



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.04.2022

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

Contempt Petition No.397 of 2020

M/s.F.M.Finance & Investments,
Represented by its Partner,
Praveen Kumar,
S/o.Ramesh Kumar Jain,
No.61, Krishnappa Agraharam Street,
Kondithope,
Chennai – 600 001.

... Petitioner

Vs.

S.Nanthagopal,
Proprietor of M/s. Madras Enterprises,
No.54, Velayudham Colony,
2nd Street, Saligramam,
Chennai 600 093

... Respondent

Prayer: Contempt petition filed under Section 11 of Contempt of Courts Act, praying to punish the respondent for willful breach of Undertaking to this Hon'ble Court given by him on 03.02.2020 in C.S.(Comm.Div.)No.37 of 2020.

For Petitioner : Mr.P.L.Narayanan

For Respondent : Ms.G.Sumitra



ORDER

WEB COPY This Contempt Petition has been hanging fire before this Court for the past two years. The Contempt Petition was filed on 21.02.2020. The backdrop in which the contempt petition has been filed is narrated herein below in order to highlight the contumacious conduct of the contemnor who after giving a solemn undertaking to this Court on 03.02.2020 is attempting to scuttle the process of contempt.

2. The petitioner herein had filed an application seeking injunction in O.A.No.66 of 2020 in C.S.(Comm. Div.) No.37 of 2020. The application in question was filed for an injunction restraining the contemnor, his agents, servants or anybody claiming through him from issuing the Key Delivery Message (KDM) for the Tamil film titled “Naadodigal-2” starring M.Sasi Kumar, Anjali and others, Music by Justin Prabhakar and Direction by P.Samuthirakani, in the areas of entire Tamil Nadu and Puducherry, morefully described in the schedule attached in the Judges Summons, for the period of 5 years commencing from the date of general release, to anyone, except the Applicant or the person authorized by the Applicant, pending disposal of the above suit.



3. The application had come up for hearing on 30.01.2020 and after hearing, the learned counsel for the petitioner herein who was the applicant therein, this Court had passed the following order:

“The balance of convenience is therefore with the applicant for the grant of an order of injunction, restraining the respondents 1 and 2 herein from releasing the Tamil film titled “Naadodigal-2”, in the areas of Tamil Nadu and Puducherry described in the schedule attached to the Judges Summons. The Order of injunction is granted subject to the condition that the applicant shall deposit the balance amount of Rs.1,75,00,000/- (Rupees One Crore and Seventy Five Lakhs only) to the credit of C.S.No.37 of 2020 within a period of two weeks from today. The applicant shall comply with the provisions under Order 39 Rule 3 of the Code of Civil Procedure.”

4. On the very next day the respondent herein had taken up an application for vacating the order of injunction in A.No.454 of 2020 and a mention was made to take up the matter urgently and out of turn.



After due notice to the applicant the application was taken up on the very same day and after hearing the parties, the following order was passed:

“That the first defendant herein has given an undertaking to transfer a sum of Rs.2 crores by 6.00 p.m this evening through RTGS or any other mode in favour of the plaintiff herein and the balance sum of Rs.1.50 crores, it shall be paid to the plaintiff herein within a period of two weeks from this day i.e.14.02.2020.

2. That the plaintiff herein shall file an Affidavit undertaking on 03.02.2020 to that effect after serving the plaintiff.

3.That it is made clear that in the event of a default in the payment of the above amounts, the plaintiff herein shall entitled to institute execution proceeding for entire the unpaid sum with interest @ 12%.

4. That as soon as the sum of Rs.2 crores is received by the plaintiff, the plaintiff or and the first defendant herein shall give necessary instructions to the second



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defendant to release the movie "Naadodigal-2".

