

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CONTEMPT PETITION NO. 34/2018 IN CRI.WRIT PETITION NO. 794/2016 (D)

Mitesh S/o Indrapal Wahane,
Aged about 34 years, Occupation – Business,
Partner of M/s Smit Traders, Resident of 389,
Kukde Layout, Rameshwari Road, Nagpur – 27.
(Mobile No.9923473150).

PETITIONER

.....VERSUS.....

1. Mrytunjay S/o Adityakumar Bannerjee,
Aged about 38 years, Occupation – Business,
Director-cum-Authorized Signatory of Dutch
Remedies Private Limited, Resident of B-121,
Sai Pearl, Sector – 35D, Khargar,
District Raigad – 410210.
2. Rajuddin S/o Kader Mulani,
Aged about 46 years, Occupation – Business,
Director-cum-Authorized Signatory of Dutch
Remedies Private Limited, Resident of 309,
Hingangaon, Khanapur, Sangli.
3. State of Maharashtra – Through Hudkeshwar
Police Station, Nagpur, District Nagpur.

RESPONDENTS

Shri S.V. Purohit, counsel for the petitioner.
Shri V.H. Kedar, counsel for the respondent nos.1 and 2.
Mrs. S.S. Jachak, Assistant Government Pleader for the respondent no.3.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 30TH NOVEMBER, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

Heard. ADMIT.

On 01.08.2016 the petitioner lodged a First Information Report against the respondents herein with Police Station Hudkeshwar alleging commission of offence under Section 420 read with Section 34 of the Indian Penal Code. The respondents thus filed Criminal Writ Petition No.794 of 2016 seeking quashing of the said First Information Report. In

those proceedings, the respondents through the respondent no.1 filed on record an undertaking dated 28.09.2016 in which they undertook to pay an amount of Rs.16,00,000/- to the petitioner towards full and final settlement of the amount due and payable. This amount was undertaken to be paid by 30.01.2017 (wrongly mentioned as 30.01.2016 in the undertaking). The aforesaid undertaking was annexed as Annexure-B in the said criminal writ petition alongwith the copy of the cheque dated 30.01.2017. The respondents did not pursue the said criminal writ petition which was thereafter dismissed on 22.12.2016 for non-removal of Office-objections.

2. On the request made by the respondents, the petitioner did not deposit the aforesaid cheque dated 30.01.2017 since the respondents stated that they were making necessary arrangements for payment of that amount. Since the statements made in the undertaking dated 28.09.2016 that was filed by the respondents in Criminal Writ Petition No.794 of 2016 were not complied with, the petitioner has filed this contempt petition alleging breach of the undertaking that was furnished by the respondents.

3. After notice was issued in the contempt petition, the respondents appeared and through their counsel undertook to make the

payment of Rs.16,00,000/-. This Court on 17.12.2019 passed the following order:

“Learned Counsel appearing for respondent Nos.1 and 2 seeks time in the matter. She also assures that the respondent Nos.1 and 2 would abide by the undertaking dated 28.09.2016 by making payment of Rs.16,00,000/- (Rupees Sixteen Lac) in the mean time.”

Thereafter on 13.01.2020 further time till 31.03.2020 was sought by the respondents which request was accepted. The order dated 13.01.2020 reads as under:

“At the request of the learned counsel for the respondent Nos.1 and 2, by way of last chance, further time till 31.03.2020 to abide by the undertaking is granted. If, there is still failure on the part of the respondent Nos.1 & 2, both the respondents shall remain present before this Court on 07.04.2020. It is made clear, respondent Nos.1 & 2 are at liberty to abide by the undertaking in one go or in instalments. Stand over to 07.04.2020.”

The proceedings were thereafter not listed till 15.12.2020 when again further time was granted to the respondents till 07.01.2021. The order dated 15.12.2020 reads as under:

“Only by way of indulgence and as a last chance, further time till 05.01.2021 is granted to the respondent nos.1 and 2 to abide by the undertaking given by them in Criminal

Writ Petition No.794 of 2016. If the undertaking is not complied with by them, the respondent nos.1 and 2 shall remain present in Court by 07.01.2021.

