

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CONTEMPT PETITION NO. 346 OF 2019

IN

APPEAL AGAINST ORDER NO.17 OF 2011

Rajesh S/o Ramkisan Yadav,
Aged about 49 years, Occ. Business, ... Petitioner
R/o 360, Chandan Nagar, Nagpur. (On R.A.)

// VERSUS //

Miss Swati D/o Sudhirschandra Chatterjee,
Aged about 39 years, Occ. Not known, ... Respondent
R/o 'Anand Kutir', Plot No.4, Dhantoli, (On R.A.)
Nagpur.

Shri K.N. Shukul, Advocate for Petitioner.
Shri S.G. Karmarkar, Advocate for respondent.

CORAM : ANIL S. KILOR, J.
DATED : 25th NOVEMBER, 2021.

ORAL JUDGMENT

This is a Contempt Petition filed by the original plaintiff in Special Civil Suit No.399/2019, (for specific performance and perpetual injunction) praying to punish the respondent/contemnor for willful disobedience and for showing utter disregard to the order passed by this Court dated 09/08/2019 in Appeal Against Order No.17/2011.

2. Brief facts of the present case are as follows:

The petitioner herein preferred a suit for specific performance and perpetual injunction alongwith an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure Code, for grant of temporary injunction. After hearing the parties the learned trial Court was pleased to allow the said application, restraining the respondent from alienating, dealing or creating any third party interest in the suit property in any manner whatsoever till decision of the suit, vide order below Exhibit-5 dated 24/11/2010.

3. The respondent feeling aggrieved by the said order below Exhibit-5 dated 24/11/2010, preferred an Appeal Against Order No.17/2011 before this Court. This Court on 09/08/2012 recorded the statement of the parties to the said appeal, which reads thus :-

“Shri Satuja, appearing for the appellant and Shri Madkholkar, appearing for the respondent No.2 make a statement before this Court that they shall not alienate or create any third party interest in the suit property in any manner during the pendency of the suit. They further state that if at all they intent to create any third party interest in future they shall file an application for grant of such permission before the trial Court which shall be considered in accordance with law.

The parties therefore agreed that if the plan is sanctioned by the Nagpur Municipal Corporation and if the appellant or the respondent No.2 propose to start construction activities, then they shall file a pursis to

that effect before the trial Court and the copy of it shall be supplied to the Advocate for the respondent No.1". Upon this, it will be open for the parties to approach before the trial Court by filing an appropriate application for getting appropriate orders. This Court further observed that "the parties shall be bound by their respective statements made before this Court. The appeal thus stands disposed of in the aforesaid terms."

4. It is the case of the petitioner that despite specific undertaking given by the respondent that she will not alienate or create third party interest in the suit property in any manner during the pendency of the suit, and if at all the respondent intends to create any third party interest in future, the respondent shall file an application for grant of such permission before the trial Court, the respondent has executed a registered sale-deed on 23/03/2018 in favour of one Dinesh Roopchand Rathore and Smt. Shraddha Bikulal Rathore having Serial No.1669/2018 registered in the office of Sub-Registrar-5, Nagpur. It is contended that no permission was obtained from the trial Court and thereby the respondent has willfully and intentionally flouted the undertaking given to this Court and thereby committed the contempt of this Court. Hence, this petition.

5. This Court on 18/12/2019 issued a notice to the respondent and posted the matter for 29/01/2020. Though the respondent was served, none appeared when the matter was listed on 25/02/2020, on

behalf of the respondent/contemnor and accordingly, bailable warrant was issued against the contemnor/respondent.

6. On 04/02/2021, Shri S.G. Karmarkar, learned counsel for the respondent appeared on behalf of the respondent and sought time to file power and reply and accordingly, the time was granted.