5. That the O.A.No.66 of 2020 and A.No.454 of 2020 do stand closed."

5. In order to ensure the release of the movie, the contemnor had paid the sum of Rs.2,00,00,000/- and on 03.02.2020 had filed an affidavit of undertaking, which reads as follows:

"2. I respectfully submit that the 1st Respondent/ Plaintiff has filed the above application against the us seeking relief of Interim stay in releasing the movie and obtained an order of Interim Injunction dated 30.01.2020 in O.A.No.66/2020 in C.S.No.37/2020. I further submit that aggrieved against the said order of Injunction we have filed an application to vacate stay in Application No.454/2020; wherein in the said application as per the direction of this Hon'ble Court in Application No.454/2020, we have paid a sum of Rs.2,00,00,000/- (Rupees Two Crores Only) to the Respondent/Applicant/plaintiff M/s.F.M.Finance and



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Investments on 31.01.2020 and the Respondent/ Plaintiff on receipt of the said amount also issued no objection for release of the film “Naadodigal-2”.

3. I further submit that as per the direction of this Hon’ble Court, I hereby undertake to repay the balance amount a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs Only) within a period of two weeks on 14.02.2020 and the Respondent/Plaintiff has also acceded for the same. Hence this Affidavit.”

6. The contemnor however did not comply with his undertaking, i.e., he had not paid the promised sum of Rs.1,50,00,000/- by 14.02.2020. Therefore, a legal notice was issued on 15.02.2020 by the petitioner and this was followed by the filing of this contempt petition.

7. The contempt petition was listed on 09.03.2020 and this Court had directed notice to the learned counsel who had appeared for the contemnor in O.A.No.66 of 2020 returnable by 19.03.2020.

8. On 19.03.2020, when the matter was listed, Mr.J.Manikandan and Ms.D.Kalaivani had entered appearance in the matter and

undertook to pay the balance sum of Rs.1,50,00,000/- on or before



26.04.2020. The matter was therefore directed to be listed on **27.04.2020** under the caption “*For Reporting Compliance*”.

9. In view of the lock down, the matter was thereafter listed only on 09.11.2020. Since the learned counsel who had undertaken to file a vakalat had not appeared before this Court, the matter was adjourned to 02.12.2020 directing the Registry to verify if the counsel had entered appearance on behalf of the respondent, failing which, to print the name of the respondent.

10. On 02.12.2020, the learned counsel who had undertaken to file vakalat had sought adjournment to 10.12.2020. On 10.12.2020 once again the learned counsel who had undertaken to appear and settle the matter did not appear before the Court. Therefore, a statutory notice was issued to the respondent.

11. The matter was next listed on 07.01.2021 and one Mr.V.Subramanian had entered appearance on behalf of the respondent. The contemnor was also present before the Court and sought time to file his counter. The matter was directed to be listed on 03.02.2021 and the contemnor was directed to be present on the said day.



WEB COPY 12. On 03.02.2021, when the matter was listed there was assurance given on instructions of the contemnor that the balance amount would be paid on or before 15.02.2021. The said representation was recorded and the Court has indicated that if the amount was not paid, further orders in the Contempt petition would be passed. On 15.02.2021 when the matter was posted the Court was informed that the undertaking to pay the balance amount was once again observed in the breach therefore the Contemnor was directed to pay a sum of Rs.25,00,000/- on or before 01.03.2021. The contemnor without complying with the order had taken it on appeal in Contempt Appeal No.1 of 2021.

13. The contumacious conduct of the contemnor is clearly evident from the fact that as against the order dated 15.02.2021, where the contemnor was directed to pay a sum of Rs.25,00,000/-, the contemnor had filed a Contempt Appeal in Contempt Appeal No.1 of 2021. On 02.03.2021, an interim order was passed by the Bench modifying the order dated 15.02.2021, which directed the contemnor to pay a sum of Rs.25,00,000/- on or before 01.03.2021 by directing the



contemnor to pay a sum of Rs.5,00,000/- on or before 05.03.2021 and the balance of Rs.20,00,000/- within a reasonable time. The matter was directed to be listed on 05.03.2021. However, the matter came to be listed only on 16.03.2021.

