



2023:DHC:6753



§~1 and 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on :- 18.09.2023*+ **CONT.CAS(C) 994/2023**

COURT ON ITS OWN MOTION

..... Petitioner

versus

JAVED HASAN

..... Respondent

+ **CM APPL. 47617/2022 in**
RFA 300/2022 (Disposed off case)

JAVED HASAN

..... Appellant

versus

RAJESH CHOPRA & ANR

..... Respondents

Appearance:

Mr. Javed Hasan, contemnor in person.

Mr. Chetan Lokur, *Amicus Curiae*, with Mr. Vaibhav Kaul, Advocate.

Mr. P. Choudhury and Mr. Ankit Choudhury, Advocates for the respondents in the appeal.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J (Oral)**

1. The captioned application and contempt proceedings arise out of an appeal filed by Mr. Javed Hasan [hereinafter, "the defendant"], against a judgment and decree dated 04.05.2022 passed by the learned Additional District Judge- 03, Central Tis Hazari Courts, Delhi in CS DJ No. 455/19. CONT.CAS(C) 994/2023 has been registered pursuant to an order of this Court dated 03.07.2023 in RFA 300/2022. CM APPL. 47617/2022 has been filed by Mr. Rajesh Chopra and Mr. Govind Patel, the plaintiffs in the suit



[hereinafter, “the plaintiffs”], for directions in terms of the order dated 01.08.2022 in the appeal.

I. Facts

2. A suit was filed on 07.05.2019 in the Court of learned Additional District Judge-03, Central Tis Hazari Courts, Delhi [CS DJ No.455/19], by the plaintiffs, against the defendant, for recovery of possession of immovable property - *shop No. 8, 9, 10 and 11, No.15-A/52, Plot No.52, Block-15A, WEA, Karol Bagh, New Delhi-110005* [hereinafter “the suit property”] and payment of arrears of rent, *mesne* profits and electricity charges.

3. The cause of action asserted by the plaintiffs was that they were the owners of the suit property, which had been leased to the defendant under a registered lease deed dated 18.09.2017 for a period of 11 months [from 01.09.2017 to 31.07.2018] on payment of monthly rent of Rs.1,00,000/-. It was stated that the defendant defaulted in regular payment of rent and also failed to vacate the suit property upon the lapse of the lease period. The plaintiffs also claimed that the defendant had caused substantial structural damage to the premises, and failed to pay consumption charges for electricity. Upon the defendant failing to vacate the property, despite the issuance of a legal notice dated 18.02.2019, the plaintiffs filed the suit for the aforementioned reliefs.

4. The suit was contested by the defendant but, upon an application for judgment on admission filed by the plaintiffs, came to be decreed in part by a judgment dated 04.05.2022. The learned Trial Court found that the defendant did not deny the execution of the lease deed, and granted a decree of possession to the plaintiffs. The defendant was directed to vacate the suit



property within sixty days from the date of the order. The learned Trial Court also granted a decree for arrears of rent at the admitted rate of Rs.55,000/- per month from August 2019 until the handing over of the premises to the plaintiffs.

5. The defendant carried the matter to this Court in RFA No. 300/2022, which was disposed of *vide* order dated 01.08.2022. The relevant extracts of the order are as follows:

“10. Today, Ms. Radhika, learned counsel for the appellant, on instructions, has given an undertaking to the Court that the appellant will be vacating the premises within a period of six months and the arrears of rent shall be paid, in equal instalments within six months, to be paid on 25th of each calendar month till January, 2023.

11. Learned counsel for the respondent, on instructions from his clients, submits that the respondents has ‘No Objection’ to said proposal with liberty to approach the Court in case of any default by the appellant.

12. Both the parties are bound down by the undertaking given by them today in Court.

13. In view of the aforesaid terms, the appeal and the pending applications stand disposed of.”¹

6. The defendant failed to pay arrears of rent as contemplated by the said order. This led to the plaintiffs filing CM.APPL. 47617/2022 on 2.11.2022, for payment of arrears of rent and for a direction upon the defendant to vacate the suit property in default of compliance with the undertaking given to the Court.