Stand over 07.01.2021.”

4. On 07.01.2021 further time of ten days was granted to the respondents to make the payment. The respondent no.2 was not present before the Court and hence bailable warrant to secure his presence came to be issued. Thereafter on 19.01.2021 since the aforesaid undertaking was not complied with, cognizance of the alleged breach was taken and charge was framed against the respondent no.1. The order dated 19.01.2021 reads as under:

“The grievance of the petitioner pertains to breach of the undertaking given by the respondent nos.1 and 2 in Criminal Writ Petition No.794/2016. By that undertaking dated 28.09.2016, both the respondents had agreed to pay an amount of Rupees Sixteen Lakhs to the present petitioner towards full and final settlement of dues on or before 30.01.2016. In that undertaking, it was further stated that failure to pay the said amount within the time stipulated would result in the settlement coming to an end and the petitioner was at liberty to initiate necessary action including proceedings for contempt against the respondent nos.1 and 2. On that basis, the aforesaid criminal writ petition came to be disposed of.

The present contempt petition has been filed on 29.01.2018 alleging that despite passage of substantial time, the undertaking has not been abided by. This has resulted in the

respondents committing wilful breach of that undertaking dated 28.09.2016. After notice was issued in the contempt petition, the respondent nos.1 and 2 have appeared through their counsel. On 17.12.2019, on the statement made by the learned counsel for the respondent nos.1 and 2, this Court noted that the respondent nos.1 and 2 had stated that they would abide by the undertaking by making payment of Rupees Sixteen Lakhs by 13.01.2020. On 13.01.2020, by way of last chance, further time was granted till 31.03.2020 with a direction that if the payment was not made the respondent nos.1 and 2 would remain present before the Court on 07.04.2020. In the meanwhile, due to pandemic situation, the contempt petition could not be listed and on 15.12.2020 further time by way of last chance was granted till 05.01.2021 to abide by the undertaking. Same was not done and on 07.01.2021, time of ten days was again granted to the respondent nos.1 and 2 to show their bona fides. On 18.01.2021 at the request of the counsel for the respondent nos.1 and 2 to enable the said respondents to make an offer to the petitioner the proceedings were kept today. Except for indicating willingness to pay an amount of Rupees One Lakh to the petitioner, no steps have been taken to abide by the said undertaking.

Thus, in the light of breach of the undertaking dated 28.09.2016, we are of the prima-facie view that the respondent nos.1 and 2 have committed civil contempt as defined under Section 2(b) of Contempt of Courts Act, 1971 on account of wilful breach of the undertaking given to this Court. The respondent no.1 is present in the Court today.

Charge is accordingly framed against the respondent no.1 as to why he should not be held guilty for having

committed wilful breach of the undertaking dated 28.09.2016 which has resulted in an act of civil contempt under Section 2(b) of the Contempt of Courts Act, 1971. He is granted time of two weeks to respond to the charge.

Stand over 09.02.2021 on which date both the respondents shall remain present in the Court.”

5. Again when the proceedings were listed on 05.03.2021 further time was granted to the respondent no.1 to respond to the charge as framed. Thereafter on 14.06.2021 on the statement made by the learned counsel for the respondents on instructions, further time was granted to file an undertaking and make the payment. The order dated 14.06.2021 reads thus:

“At the outset, Shri V. H. Kedar, learned counsel for the respondent nos.1 and 2 submits that he has received telephonic instructions from the respondent no.1 that the amount due and payable to the petitioner would be entirely paid within a short period.

We find that despite grant of sufficient time to the respondents to comply with the orders of which contempt is alleged, the same has not been done. Only by way of indulgence, we direct the respondent no.1 to file affidavit/undertaking making a statement that the entire amount due and payable to the petitioner shall be paid to him by 15.07.2021. Such affidavit/undertaking be filed on record by the next date which is 23.06.2021. It is made clear that if such affidavit/undertaking is not filed by that date, the Court

would proceed further with adjudication of the contempt petition. We also note that time was granted to the respondents on two earlier occasions to respond to the charge framed in the contempt petition but the same has not been done till date.

