

08.11.2024
SL No.1-4
Court No.12
(sg/gc)

CRC 5 of 2019
CAN 1 of 2024

Efcalon Tie Up Pvt. Ltd.
Versus
Pradip Churiwal & Ors.

With

CPAN 116 of 2021

Efcalon Tie Up Pvt. Ltd.
Versus
Annapurna Devi Churiwala

With

CRC 1 of 2020

Efcalon Tie Up Pvt. Ltd.
Versus
Sharda Gupta

With

CRC 2 of 2021

Efcalon Tie Up Pvt. Ltd.
Versus
Subodh Singh

With

CRC 5 of 2021

Efcalon Tie Up Pvt. Ltd.
Versus
Ashim Agarwal

With

CRC 6 of 2021
CAN 2 of 2021

Efcalon Tie Up Pvt. Ltd.
Versus
Bhavin Doshi Dalichan & Ors.

With

FMA 33 of 2019

With

FMA 71 of 2019

Mr. Sabyasachi Chowdhury
 Mr. Dawipayan Basu Mallick, Adv.
 Mr. Rajesh Upadhyay, Adv.
 ...for the applicant

Ms. Sutapa Roy Choudhury
 Ms. Aratrika Roy
 ...for alleged contemnors in CRC 5/2021

Mr. Arindam Banerjee
 Mr. Aishwarya Kumar Awasthi
 ...for alleged contemnors in CRC 6/2020

Mr. Sakya Sen Adv.
 Mr. Chunky Agarwal, Adv.
 Ms. Ram Maroo, Adv.
 ...for the respondents in CPAN 116/2021
 ...& for the respondents in CRC 5/2019

Mr. Nikunj Berlia, Adv.
 Mr. Mosarat Reyaz
 Mr. Sandip Manna
 ...for alleged contemnors in CRC 1/2020

Mr. Ishan Saha, Adv.
 ...for alleged contemnor in CRC 2/2021

Re: CRC 5 of 2021

1. This contempt application is arising out of an order passed by a Division Bench presided over by one of us (Soumen Sen, J.) on 25th February, 2019 in which we have passed several directions upon the Receiver over and in respect of the properties forming the subject matter of the contempt petition. Briefly stated, there was a dispute between the petitioner and one Startrack Agency

Pvt. Ltd. over several godowns of which Efcalon Tie-Up Pvt. Ltd. claimed to be the owner. Efcalon initiated a proceeding for eviction of Startrack upon expiry of the licence. In view of the arbitration clause in the said agreement, the matter was referred to arbitration in which an award was ultimately passed in favour of Efcalon.

2. During the pendency of the arbitration proceeding, Efcalon filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 in which several orders were passed from time to time out of which three orders we found to be relevant for the present purpose. In order of time, 28th September, 2011 is the order where certain directions were given with regard to the disclosure of bank account of Startrack followed by an order dated 8th June, 2015 and ultimately the order dated 18th September, 2018 passed by the learned Additional District Judge, 13th Court, Alipore. By the last order, the Receiver already appointed was directed to collect occupational charges and service charges directly from the actual occupant of premises no.P-10, Taratala Road, Kolkata without interference of respondent. The respondent, namely, Startrack was further restrained from sub-licensing any part or portion

of the said premises to any person or concern. This order has been assailed in appeal by the Efcalon in which the order dated 25th February, 2019 was passed.

3. In order to appreciate the nature of contempt, it is necessary for us to set out the relevant portion of the order below:-

“The supplementary-affidavit filed on behalf of the appellant shows that the Receiver has noticed cat and mouse game of the respondent in relation to occupants. The Receiver in the Minutes of the Meeting of 11th October, 2017 has recorded that many of office premises were found to be under lock and key and though the name of several companies are mentioned outside the entrance of the shades but it could be ascertained later on that someone else is in possession. The Receiver also could not enter many of the shades as they were found to be under lock and key. The Trial Court has permitted the Receiver to collect all occupational charges and service charges directly from the actual occupant of Premises No.P-10, Taratala Road, Kolkata- 700 088 without interference of the respondent. Although, the respondent was directed to disclose Bank Account details and amount held by them in terms of orders dated 28th September, 2011 and 8th June, 2015, they have not done so far. The respondent is now directed to comply with the said direction within a fortnight from date. The respondent

was further restrained from sub-licensing any part or portion of the said premises to any person or concern. The learned Trial Judge has adequately protected the interest of the appellant and has rightly observed that other prayers could not be granted in view of pendency of the application for setting aside of the award.

However, since the Receiver has appeared pursuant to our direction and submitted that he could not obtain the list of occupants because some of them were not found at the time of inspection, the Receiver shall make a surprise visit to the premises in question and make a list of the occupants who are found to be in actual physical possession. In the event, the Receiver is prevented from implementing this order, the Officer-in-Charge of the local Police Station shall render all assistance to the learned Receiver to carry out the direction of this Court on a written request being made by the Receiver along with the copy of this order.”

