

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

**CONTEMPT PETITION NO. 69 OF 2017
IN
CHAMBER SUMMONS NO. 1518 OF 2016
IN
EXECUTION APPLICATION (L) NO. 1655 OF 2016**

Richmond Mercantile Limited FZC registered under
the Laws of United Arab Emirates C-3-012, P.O. Box
8412, Sharjah Airport International Free Zone,
Sharjah, United Arab Emirates

... Petitioner

Versus

1. Vinergy International Private Limited
a Company incorporated under the provisions
of the Companies Act, 1956 and having its
Registered Office at Gala No.16, Sunny
Compound Rahana, Bhiwandi, Thane 421302.
2. Mukul Mahavirprasad Agarwal,
Director of Respondent No.1 and having his
address at 181/b, Tanna Residency, 392, Veer
Savarkar Marg, Prabhadevi, Mumbai-25.
3. Sharda Mahavirprasad Agarwal,
Director of Respondent No.1 and having her
address 181/b, Tanna Residency, 392, Veer
Savarkar Marg, Prabhadevi, Mumbai-25.

... Respondents

Mr. F.D'Vetre, Senior Advocate a/w Mr. Chirag Balsara, Ms. Pratiksha Mody, Mr. Aekaanth Nair i/b M/s. K. Ashar & Co. for the Petitioner.

Mr. Dinyar D. Madon Sr. Advocate a/w Ms. Ridhi Nyati, Mr. Rishi Murarka i/b Ashwin Shankar for Respondent Nos.1 to 3.

CORAM : R.I. CHAGLA, J.

RESERVED ON : 3rd JULY, 2019.

PRONOUNCED ON : 1st AUGUST, 2019.

ORAL JUDGMENT :

1 This Contempt Petition has been filed for breach of the orders dated 18.11.2016 (passed by S.J. Kathawalla, J.) and 13.01.2017 (passed by G.S. Patel, J.) in Chamber Summons No.1518 of 2016. The said Chamber Summons had been taken out by the Petitioner in execution of a foreign award dated 25.09.2014 which had attained finality by virtue of the enforcement Petition No.59 of 2015 filed under Section 47 of the Arbitration and Conciliation Act, 1996 being allowed vide order dated 01.07.2016 passed by this Court. The Respondent No.1 is the Judgment Debtor and the Petitioner is the Judgment Creditor under the said award.

2 A brief background of facts is necessary. The said award came to be passed by an arbitral tribunal in London, United Kingdom and under which certain sums were awarded to the Petitioner and payable by Respondent No.1. The challenge to the said award in the United Kingdom proved unsuccessful. On 18.12.2014, the Petitioner filed Arbitration Petition No.59 of 2015 for the enforcement of the award. Prior to this Court making the Arbitration Petition absolute and declaring the said

award enforceable as a decree of this Court, certain orders had been passed in Applications taken out in the Arbitration Petition, a few of which are necessary to mention. This Court by an order dated 04.05.2016 granted ad-interim relief in the Arbitration Petition restraining Respondent No.1 from in any manner selling, transferring, creating any third party rights, encumbrance or dealing in any manner with any of the Respondent No.1's assets. A Notice of Motion was taken out by Respondent No.1 with a view to exclude certain assets of Respondent No.1 which was in respect of certain quantity of bitumen and instead sought to replace this with an unencumbered property at Pali District, in Rajasthan. Pursuant to the Notice of Motion filed, this Court by an order dated 06.05.2016 observed that the Respondents had not come to the Court with clean hands and suppressed the fact that out of the seven assets in respect of which injunction has been granted, four assets were already encumbered. This Court directed an affidavit of disclosure to be filed by Respondent No.1. Accordingly, an affidavit of disclosure was filed by Respondent No.1 pursuant to the said order. Upon an application being filed by the Petitioner applying for certain security to be provided to secure the said award and an injunction restraining the Respondent No.1 from encumbering the property at Pali, Rajasthan which was still not encumbered, an order came to be passed by the learned Judge of this Court

recording a statement of Respondent No.1 that they have neither created nor will create any third party interest in the property (Pali property) which was the subject matter of the said Notice of Motion.

