

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

Date of decision: 05th, MAY 2022

IN THE MATTER OF:

+ **CONT.CAS(C) 470/2022**

UMA PATI SOOD

..... Petitioner

Through: Mr. Manohar Lal and Mr. Chitanya
Rohilla, Advocates

versus

GAURAV KAPOOR, MANAGING DIRECTOR OF M/S CRS
INFRASTRUCTURE LTD. & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Alleging wilful violation of the order dated 07.03.2019, passed by the learned ADJ, Dwarka Courts, in CS No.1053/2018 titled as 'Uma Pati Sood vs. M/s CRS Infrastructure & Anr.' the instant contempt petition has been filed.

2. The facts, in brief, leading up to the filing of the petition are as follows:

- a) Father of the Petitioner herein – Mr. Jagan Nath Sood, passed away on 23.03.2007 leaving behind the Petitioner herein, another brother – Mr. Rama Pati Sood, and two daughters. Mr. Jagan Nath Sood was the owner of the property bearing No. D-2/7 Janak Puri, New Delhi admeasuring 419 Sq. Yards (*hereinafter referred to as 'the property'*). It is stated that the

daughters of Mr. Jagan Nath Sood relinquished their share in the property in favour of the Petitioner herein and his brother - Mr. Rama Pati Sood.

- b) It is stated that a Collaboration Agreement dated 12.06.2015 was entered into between the Petitioner herein and M/s CRS Infrastructure Ltd. (Respondent No.1 herein), having its office at B-201, Vikas Tower, G-Block, Community Centre, Opposite PVR Vikas Puri, New Delhi-110018, for developing the property. Respondent No.2 – Mr. Gaurav Kapoor was the Managing Director of M/s CRS Infrastructure Ltd. Clause 7 of the said Collaboration agreement reads as under:

“7. That after completion of the construction works the said property as per the laid down specifications and terms and conditions agreed by both the parties duly as permitted in the approved building plan. Ownership of upper ground floor and first floor without roof rights shall remain with the First party i.e. the owner and the entire basement, second floor without roof rights and third floor with roof rights along with the proportionate parking area in stilt floor i.e. with 1/4th (One-fourth proportionate parking space in stilt area for each floor of the building, within the limits of Delhi Municipal Corporation, along with proportionate undivided, indivisible and unpartitioned freehold rights of land under the said plot, (hereinafter called the portion of property) shall become the ownership of the second party/builder or its nominee with immediate effect after the RCC Slab of the third floor and the builder will pay a sum of Rs.2,25,00,000/- in the following matter-

- a) Rs.15 lacs vide Demand Draft by 20-Jul-*

2015 in favour of Mr. Rama Pati Sood after signing the collaboration agreement.

b) Balance of Rs.2.10 Crore in favour of Mr. Rama Pati Sood i.e. at the time of signing of sale deed for half undivided share of entire freehold property No. D-2/7 Janak Puri, New Delhi-110058 by 20-Oct-2015.”

- c) A perusal of the abovementioned clause would show that a sum of Rs.2,25,00,000/- (Rs.15 lakhs + Rs.2.10 Crores) was to be paid to Mr. Rama Pati Sood by the Respondents towards his half undivided share in the entire property. It is stated that out of his half undivided share in the entire property, Mr. Rama Pati Sood sold 1/8th share of the property to the Respondent No.2, 1/4th share was sold to one M/s Jolly Brothers Buildwell Pvt. and 1/8th part of the property was sold to one Mr. Akshay Jaggi.
- d) It is stated that the Petitioner herein was unaware of these sales.
- e) It is stated that since there was no progress in the Collaboration Agreement, the Petitioner herein filed a suit, being CS No. 1053/2018 (old No. 383/2018) titled ‘Uma Pati Sood v/s CRS Infrastructure and Anr.’ for declaring the Joint Sale Deed dated 24.11.2015 as null and void, before the Dwarka District Courts.
- f) It is stated that during the pendency of the suit, the matter was amicably settled between the parties and the suit was disposed of on 07.03.2019 by the learned ADJ, Dwarka Courts, by passing the following order:

" During pendency of the present proceedings, with the intervention of the court,

matter has been amicably resolved between the parties.

Defendant no. 2 who is Director of defendant no. 1 company undertakes to complete the construction work on this plot within a period of two years from today whereafter, plaintiff shall be given his share in the said property in terms of the collaboration agreement dated 12.06.2015.