7. On 18/02/2021, this Court passed an order observing that the respondent has not expressed remorse or tendered apology, but has questioned maintainability of the petition on the ground that the petition has been filed beyond the period of limitation as provided under Section 20 of the Contempt of Court Act, 1971. This Court has further observed that the respondent has also challenged the maintainability of this petition on the ground that the petitioner has already availed the remedy of Order XXXIX Rule 1 and 2 of the Civil Procedure Code and also alleged a conspiracy hatched by the bank officer to recover the outstanding dues.

8. This Court looking to the above referred conduct of the respondent held that *prima facie* there is a breach of undertaking given to this Court and willful disobedience of the order of the Court.

9. This Court accordingly issued notice to the respondent in Form-I.

10. Thereafter the matter was listed on 22/09/2021 when the learned counsel for the respondent sought time to file reply/additional affidavit. While granting time as prayed by the respondent, this Court has observed that since the respondent appeared through her learned Advocate, the effect of order of issuance of bailable warrant no more exists.

11. On 24/09/2021, the contemnor was personally present in the Court. Accordingly, this Court has observed that there is no need to issue bailable or non-bailable warrant. This Court further directed the respondent to visit the office to collect the copy of notice in Form-I.

12. Shri Karmarkar, learned counsel for the respondent, on that day pointed out to this Court that, a reply has already been filed on record and he wants to file additional reply, if required. Accordingly, the matter was posted for 06/10/2021.

13. On 18/11/2021, when the matter was listed, Shri Karmarkar, learned counsel for the respondent prayed for time to argue the matter

and further he sought time to file additional documents. However, no documents as sought have been filed on record till today.

14. Today, when this matter was called out, Shri Karmarkar, learned counsel for the respondent informs that, his client is not present in the Court as she is not well and she required to be hospitalized. Thus, he has sought oral exemption from appearance.

15. Though Shri Shukul, learned counsel for the petitioner has opposed the said request on the ground that, no document supporting the ground of illness has been filed on record.

16. However, I am of the view that because of illness, exemption from personal appearance needs to be granted to the respondent and accordingly it is granted.

17. I have heard the learned counsel for the respective parties.

18. Shri Shukul, learned counsel for the petitioner has drawn attention of this Court to para 5 of the order dated 09/08/2012 passed by this Court in Appeal Against Order No.17/2011. He has further pointed out the sale-deed executed by the respondent in total disregard of the undertaking given to this Court. It is submitted that since there is a willful

disobedience of undertaking given to this Court, the respondent is liable to be punished under the provisions of Contempt of Court Act, 1971.

19. It is further pointed out that in spite of willful disobedience the respondent has not tendered any apology and this Court has rightly observed in the order dated 18/02/2021 that, the respondent has not expressed remorse or tendered apology.

20. Shri Shukul, learned counsel for the petitioner, in support of his submission relied on a judgment of the Hon'ble Supreme Court of India in the case of ***Balram Singh Vs. Bhikam Chand Jain and others***¹, and requested this Court to pass a sentence of imprisonment in this matter and that, the respondent should not be sentenced to only pay a fine.

21. By citing a judgment in the case of ***K. Mallaiah and others Vs. Sandeep Kumar Sultania and others***², he has pointed out the scope of the contempt and has further submitted that, whenever there is any interference with the course of justice, or any obstruction caused in the path of those seeking justice, is an affront to the majesty of law and the conduct of interference/obstruction is punishable as contempt of Court.

¹ (1985) 4 SCC 246

² 2015 SCC Online Hyd 261
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22. He has further relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Vishram Singh Raghubanshi Vs. State of Uttar Pradesh***³, and submitted that, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in Contempt of Court. It is submitted that an apology can be accepted in case, the contempt for which the apology is given, is such that it can be ignored without compromising the dignity of the Court or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow. If there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law, then such an apology can merely be termed as paper apology.

23. Lastly, he has relied upon the judgment of Coordinate Bench of this Court in the case of ***Swaranjeet Singh Vs. Melco Technologies India Pvt. Ltd. And others***⁴ and has submitted that in this case, in a similar set of facts and circumstances, this Court has imposed simple imprisonment for a term of six months and also a fine of Rs.2,000/-. By pointing out this judgment, he prays for similar punishment in the present matter.

