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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (STAMP) NO.11435 OF 2019

Anil Krishna Kirve And Ors.	...Petitioners
vs	
Yash Jewellery Private Ltd. And Ors.	...Respondents

WITH

CONTEMPT PETITION (STAMP) NO.11436 OF 2019

Aana Sebastian Alphanso And Ors.	...Petitioners
vs	
Rolly Jewellery Private Ltd. And Ors.	...Respondents

WITH

CONTEMPT PETITION (STAMP) NO.11438 OF 2019

Anil Kaluram Kamble And Ors.	...Petitioners
vs	
Lily Jewellery Private Ltd. And Ors.	...Respondents

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Ms. Radhika Samant, for the Petitioner in all three Contempt Petitions.

Mr. Mahesh Shukla, i/b. Mr. Niraj Prajapati, for Respondent Nos. 1, 3, 4 in all three Contempt Petitions.

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CORAM : S.C. GUPTE, J.

DATED: 12 FEBRUARY, 2020

P.C.:

. Heard learned Counsel for the parties.

2. This contempt petition alleges breach or disobedience of an order of this Court passed on 26 November 2018. The order *inter alia* recorded a statement on behalf of respondent nos. 1 and 2 to the original petition (Respondent/Contemnor Nos. 1 and 2 to the present contempt petition) that the writ petitioners would be paid their legal dues, if they made a written application for such dues. In view of this statement, the writ petitions were withdrawn by the original petitioners, offering to accept the payments offered without prejudice to their right to reinstatement. The petitions were disposed of accordingly with liberty to the petitioners to take appropriate proceedings for the relief of reinstatement or any other relief that may be available in law. The grievance of the writ petitioners, who are Petitioners in the present contempt petition, is that despite their applications before the original respondents (Respondent Nos. 1 and 2 to the contempt petition), their dues have not been paid. In reply, it is submitted by learned Counsel for original respondent nos. 1, 3 and 4 that the main promoter of respondent no.1 company, who was its managing director, was kidnapped in Mozambique and his whereabouts have still not been known, and in the premises, the dues of the Petitioners could not be paid.

3. Learned Counsel for the Contempt Petitioners submits that the original order was against Respondent No.1 herein, a corporate entity. It is also submitted that its managing director (Respondent No.2 herein) was kidnapped sometime in February 2018, that is to say, much before the order was passed by this Court on the pending writ petitions (the order was passed on 26 November 2018).

4. Be that as it may, two things definitely emerge from the facts narrated above. In the first place, the original order of 26 November 2018 was passed against Respondent No.1 herein, who was then represented by Respondent No.2, its managing director. The statement, in other words, of Respondent Nos. 1 and 2, was on the part of mainly Respondent No.2. (No doubt, on the date when this statement was made, the whereabouts of Respondent No.2 were not known, though it is the case of the Respondents herein that at that stage, he was expected to be released by the kidnappers at the intervention of Government of India through liaison with the Government of Mozambique.) Secondly, the circumstances contained indicate that there has been no deliberate or contumacious breach or disobedience of the order dated 26 November 2018 on the part of the Respondents herein.

5. In any event, the original writ petitioners, whilst withdrawing their writ petitions, had reserved liberty unto themselves to seek every remedy available in law to them in respect of their impugned terminations. In the premises, it would be more appropriate for the Contempt Petitioners herein to either approach a competent court for execution of the order passed on 26 November 2018 or to apply for recall of dismissal order passed on 26 November 2018 in the writ petitions and restoration of the writ petitions on file. Contempt proceedings taken out herein are not an appropriate remedy in the facts and circumstances of the case.

6. The contempt petitions are, accordingly, dismissed with liberty to the Petitioners to adopt such other steps as may be permissible to them in law.

(S.C. GUPTE, J.)

Smita
Gonsalves

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