7. By an order dated 30.01.2023, passed in the said application, the defendant, who was present in person, was directed to comply with the order dated 01.08.2022 in its entirety, and the application was listed on 02.02.2023.

¹ Emphasis supplied.



8. On 02.02.2023, it was noted that the defendant failed to abide by the undertakings given to the Court with regard to vacation of the suit property and payment of arrears of rent, but sought an extension of two months to comply with both directions. Although the Court deprecated the action of the defendant, upon the plaintiffs expressing no objection to the grant of such an extension, the Court passed the following order:

“1. The appellant had given an undertaking to this Court vide order dated 01.08.2022 that he will be vacating the premises within a period of six months and will be paying arrears of rent in equal instalments within six months. However, **the appellant has failed to abide by the undertaking given to this Court**, he has neither vacated the suit property nor paid any arrears of rent.

2. The appellant, who appears in person, has sought extension of two months time from today to vacate the suit premises as well as to pay arrears of rent.

3. Though the Court deprecates the action of the appellant of not complying with the order dated 01.08.2022, in the interest of justice, **one last opportunity is given to the appellant to comply with order dated 01.08.2022.**

4. Learned counsel for the Respondent on instruction from his client who is present in court states that the respondent has no objection if a further period of 2 months is granted to the appellant to vacate the suit premises.

5. **In view of the statement made by the appellant, this Court grants further two months' time from today to vacate the suit premises as well as pay arrears of rent i.e. 02.04.2023.**

6. It is also made clear that the appellant was trying to shield behind the garb that the earlier counsel for the appellant has made a statement before this Court on 01.08.2022 and the appellant was not aware of the consequences of that statement.

7. Today, the appellant has engaged another counsel and **it was explained to the appellant as well as learned counsel for the appellant that he will remain bound by the undertaking given to this Court and shall be following the orders in letter and spirit and any violation of the undertaking given to the Court will be held to be the contempt of the Court.**

8. With these observation, list on 05.04.2023.”²

² Emphasis supplied.



9. The defendant was represented by a new counsel when the matter was taken up on 10.04.2023, and was also present in person before the Court. The Court noted that the defendant was in contempt of the orders of the Court, and made the following directions:

“4. The appellant had in spite of the undertakings given to this Court on 01.08.2022 and 02.02.2023 has not vacated the suit premises as well as not paid the arrears of rent. The appellant is in complete contempt of the orders passed by this Court and the undertaking given to this Court on two different occasions. The appellant has also changed multiple counsel during the course of the litigation.

5. The appellant has again appeared in person and requested further extension of two months to vacate the suit property and has also assured that the arrears of rent will be paid within a period of two months. The conduct of the appellant does not inspire any confidence in the Court to grant him any further extension.

6. The respondent has appeared in person and has agreed to grant him extension of two months on the assurance that the arrears of rent shall be paid within one month from today. Learned counsel for the respondent, on instructions from his client, is willing to grant him the last extension only on the assurance that the appellant shall not seek any further extension from this Court for vacating the suit premises and shall pay the arrears of rent within a period of one month from today.

7. Though this Court deprecate the action of the appellant and contemplates issuing contempt notice to the appellant for violating the undertakings given to this Court on 01.08.2022 and 02.02.2023, it is made clear to the appellant, who appears in person, that if he fails to vacate the suit premises within the stipulated period of two months from today and clear all outstanding arrears of rent within a period of one month, this Court shall take a very strict view on the next date of hearing.”³

10. The defendant thereafter filed CM.APPL.18233/2023 for an extension of two years to vacate the suit premises. This application was rejected on 17.04.2023.

³ Emphasis supplied.