24. Shri Shukul, learned counsel for the petitioner further points out aggravation of the contempt by the respondent by drawing attention

³ (2011) 7 SCC 776

⁴ 2019(2) Mh.L.J. 277
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of this Court to the public notices published by the respondent in various news papers in the month of May 2021, relating to suit property.

25. On the other hand Shri Karmarkar, learned counsel for the respondent has pointed out from the reply that the respondent has tendered unconditional apology in writing.

26. Shri Karmarkar, learned counsel for the respondent submits that, the sale-deed was executed on 23/03/2018 and though the petitioner had knowledge about the same this petition was filed beyond prescribed period of one year of limitation.

27. He further submits that the petitioner had already filed the proceedings under Order XXXIX Rule 2(a) of the Code of Civil Procedure which is pending before the Civil Court and as such the contempt petition is not maintainable.

28. Lastly, he argued that the sale deed is void. It is submitted that under the pressure of the Bank Officers, the same was executed. It is contended that, no consideration was received by the respondent or even the possession has not been handed over and therefore, the said sale-deed is not a valid sale-deed in the eyes of law. Hence, according to him, even though, the said sale-deed was executed, it cannot be said that the

undertaking has been flouted by the respondent as alleged in the present petition. Accordingly, he prays for dismissal of the present petition.

29. Shri Karmarkar, learned counsel for the respondent while opposing the request of the petitioner to sentence the respondent, simple imprisonment for six months and impose fine, has submitted that the Hon'ble Supreme Court of India in the case of ***Smt. Pushpaben and another v. Badiani and another***⁵, has held that, in contempt matters jail is an exception.

30. To consider the rival contentions of the parties, I have perused the record and judgments cited by both the parties.

31. In the case of ***K. Mallaiah and others V. Sandeep Kumar Sultania and others***⁶ has observed thus:

"I. CONTEMPT OF COURT: ITS SCOPE:

Disobedience of orders of the Court strikes at the very root of the rule of law on which the judicial system rests. If the judiciary is to perform its duties, function effectively, and remain true to the spirit with which they are entrusted with certain sacred duties, the dignity and authority of the Court should be respected and protected. (Maninderjit Singh Bitta; T.N. Godavarman Thirumulpad (102) v. Ashok Khot) Rule of law is the foundation of democratic society and the judiciary is its guardian. The Court has the duty of protecting the interest of the public in the due administration of justice and, as such, is entrusted with the power to commit for contempt of court, not in order to protect its dignity against insult or injury as the expression contempt of court may seem to suggest, but to protect and vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. If orders of the Court are disobeyed with impunity by those who owe an obligation to society to preserve the rule of law, not only would individual litigants suffer, but the whole administration of justice would be brought into disrepute. (Advocate General, State of Bihar v. M.P. Khair Industries; Bijay Kumar Mahanty v. Jadu)

⁵ AIR 1979 Supreme Court 1536

⁶ 2015 SCC OnLine Hyd 261
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Disobedience of an order of court, whether prohibitive or mandatory, whether made ex-parte or upon hearing both parties, or interim or perpetual, amounts to contempt if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard (Jagarmudi Chandramouli v. K. Appa Rao). Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. (Director of Education, Uttaranchal v. Ved Prakash Joshi , Union of India v. Subedar Devassy PV , Prithawi Nath Ram v. State of Jharkhand). The power, to punish for contempt, is exercised to prevent perversion of the course of justice. (Kapildeo Prasad Sah v. State of Bihar). Once a direction is issued by a competent court, it has to be obeyed and implemented without reservation. The only remedy available to a party, who suffers an order, is to challenge it in accordance with law. The order cannot be rendered ineffective, by not complying with the directions on specious pleas, as it would seriously affect and impair administration of justice. (Karnataka Housing Board v. C. Muddaiah ; Patel Rajnikant Dhulabhai7).