Stand over 23.06.2021.”

The respondent no.1 filed an affidavit in view of the order dated 14.06.2021 and hence on 25.06.2021 the following order was passed:

“Pursuant to the order dated 14.06.2021, affidavit has been filed by respondent No.1 and in paragraph no.8, it has been stated as under:

‘8. That accordingly the respondent No.1, in compliance to the Order dated 14/06/2021 undertakes to pay the remaining amount of Rs.15,00,000/- on or before 15/07/2021 to the Petitioner before this Hon’ble Court.’

In the light of aforesaid, put up this matter on 17/07/2021.

If the payment of Rs.15,00,000/- is not made by 15/07/2021, the respondent No.1 shall remain present in the Court on 17/07/2021.”

6. The statements made were not complied with and hence the contempt petition was listed for further hearing. On 27.07.2021, the respondent no.1 again came up with another undertaking in which it was stated that amount of Rs.11,00,000/- would be paid to the petitioner by the first week of November-2021. Accordingly, cheque for the said

amount dated 30.10.2021 was furnished. The order dated 27.07.2021 reads as under:

“The petitioner and the respondent no.1 are present in Court today.

Before we could commence hearing of the contempt petition, the respondent no.1 has come up with an undertaking in writing in which it has been stated that a Demand Draft for an amount of Rs.4,00,000/- (Rupees Four Lakhs) dated 26.07.2021 has been brought by him and which is handed over to the petitioner in part-payment of the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs) which the petitioner was to receive. A further statement has been made in the undertaking that a post-dated cheque for an amount of Rs.11,00,000/- (Rupees Eleven Lakhs) dated 30.10.2021 is also handed over to the petitioner. Thus it is stated that in all an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs) is sought to be paid to the petitioner. A statement is also made that the cheque for the amount of Rs.11,00,000/- would be honoured on its presentation and in case if the cheque is dishonoured the respondent no.1 undertakes to pay a further amount of Rs.2,00,000/- (Rupees Two Lakhs) to the petitioner. The undertaking is signed by the respondent no.1 and his learned counsel. Its copy is handed over in Court and the same is taken on record and marked “A” for identification.

Shri S.V. Purohit, learned counsel for the petitioner on instructions submits that the petitioner is willing to wait till the first week of November-2021 to receive the amount of Rs.11,00,000/- (Rupees Eleven Lakhs) as per the cheque dated 30.10.2021.

We could have proceeded with the hearing of the contempt petition in view of the earlier order dated 20.07.2021. However, since the respondent no.1 has now sought to make a payment of Rs.4,00,000/- (Rupees Four Lakhs) to the petitioner alongwith further undertaking as referred to above, we defer the hearing of the contempt petition till 15.11.2021. In terms of the undertaking submitted by the respondent no.1, it is expected that the cheque for the amount of Rs.11,00,000/- (Rupees Eleven Lakhs) would be duly cleared.

Stand over to 15.11.2021.

If the cheque for the amount of Rs.11,00,000/- is dishonoured the respondent no.1 shall remain present in the Court on that date.”

7. The cheque that was given by the respondent no.1 was dishonoured for want of adequate funds and hence on 18.11.2021 further charge was framed against the respondent no.1. The relevant part of the order reads thus:

5. *It is now informed that the cheque for an amount of Rs.11 lakhs which was given by the respondent No.1 to the petitioner has been dishonoured on account of insufficient funds in the account of the respondent No.1. The respondent No.1 was therefore directed to remain present in Court today.*

6. *We find that the conduct of the respondent No.1 of not abiding by the undertaking dated 27.07.2021 amounts to aggravating the contempt. No steps have been taken to ensure that the undertaking is complied with till today.*

The respondent No.1 is present in Court today.

7. After hearing the learned counsel for the respondent No.1, an additional charge is framed in the proceedings as under:

'The respondent No.1 having committed breach of the undertaking dated 27.07.2021 given by him whether he is guilty of having committed civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971 ?'

