

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

Reserved on: February 07, 2019

Pronounced on: August 21, 2019

+ **CONT. CAS(C) 23/2004 & CRL.M.A.8872/2004**

INDRA CHAND JAIN Petitioner

Through: Mr. Jai Sahai Endlaw &
Mr. Shivansh Soni, Advocates.

Versus

JAIDEEP GUPTA Respondent

Through: Mr. Ashwin Vaish, Amicus Curiae,
Mr. Vinod Pandey & Mr. Kunal Awana,
Advocates with respondent in person.

+ **CONT. CAS(C) 313/2005 & CRL.M.A.1459/2007 &
CM 1978/2007**

DR. INDRA CHAND JAIN Petitioner

Through: Mr. Jai Sahai Endlaw &
Mr. Shivansh Soni, Advocates.

Versus

PUSHPA GUPTA & ORS. Respondents

Through: Mr. Ashwin Vaish, Amicus Curiae,
Mr. Vinod Pandey & Mr. Kunal Awana,
Advocates with respondent No.3 in
person.
Mr. A.B.Dial, Senior Advocate with
Ms. Ananya Datta Majumdar, Advocate
for respondents No.4 & 5

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

CONT. CAS(C) 23/2004, CRL.M.A.8872/2004 & CONT. CAS(C) 313/2005, CRL.M.A.1459/2007, CM 1978/2007

In the above captioned contempt petitions, violation of orders of 5th July, 1982 and 4th April, 1983 passed in RFA No.188/1982 is alleged. Vide aforesaid orders of 5th July, 1982 and 4th April, 1983 in RFA No.188/1982 appellant-*Sudhir Kumar Gupta*, was restrained from alienating suit property and vide orders of 4th April, 1983 it was ordered that status quo in respect of suit property be maintained by the parties. According to petitioner, respondent/contemnor in violation of the aforesaid orders of 5th July, 1982 and 4th April, 1983 have alienated 1/12th share each of the suit property in favour of one *Ms. Simmi Berry* vide two sale deeds of 29th July, 1994.

The aforesaid is the contempt alleged against respondent/*Jaideep Gupta* in the above captioned first petition, whereas in the above captioned second petition, the contempt alleged against *Pushpa Gupta, Sandeep Gupta, Jaideep Gupta* and *Anupama Jagdi* is of violating the aforesaid orders by executing four release deeds for consideration in October, 2004 in favour of respondent no.5/Sh.Ramnik Gupta, brother of S.K.Gupta.

The stand taken by the respondents/contemnors in the reply to this contempt petition is that they had come to know about the status quo order only on 24th August, 2004 and they had no knowledge of the execution of the release deed in pursuance to the decree passed by the trial court. In the reply, it is also stated by the respondent nos.1 to 4 that

the release deeds have been executed by them under duress and misrepresentation and that respondent nos.1 to 4 had no money to sustain themselves at the time of execution of the release deeds and so they had received ₹20,000/- only, whereas in the release deeds amount mentioned is ₹1,50,000/- each.

Learned counsel for petitioner submitted that the respondents/contemnors were aware of the passing of the interim order against Sh.S.K.Gupta who had died on 15th October, 1986 as they had sought impleadment in the RFA No.188/1982 and the respondents/contemnors were brought on record on 18th January, 1988. It was submitted that respondents/contemnors were very much aware of the interim orders passed in the aforesaid RFA, as several litigations were going on between the parties and so the respondents/contemnors ought to be suitably punished.

On the contrary, learned counsel for the respondents/contemnors submitted that the contempt petition has been filed belatedly after a period of ten years from the date of alleged contempt and is barred by Section 20 of the Contempt of Courts Act, 1971. To submit so, reliance was placed on Supreme Court's decision in *Maheshwar Peri & Ors. vs. High Court of Judicature at Allahabad*, (2016) 14 SCC 251. Learned counsel for respondents/contemnors reiterated the stand taken by the respondents/contemnors in the reply to the contempt petition.

Respondent/contemnor-Jaideep Gupta, in CONT. CAS(C) 23/2004 appeared in person with Mr.Ashwin Vaish, Amicus Curiae and respondent no.3 in CONT. CAS(C) 313/2005 also appeared in person on behalf of respondent nos. 2 and 4 in the aforesaid petition. Photocopy of

death certificate of respondent/contemnor - *Pushpa Gupta* was handed over in Court and it was taken on record.

Learned Senior counsel for respondent no.5 submitted that respondent no.5 in CONT. CAS(C) 313/2005 was not a party to RFA 188/1982 and had no knowledge about the interim orders passed and the execution of release deeds is a family arrangement not only in respect of the suit property but in respect of the entire estate of late *B.D.Gupta*.

The submissions advanced by both the sides in these petitions and the applications have been duly considered and on perusal of the record, this Court finds that contempt proceedings ought not to be initiated unless a degree of default or misconduct is quite evident. The contemptuous act alleged done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely” needs to be punished in contempt proceedings. The wilful act has to be distinguished from an act done thoughtlessly, heedlessly or inadvertently. A deliberate conduct of a person means that he knows what he is doing and intends to do the same. Thus, there has to be a calculative violation with evil motive, for initiating contempt proceedings. Even if there is disobedience of an order but such disobedience is result of some compelling circumstances, then the contemnor cannot be punished.

The pertinent observations of Supreme Court in ‘*Ram Kishan Vs. Tarun Bajaj & Ors.*’ (2014) 16 SCC 204 which are as under:-

“It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be

taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act”.

In the light of afore-referred legal position, the alleged contempt has been examined and thereupon it becomes evident that the respondent/contemnors had learnt about the status-quo order in August, 2004 and prior thereto, they had no knowledge about status-quo orders passed by this Court on 5th July, 1982 and 4th April, 1983. This aspect assumes importance in the light of the fact that the original contemnor- *S.K. Gupta* had died in October, 1986 and there is nothing on record to show that he was aware about the passing of the aforesaid interim orders in the appeal.

Considering the fact that the legal heirs of original contemnor were ill advised that execution of lease deeds would not violate the interim orders, I find that the legal heirs of original contemnors had *bona fide*ly executed the release deeds in favour of *Ramnik Gupta*, who was not a party to the civil suit nor was a party in the appeal. Since aforesaid *Ramnik Gupta*, cannot be hauled up for contempt, therefore, the title of applicant-*M/s Evershine Pvt. Ltd.* who had purchased the subject property from aforesaid *Ramnik Gupta*, cannot be put under cloud. It has come on record that due to financial stringencies the alleged contemnors had executed the release deeds and since it was done under compelling circumstances, therefore, the alleged contemnors cannot be punished for disobeying the interim orders passed in the appeal, as this Court finds that their conduct was neither wilful nor intentional or perverse.

Consequently, this Court is not inclined to proceed against the alleged contemnors for violation of the interim orders passed in the appeal.

The contempt petitions and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 21, 2019
ak/p'ma