Any interference with the course of justice, or any obstruction caused in the path of those seeking justice, is an affront to the majesty of law and the conduct of interference/obstruction is punishable as contempt of court. If the act complained of causes hindrance in the discharge of, or tends to obstruct or interfere with, the due course of justice, the conduct complained of constitutes contempt of court, (Ram Autar Shukla v. Arvind Shukla), and the power of contempt can be exercised to uphold the dignity of the court and protect its proper functioning. (ITAT v. V.K. Agarwal). Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd.,).”

32. In the case of ***Vishram Singh Raghubanshi Vs. State of Uttar Pradesh***⁷, the Hon’ble Supreme Court of India has observed thus:

“Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in contempt of court. An apology can be accepted in case the conduct for which the apology is given is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as paper apology.”

33. In the case of ***Balram Singh Vs. Bhikam Chand Jain and others***⁸, the Hon’ble Supreme Court of India has observed thus:

“All this is of no avail and does not exonerate the contemnors nor relieve them of the undertaking. We refrain from expressing any opinion on the question whether there is infringement of any patent or trade mark or whether the ingredients of an offence punishable Under Section 420 of the Indian Penal Code, 1860 are made out. Nor should we be taken to have expressed a view

⁷ (2011) 7 SCC 776

⁸ (1985) 4 SCC 246

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upon the question whether the contemnors have any right to the user of the trade description 'Balram Septic Tank' or to manufacture and sell their product under that description. These are not the questions before us. The only question is whether the breach of the said undertaking amounts to contempt. To go beyond that might come into the field of discussion of the merits of the case. It is true that the contemnors have deleted the caption or legend 'Design invented by Shri Bhikam Chand Jain' from the advertisements, brochures etc. issued by them, but instead they have prominently printed the photograph of Tikam Chand Jain, partner of the said firm. Prima facie a reading of the advertisement, brochure etc. issued by the contemnors is bound to mislead the public. Faced with this situation, learned counsel for the contemnors in sheer desperation offered that the contemnors would drop the trade description 'Balram Septic Tank'. As a last resort, he contended that even if they are committed for contempt, they should be sentenced to pay a fine. It would be a travesty of justice if the Court were to allow such gross contempt of Court to go unpunished, without an adequate sentence and we find no mitigating circumstances whatever not to pass a sentence of imprisonment. We accordingly commit the contemnors for contempt of Court and sentence each of them to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 1,000 or in default, to undergo simple imprisonment for a further period of one month."

34. In the case of **Swaranjeet Singh Vs. Melco Technologies India Pvt. Ltd.**⁹, this Court has observed thus:

"11. In the premises, there is a clear and overwhelming case of contumacious defiance of an order of this court and undertaking given to it. There is no attenuating circumstance - no offer to undo the wrong, no expression of remorse - nothing at all, to allow the court to take a lenient view.

12. At the stage of passing of the order, learned Counsel for the Respondents objects to the order being passing without framing of a formal charge. Learned Counsel submits that without framing such charge and conducting a full blown trial, no order can be passed under Sections 12 and 13 of the Act. Contempt of Courts Act, 1971 read with High Court Rules, not only provides for the punishment, but also the manner of taking cognizance of a complaint of commission of contempt of court and its procedure. A formal contempt notice issued by the court under Rules 1035(1) and 1036(1) of the High Court (Original Side) Rules, 1980, fulfills the requirements of a formal notice of the charge against the contemnor/respondent. The contemnor/respondent is thereby given a full opportunity to show cause. There is nothing in this case to suggest that the Respondents were in any way prejudiced in availing this opportunity to show cause. The Respondents have filed their complete response and have been extensively heard by this court and, as I have noticed above, have not shown any reason whatsoever why they should not be held guilty of a willful breach or disobedience of an order of this court and an undertaking furnished to, and accepted by, it.