8. Time of ten days is given to the respondent No.1 to file his affidavit in response to the aforesaid charge.

Put up for hearing on 30.11.2021 on which date the respondent No.1 shall remain present in Court."

8. Accordingly, the contempt petition has been taken up for hearing on the following charges:

1. Whether the respondent no.1 should be held guilty for having committed wilful breach of the undertaking dated 28.09.2016 which has resulted in an act of civil contempt under Section 2(b) of the Contempt of Courts Act, 1971?

2. The respondent No.1 having committed breach of the undertaking dated 27.07.2021 given by him whether he is guilty of having committed civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971?

9. The learned counsel for the petitioner submits that in terms of the undertaking furnished by the respondents and specifically the respondent no.1 which is part of the record in Criminal Writ Petition No.794 of 2016, it was incumbent upon the respondents to have complied with the said undertaking. Though the amount of Rs.16,00,000/- was to

be paid by the end of January-2017, a period of almost five years has since elapsed. Except payment of Rs.5,00,000/- in the meanwhile, the amount of Rs.11,00,000/- is still not paid to the petitioner. It is submitted that despite grant of sufficient opportunity to the respondents the undertaking given by them as well as the subsequent statements made before the Court have not been complied with. According to the learned counsel for the petitioner, a clear case of breach of the undertakings given to the Court has resulted in commission of civil contempt under Section 2(b) of the Contempt of Courts Act, 1971 (for short, 'the Act of 1971'). He submits that appropriate action be taken against the respondents for such wilful breach.

In response to charge no.1 as framed, the respondent no.1 initially filed an affidavit dated 09.02.2021 in which it was stated that on account of financial constraints the undertaking given could not be complied with. It was further stated that the undertaking would be complied with immediately by the respondent no.1. Thereafter on 19.06.2021, the respondent no.1 again undertook to pay an amount of Rs.15,00,000/- by 15.07.2021. The statement made in paragraph 8 of that affidavit reads as under:

“8. That accordingly the Respondent No.1, in compliance to the Order dated 14.06.2021 undertakes to pay the remaining amount of Rs.15,00,000/- on or before 15.07.2021 to the Petitioner before this Hon’ble Courts.”

10. Yet another undertaking dated 27.07.2021 given by the respondent no.1 reads thus:

“The respondent No.1 is present today before this Hon’ble Court, handed over a demand draft of Rs.4,00,000/- dated 26.07.2021 and a post dated 30.10.2021 cheque of Rs.11,00,000/- bearing No.119008 drawn on Bank of India, Kharghar, Navi Mumbai Branch to the petitioner before this Hon’ble Court. The said amount is towards full and final payment of outstanding of the petitioner.

The respondent undertakes to honour the cheque on the given date and in case the cheque is dishonoured for any reason whatsoever, the respondent No.1 undertakes to pay an amount of Rs.2,00,000/- in addition to the abovementioned amount to the petitioner.

Hence this undertaking.”

11. After the additional charge was framed against the respondent no.1 he has filed further affidavit dated 29.11.2021 in which similar stand has been taken as the reason for not complying with such undertaking. The respondent no.1 has further stated that if the Court comes to the conclusion that the earlier orders were not complied with then the respondent no.1 was tendering an unconditional apology on behalf of his subordinate officers.

The learned counsel for the respondents has reiterated the aforesaid stand as taken by the respondent no.1 in the affidavit. He therefore submits that for the reasons stated in the affidavit the

undertakings could not be complied with. Hence no action be taken against the respondents.

On hearing the learned counsel for the parties, it becomes crystal clear from the facts which are not in dispute that on 28.09.2016 the respondents through the respondent no.1 had undertaken to pay the petitioner an amount of Rs.16,00,000/- by 30.01.2017. Since the statements made in that undertaking which was annexed as Annexure-B to Criminal Writ Petition No.794 of 2016 were not complied with the present proceedings have been filed. Various orders to which we have referred would clearly indicate that sufficient time was granted to the respondents to comply with the aforesaid undertaking. The Court has been more than lenient in granting numerous opportunities to the respondents to comply with the undertaking that was given more than five years ago. On one pretext or the other the respondents have been whiling away time by giving false hopes to the Court as well as to the petitioner that the entire amount of Rs.16,00,000/- would be paid to the petitioner. It may be noted that in the interregnum the petitioner has received an amount of Rs.5,00,000/- and as per the last undertaking given in July-2021 balance amount of Rs.11,00,000/- was to be paid by 30.10.2021. All affidavits have been sworn by the respondent no.1. The cheques dated 30.01.2017 for Rs.16,00,000/- as well as the one dated 26.07.2021 have been signed by the respondent no.1. It is clear from the

