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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 720/2018 & CM APPL. 52033/2018**
MARSHALL MACHINES PVT LTD Petitioner
Through Ms. Manmeet Arora, Ms. Herinder
Kaur Brarj, Ms. Samapika Biswal,
Mr. Sarvesh Singh, Advs.
versus

HEMA ASHOK HATTANGADY Respondent
Through Mr. Dileep Poolakkot, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **23.01.2019**

CM APPL. 52033/2018

The CM APPL. 52033/2018 is an application filed on behalf of the respondent seeking condonation of 55 days delay in filing the counter affidavit, which prayer is not opposed on behalf of the petitioner and for the reasons explained in the application, the said delay is condoned and the counter affidavit is taken on record.

The application is disposed of.

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Vide the present petition, the petitioner assails the impugned order dated 01.06.2018 of the learned ADJ-1 (North) in Misc. DJ – 24/18 filed by the petitioner herein seeking initiation of contempt proceedings against the respondent to the present petition, which application was held to be barred in *CM(M) 720/2018*

terms of Section 20 of the Contempt of Court Act, 1971 in as much as the alleged contempt was made on 28.02.2017 and thus on the date 01.06.2018 when the application was taken up for consideration more than a year had elapsed from the date 28.02.2017. It was held vide the impugned order dated that the initiation of the proceedings for alleged contempt had become barred by time and reliance in relation thereto was placed by the learned Trial Court on the observations in the verdict of the Hon'ble Supreme Court in the case titled as ***Om Prakash Jaiswal Vs. D.K. Mittal and Another, AIR 2000 SC 1136*** whereby it had been observed by the learned Trial Court vide para 7 of the impugned order to the effect that in case of a civil contempt where a party has filed an application for initiation of proceedings, the expression "initiation of proceedings" can be said to have commenced when the Court has formed an opinion that a prima facie is made out and that the respondents should be called upon to show cause why they should not be punished.

On behalf of the petitioner, reliance has been placed on the verdict of the Hon'ble Supreme Court in the case titled as ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** and also on the verdict of this Court in the cases titled as ***Santosh Kapoor Vs. Apex Computers P. Ltd.*** and ***Apex Computers P. Ltd. Vs. Sh. Rajiv Kapoor, ILR (2009) III DELHI 628***. It was on the basis of the said reliance that had been placed on the same two verdicts in the case titled as ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** and also on the verdict of this Court in the cases titled as ***Santosh Kapoor Vs. Apex Computers P. Ltd.*** that notice of the petition had

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been ordered to the respondent vide order dated 03.07.2018. Through the counter affidavit that has been submitted on behalf of the respondent, the said aspect of the observations in the case titled as ***Om Prakash Jaiswal Vs. D.K. Mittal and Another, AIR 2000 SC 1136*** having been implicitly varied by the Hon'ble Supreme Court in the case titled as ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** have not been refuted on behalf of the respondent though during the course of the submissions made on behalf of the respondent, it was submitted that there was no case whatsoever for any contempt made out against the respondent.

As regards the merits or demerits of the application that has been filed on behalf of the petitioner before the learned Trial Court seeking initiation of contempt proceedings against the respondent, the said aspect is *de hors* the scope of the present petition, which assails the impugned order dated 01.06.2018 vide which the application under Section 10 and 11 of the Contempt of Courts Act, 1971 filed by the petitioner herein on 26.05.2017 was rejected on the ground of it being barred by time. The proceedings sheet of the date 26.05.2017 annexed as Annexure-E to the present petition in TM – 9/17 indicate that the application had been filed by the plaintiff of the suit i.e. the present petitioner herein on the date 26.05.2017 qua stated alleged contempt committed by the respondent on the date 28.02.2017 at the time of the execution of the local commission by the Local Commissioner. Thus apparently the application seeking initiation of the contempt proceedings against the respondent having been filed on 26.05.2017 in relation to the alleged contempt made on 28.02.2017 was filed within a year from the date of the alleged commission of the contempt.

Vide verdict of the Hon'ble Bench of the three Hon'ble Judges of the Supreme Court *Pallav Sheth Vs. Custodian and Others* (2001) 7 SCC 549, the observations in *Om Prakash Jaiswal Vs. D.K. Mittal and Another* which is a verdict of Hon'ble Supreme Court Bench of two judges have been referred to vide para 42 of the verdict in case titled as *Pallav Sheth Vs. Custodian and Others* (2001) 7 SCC 549, which reads to the effect : -

“The decision in Om Prakash Jaiswal case, to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show-cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to Court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court making of a reference by a subordinate court on its own motion or the filing an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 20, then such an interpretation would not impinge

on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the Courts to punish for contempt which is recognised by the Constitution.” whereby

it is thus observed inter alia thus to the effect that the provision of Section 20 of the Contempt of Court Act, 1971 is to be interpreted having regard to the realities of the situation and that the interpretation of the same as per the verdict in Om Prakash Jaiswal case to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contemnor to show-cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted, which is not only going to cause hardship but would perpetrate injustice and harmonisation of the provisions of the Section 20 of the Contempt of Court Act, 1971 and the powers in terms of the Article 215 of the Constitution have thus been harmonized as per the observations made in para 42 of the verdict of the Hon’ble Supreme Court in ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** and have also been followed thus vide the verdict of this Court in ***Santosh Kapoor Vs. Apex Computers P. Ltd.*** and ***Apex Computers P. Ltd. Vs. Sh. Rajiv Kapoor, ILR (2009) III DELHI 628.***

In view of the observations thus of the Hon’ble Supreme Court in ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** as already
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observed hereinabove, as the application bearing no. Misc. DJ – 24/18 that had been filed by the petitioner herein on 26.05.2017 qua the alleged contempt committed by the respondent on the date 28.02.2017 is thus within a period of a year from the date of the alleged commission of the contempt and in terms of the verdict of the Hon'ble Supreme Court in ***Pallav Sheth Vs. Custodian and Others (2001) 7 SCC 549*** as observed in para 42 thereof and would thus fall within the ambit of the period of the limitation in terms of the Section 20 of the Contempt of Court Act, 1971.

The impugned order dated 01.06.2018 of the learned ADJ-1 (North) in Misc. DJ – 24/18 holding that the said application was barred by time under Section 20 of the Contempt of Court Act, 1971 is thus set aside and the said application bearing no. Misc. DJ – 24/18 that had been filed before the learned Trial Court in suit no. TM 9/2017 is thus restored to its original stage and number.

It is now submitted on behalf of the petitioner and not refuted on behalf of the respondent by learned counsel present on behalf of the respondent that the said suit No. TM 9/2017 has since been transferred to this Court and is now pending as CS 217/2018 before this Court. In view thereof, the records of the Misc. DJ – 24/18 in suit No. TM 9/2017 are directed to be requisitioned from the learned Trial Court by the Registry and directed to be placed alongwith the records of the CS 217/2018 for further proceedings in relation thereto.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 23, 2019/MK