11. By an order dated 03.07.2023, the Court noted the aforesaid factual situation and the contention of the defendant that he wishes to continue to use the property and does not wish to vacate the same. He contended that he had filed complaints against three counsel, who had appeared on his behalf, for making wrong statements. The Court did not accept this contention in view of the undertakings given by the defendant in person on previous occasions, and issued notice to the defendant to show cause as to why proceedings in contempt not be initiated against him. He was directed to file his reply to the contempt notice before the next date of hearing. CONT.CAS(C) 994/2023 has been registered pursuant to this order.

12. On the next date of hearing, i.e., 27.07.2023, the defendant was present in person and sought further time to file a reply, which was granted subject to payment of costs. Although the Court expressed a *prima facie* view that the defendant was guilty of contempt, Mr. Chetan Lokur, learned counsel, was requested to assist as *Amicus Curiae*, as the defendant was appearing in person and had not filed a reply to the contempt notice.

13. The defendant was heard in person on 16.08.2023, as also today. Learned *Amicus Curiae* and learned counsel for the plaintiffs were also heard. The defendant reiterated that he does not intend to vacate the suit property, and that his erstwhile counsel had breached his trust. He contended that he had in fact paid more than the rent due to the plaintiffs, albeit in cash and for which he had no documentary evidence.

14. The reply to the contempt notice, handed over by the defendant/contemnor on 16.08.2023 has been taken on record, and I am informed that costs imposed by order dated 16.08.2023 have been paid. In the reply, the defendant has stated that statements were made by counsel without his



instructions. He has also sought to raise certain contentions on the merits of the appeal and decree, which are not germane at this stage.

II. Analysis

A. Has the defendant committed contempt of Court?

15. "Civil contempt" has been defined in Section 2(b) of the Contempt of Courts Act, 1971 ["the Act"] as follows:

"2. (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"

16. The principles governing the exercise of contempt jurisdiction have been dealt with in several decisions of the Supreme Court and this Court. They have been very recently discussed by the Supreme Court in *Balwantbhai Somabhai Bhandari vs. Hiralal Somabhai Contractor (Deceased) rep. by LRs & Ors.*⁴, and citation of other authorities is unnecessary for the purposes of the present case. It has been observed by the Court in *Balwantbhai Somabhai Bhandari*⁵ that a litigant is liable to be punished for contempt if he/she, knowing the judgment or the order of the Court, and being conscious of its consequences and implications, acts in violation thereof. In such circumstances, the disobedience would be "wilful". While contempt jurisdiction should be invoked with great circumspection, making all allowances for errors of judgment, however, it is imperative to the rule of law that action is taken when a deliberate violation of orders of the Court is made out. Breach of an assurance, in the form of an undertaking given by counsel on behalf of the client to the Court [as

⁴ 2023 SCC OnLine SC 1139

⁵ *Ibid.*



opposed to undertaking given to a party to the *lis*], would also amount to civil contempt under Section 2(b) of the Act.

17. Applying these principles to the present case, I am of the clear view that the defendant has committed contempt of Court for the following reasons:

- a. An undertaking was given by learned counsel for the defendant on 01.08.2022 to the effect that the suit premises would be vacated within a period of six months, and that arrears of rent would also be paid in equal instalments within the same period. It is recorded in the order that the undertaking was given “*on instructions*,” and that the defendant’s sister was present in Court. In these circumstances, the undertaking was clearly one given to the Court, and not to the plaintiffs alone.
- b. By order dated 30.01.2023, the Court gave a positive direction to the defendant, who was present in person, to comply with the order dated 01.08.2022 in its entirety. The defendant has failed to do so.
- c. In the order dated 02.02.2023, the undertaking given on 01.08.2022 was characterised as one “*given to this Court*,” and the defendant’s request for an extension of two months’ time to vacate the premises and pay arrears was accepted, with the consent of learned counsel for the plaintiffs. The Court specifically noted the defendant’s contention that he was not aware of the consequences of the statement made on his behalf on 01.08.2022 and, therefore, recorded that it had been explained to him and his counsel that he would “*remain bound by the undertaking given to this Court*” and that “*any violation of the*



undertaking given to the Court will be held to be the contempt of the Court.”

