment order would be revived. Thus, as a result of the default by the JDs, Execution Petition No.126/1997 stood revived by an order dated 18th January, 1998. Further, the DH filed Contempt Petition CCP (O) 146/1997 for orders to proceed against the Appellant for civil contempt.

12. The learned Single Judge has in the impugned order dated 28th November, 2016 held that the JDs having furnished an undertaking to the Court, were bound to clear the pending amounts failing which they would be liable to be proceeded against for contempt of Court. It was held *inter alia* that the present Appellant/JD having availed benefits from the order dated 13th July 1997 “of having the attachment earlier ordered lifted” could not “deprive the realtor/decreed-holder of the benefits thereof.” It was further observed that although the DH had attempted to execute the decree but owing to the JDs having “arranged their affairs in a manner that nothing is available for execution of the money decree, the same remained non-executed.” Accordingly, the Appellant was held guilty for contempt of Court under Section 12 of the Act and punished with simple imprisonment for a period of three months.

13. While admitting this appeal on 8th December 2016, this Court stayed the sentence imposed on the Appellant. At one stage during the hearing of the present appeal, the following order was passed on 20th February, 2018.

“Mr. Vijay Kumar Bhatia, the appellant, who is present in Court, states that, without prejudice to the rights and contentions, he would be depositing Rs. 10,00,000/- in the Court within a period

of six weeks. He would file a written undertaking given to the Court for the said deposit within a period of one week from today.

List on 23.4.2018, on which date we will examine the question of contempt and alternative prayers of civil imprisonment or whether the appellant should be declared insolvent.”

14. However, pursuant to the above order, no written undertaking was furnished by the Appellant. He also did not deposit Rs. 10 lakhs in this Court. On 5th July, 2018, this Court passed a detailed order in which, *inter alia* it noted the statement made by the learned counsel for the Appellant that “the Appellant has no source of income and is completely dependent on the money sent to him and his wife by his two sons, both of whom are employed abroad.” This Court then called upon the Appellant to file an affidavit disclosing a number of particulars from 28th November, 2016 onwards, the date of the impugned judgment of the learned Single Judge.

15. Pursuant to the order dated 5th July 2018, the Appellant filed an affidavit disclosing the details that had been sought by way of the said affidavit. It shows that the solitary built up immovable property of the Appellant at New Friends Colony (NFC) stands mortgaged to the Uttar Pradesh Financial Corporation (UPFC). The UPFC has already issued notice to the Appellant demanding Rs. 69 crores. Apparently, there are no other immovable properties in the name of the Appellant or his family members/HUF. Even in his bank accounts, there is no substantial amount at present.

16. Mr. Naresh Thanai, learned counsel for the Respondent urges that this Court should treat the conduct of the Appellant as a wilful disobedience of

the undertaking given to the Court way back in 1997 when, in execution proceedings, a settlement was recorded and affidavit was filed by the present Appellant in those proceedings. Relying on the decisions in ***Rama Narang v. Ramesh Narang (2016) 11 SCC 114*** and ***Mohan Nair v. Rajiv Gupta (2015) 220 DLT 332***, learned counsel for the Respondent insists that this Court should concur with the learned Single Judge and hold the Appellant guilty of ‘civil contempt’ as defined under Section 2 (b) of the Act.

17. Mr. Rajesh Banati, learned counsel for the Appellant, on the other hand, submits that the Respondent is using the weapon of contempt proceedings when the Respondent had the alternative remedy of execution proceedings. He refers to an order dated 13th April, 2018 passed by the Executing Court dismissing the Respondent’s Execution Petition No. 126/1997 after observing that there was no intent on the part of the DH i.e. the Respondent herein, to recover any money. The learned executing Court observed: “It is quite obvious that remand of the execution was obtained just to keep the same pending, without any intent to recover any monies. The same is also evident of total unpreparedness for the hearing and lack of any steps taken prior to the hearing.”

18. Relying on the decisions in ***R.N. Dey v. Bhagyabati Pramanik (2000) 4 SCC 400*** and ***M/s D.S. Marketing Pvt. Ltd v. M/s Syrus Marketing Pvt. Ltd*** (decision dated 12th December, 2005 of this Court in CCP No. 34/1998 in CC(OS) No. 2200/1997), Mr. Banati submits that a DH who takes no steps towards executing a decree should not be encouraged to invoke the contempt jurisdiction of the Court only because the decree has not been satisfied by

the JD.

19. The above submissions have been considered. The key question to be addressed by the Court is, keeping in view the facts and circumstances of the case, can the Appellant be said to have committed civil contempt as defined under Section 2 (b) of the Act? In other words is the conduct of the Appellant 'wilful disobedience' of 'any judgment, decree, direction, order, writ or other process of a Court' or 'wilful breach of an undertaking given to a Court'? The key adjective that is required to be focused on is 'wilful'.