3 Thereafter, pursuant to a further application made by the Petitioner for disclosure and for injunction restraining the Respondent No.1 from in any manner dealing with the assets which they have disclosed in their affidavit of disclosure, this Court by an order dated 07.06.2016 arrived at a prima facie finding that the Respondents have committed violation of ad-interim order dated 04.05.2016 in that they have dealt with their assets i.e. bitumen, possession of which had been parted with in violation of order dated 04.05.2016. However, it is required to be noted that in the said order dated 07.06.2016, the learned Senior Counsel appearing for the Respondent No.1 had drawn this Court's attention to averments made in the Arbitration Petition No.59 of 2015 and submitted that it was to the knowledge of the Petitioner that the assets described in Exhibit-E to the Petition were encumbered by the Respondents. This Court by the said order granted the prayers in the Notice of Motion and it was made clear that if the Respondent No.1 furnished bank guarantee of Rs.50 crores within the time prescribed, injunction granted by this Court in terms of the prayers in the Notice of Motion shall stand vacated.

4 The learned Judge of this Court on 01.07.2016 made the Arbitration Petition seeking enforceability of the said award as a decree of this Court absolute. Accordingly, the Petitioner filed Execution Application No.1928 of 2016 on 22.07.2016. The Petitioner in the Execution Application filed the Chamber Summons No.1518 of 2016 for interim relief, in particular at prayer clauses (c), (d) and (f) relief was sought as under :-

“(c) That this Hon'ble Court be pleased to Order and direct the Respondent / Judgment Debtor and the Additional Respondents to make and file in this Hon'ble Court within two weeks or such other time as may be prescribed by this Hon'ble Court an Affidavit giving further and better particulars of the assets and properties of the Respondent / Judgment Debtor disclosed by the Additional Respondent No. 2 by way of his Affidavit dated 20th May 2016 [being Exhibit “C” to the Affidavit in support of Chamber Summons], the further and better particulars relating to the Respondent / Judgment Debtor's assets and properties which require disclosure by the Respondent and the Additional Respondents are listed in column “C” of the Annexure “A” to this Chamber Summons;

(d) That this Hon'ble Court be pleased to Order and direct the Respondent / Judgment Debtor and the Additional Respondents to produce before this Hon'ble Court and furnish to the Applicant / Award Holder within two weeks or within such other time as may be prescribed by this Hon'ble Court, true photocopies of all documents relating to the Respondent / Judgment Debtor's assets and properties and the documents which require to be produced and furnished as aforesaid are listed in column “D” of the Annexure “A” to this Chamber Summons against each of the Respondent / Judgment

Debtor's assets and properties listed at Serial nos. 1 to 21 thereof.”

(f) That the Respondent / Judgment Debtor be ordered and directed to produce before this Hon'ble Court and furnish to the Applicant/ Award Holder within 4 weeks or within such time as may be prescribed by this Hon'ble Court true photocopies of all the books of accounts, financial statements including Balance Sheet and Schedules and Annexures thereto and Income-Tax returns of the Respondent/ Judgment Debtor at least for the last three years, to enable the Respondent/ Judgment Debtor to make use of such information, financial statements and Income Tax Returns (to be disclosed by the Respondent/ Judgment Debtor as aforesaid) in enforcing the Arbitral Award dated 25th September 2014 (being the subject matter of the above Execution Application);

5 By an order dated 08.08.2016, the learned Judge of this Court extended the ad-interim relief granted to the Petitioner vide orders dated 04.05.2016 and 07.06.2016 and directed the Respondent No.1 to file additional affidavit giving particulars as to the assets disclosed and to comply with prayer clauses (c) and (d) of the Chamber Summons. The Respondent No.2 failed to comply with the order dated 08.08.2016. In view thereof, orders were passed by this Court observing the non-compliance of the order dated 08.08.2016 and directing Respondent No.2 to remain present in Court as well as noting that such non-compliance would amount to interference with the administration of justice. By an order dated 18.11.2016, the learned Judge (Coram: S.J. Kathawalla, J.)

passed an order in Chamber Summons No.1518 of 2016 in which the stand taken by the Respondent No.1 of non-compliance of the said order dated 08.08.2016 was noted and the reason for such non-compliance on the ground that it had become a physical, legal and financial impossibility on the part of the Respondents to comply with the said order, was not accepted. It was prima facie found that the Respondents have committed contempt of the order passed by this Court. It was observed that a new Company had been formed by the Respondents which was in view of the learned Judge nothing but a front Company and alter ego of Respondent No.1 and the assets of Respondent No.2 are being used to further the business of the new Company. By the said order, the learned Judge of this Court granted prayer clause (f) of the Chamber Summons No.1518 of 2016 and directed the Respondents to file further affidavit providing the information/ documents as sought for by the Applicant in terms of prayer clauses (c) and (d) of the Chamber Summons.

