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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO.11013 OF 2021

STATE EXCISE, NEAR MAHARASHTRA MAHSUL  
PRABODHINI, AURANGABAD

VERSUS

SANJAY RUPLAL JAISWAL AND OTHERS

...

Mr D. R. Kale, Govt. Pleader for petitioner;

Mr P. F. Patni, Advocate for respondent No.1

Mr S. B. Patil, Advocate for respondent Nos.2 & 4

**CORAM : SMT. BHARATI DANGRE, J.**

**DATE : 22nd February, 2022**

**PER COURT:**

1. Heard Shri. D. R. Kale, learned Govt. Pleader for the petitioner, Shri. Patni, learned Counsel for respondent No.1 and Shri. S. B. Patil, learned Counsel for respondent No.2 and 4. It is informed that respondent No.3 is dead.

2. The petition is filed by the Superintendent, State Excise, Aurangabad, being aggrieved by a contempt notice issued against him on 30/04/2021 in Regular Darkhast No.34/2015. The said order dated 30/04/2021, is preceded by an order dated 22/04/2021, directing his personal presence in the Court.

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3. Perusal of the writ petition along with its annexures would reveal that the respondent No.1 filed Regular Civil Suit No.372/2010 against respondent Nos.2 to 4, the Collector through the State Excise Department being impleaded as defendant No.4. A declaration was sought by the plaintiff in the said suit to include his name in the CL-III licence, which was in the name of late Gangulal Dhanulal Jaiswal and permanent injunction was sought against respondent Nos.2 to 4.

On 06/02/2011, since a compromise was entered into between the plaintiff and defendant Nos.1 to 3, it was presented before the Lok Adala, the following order came to be passed :

*“ORDER BELOW EXH.1*

- (1) In view of withdrawal purshis at exh.29 this suit is disposed of as withdrawn against defendant No.4.*
- (2) In view of compromise purshis filed by plaintiff and defendant nos.1 to 3 at exh.24 this suit is disposed off accordingly.*
- (3) Compromise purshis decree be passed in view of terms of compromise purshis at exh.24.*
- (4) Court fee be refunded to plaintiff as per rules.”*

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The aforesaid order would indicate that by withdrawal purshis, the suit was disposed of as withdrawn against the petitioner, who was impleaded as defendant No.4.

4. The compromise was thus entered in between the plaintiff and defendant Nos.1 to 3 as regards the CL-III license and the compromise terms inter-se resolved the dispute amongst themselves, as regards the licence and it contemplated that defendant No.1 shall be released from it, whereas name of the plaintiff and defendant Nos.2 and 3 shall be incorporated in the licence. The parties agreed to put signatures on the necessary documents for effecting the said change and the defendant Nos.1 to 3 agreed to the compromise. Clause No.8 of the compromise terms specifically stipulated that if the compromise for some reason is not implemented by the defendants, the plaintiff would be at liberty to institute a fresh suit by keeping his right and contention open.

5. For execution of the said decree, Regular Darkhast No.34/2015 came to be instituted under Order XXI Rule 11 of the Code of Civil Procedure and the petitioner was once again impleaded as respondent No.4, though he was deleted when the

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compromise decree was passed and necessarily he came to be deleted from Darkhast on 18/02/2016. The decree was sought to be executed against the judgment debtor Nos.1 to 3.

6. In the pending Darkhast, the learned Civil Judge Senior Division, on 13/03/2020, addressed a communication to the petitioner, with reference to the Darkhast No.34/2015 pending before him, in the wake of the compromise decree dated 24/02/2011.

In the communication, he informed the petitioner about the compromise being entered by the parties and the compromise decree being executed by him and he sought explanation whether any action has been taken on the application filed by Sanjay Ruplal Jaiswal and directed the petitioner to submit his report within a period of three days.

On 20/03/2020, the petitioner promptly responded to the said communication and pointed out that the licence holders and their legal heirs never appeared before him and he apprised the learned Judge of the steps taken by him, in pursuance to the application preferred by Sanjay Jaiswal on 16/04/2019, since certain clarifications were sought from him. Despite this, the

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learned Judge again addressed a letter to the petitioner on 13/01/2021, making a similar query which is also responded by the petitioner on 22/02/2021. Similar letters are forwarded by the learned Judge on 18/02/2021, 08/03/2021 and 30/03/2021 and these communications are collectively responded on 08/04/2021. All these communications are personal correspondence made by the learned Judge with the Superintendent, State Excise, who is never a party to the decree or a party in the execution proceedings. On 18/08/2021, the learned Judge addressed a letter to the Commissioner, State Excise, informing about developments and the said letter is also placed on record along with the petition.