- d. In the order dated 10.04.2023, the Court has already returned the finding that the defendant was in contempt of the orders of this Court, recording a breach of the undertakings given to the Court on two different occasions. On this occasion also, the defendant appeared in person and requested further time to vacate the premises, which was granted with the consent of the plaintiffs. It is noted in the said order that the defendant would not be entitled to seek any further extension from the Court, and would vacate the suit property within two months and pay the areas of rent within one month from the said date. The Court recorded that it had been made clear to the defendant, who had appeared in person, that if he failed to vacate the premises within the stipulated date and clear all outstanding rent within a period of one month, the Court would take a strict view of the matter. The defendant's application for further extension of time of two years was expressly rejected by order dated 17.04.2023.
- e. In light of the express undertakings recorded in the aforesaid orders, both of learned counsel for the defendant and by the defendant in person, I am of the view that the defendant had given clear undertakings to the Court, that he was aware of the nature of the undertakings, and has willfully failed to act in compliance thereof.
- f. The defendant's repeated assertions that he was misled by counsel are clearly untenable. The undertakings recorded had been given by the defendant in person, and the Court had also explained to the defendant



himself, the implications of the order and the consequences of breach thereof.

- g. The defendant has taken advantage of the time granted by orders dated 01.08.2022, 02.02.2023 and 10.04.2023. He thus obviously understood the implications of the orders of the Court, to the extent that they postponed his liability to eviction from the suit premises. In these circumstances, I do not accept his self-serving assertion that he did not understand the effect of the undertakings that he had offered.

18. In the reply to the contempt notice, as stated above, the defendant has again sought to place the blame on three counsel who have appeared on his behalf, and has made arguments with regard to the total amount, in fact, paid to the plaintiffs. No apology has been tendered except in the following terms:

“11. That the contemnor beg pardon unconditionally with folded hands to your lordship. The contemnor is really very sorry for the inconvenience if any and hearty apologies and prayed for the withdrawal of this contempt notice in the light of these facts and circumstances.”

19. While the Court undoubtedly has jurisdiction to accept an apology of a contemnor, I do not consider it appropriate to do so in this case. As held in *Balvantbhai Somabhai Bhandari*, a contemnor ought not to be absolved of the consequences thereof, merely by expression of an apology to the Court, unless it is a deep ethical act of “*introspection, self-introspection, atonement and self-reform.*”⁶ The Supreme Court has observed that leniency in acceptance of apologies emboldens unscrupulous litigants to disobey or commit breaches of orders passed by the Court or undertakings given to the Court with impunity. In the present case, the defendant has in fact asserted

⁶ Supra, note 4 at para 111.



time and again, and continues to assert, that he does not wish to vacate the suit property despite the undertakings given to the Court. The Court, therefore, is unable to accept the apology, at best halfhearted, tendered by him.

20. For the aforesaid reasons, I hold that the defendant has willfully disobeyed the undertakings given to the Court and the orders of the Court dated 01.08.2022, 30.01.2023, 02.02.2023 and 10.04.2023. The defendant is, therefore, held guilty of contempt of Court as defined in Section 2(b) of the Act. He is directed to appear in person on 7.11.2023 for sentencing.

B. Further Directions:

21. A further question arises as to the steps which the Court may take to purge the contempt, at least to the extent that possession of the suit property is recovered by the plaintiffs. Proceedings for execution of the decree dated 04.05.2022 granted by the learned Trial Court are pending. However, Mr. P. Choudhury, learned counsel for the plaintiffs, submits that directions to effectuate the orders of the Court may be granted in these proceedings also.

22. The Supreme Court, in *State Bank of India and Others vs. Dr. Vijay Mallya*,⁷ has clearly held that, apart from punishing the contemnor for his contemptuous conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contemptuous conduct is completely nullified.