6 The learned Judge of this Court (Coram: G.S. Patel, J.) by an order dated 13.01.2017 recorded that prima facie, the Respondents continue to be in deliberate and flagrant violation of orders of this Court, including the order of disclosure. The learned Judge recorded the assurance of the learned Counsel appearing for the Respondents that the

order dated 18.11.2016 shall be complied with. The learned Judge observed that in paragraph 17 of the said order, a further affidavit was called for and a short time for filing the affidavit was granted. This was to be filed on 16.01.2017. Accordingly, the Respondent No.2 filed an affidavit of disclosure which was over 2200 pages and was stated to be in compliance with the orders dated 08.08.2017 and 18.11.2017 as well as the subsequent order dated 13.01.2017.

7 The Petitioner filed the present Contempt Petition on 13.10.2017 for contempt of orders dated 18.11.2016 and 13.01.2017. The Contempt Petition was admitted by the learned Judge of this Court (Coram: K.R. Shriram, J.) on 30.11.2018 who noticed prima facie that the Respondents continue to be in deliberate and flagrant violation of the orders of this Court and a prima facie case of contempt was made out as only a partial compliance has been made by the Respondents. Subsequent to the filing of the Contempt Petition, an order came to be passed by the learned Judge of this Court (Coram: K.R. Shriram, J.) dated 08.03.2019 directing Respondent No.2 to deposit his passport with the Prothonotary and Senior Master with proof of deposit to be intimated to the Petitioner. There are further affidavits filed by the Respondents producing the information sought for in the Chamber Summons, in particular, prayer

clause (f) of the Chamber Summons which had been granted vide order dated 18.11.2016 passed by this Court. There are subsequent applications made by the Respondents for return of the passport, which have not been granted and the Appellate Court had also granted liberty to the Respondents to move the learned Single Judge who was requested to hear and dispose of the Contempt Petition expeditiously by making appropriate application. Accordingly, this Contempt Petition has been taken up for hearing.

8 Submissions have been advanced on behalf of the Petitioner, initially by Mr. D'vitre, learned Senior Counsel and later in his absence by Mr. Balsara, learned Counsel. The learned Senior Counsel for the Petitioner has submitted that there has been a clear breach of the orders dated 18.11.20016 and 13.01.2017. The learned Counsel for the Petitioner has submitted that the Respondents were at all times aware of order dated 18.11.2016 and the said order was specific and unambiguous and had granted prayer clause (f) of the said Chamber Summons No.1518 of 2016 which required production by the Respondents of true copies of all the books of accounts, financial statements including balance-sheet and schedules and annexures thereto and income tax returns of the Respondent No.1/Judgment Debtor atleast for the last three years, which till date has

not been fully complied with. He has submitted that the Respondents have observed the prior orders passed by this Court in Arbitration Petition for enforcement of the said award only in the breach. He has submitted that this has been noted by the learned Single Judge in the orders dated 06.05.2016 and 07.06.2016. He has submitted that the learned Single Judge has observed in the said orders that there was no complete disclosure made by the Respondents of the assets of Respondent No.1 and that Respondent No.1 had delivered part of bitumen between 04.05.2016 and 06.05.2016 in violation of the ad-interim order granted by the learned Single Judge on 04.05.2016. The learned Single Judge in the order dated 07.06.2016 had in fact expressed a prima facie view that the Respondent No.1 had committed violation of the ad-interim order dated 04.05.2016. The Application of the Respondent No.1 dated 06.05.2015 for modification of order dated 04.05.2016 to exclude the four assets which had already been encumbered prior to the said order was not granted and it was observed that the Respondents have failed to mention about the fact that these assets were encumbered when the ad-interim order came to be passed. He has further submitted that the Respondents although having given an undertaking before the learned Judge of this Court on 27.05.2016 that they have neither created nor they will create any third party interest in the Pali property that was the subject matter of the Notice of Motion,

had not furnished the undertaking to the Petitioner on 27.05.2016. Hence, the Respondents were called upon to furnish the same to the Petitioner which they did in Court on 07.06.2016, i.e. after passing of the order by the learned Single Judge on that day.

9 He has submitted that the reason given by the Respondents for non-compliance of the order of this Court dated 08.08.2016 was that the Respondents were financially unable to comply with the said order since the funds of Respondent No.2, who was solely managing Respondent No.1, had been frozen and he was unable to pay the employees salaries and that the employees had left the Company and there was no one to help the Respondents. This reason had been rejected by this Court vide order dated 18.11.2016.