14. When the matter was listed on 16.03.2021, the Bench was informed a sum of Rs.10,00,000/- was paid till date and had directed the contemnor to pay a further sum of Rs.5,00,000/- by 25.03.2021. When the matter was listed before the Bench on 30.04.2021 the Contempt Appeal was dismissed since the contemnor had not made payments as undertaken by him. In view of the pendency of the Contempt Appeal, the contempt petition had not been proceeded with by this Court.

15. The matter was posted thereafter only on 03.12.2021 before the learned Judge in the Commercial Division and the learned Judge had observed as follows:

“This Court is not satisfied with the explanation given by the respondent in the affidavit. Till date, the order passed by this Court based on the undertaking given by the respondent is in force. Therefore, the respondent has to



comply with the order and the respondent cannot be allowed to get away by coming up with technical objections.”

16. However, since the order was passed by this Court the learned Judge had directed the matter to be listed before this Court after getting necessary orders from the Hon'ble Chief Justice. The matter was posted before this Court on 11.03.2022 and the following direction was issued:

“The Contemnor shall be present before this Court on 04.04.2022.

2. The learned counsel for the contemnor shall ensure that the balance amount payable is paid before the said date or a substantial amount is brought by way of Banker's cheque, favouring the respondent.

3. Finally, the matter is adjourned to 04.04.2022.”

17. On 04.04.2022 when the matter was posted before this Court, this Court had noted that after the contempt petition was filed on 20.02.2020 as against the undertaking to pay the sum of Rs.1,50,00,000/- on or before 14.02.2020 only a sum of Rs.15,00,000/-



was paid leaving a sum of Rs.1,35,00,000/- that too two year and two months after the undertaking had been filed into the Court. Therefore, this Court had given a final chance to the contemnor to make balance payment of a sum of Rs.1,35,00,000/- on or before 25.04.2022, failing which the Court had informed the contemnor, he will be detained in a Civil Prison for contempt.

18. When the matter was listed today, the learned counsel for the contemnor tendered a demand draft for a sum of Rs.7,00,000/-. When the Court pointed out the order dated 04.04.2022, the learned counsel for the contemnor would submit that the matter may be adjourned and the contemnor be given time to repay the balance sum of Rs.1,35,00,000/-. The Conduct of the learned counsel makes a mockery of the contempt jurisdiction of this Court and brings down the majesty of the Court. From the conduct of the learned counsel it appeared that sagacious advice has not been made available to the contemnor.

19. The learned counsel had not only attempted to out shout and silence the other side but attempted the same with the Court. The learned counsel had the temerity to tell the Court that by punishing the



contemnor no useful purpose would be served. As against a sum of Rs.1,35,00,000/- directed to be paid, today, to prevent being punished for contempt, a sum of Rs.7,00,000/- by Demand Draft was offered and the learned counsel insisted upon this Demand Draft being accepted and the matter being adjourned for further payment. Unfortunately, the learned counsel who is an Officer of the Court had by her action treated the Court sitting in its Contempt Jurisdiction as an Executing Court.

20. Coming to the contempt on hand, a solemn written undertaking had been given to this Court on 03.02.2020 by the contemnor that the balance sum of Rs.1,50,00,000/- would be paid on or before 14.02.2020. However, the said undertaking has been observed in the breach. The contemnor had reduced the contempt jurisdiction of this Court to that of an Execution Court.

21. The contemnor had failed to understand that the act of contempt was the breach of the solemn undertaking given by him to the Court by reason which an order vacating the injunction had been earlier granted by the Court. Therefore, the contemnor has clearly committed a fraud of Court and practiced subterfuge and thereafter the



brazen manner in which he had appeared before the Court seeking time to make the payment clearly indicates his intention of not complying with the undertaking given by him to this Court. The counter has been filed where apology has been offered which is nothing but a mere lip service.