7. It is not clear that as to under what provision of law has been invoked by the learned Judge, which permitted him to address communications to the State Official, compelling him to seek his response though he is not a party to the proceedings. The learned Judge did not stop here and on 05/04/2021, he passed the following order :-

*“It appears from endorsement vide Exh.30 that, notice already served upon State Excise Dept. In spite of this*

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*Superintendent State Excise neither appeared nor filed report of compliance. Hence this order :*

*Order*

*Issue notice of contempt to the Superintendent State Excise, Aurangabad through Collector”*

8. By the aforesaid order, the contempt notice is issued to the petitioner and in furtherance thereof, on 22/04/2021, when the Sub-Inspector of the Excise Department presented himself before the Court, the learned Judge recorded that since the contempt notice is issued to the petitioner, he ought to have remained present personally, but since he has failed to do so, he passed the following order :

- “1) The Superintendent State Excise Aurangabad shall remain present personally before Court, on next date.*
- 2) The Superintendent State Excise Aurangabad shall get execute the necessary compliance on the part of Decree Holder.*
- 3) Decree Holder shall remain present on 23.04.2021 before Superintendent State Excise, Aurangabad.*
- 4) The Superintendent State Excise Aurangabad shall do the needful compliance.”*

9. On 30/04/2021, the following order is passed :-

*“Reissue notice of Contempt to the Superintendent, State Excise, Aurangabad through Collector”.*

The petition is filed being aggrieved by the aforesaid order.

10. Perusal of the entire proceedings and the order passed by the learned Judge, it is not understood as to what prompted the learned Judge invoke his powers to issue contempt notice, without giving a thought, whether he is empowered to do so.

On perusal of the order, it can be seen that without the powers being conferred upon the learned Judge to initiate the contempt proceedings, since the power to issue contempt notices for contempt of subordinate Courts rests solely with the High Court exercised jurisdiction over it. Subordinate Courts cannot assume contempt jurisdiction, which only vest in the Hon'ble Supreme Court under Article 129 and the High Court under Article 215 of the Constitution of India and it is not open to the Court of Civil Judge to issue show cause notice as to why contempt proceedings be not initiated. A subordinate Court can only make reference to the High Court and the High Court shall have the jurisdiction to inquire into and try the contempt proceedings. The learned Judge has issued notice, being

unmindful of the fact that the petitioner is not even party to the proceedings and therefore, there is no question of he committing breach of the orders. The learned Judge has written a letter to the petitioner and which power he has exercised is also not known, as in my opinion and reading and understanding of the Code of Civil Procedure, such power is not vested in any Judge to address a communication to third party, who is not a party to the proceedings.

11. It is well known position that the Judge speaks through his orders. Here, the learned Judge has chosen to address a letter to the petitioner and for his non-presence on a given date, has issued contempt notice. Not only this, the learned Judge has taken it further and has ordered his presence before the Court.

The assumption of powers under the Contempt of Court Act by the learned 2<sup>nd</sup> Joint Civil Judge Senior Division, Vaijapur, is unwarranted and needless to state that he has exceeded powers vested in him.

12. The petitioner is not answerable to the decree, since the learned Counsel for the respondent, who has taken me through the decree, is unable to point out any single obligation being cast

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upon the petitioner, to take action in furtherance of the compromise. The compromise was entered between the parties and in terms thereof, if they prefer an application to the Collector/ Superintendent, Excise Department, he is bound to consider it in accordance with law and if there is failure on his part to discharge his duties, it is open to the respective parties to seek a writ of mandamus. However, since the Superintendent, Excise does not owe any responsibility under the decree and when he was not party to the proceedings, the learned Judge has fallen into complete error in adopting the course of action in writing letters to him seeking his presence and going ahead and issuing contempt notice.

13. In the wake of the aforesaid, since the impugned orders are beyond the powers and jurisdiction of the learned Civil Judge Senior Division, the said orders dated 05/04/2021, 22/04/2021 and 30/04/2021, are quashed and set aside.

14. The learned Judge is also reminded that he shall henceforth not indulge in any correspondence with any of the official authority of the Excise Department, by exceeding his powers.

For the reasons recorded above, the writ petition is allowed.

15. The Registry is directed to bring the aforesaid order to the notice of the Guardian Judge of the Aurangabad District.

**(SMT. BHARATI DANGRE, J.)**

sjk