10 He has submitted that in the Contempt Petition, the contempt committed by the Respondents has been clearly set out in paragraph 40 of the Contempt Petition and that erroneously, paragraph 39 has been inserted after paragraph 38 when the same ought to have been inserted before paragraph 38. He has submitted that although in paragraph 39 it is mentioned that no such affidavit was filed by the Respondents pursuant to the order dated 13.01.2017, it has been clearly mentioned in paragraph 38 that a purported affidavit of disclosure dated 16.01.2017 was filed by

Respondent No.2 as Director of Respondent No.1 in the Chamber Summons and that the words no such affidavit is filed and/or served by the Respondents would be attributable to the type of affidavit which was contemplated by the order dated 13.01.2017. He has submitted that this was made clear from the statement in paragraph 38 of the Contempt Petition that the Respondent No.2 in the affidavit of disclosure dated 16.01.2017 had raised patently false, frivolous and malafide allegations to once again avoid making disclosure as mandated by the order dated 08.08.2016 and more particularly the order dated 18.11.2016 and that the Respondents continued with the blatant, intentional and willful contempt of the said orders of this Court. He has submitted that in any event the Respondents have not raised any issue as to the order dated 18.11.2016 not having been understood by them. He has submitted that Respondent No.2 in the additional affidavit dated 20.02.2019 admitted that there was non-compliance of prayer clause (f) of the order dated 18.11.2016 and stated that in order to cure the alleged inadvertent slip, the Respondents were producing the audited balance-sheet of financial years 2013-14, 2014-15 and the income tax return acknowledgement for financial years 2013-14 and 2014-15.

11 He has submitted that it has been a consistent stand even in

this affidavit on the part of the Respondent No.2 that he did not have funds at his disposal and/or requisite staff to comply with prayer clause (f) of the said order dated 18.11.2016. He has submitted that in the further affidavit dated 07.03.2019, the Respondent No.2 has again admitted that there was non-compliance with prayer clause (f). He submits that Respondent No.2 had wrongly contended that the same was inadvertent. He has further submitted that Respondent No.2 in the said affidavit had wrongly contended that the Petitioner had made a grievance that disclosure ought to have extended to 2013 when in fact no such grievance had ever been made. In fact, the said order dated 18.11.2016 was never modified much less as suggested by Respondent No.2 in the said affidavit. In fact, in the affidavit of sur-rejoinder dated 28.03.2019, Respondent No.2 has admitted that the order dated 18.11.2016 required balance-sheet for financial years 2013-14, 2014-15 and 2015-16. He has submitted that this Court had previously refused to accept the sur-rejoinder and when the sur-rejoinder was once again tendered across the bar at the hearing on 26.06.2019, no reliance could have been placed on the same and in any event the Petitioner was allowed to proceed and had proceeded on the basis of denials.

12 He has submitted that there has been deliberate and

intentional refusal on the part of Respondent No.2 to comply with prayer clause (f) which had been granted by order dated 18.11.2016 and which was directed to be complied with by further order dated 13.01.2017. He has submitted that there has been a deliberate breach of the orders dated 18.11.2016 and 13.01.2017 and for which he has relied upon the judgment of the Supreme Court in *Patel Dhulabai v. Patel Dhulabhai*, reported in 2008 (14) SCC 561 at paragraph 48 which has set out the conditions to be satisfied in determining the civil contempt and which sets out that there must be a judgment of a Court and disobedience to such judgment, as well as the disobedience must be willful to amount to a civil contempt. He has submitted that these conditions exist in the present case and that a clear case of civil contempt has been made out against the Respondents. He has submitted that it is inadequate for the Respondents to contend that they have made full disclosure as contained in prayer clauses (c) and (d) of the Chamber Summons as these disclosures are not the subject matter of the present Contempt Petition and in fact the present Contempt Petition concerns itself with the non-compliance of prayer clause (f) of the Chamber Summons which is a willful non-compliance on the part of the Respondents and which till date has not been fully complied with.

13 Mr. Madon, the learned Senior Counsel appearing for the

Respondents has submitted that the Contempt Petition has been filed after considerable delay i.e. on 13.10.2017 alleging contempt of orders dated 18.11.2016 and 13.01.2017. He has submitted that the Contempt Petition itself is vague and misleading. The Contempt Petition fails to spell out in sufficient detail, either in the text of the Petition or its prayers the manner in which the Respondents are allegedly in contempt of orders dated 18.11.2016 and 13.01.2017. He has further submitted that the Contempt Petition also fails to deal with the affidavit of disclosure of Respondent No.2 dated 16.01.2017 either as to the nature and/or extent of the said disclosure. He submits that the Petitioner has in the Contempt Petition merely annexed two pages of the body of the affidavit but has failed to annex the four pages where prayer clauses (c) and (d) were answered, nor does it make any reference whatsoever to the 2200 pages (approximately) where disclosures have been made, thereby giving an impression to this Court that no disclosure had in fact been made. He has stated that in paragraph 39 of the Petition, the Petitioner makes a false statement that “no such affidavit is filed and/or served by the Respondents upon the Petitioner till date”. He has submitted that even the show cause notice dated 13.12.2018 is vague as regards the specific charges of contempt. He has relied upon certain case laws in support of this contention which includes:

- (i) R.S. Sherawat v. Rajeev Malhotra and Ors. (2018) 10 SCC 574 (Para 15)
- (ii) Jayantilal Hiralal and Co. v. Waman Narayen Velinker, AIR 1932 Bom 638 (Para 7)
- (iii) Nazamunnissa Shaukat Ali and Ors. v. MCGM and Ors, 1989 (3) Bom CR 267 (para 66)

14 He submits that there is no willful non-compliance of the order dated 18.11.2016 and such non-compliance was purely unintentional and inadvertent. He submits that upon reading paragraph 17 of the order dated 18.11.2016 which upon granting prayer clause (f) of the Chamber Summons directs the Respondents to file further affidavit providing information/documents as sought for by the Petitioner in terms of prayer clauses (c) and (d) within two weeks from the date of the order being uploaded, the Respondents had filed the further affidavit. He has referred to prayer clause (f) of the Chamber Summons and submitted that this clause does not contemplate filing of any affidavit and that it was by virtue of this inadvertent slip in not complying with prayer clause (f) that these documents were not produced. He has submitted that the directions to file further affidavit which was to be done within the time limit prescribed was duly complied with and that the information provided in the further affidavit was an adequate disclosure of the assets of the Respondent No.1

and hence, the non-compliance of prayer clause (f) of the Chamber Summons cannot be considered to be willful. He has submitted that even in the order dated 13.01.2017, paragraphs 2 and 3 refers to further affidavit to be filed and that in complying with the said order and filing the “further affidavit”, the Respondent No.2 had missed out on the production of the documents as provided for in prayer clause (f) by focusing on the filing of the “further affidavit”.

15 He has submitted that the Contempt Petition which was filed almost a year after the first order dated 18.11.2016 and had been served on the Respondents only on 28.11.2017 (a year later) suffers from gross delay. He has submitted that at no stage after filing of the disclosure affidavit on 16.01.2017 and/or prior to the filing of the Contempt Petition did the Petitioner or its Advocates call upon the Respondents to provide any “missing” information with regard to prayer clauses (c) and (d) or drew the Respondents’ attention to the fact that the documents covered by prayer clause (f) were not furnished. Accordingly, the Respondent No.2 was under a bonafide belief that the said orders had been fully complied with by virtue of filing of the further affidavit of disclosure dated 16.01.2017. He has submitted that Respondent No.2 has unconditionally apologized for the inadvertent non-compliance with prayer clause (f) and

has complied to the extent possible with prayer clause (f) as soon as it came to his notice. He has submitted that insofar as the financial statements and Income tax returns for financial year 2015-16 are concerned, the same have not been prepared on account of lack of funds to conduct a statutory audit subsequent to this Courts order of injunction against the first Respondents assets in 2016. He has submitted that several affidavits of disclosure have been given from time to time, thereby giving comprehensive disclosure of all its assets and the Respondents have at all times tried to comply with the orders of this Court ordering disclosure of the assets of Respondent No.1.

16 He has submitted that insofar as the books of accounts for the last three years, which were to be produced under prayer clause (f), a substantial portion of the Respondents' documents including these books of accounts were kept at the Thane Depot, which has been sealed by the statutory authorities. These office premises have thereafter been taken over by the banks. Although, Respondent No.2 is unable to retrieve these documents, he states on instructions, that Respondent No.2 is in possession of a hard disk, which may contend some details of the books of accounts and although the Respondent No.2 is not in a position to make a positive statement that the documents can be retrieved from the hard disk, attempts

are being made. In the event that some data is retrieved, he states on instructions, that the same shall be handover to the Petitioner. He submits that insofar as the financial statements are concerned, there was no direction of this Court to provide bank statements and that the request for bank statements was limited to fixed deposits alone. He has submitted that the Petitioner has alleged that there was only partial compliance of prayer clauses (c) and (d) which is made for the first time in the Petitioners rejoinder dated 07.03.2019. However, it is not necessary for this Court to consider compliance of prayer clauses (c) and (d) as the same was not the basis on which the Contempt Petition was filed in the first place and which has been admitted by the Petitioner in the arguments before this Court.