22. The contemnor has given a solemn undertaking before this Court, which undertaking he has breached. By breaching the undertaking, the contemnor has struck at the very majesty of the Court. The contemnor has gained advantage over the Court by giving such undertaking and later breaching the same. From his conduct it is clear that he has given the undertaking with the intention of breaching it.

23. The Hon'ble Supreme Court in series of Judgements had held that a breach of a clear undertaking given to the Court amounts to contempt of Court since the contemnor by making false representation to the Court obtains a benefit for himself and plays serious fraud on the Court itself. By this action, he not only obstructs the course of Justice but brings disrepute to the Judicial Institution.

24. The Hon'ble Supreme Court in the Judgement reported in

AIR 2007 SC 2019 – Rama Narang Vs. Ramesh Narang and others



had observed as follows:

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“40. In order to maintain sanctity of the orders of the highest court of the country, it has become imperative that those who are guilty of deliberately disregarding the orders of the Court in a clandestine manner should be appropriately punished. The Majesty of the Court and the Rule of Law can never be maintained unless this Court ensures meticulous compliance of its orders.”

The Hon'ble Supreme Court had proceeded to sentence the contemnor to imprisonment for a period of 2 months with a fine of Rs.2,000/-.

25. After discussing the various Judgements relating to the breach of undertaking, the Hon'ble Supreme Court in the Judgement reported in **AIR 2007 SC 2029 – Rama Narang Vs. Ramesh Narang and others** had finally held as follows:

“The critical analysis of the decided cases of this Court clearly leads to the conclusion that wilful breach of an undertaking given to the Court amounts to contempt of court under Section 2(b) of the Act.”



WEB COPY 26. A division Bench of the Bombay High Court in the Judgement reported in ***AIR 1950 Bom 336 – Bajranglal Gangadhar Khemka and another Vs. Kapurchand Ltd.***, had observed as follows:

“...we can only construe the undertaking given by the defendants as an undertaking given to the Court and not given to the other side... The very fact that the Court passed a decree after an undertaking was embodied in the consent terms clearly shows that the Court did sanction a particular course ; and that course was the putting of its imprimatur upon the consent terms. The Court was led to pass an order upon the defendants to execute a lease in view of the fact that an undertaking was given by the defendants to get the Paradise Cinema, Limited, to join the lease.”

27. This view expressed by the Bombay High Court was approved by the Hon'ble Supreme Court in the Judgement reported in ***2004 (1) SCC 360 – Bank of Baroda Vs. Sadruddin Hasan Daya.***



28. The Hon'ble Supreme Court in this Judgement had observed

as follows:

“The wilful breach of an undertaking given to a court amounts to "civil contempt" within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents having committed breach of the undertaking given to the Supreme Court in the consent terms they are clearly liable for having committed contempt of court.”

29. In the case on hand, the contemnor had urged the Court to vacate the interim order on the specific condition that he would pay a sum of Rs.1,50,00,000/- on or before 14.02.2020 and had also reduced this promise in the form of affidavit of undertaking dated 03.02.2020. This undertaking has been flouted by the contemnor who has only paid a meagre sum of Rs.15,00,000/-. The contemnor had the benefit of his movie being released and the same having played in the theaters for some time. However, the contemnor has not kept up with the promise in the undertaking. The furnishing of the undertaking and its breach is admitted by the contemnor.

30. The contemnor is punished to undergo two months of simple imprisonment.



31. I direct the XXIII, Metropolitan Magistrate, Saidapet to issue appropriate warrant addressed to the Commissioner of Police, Greater Chennai Police, Commissioner Office Building, Vepery, for causing production of the respondent. On such production, the XXIII, Metropolitan Magistrate, Saidapet, shall commit the respondent to prison for undergoing the period of sentence.

32. In the result, this contempt petition stands ordered on the above terms.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

To

1. The XXIII, Metropolitan Magistrate,
Saidapet, Chennai

2. The Commissioner of Police,
Greater Chennai Police,
Commissioner Office Building, Vepery

3. The Public Prosecutor,
High Court, Madras