4. The petitioner alleged that the present contemnor has willfully and deliberately violated the order in refusing to pay the occupational and service charge to the learned Receiver in respect of unit no.3 at premises no.P-10, Taratala Road, Kolkata and is deliberately and intentionally interfering with the function of the Receiver.
5. On the basis of the averment and disclosure of documents, we were prima facie satisfied and

issued Rule. Initially the contempt rule could not be served and it was returned with the endorsement “refused”. Thereafter, the contemnor was produced by the Police Authorities. In the answer to the said Rule, it is stated that the alleged contemnor was one of the partners of M/s. Diamond Engineering and used to carry the business of distributorship of spare parts of cranes. For the purpose of storage and warehousing of the spare parts on or about 1st July, 2017 an agreement was entered into by and between M/s. Sneha Realcon Private Limited (hereinafter referred to as M/s. Sneha Realcon). On the basis of the agreement, out of approximately 50,000 sq.ft. in a warehouse, 2100 sq.ft was earmarked for the partnership firm and on the basis thereof, the partners commenced its business from a portion of the said godown on and from 1st July, 2017 to 31st May, 2020. The godown rents were paid during the said period with revisions contemplated under the said agreement.

6. It is alleged that before the termination of the said agreement, M/s. Sneha Realcon intimated the partnership firm that it is a sister concern of one M/s. Bhawani Realcon Private Limited

(hereinafter referred to as M/s. Bhawani Realcon) and a fresh agreement was entered into on 1st June, 2019 with M/s. Bhawani Realcon on similar terms and conditions. The said sister concern has absolutely seized and possessed of the portion rented out to Diamond Engineering and henceforth the rent and other charges should be paid to the said M/s. Bhawani Realcon. On the basis of such communication, on an from 1st June, 2019 the partnership firm paid and continued to pay the rents and other charges in terms of the agreement that had entered into with M/s. Sneha Realcon until the termination. It is alleged that the alleged contemnor was acting bonafide, in good faith and upon the representation made by M/s. Sneha Realcon and Bhawani Realcon, rents and occupational charges were paid to the said two concerns on 1st July, 2017 to 15th January, 2021. It was further emphasized that neither M/s. Sneha Realcon nor Bhawani Realcon had however informed the petitioner regarding the pendency of the proceeding before the learned Alipore Court or before this Court or existence of any order passed by this Court appointing the learned Receiver/Special Officer.

7. It was initially stated that the alleged contemnor came to know about the order dated February 25, 2019 on May 21, 2019. However, subsequently said date was corrected as 21st May, 2021. The alleged contemnor has however expressed unconditional apology for any violation of the order unintentionally committed by the alleged contemnor.
8. The petition and the affidavit-in-reply filed on behalf of the petitioner disclosed the report filed by the Special Officer and also the communications made by Mr. Rajesh Upadhyay, learned Advocate-on-Record for the petitioner to establish that the alleged contemnor had due knowledge and notice of the proceeding pending before the High Court in which the orders have been passed from time to time. It is alleged that in spite of notice of such orders, the alleged contemnor had violated the orders and interfered with the possession of the Special Officer with impunity.
9. Initially, the alleged contemnor tried to convince that he was not aware of the order passed by the learned Trial Court or by this Court with regard to direction of payment of occupational charges and service charges to the Receiver directly. However,

having confronted with the report of the Special Officer as well as the two communications made by Mr. Upadhyay on 15th October, 2019 and 13th February, 2020 it has been argued that the report of the Special Officer would clearly show that the alleged contemnor was not present and it was under the control of Startrack Agencies Private Limited and the communications alleged to have been made on behalf of the petitioner were not duly delivered to the alleged contemnor.

10. Although, we may accept the first submission with regard to the absence of knowledge on the date when the Special Officer had visited the premises in question however, it appears from the reports filed by the Special Officer that the Special Officer had affixed a notice in which necessary details with regard to the pendency of the proceeding were duly mentioned. Moreover, the two notices issued on behalf of the petitioner appear to have been duly served in view of the track confirmation report issued by the Postal Agencies. Even if we give benefit to the alleged contemnor of confusion with regard to service of first notice dated 15th October, 2019, the alleged contemnor cannot escape from the fact that the subsequent notice of 13th February, 2020 was

duly received by him, but he did not reply to the said notice. It seems that that he was conniving with Churiwals and the Startrack.