It has been agreed that plaintiff shall assist defendant no. 1 company for the purposes of raising construction and for signing the documents on the applications if required to be submitted with authorities. Defendant no. 2 also undertakes that in case of any delay on their part in completing the construction within a period of two years, they shall comply with the default clause and instead of Rs. 15,000/per month as agreed in the collaboration agreement they shall pay Rs. 50,000/per month to the plaintiff.

Plaintiff also undertake to withdraw the criminal complaint filed by him against the defendants pending in the court of Sh. Himanshu Raman Singh, Ld. MM. Dwarka Courts.

Statement of plaintiff and defendant no. 2 for himself as well as for defendant no.1 to this effect has been recorded separately.

In view of the statement of the parties recorded today, the present suit is disposed off as compromised/withdrawn."

- g) It is stated that M/s Jolly Brothers Buildwell Pvt. later sold their share (1/4th of the entire property) to one Mr. Rakesh Katyal and the Respondent No.2 was a signatory to the sale deed dated 26.12.2018.
- h) Mr. Rakesh Katyal filed a suit, being CS (OS) 116/2020, before this Court, for obtaining a decree of partition of the property. The

Petitioner herein was arrayed as Defendant No.1 in the said suit. The Petitioner herein contested the suit by stating that he had entered into a Collaboration Agreement with M/s CRS Infrastructure Ltd. (Respondent No.1 herein) for construction of the entire suit property and, therefore, Mr. Rakesh Katyal (Plaintiff therein) could not have purchased any portion of the property. This Court by its judgment dated 23.03.2021 over-ruled the objection of the Petitioner herein and passed a preliminary decree in favour of Mr. Rakesh Katyal for his 1/4th undivided share in the property.

- i) The Petitioner herein has filed the instant contempt petition alleging that the Respondents have frustrated the consent order dated 07.03.2019, passed by the learned ADJ, Dwarka Courts, in CS No.1053/2018 by making his representative purchase a major share from Mr. Rama Pati Sood.

3. Mr. Manohar Lal, learned counsel for the Petitioner, contends that the Respondents have frustrated the entire Collaboration Agreement and the settlement agreement which was entered into between the Petitioner and the Respondents inasmuch as Respondent No.2, who is the Managing Director of Respondent No.1 company, was an active participant in the sale deed for selling half of the share of the property to various individuals. He submits that the Respondents have taken all steps to frustrate the consent order which stipulated that the construction would be completed within two years by persuading Rakesh Katyal to file a Civil Suit, being CS(OS) 116/2020 for partition of the property. It is further stated by the learned counsel for the Petitioner that the fact that M/s Jolly Brothers Buildwell Pvt. Ltd. has sold

their share (1/4th of the entire property) to Mr. Rakesh Katyal has been suppressed by the Respondents in the proceedings before the learned ADJ. He submits that the Respondents never intended to fulfil the agreement entered into between them and the Petitioner.

4. The submission of the learned counsel for the Petitioner cannot be accepted.

5. The power to punish for contempt is a special power and needs to be exercised with care and caution, and it should be used sparingly by the Courts. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and whether the conduct of the party who is alleged to have committed such disobedience is contumacious or not. In Jharieswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352, the Supreme Court has observed as under:

"11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes

between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended

to maintain the majesty and image of courts."

6. A reading of the order dated 07.03.2019 shows that the Respondent No.1 company was to complete the construction within two years from the date of that order. Order dated 07.03.2019 further stipulated that in case of failure in completing the construction, Respondent No.1 herein was to pay a sum of Rs.50,000/- per month to the Petitioner herein.

7. Mr. Rama Pati Sood has sold his half undivided share in the property to three other individuals. The sale of his share of the property by Mr. Rama Pati Sood has been upheld by this Court while passing the preliminary decree dated 23.03.2021. It cannot be said that the Respondents have violated any order passed by the Court or have violated any undertaking given to the Court because order dated 07.03.2019, which was a consent order, stipulates that in case of delay in construction, the Respondent No.1 would be liable to pay Rs.50,000/- per month to the Petitioner herein.

8. In absence of violation of any order or undertaking by the Respondents herein, this Court observes that there has been no wilful disobedience on the part of the Respondents of the Order dated 07.03.2019, passed by the learned ADJ, Dwarka Courts, in CS No.1053/2018 and, therefore, no contempt is made out against them.

9. Accordingly, the instant contempt petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MAY 05, 2022

Rahul

CONT.CAS(C) 470/2022

Page 8 of 8