13. In the premises, the Contempt Petition is allowed by ordering committal of Respondent No.3, who is admittedly the Managing Director of Respondent No.2 and Proprietor of Respondent No.1, and who is responsible for the conduct of their business and affairs, including, in particular, the present matter of delivery of possession of the suit premises, to simple imprisonment for a term of six months and also a fine of Rs.2,000/-. A warrant of arrest may accordingly be issued against Respondent No.3.”

35. From the above referred judgments, it is clear that any disobedience of order of Court amounts to contempt if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt.

36. It is further clear that, any interference with the course of justice, or any obstruction caused in the path of those seeking justice, is an affront to the majesty of law and the conduct of interference/obstruction is punishable as contempt of court. If the act complained of, causes hinderance in the discharge of, or tends to obstruct or interfere with, the due course of justice, the conduct complained of constitutes contempt of court, and the power of contempt can be exercised to uphold the dignity of the court and protect its proper functioning. Public interest demands that there should be no interference with the judicial process, and that,

the effect of the judicial decision should not be pre-empted or circumvented.

37. In this case, there is no dispute that undertaking was given by both the parties i.e. the petitioner and also the respondent that they will not alienate or create third party interest in the suit property in any manner during the pendency of the suit and that, if they wanted to create any third party interest in future they will file an application for grant of such permission before the trial Court.

38. The respondent is not denying the execution of sale-deed in this matter in respect of the suit property without obtaining permission from the trial Court. However, the justification which has been offered is that the sale-deed is void as the respondent has not received any consideration towards the same and the possession has not been handed over to the purchaser. It is further stated that the sale-deed was executed because of conspiracy hatched by the Bank officer.

39. As far as the case of the respondent that the sale-deed is void because the respondent has not received any consideration towards sale of the suit land is the matter of evidence and this Court in contempt proceeding cannot go into that controversy.

40. This Court in this matter is considering whether undertaking given to this Court by the respondent is flouted or not. In view of the undisputed facts that the respondent has executed the sale-deed and thereby alienated the suit property by creating third party interest over the suit property, without obtaining permission of the trial Court, it is apparently clear that there is a clear disobedience of undertaking given by the respondent to this Court. Thus, I am of the considered view that, the respondent has committed contempt.

41. Moving to the next contention of the respondent that this petition is time barred. I find no substance in the said contention in view of the fact that cause of action is continuous one and the respondent has further aggravated the contempt by issuing public notice in the month of May, 2021 in various news papers, in respect of suit property. Accordingly, I hold that the present petition is not barred by limitation.

42. Taking the further contention of the respondent for consideration, that proceeding under Order XXXIX R 2 (a) of the Code of Civil Procedure is pending therefore, present petition is not maintainable. This Court has already observed that the respondent has flouted the undertaking given to this Court and thereby she has

committed the Contempt of this Court. In the light of said finding, this petition is maintainable and the contention of the respondent in this regard, is rejected.

43. As regards the punishment, it is the submission of the learned counsel for the respondent that the respondent has tendered apology. However, after going through the apology, I am of the opinion that to escape the rigour of the law the apology has been tendered and this Court has already observed in clear term, after observing the conduct of the respondent that the respondent has not expressed remorse.

44. In that view of the matter, said apology can merely be termed as paper apology.

45. The next contention of the learned counsel for the respondent is that in contempt proceeding, a sentence of fine alone should be imposed in normal circumstances and jail is an exception. Having held that the apology tendered by the respondent can be termed as paper apology and moreover, as this Court has already observed in earlier order that the respondent has not expressed remorse, I am of the firm view that in the present matter a sentence of fine alone will not suffice. Accordingly, I pass the following order.

ORDER

- a] The contempt petition is allowed.
- b] The respondent is sentenced to suffer simple imprisonment for a term of 10 days and a fine of Rs.2,000/- (Rupees Two Thousand Only).

A warrant of arrest may be accordingly issued against the respondent.

[ANIL S. KILOR, J.]