17 He has submitted that contempt is a matter between the Court and the Contemnor and it was not open for the Petitioner to raise issues or litigate on the view of the Court that a case of contempt is made out or not. He has submitted that once the alleged contempt is pointed out, the Petitioner has no further role to play. He has submitted that the Petitioner cannot be allowed to labour on the alleged contempt and that if such detailed arguments are required for ascertaining whether a contempt has been committed, then it is not a fit case for contempt. He has submitted that although prayer clauses (c) and (d) do not arise for determination

and/or is not the basis for the Contempt Petition, the learned Counsel for the Petitioner has laboured on the disclosure made under prayer clauses (c) and (d) of the Contempt Petition, which is not permitted as per the well settled principles of law laid down by the Supreme Court. He has relied upon the judgments of the Supreme Court and of this Court in support of his contention that the contempt is a matter between the Court and the contemnor.

- (i) D.N. Taneja v. Bhajan Lal, (1988) 2 SCC 26 (para 12)
- (ii) Bombay Diocesan Trust Association Pvt. Ltd. v. Pastorate Committee of the St. Andrews Church, Mumbai, 2008 (5) Mh.L.J.661 (para 29).

18 He has submitted that for a contempt of an order of this Court, it must be willful. A casual, accidental or unintentional disobedience is not sufficient to render the contemnor liable for punishment. He has submitted that a comprehensive disclosure of all assets has been given by the Respondents as on May 2016 and that it is always been the Respondents intention to ensure full compliance of all orders. He has submitted that once it came to the notice of the Respondents that prayer clause (f) remained to be complied with, the same was complied with to the extent possible. He has submitted that the non-compliance of prayer clause (f)

was not intentional let alone willful. He has relied upon judgments of the Supreme Court in support of his contention that a contempt of an order a Court must be willful and that unintentional disobedience is not sufficient to render the contemnor liable for punishment. These judgments relied upon are:

- (i) Dinesh Kumar Gupta v. United India Insurance Company Ltd. and Ors. (2010) 12 SCC 770 (para 23-24)
- (ii) Noor Saba v. Anoop Mishra and Anr. (2013) 10 SCC 248 (para 14)
- (iii) Rajendra Sail v. M.P. High Court Bar Association, (2005) 6 SCC 109 (para 25-28)

19 He has further relied upon judgments of the Supreme Court as well as of the Delhi High Court in support of his contention that contempt proceedings being quasi-criminal in nature, the same standard of proof as in criminal cases is applicable. He has submitted that the Respondents are entitled to all safeguards/rights as provided in criminal jurisprudence including the benefit of doubt. The case should not rest on surmises or conjectures. These judgments relied upon are:

- (i) Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307 (para 38)
- (ii) T.C. Gupta v. Bimal Kumar Dutta and Ors, (2014) 14 SCC 446 (para 10)

- (iii) R.S. Sherawat v. Rajeev Malhotra and Ors. (2018) 10 SCC 574 (para 15-17)
- (iv) Rajendra Sail v. M.P. High Court Bar Association, (2005) 6 SCC 109 (para 25-28)

20 He has submitted that the Contempt Petition is vague on the charges and that the Petitioner has sought to fill up the vague charges in the Contempt Petition in a rejoinder by shifting its stance which had been taken in the Petition which is impermissible.

21 He has submitted that this is a clear case to further personal vendettas as the Petitioner has instead of using the information provided to the Petitioner to satisfy his decree, has pursued the Contempt Petition. He has submitted that the Petitioner has not adopted any garnishee proceedings against the debtors who have not replied stating that no amounts are payable to Respondent No.1, despite communication addressed to them. The Petitioner has also not taken steps for sale of admitted unencumbered assets disclosed by the Respondents. He has relied upon the following judgment of the Supreme Court in support of this contention:

P.S.R. Sadhanantham v. Arunachalam and Anr., (1980) 3 SCC 141 (para 13, 14, 16)

22 He has submitted that the Petitioner has misled this Court by giving an impression that the Petitioner in the affidavit of disclosure of 16.01.2017 made a two page affidavit as only two pages of this affidavit has been annexed to the Contempt Petition. Whereas the affidavit of disclosure runs into 2200 pages (approximately). As a result of which, this Court had not been in a position to ascertain the extent of the disclosure. He has submitted that the Petitioner has not disclosed to this Court by relying on the order dated 06.05.2016 that the Petitioner had already known that the first four assets of Respondent No.1, were encumbered and that the same was brought to the notice of this Court by the learned Senior Counsel appearing for the Respondents. He has also submitted that the undertaking given by the Petitioner to this Court and which this Court took on record on 27.05.2016, was known to the Petitioner and despite which the Petitioner had claimed that the Petitioner was unaware of this undertaking and it came to the Petitioner's knowledge only on 07.06.2016 after this Court had passed its order. He has submitted that Respondent Nos.2 and 3 cannot be made liable for the first Respondent's debt as it is the first Respondent who is a Company in default and the Judgment Debtor. He has submitted that Respondent No.3 was not engaged in the day-to-day's activities of Respondent No.1 particularly on account of her being indisposed and had no knowledge of the said orders dated

18.11.2016 and/or 13.01.2017. He has submitted that the passport deposited in Court is required to be returned to the Respondent No.2 as no application had been made for impounding the passport of Respondent No.2.