11. In course of hearing, it has been alleged that the said partnership firm is a dummy company of Churiwal which need to be assessed when the contempt applications against Startrack and Churiwal are to be considered.
12. In the contempt jurisdiction, the Court is required to ensure that the majesty and dignity of the Court are not tarnished by any act of willful and deliberate violation of its order. In the given facts and circumstances of the case, it is an admitted position that the alleged contemnors have violated the order passed by the Division Bench in refusing or declining to pay the occupational and service charges to the Special Officer in spite of knowledge of the order. The act and conduct of the present contemnor is one of avoidance and connivance. In spite of having the opportunity to co-operate with the Special Officer and at least to take steps as per letters of Advocate-on-Record for the petitioner disclosing the basis of his occupation and to approach the Court with a prayer for acceptance of occupational charges after being aware of the

existence of the orders being faced with the grave reality having violated the order, it is too late in the day to surrender and tender unconditional apology.

13. Disregarding the direction of the Court and interfering with the possession of the Special Officer manifestly establishes the conduct of the alleged contemnor. The alleged contemnor seems to have deliberately violated the order of the Division Bench by disregarding the communication made by Mr. Rajesh Upadhyay on 15th October, 2019 followed by reminder and communication dated 13th February, 2020 requesting the alleged contemnor to disclose the basis of his possession.
14. It is trite law that a contemnor is required to be punished for the act of contempt if the court has arrived at a finding that the acts and conduct of the alleged contemnors are contumacious, deliberate, willful and aimed at circumventing the order consciously in order to render the order infructuous or inexecutable.
15. On the basis of the aforesaid, it can be safely concluded that the alleged contemnor has knowingly, deliberately and intentionally violated the order dated 25th February, 2019. In fact, the

contemnor has also violated the order passed by the learned Trial Court regarding deposit of occupational charges to the Receiver.

16. As observed earlier, the direction of the learned Trial Court regarding deposit of occupational charges have also been flouted first in entering into the agreement and secondly in not depositing the occupational charges with the Receiver. Even if it is contended and held that initial entry of the alleged contemnor could be without knowledge of any subsisting order not disclosed by Startrack but with the passage of time it is now clear from the record that the partnership firm being aware of the order passed by the learned Trial Court as well as by the Division Bench with regard to the possession and occupational charges.

17. The contemnor is personally present.

18. The learned counsel appearing on behalf of the contemnor has submitted that the apology tendered in the affidavit filed by the contemnor may be accepted. Moreover, in the event the Court is of the view that the apology cannot be accepted and proposes to punish the contemnors with imprisonment and costs, a suitable time may be given to the petitioner to prefer a statutory

appeal under Section 19 of the Contempt of Courts Act, 1971.

19. It is true that in answer to the Rule, they have tendered unconditional apology but such apology has to be considered in the background of the facts and circumstances and the conduct of the contemnors. When the “die is cast” and “bolt is impending” and the contemnor was left with no other alternative but had to confess that they have committed an offence, they cannot be exonerated of their contumacious conduct simply because they have tendered apology.

20. In ***Re. M.Y. Shareef and Another vs. Hon’ble Judges of the Nagpur High Court and Others.*** [AIR 1955 SC 19], the Hon’ble Supreme Court held at Paragraph 10 as follows:-

“10. The proposition is well settled and self evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.”

21. In ***Re: Patel Rajnikant Dhulabhai and Another vs. Patel Chandrakant Dhulabhai and Others.*** [2008 (14) SCC 561], at paragraph 77, the Hon’ble Apex Court held as follows:-

“77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a “tactful move” when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.”

22. In the background of the facts and circumstances narrated above, we are of the view that we are unable to accept the unconditional apology at this belated stage. Since we have negated the plea of lack of knowledge and refused to accept the unconditional apology we propose to decide punishment for such act of contempt.

23. The learned Counsel for the contemnor submits that the alleged contemnor is innocent and having regard to the apology tendered, he may be exonerated. However, for the reason indicated above, we are unable to accept the apology. In the facts and circumstances of the case, we, however, do not propose imprisonment of the alleged contemnor. However, we impose exemplary fine of Rs.4 lakhs to be paid to the State Legal Services Authority, West Bengal within

a period of four weeks from this date. In default, the alleged contemnor shall suffer simple imprisonment of one month.

24. The said fund shall be earmarked for mediation and juvenile in equal share.

25. The contempt application being CRC 5 of 2021 in CPAN 504 of 2020 is disposed of.

26. It appears that a sum of Rs.1 lakh has been deposited by the contemnor in terms of the order dated 21st May, 2021 in the office of the learned Registrar General.

27. In the event the aforesaid fine is paid, the learned Registrar General shall prematurely encash the fixed deposit and return the proceeds thereof to the contemnor.

28. The prayer for stay is considered and rejected.

29. The matter shall be listed after **five weeks** with a report from the Secretary of the SLSA, West Bengal.

30. This order shall be communicated to the Secretary, SLSA for information and doing the needful.

31. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

32. On the prayer of the parties, the remaining matters shall be listed on **10th January, 2025**.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)