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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision : 01.02.2022**

+ **CONT.APP.(C) 3/2022**

SANJAY GROVER Appellant
Through Mr Rahul Shukla, Adv

versus

KUMUD GROVER Respondent
Through Mr Mohit Jolly, Adv

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):-

CM APPL. 5685/2022

1. Allowed, subject to just exceptions.

CONT.APP.(C) 3/2022 & CM APPL.5684/2022*[Application filed on behalf of the appellant for interim relief]*

2. This appeal is directed against the order dated 08.12.2021, passed by the learned single judge in CONT.CAS(C) 861/2020. *Via* the impugned order, the learned single judge has held the appellant, who is the husband of the respondent, guilty of contempt.

2.1. The matter has been fixed for sentencing before the learned single judge on 02.02.2022.

3. Mr Rahul Shukla, who appears on behalf of the appellant, assails the order passed by the learned single judge on two grounds:

(i) First, since remedy by way of execution proceedings is



available to the respondent, contempt proceedings are not maintainable.

(ii) Second, the appellant does not have the wherewithal to pay the money due and payable to the respondent.

4. Insofar as the first ground is concerned, we are of the view that the same is not tenable. The execution proceedings, both in scope and nature, are different from the proceedings initiated under the provisions of the Contempt of Courts Act, 1971 [in short, the “1971 Act”].

4.1. Since the proceedings initiated under the 1971 Act concern the contemnor and the court, and are premised on upholding the rule of law, the respondent cannot, possibly, obtain redressal (in this case recover monies) under the said proceedings. Execution proceedings are essentially remedial in character, whereas civil contempt proceedings are founded on wilful breach and not just non- compliance. [See *Niaz Mohammed & Others vs State of Haryana & Others*, (1994) 6 SCC 332¹; *Kapildeo Prasad Sah vs. State of Bihar*, (1999) 7 SCC 569².] It may happen that, in a given case, an

¹ “Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure.

.....Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful.”

² “**10.** In his famous passage, Lord Diplock in *Attorney General v. Times Newspapers Ltd.* [(1973) 3 All ER 54 (HL)] said that there is also



offshoot of the contempt proceedings may result in remediation. A perusal of the record of the case would show that this is a case of wilful default; an aspect which is elaborated hereafter. Therefore, this submission is rejected.

5. Inasmuch as the second ground is concerned, its tenability needs to be examined in the backdrop of the record of the case.

5.1. The record shows that the contempt proceedings were initiated pursuant to the orders passed by the learned Metropolitan Magistrate-02, Mahila Court, Saket, New Delhi [in short, “MM”] in CC No.6505/2017. This was an action instituted by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter referred to as “the DV Act”]

5.2. In these proceedings, two significant orders were passed by the learned MM; the first was passed on 15.02.2018 while the second was passed on 14.08.2020.

5.3. Curiously, the appellant has not placed on record the second order i.e., order dated 14.08.2020, although the same has been screen-shared by the counsel-on-record for the respondent i.e., Mr Mohit Jolly.

5.4. A perusal of the order dated 15.02.2018 shows that the respondent had moved the learned MM for issuance of directions for securing residence for her and her son in the “shared household” and/or alternate accommodation.

“an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity”.

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.”



5.5. The appellant, however, opposed the request, and offered instead to pay Rs.15,000/- per-month to the respondent towards rent that she may have to pay for securing an accommodation for herself and their son.

5.6. Given the stand of the appellant, a direction was issued to that effect.

5.7. Likewise, a perusal of the order dated 14.08.2020 shows that since there was a default by the appellant in remitting Rs 15,000/- p.m. as directed, an application was moved by the respondent. The appellant, to avoid a coercive order offered to pay the outstanding dues within one month.

5.8. Pertinently, both the orders [i.e., orders dated 15.02.2018 and 14.08.2020] are predicated on the appellant's stance; taken of his own free-will.

5.9 Therefore, to our minds, for the appellant to now say that he does not have the wherewithal, seems incredulous. Therefore this ground is rejected as well

6. Admittedly, the parties' shared-household is located in the property situate at 98, Indira Vihar, New Delhi. That being said, there is a dispute as to the floor on which the parties were residing. According to Mr Shukla, the parties were residing on the ground floor, whereas Mr Jolly says that the respondent, along with her son, was residing on the first floor of the aforesaid property;

6.1 We queried Mr Shukla as to the amount which, according to the appellant, is payable to the respondent. Mr Shukla says that approximately Rs.1.65 lakhs is payable to the respondent.

6.2 We may note that the learned single judge, in paragraph 1 of the impugned order, has recorded Rs.1.95 lakhs as the amount payable to the respondent.



7. Thus, given the aforesaid circumstances, in particular, the appellant's stance before the learned MM, which is, that he would pay the outstanding dues, we are not inclined to interfere with the impugned order.

7.1. To us, it seems very unlikely that the appellant undertook the obligation to pay Rs 15000/- p.m. to the respondent towards rent, without being cognizant of his resources. The fact that the appellant allowed arrears to mount and, then, agreed to pay the outstanding dues also points in the direction that the violation of the first order i.e., order dated 15.02.2018 was wilful.

8. The appeal is, accordingly, dismissed. Consequently, pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 1, 2022/pmc

Click here to check corrigendum, if any