23 Having considered the submissions, it appears that the Contempt Petition has been filed after a considerable lapse of time from the passing of first order dated 18.11.2016 by the learned Judge (S.J. Kathawalla, J.) recording prima facie contempt by Respondent No.1 of the order of disclosure. In fact, the present Contempt Petition had been served on the Respondents on 20.11.2017 (a year after the first order dated 18.11.2016). It is noted that after the second order dated 13.01.2017, in respect of which contempt has been alleged, the Respondents had filed affidavit of disclosure on 16.01.2017 which comprises nearly 2200 pages and voluminous documents have been disclosed. However, in the Contempt Petition, the Petitioner has only annexed the first two pages of the affidavit of disclosure and not the remainder pages. It is also pertinent to note that after the affidavit of disclosure dated 16.01.2017 was filed, the Petitioner had not made any application to the Court or called upon the Respondents for producing the documents which the Petitioner claims that the Respondents had not disclosed in accordance with prayer clause (f) of

the Chamber Summons granted by the first order dated 18.11.2016. In fact the Contempt Petition in paragraph 39 has stated that no such affidavit as contemplated in the second order dated 13.01.2017 was ever filed and/or served by the Respondents upon the Petitioner till the date of filing of the Contempt Petition. The averments in paragraph 38 of the Petition, which the Petitioner has submitted that should have come after paragraph 39 of the Petition, states that a purported affidavit of disclosure dated 16.01.2017 was filed by Respondent No.2 as Director of Respondent No.1 and wherein the Respondents had raised patently false, frivolous and malafide allegations to once again avoid making disclosures as mandated by the order dated 08.08.2016 and the first order dated 18.11.2016 and by which the blatant intentional and willful contempt of the said orders of this Court continued. However, the Contempt Petition has not dealt with the affidavit of disclosure dated 16.01.2017 and in fact an improper picture has been presented to this Court that the affidavit of disclosure dated 16.01.2017 filed by Respondent No.2 as Director of Respondent No.1, was comprising of only a few pages and that there was no real disclosure of the assets of Respondent No.1. It is further apparent to note that subsequent to the filing of the said affidavit of disclosure, the Petitioner has till the institution of the Contempt Petition i.e. nearly nine months later, not complained of the inadequacy of the disclosures made therein. In fact, this

has been dealt with by the Petitioner for the first time in the rejoinder filed in the Contempt Petition.

24. Further, in paragraph 40 of the Contempt Petition a vague statement is made that the Respondents have committed blatant intentional and willful contempt of the first and second orders. It has been mentioned that the Respondents have deliberately failed and maliciously neglected to place on record all the books of accounts, financial statements including balance-sheet schedule and annexure thereto and income tax returns of Respondent No.1 for the last three years as mandated by this Court in the said orders. However, the Petitioner has not made any attempt to deal with the affidavit of disclosure dated 16.01.2017 or its adequacy thereof. In the prayer of the Petition, there is only a prayer directing the Respondents to comply with the directions of this Court in the first and second orders. There is no mention in the prayers as to which direction the Respondents have to comply with. The rejoinder cannot be claimed by the Petitioner to fill up this absence. This Court in *Jayantilal Hiralal and Co.* (supra) and *Nazamunnissa Shaukat Ali* (supra) has held that the precise nature of contempt must be set out in the Notice of Motion since a proceeding in contempt is a quasi criminal proceedings. Although in those cases Notice of Motions had been filed for contempt as per the

procedure that was followed under the Original Side Rules prior to the requirement of filing a Contempt Petition, in my view the principles would be applicable to a Contempt Petition as it would be necessary for the contemnor to know the particulars of contempt of the order which is alleged against him.

25 For the purpose of ascertaining whether there is contempt committed by the Respondents of the first and second orders, it will necessary to refer to the said orders. Paragraph 2 of the second order dated 13.01.2017 reads thus:

“ Mr. Shankar assures me of compliance of the order dated 18th November 2016 and, specifically, paragraph 17 of that order, and on which a further Affidavit was called for. That Affidavit is already delayed. I will grant short time as an indulgence at the request of Mr. Shankar.”