20. There could be many instances where undertakings are given to the Court by the parties, which they are not able to comply with. Not every failure to comply with an undertaking would automatically result in the party being in civil contempt of the Court. For the purposes of Section 12 read with Section 2 (b) of the Act, the Court will have to be satisfied that the disobedience of the Court's order or the breach of the undertaking given to the Court was 'wilful'. What constitutes 'wilful disobedience' or 'wilful breach' will of course depend on the facts and circumstances of the case.

21. For instance, the factual situation in *Mohan Nair v. Rajiv Gupta* (*supra*), relied upon by the learned counsel for the Respondent, arose in the context of rent control proceedings where the directions of the Rent Control Tribunal, that had attained finality, directing vacation of the tenanted premises, remained unimplemented. In fact the tenanted premises came to be demolished. Faced with contempt proceedings, the contemnors offered to pay the cost of the reconstruction/restoration of the premises. However, after the offer was accepted and an order recorded, the Respondent caused

disruption in the restoration/reconstruction. It was in those circumstances that it was held that there had been a wilful disobedience of the undertaking given to the Court.

22. Closer to the case on hand is the one in *M/s D.S. Marketing Pvt. Ltd v. M/s Syrus Marketing Pvt. Ltd.* (*supra*). There too, an undertaking was given to the Court that payments would be made in instalments to the DH. The JD was, however, unable to make the payments as undertaken. On the facts of that case, it was found that there was no wilful disobedience or breach of an undertaking that would attract ‘civil contempt.’ The Court observed that it was not so much “a case where a person has resiled from the terms for a consent order but that a person had given a solemn undertaking to the Court and had not fulfilled the undertaking.”

23. It is useful in this context to refer to the decision in *R.N. Dey v. Bhagyabati Pramanik* (*supra*) where a distinction was drawn between the remedy provided by way of execution proceedings and contempt proceedings initiated for non-compliance with the order of the Court. The Supreme Court observed as under:

“7. We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt

proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

8. Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment debtor and hence the court should not normally lend help to a party who refuses to take legally provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree.”

24. In the above background, it is significant that in the present case, the same learned Single Judge who passed the impugned order holding the Appellant guilty of ‘civil contempt’ subsequently rendered a judgment dated 13th April, 2018 dismissing the main Execution Petition 126/1997 which judgment is reported as ***Som Dutt Enterprises v. Vijay Cable Industries & Ors, 2018 V AD (Delhi) 125***. There the learned Single Judge noted in that order that earlier on 17th August, 2016, the execution petition had been dismissed since the DH had not informed the Court “the manner in which the assistance of this Court is required for execution.” Although the said order was set aside

by the DB on 21st December, 2017 with the consent of counsel for the JDs and the execution petition was revived, for more than three months thereafter, the DH was unable to state the mode of execution. It was noted by the learned Single Judge that the JD had filed an affidavit stating that an amount of Rs. 73,56,397/- was recoverable from DGS&D and Rs. 74,97,468.26/- from the Delhi Vidyut Board (DVB). The learned Single Judge found that no steps had been taken by the DH despite having the above information leaving the Court with the impression that “no steps have been taken” with respect to the receivables from DGS&S and DVB since 21st December, 2017.

25. The learned Single Judge concluded the order dismissing the execution petition with the following observation:

“It is quite obvious that remand of the execution was obtained just to keep the same pending, without any intent to recover any monies. The same is also evident of total unpreparedness for the hearing and lack of any steps taken prior to the hearing.”

26. The Court is informed by learned counsel for the DH that till date, the DH has not filed any appeal against the above order.

27. It is in the above context that the Court has to examine whether the failure by the Appellant to comply with the undertaking given to the Court to make payment which was recorded in the order dated 30th July, 1997 in the execution proceedings can be stated to be ‘wilful’. What comes across is the inability of the Appellant to make payment and not that the Appellant wilfully breached the undertaking given to the Court.

28. There must be some credible material to show that the Appellant has deliberately and consciously avoided making payment despite having the resources. That is absent in the present case. In other words, there is nothing placed on record either before the learned Single Judge or this Court that helps conclude that the present Appellant deliberately misled the Respondent or even the Court by giving a false undertaking with no intention of complying with such an undertaking. This was the crucial aspect that was required to be examined by the learned Single Judge.

29. The Court finds no finding in the impugned order of the learned Single Judge that the conduct of the Appellant answers the description of 'civil contempt' under Section 2 (b) read with Section 12 of the Act. In other words, there is no finding by the learned Single Judge that the conduct of the Appellant constitutes 'wilful breach of the undertaking given to the Court.'

30. To reiterate, while the Appellant could be said to be in breach of the undertaking given by him to the Court, the facts placed on record do not persuade this Court to hold that he was in 'wilful breach' of such undertaking given to the Court.

31. In such circumstances, it is not as if the aggrieved party i.e. the DH has no remedy. The DH in fact did get the execution proceedings revived but was not interested in taking steps to carry those proceedings to a logical conclusion.

32. For the above reasons, this Court is unable to agree with the view expressed by the learned Single Judge that the Appellant is guilty of civil

contempt. The impugned judgment of the learned Single Judge is set aside.

33. The appeal is allowed but, in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 06, 2018

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