23. The present case is one which calls for the exercise of such power. The defendant has already been granted three extensions of time to vacate the suit property. He has failed to do so, and now expresses a desire not to

⁷ 2022 SCC OnLine SC 826.



do so at all. His conduct thus continues to be contumacious and unworthy of any indulgence by the Court.

24. Two cases were cited by learned *Amicus Curiae* to suggest that the question of possession may also be left to the Executing Court – *R.N. Dey and Others vs. Bhagyabati Pramanik and Others*,⁸ and *Jamna Datwani vs. Kishin Datwani and Others*.⁹ However, these judgments are distinguishable from the facts and circumstances of the present case. They do not concern undertakings given by contemnors to the Court, in *lieu* of which they enjoyed a benefit conferred by the Court. On the other hand, several judgments of the Supreme Court and this Court,¹⁰ including in cases of undertakings given with regard to possession of immovable property,¹¹ have emphasised the role of the Court in ensuring compliance with its orders. These judgments are, in my view, much closer to the facts of the present case.

25. Further, in the present case, while recording the undertaking given by the defendant on 01.08.2022, liberty was reserved for the petitioners to approach the Court in case of default. They have done so by filing CM.APPL. 47617/2022 in RFA 300/2022. The Court's jurisdiction to pass the aforesaid order flows from the aforesaid proceedings as well.

26. The defendant is, therefore, directed to hand over vacant possession of the suit premises to the plaintiffs within one week from today, failing which the Executing Court will take necessary coercive steps on the next date of

⁸ (2000) 4 SCC 400.

⁹ Judgement dated 24.09.2014 in CONT.CAS(C) 652/2014.

¹⁰ Judgements in *Mohammad Idris and Another v. Rustam Jehangir Babuji and Others* [(1984) 4 SCC 216] and *State Bank of India and Others v. Dr. Vijay Mallya* [2022 SCC OnLine SC 826].

¹¹ Judgements in *Kanta Gupta (Smt) v. VIII Additional District Judge, Meerut and Others* [1991 Supp (1) SCC 219], *Kailash Chander Sharma v. Nirmala Wati* [2001 SCC OnLine Del 394] and *Deepika Chauhan*



hearing. It is made clear that the proceedings in execution would continue in accordance with law, as far as recovery of arrears of rent is concerned.

III. Conclusion

27. For the aforesaid reasons, the following directions are passed:

- a. The defendant, Javed Hasan [respondent in CONT.CAS(C) 994/2023], is held guilty of civil contempt of this Court for breach of the undertakings recorded and orders of this Court dated 01.08.2022, 30.01.2023, 02.02.2023 and 10.04.2023.
- b. List CONT.CAS(C) 994/2023 on 07.11.2023 for orders on sentencing. The contemnor is directed to remain present before the Court on that date.
- c. The defendant is directed to hand over vacant and peaceful possession of the suit property [shop No. 8, 9, 10 and 11, No. 15-A/52, Plot No.52, Block-15A, WEA, Karol Bagh, New Delhi-110005] to the plaintiffs within one week from today.
- d. In the event of default with compliance of direction 12 (c) above, the Executing Court is directed to take coercive proceedings for recovery of possession of the suit premises on the next date of hearing.
- e. Proceedings before the Executing Court will continue for purposes of recovery of arrears of rent and *mesne* profits, in terms of the decree of the Trial Court and until the date of recovery of possession.
- f. In addition, costs of Rs.1,00,000/- are imposed upon the defendant, which may also be recovered by the plaintiffs in the execution proceedings arising out of the decree.

and Another v. Indra Pasricha [2023 SCC OnLine Del 1552].



2023:DHC:6753



g. CM APPL. 47617/2022 in RFA 300/2022 stands disposed of.

28. The Court records its appreciation for the valuable assistance rendered by Mr. Chetan Lokur, Advocate, as *Amicus Curiae*. He is requested to assist the Court on the next date of hearing on the question of sentencing also.

PRATEEK JALAN, J

SEPTEMBER 18, 2023

SS/