It appears that the Respondents through their Counsel had assured this Court of compliance of order dated 18.11.2016 and specifically paragraph 17 of that order and on which a further affidavit was called for. Paragraph 17 of the first order dated 18.11.2016 reads thus :

“In light of the aforesaid, prayer clause (f) of this Chamber Summons No. 1518 of 2016 is allowed. The Respondents are directed to file Further Affidavit providing the information/documents as sought for by the Applicant as per Annexure 'A' to this Chamber Summons in terms of prayers (c) and (d) within 2 weeks

from the date of this Order being uploaded, failing which it will be open for Richmond to apply for further reliefs.”

26 The Respondents have submitted that in order to comply with the first and second orders they had focused on filing a “further affidavit” in compliance with prayer clauses (c) and (d) but had missed out on the first sentence of the said paragraph of the first order i.e. the grant of prayer clause (f) of the Chamber Summons. From a reading of prayer Clause (f), it apparent that the filing of an affidavit was not contemplated. However, it did contemplate production of the documents mentioned therein and which the Respondents had not produced when the Contempt Petition was filed. It is to be noted that after the filing of the Contempt Petition, Respondent No.2 has in the further affidavit unconditionally apologized for this inadvertent non-compliance with prayer clause (f) and has disclosed the documents required under prayer clause (f) to the extent possible. Thus, it can be seen that the Respondents have although not complying with prayer clause (f) when the Contempt Petition was filed has thereafter produced the requisite documents albeit not completely. The Respondents have stated that the books of accounts for the last three years were kept at the Thane Depot which has been subsequently sealed by the statutory authorities and thereafter the office premises have been taken over by the

banks. The learned Counsel on instructions from Respondent No.2 has stated that although Respondent No.2 is unable to retrieve these documents, Respondent No.2 is in possession of a hard disk with some details of the books of accounts and although not in a position to make a positive statement that the documents can be retrieved from the hard disk, attempts will be made and in the event some data is retrieved, the same shall be handed over to the Petitioner. The Statement is accepted.

27 It is well settled that contempt is a matter between the Court and the Contemnor and that it is not for the Petitioner to raise issues or litigate on the view of the Court as to whether contempt is made out or not. This has been laid down by the Supreme Court in *D.N. Taneja* (supra) and by the Bombay High Court in *Bombay Diocesan Trust Association Pvt. Ltd.* (supra).

28. Further, the Supreme Court in *Rajendra Sail* (supra) has in paragraphs 25 held as under :

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. The court has to act with as great circumspection. It is only when a clear case of contemptuous conduct not explainable otherwise, arises that the contemnor must be punished.”

Thus, it has been held that in adjudicating as to whether there is contempt of Court, the Court has to act with great circumspection and only when there is a clear case of contemptuous conduct not explainable otherwise, the contemnor must be punished. It has also been repeatedly held by the Supreme Court that a contempt must be willful. A mere casual, accidental or unintentional disobedience is not sufficient to render the contemnor liable for punishment. This has also been held by the Supreme Court in *Dinesh Kumar Gupta* (supra) and *Noor Saba* (supra).

29 In the present case the Respondents have filed several affidavits of disclosure including the affidavit of disclosure dated 16.01.2017. Further, the Respondents as and when they became aware of the non-compliance with prayer clause (f) of the Chamber Summons which had been granted by the first order, complied with the same to the extent possible by producing the relevant documents under prayer clause (f). Although there has been delay in complying with the said orders, it cannot be held that there has been a willful breach of the said orders. It is accordingly not necessary for this Court to go into the reasons for the initial non-compliance of the said orders.

I also do not consider it necessary to go into the prior orders passed by this Court in the Arbitration Petition for enforcement of the

foreign award, although much has been said about the compliance of these orders by the Respondents. Suffice it to say that these orders are immaterial in the context of the present Contempt Petition apart from no action having been taken for the alleged breaches thereof. In my view, it would have been appropriate for the Petitioner to concentrate on the execution proceedings rather than pursue with this Contempt Petition.

30 In view of my above findings, I find no real merit in the Contempt Petition. Accordingly, the Contempt Petition is dismissed with no order as to costs. The office is directed to forthwith return the passport of Respondent No.2 deposited in this Court, in view of the dismissal of the Contempt Petition.

31 Mr. Balsara, the learned Counsel for the Petitioner applies for a stay of the direction to forthwith return the passport of Respondent No.2 deposited in this Court. This stay cannot be granted as the Contempt Petition has been dismissed and hence the passport which was ordered to be deposited prior to the dismissal of the Contempt Petition is required to be returned to the Respondent No.2. Accordingly, the stay application is refused.

(R.I. CHAGLA, J.)