record that the respondent no.1 has failed to abide by the statements made in various affidavits and undertakings given to the Court. We find that such statements and undertakings were given by the respondent no.1 only buy the time and to avoid the inevitable. The conduct of the respondent no.1 also needs to be noted in the light of the fact that while furnishing further undertaking dated 27.07.2021 he had issued a post-dated cheque for Rs.11,00,000/- dated 30.10.2021. Despite being aware of the fact that on the said date there were insufficient funds in his account the respondent no.1 neither informed the petitioner nor thought it fit to approach this Court before that date to indicate his inability to honour the said cheque. We permitted the petitioner to deposit the said cheque and the respondent has again filed an affidavit dated 29.11.2021 stating that if the Court found that the earlier orders were not implemented by him in true sense of the order he was tendering an unconditional apology on behalf of his subordinate officers. The conduct of the respondent no.1 thus disentitles him to any leniency whatsoever and infact by such conduct the contempt stands aggravated.

12. We are therefore of the firm view that by not abiding by the undertaking given initially on 28.09.2016 and thereafter on 27.07.2021 the respondent no.1 who had signed both the undertakings, is guilty of wilful breach of the undertakings given to this Court. No acceptable

defence for such wilful breach has been made out by the respondent no.1. It is accordingly held that the respondent no.1 is guilty of having committed civil contempt under Section 2(b) of the Act of 1971 for the aforesaid reasons.

13. We have heard the respondent no.1 on the question of sentence. The respondent no.1 submits that being a professional, liabilities arose while trying to satisfy and complete the financial transaction with the petitioner. Despite attempts made by him the amount in question could not be arranged. He therefore submits a lenient view of the matter may be taken. He also submits that if time is granted to him, attempt would be made to pay the dues of the petitioner.

14. As stated above, this Court has been more than lenient and accommodative while extending the time on various occasions to enable the respondent no.1 to abide by his own undertakings, affidavits and statements made to the Court. The undertakings given were on his own accord and the respondent no.1 was not compelled by any party to furnish the same. However having regard to the fact that the respondent no.1 is a professional and has submitted that he still desires to abide by the undertakings furnished by him, we being guided by the course adopted in *Mathews Nedumpara, in Re* [(2019) 19 SCC 454] proceed to pass the following order:

- (I) It is held that the respondent no.1 is guilty of wilful breach of the undertakings furnished by him to this Court and hence has committed civil contempt under Section 2(b) of the Contempt of Courts Act, 1971.
- (II) Considering the conduct of the respondent no.1 as is clear from the various undertakings given by him, we are satisfied in terms of Section 12(3) of the Act of 1971 that imposition of fine on the respondent no.1 would not meet the ends of justice. The conduct of the respondent no.1 is such that though a sentence of imprisonment is necessary, in the light of Section 12(3) of the Act of 1971, he is directed to be detained in civil prison for a period of one month.
- (III) Considering the request again made today by the respondent no.1 for grant of some time, the sentence of detention in civil prison shall be executed after a period of six weeks from today. If during the said period of six weeks, the respondent no.1 honours the undertakings given by him, the sentence of detention in civil prison shall not be executed. Instead it shall stand substituted by imposing fine of Rs.2,000/- (Rupees Two Thousand) to be paid by the respondent no.1 within a period of ten days thereafter. The period of six weeks shall expire on 11.01.2022.
- (IV) The Contempt Petition is allowed in aforesaid terms with costs. Put up on 13.01.2022 for reporting compliance.

Order accordingly.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)