

Court No. 22  
**22.11.2023**  
(Item No. 2-3)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**  
**C.P.A.N. 1553 of 2023**  
**in**  
**W.P.A. 15475 of 2023**  
**+**  
**CAN 1 of 2023**

Hindustan Steelworks Construction Limited  
VS  
Mr. Rathendra Raman, Chairman, The Board of  
Trustees for The Syama Prasad Mookherjee Port,  
Kolkata (earlier known as Kolkata Port Trust) & Ors.

Mr. Ratnanko Banerjee  
Mr. Bijoy Adhikary  
Mr. Shamba Chakraborty  
Mr. Souradeep Banerjee  
Ms. Susmita Adhikary  
Mr. Subham Saha  
.... For the petitioner

Mr. Abhrajit Mitra  
Mr. Subhankar Nag  
Mr. Amit Kumar Nag  
Mr. Swarajit Dey  
Ms. Riddhi Jain  
..... for the alleged contemnors

Mr. K. K. Maiti  
Mr. Tapan Banerjee  
.... For the Customs Authority  
Mr. Tarun Jyoti Tewari  
Ms. Amrita Pandey  
.... For Union of India  
Mr. Aniruddha Chatterjee  
.... For Proforma respondent of  
Writ petition

The previous order dated November 20, 2023  
speaks for itself.

This is a contempt proceeding arose from an  
order dated **September 25, 2023** passed by a co-  
ordinate bench, **Annexure - A** at **page 34** to the  
contempt application. The order was passed in a  
connected interlocutory application being **CAN 1 of**

**2023** filed in the principal writ petition No. **W.P.A. 15475 of 2023**.

The subject matter of the writ petition relates to a disputes relating to lease on a portion of land granted by **Syama Prasad Mookjerjee Port (for short, the Port Authority)** and five numbers of Weighbridges situated thereupon.

Seeking a restraint order in the interlocutory application the petitioner moved before the co-ordinate bench when the co-ordinate bench on the basis of an undertaking given by the Port Authority observed that in view of the undertaking given by the Port Authority no order of injunction was passed.

The relevant portions from the said order dated **September 25, 2023** are quoted below:

*“Be that as it may, Ministry of Shipping has already approved lease in favour of the petitioner of 30 years in respect of the said 5 sites of SPMP, Kolkata for installation and operation of weighbridges within the port area.*

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*Mr. Abhrajit Mitra, learned senior counsel appearing on behalf of the SPMP, Kolkata, on the other hand, submits that the letter dated November 20, 2013 cites in unqualified term that the lease granted to the petitioner was for 10 years. However, it is submitted by him that the tender in question does not involved the land sites and 5 number of weighbridges for which lease was granted in favour of the petitioner. By the impugned tender the interest of the petitioner will not be hampered and the SPMP, Kolkata shall take necessary action of removal of the petitioner in due*

*process of law. It is also submitted by him that the law on this subject is trite to the effect that by or upon an application under Article 226 of the Constitution of India, specific performance of contract cannot be granted or that an aggrieved party cannot pray for damages.*

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*While making such submission as recorded above, the respondents submit that they may be permitted to file affidavit-in-opposition in the instant writ petition.*

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***Since the learned advocate on behalf of the respondent, SPMP, Kolkata undertakes that the tender process does not involve the land sites and 5 weighbridges for which lease was granted to the petitioner, this Court relying on such undertaking does not think it necessary to pass any interim order at this stage.”***

Mr. Ratnanko Banerjee, learned Senior Counsel appearing for the petitioner placed reliance heavily upon the undertaking given by the Port Authority quoted above and submits that even after giving such undertaking the Port Authority was minded and decided to proceed with the tender process which, inter alia, included the subject land and Weighbridges being the subject matters in the said pending interlocutory application. In this regard, he refers to the document appearing at **pages 45 to 49** to the contempt application and submits that, this was a document which was already in existence when the said order dated **September 25, 2023** was passed

and the undertaking was given by the Port Authority but the Port Authority did not draw attention of the co-ordinate bench on the said document and gave the undertaking. Learned senior counsel for the petitioner then submits that, in the event any further tender process takes place including the said plot of land and the five numbers of Weighbridges, which are the subject matter in the pending interlocutory application, it would amount to a breach of undertaking given by the Port Authority and the same would be definitely an act of contempt which is the subject matter of the contempt proceeding. An undertaking given by a party before a Court of law, as in the instant case, if is breached by that party the same would attract the contempt jurisdiction of this Court. In this regard he placed reliance upon a judgment of the Hon'ble Supreme Court, **In the matter of: Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor (Deceased) rep. by Lrs. And Others** reported at **2023 SCC OnLine SC 1139**.

Mr. Abhrajit Mitra, learned senior counsel appears for the alleged contemnors. Placing reliance upon the undertaking given by the Port Authority appearing at **page 42** to the contempt application, learned senior counsel submits that, the undertaking was limited only to the extent of the tender process relating to the land sites and five numbers of

Weighbridges for which lease was granted to the petitioner. He then relied upon a portion from the order dated **September 25, 2023** at **page 39** to the contempt application and submits that, it was clearly recorded by the co-ordinate bench that, by the impugned tender the interest of the petitioner will not be hampered and the Port Authority shall take necessary action of removal of the petitioner in due process of law. He submits that, the Port Authority is entitled to take steps in accordance with law against the petitioner in any other mode but other than relating to the tender process.

Mr. Mitra, learned senior counsel appearing for the alleged contemnors further submits, on instruction that the Port Authority has not acted in any manner which amounts to violation of the undertaking recorded in the order dated **September 25, 2023** and the work order has already been issued under the tender process is not in respect of the land sites or the five numbers of Weighbridges, which are the subject matter of the pending writ petition and the interlocutory application. Mr. Mitra, learned senior counsel further submits that, the contempt proceeding is not maintainable.

After hearing the learned senior counsel for the parties and upon perusal of the materials on record this Court is of the firm view that, the order dated **September 25, 2023** was passed, inter alia, clearly

on the basis of an undertaking as recorded in the penultimate paragraph at **page 42** to the contempt application.

Exercising jurisdiction in contempt, this Court shall only look into whether any contumacious act done in terms of **Section 2(b)** of the **Contempt of Court Act, 1971**, defining Civil Contempt. The definition of civil contempt, inter alia, includes violation of an undertaking given by a party before the Court of law. The law is also settled that, contempt also lies even if a party attempts to circumvent the order or direction of a Court willfully. The foremost principle while adjudicating a contempt proceeding should be kept in mind that, the majesty of the direction as an order of the Court should be upheld.

The submissions made by Mr. Abhrajit Mitra, learned senior counsel appearing for the alleged contemnors as recorded above would indicate that, there was no violation of the undertaking given by the Port Authority before the co-ordinate bench. **He also reiterates the same undertaking before this Court as recorded above today also.** However, the documents appearing from **pages 45 to 49** of the contempt application, though the same is a document which came into existence before the previous order dated **September 25, 2023** was passed but when the undertaking was given by the Port Authority, it is deemed that taking into consideration of that

document the undertaking was given by the Port Authority keeping their eyes open. The law of contempt demands that, no party shall be allowed to circumvent or bye-pass any order or direction of the Court.

In view of the foregoing reasons and discussions, this Court is of the firm view that, **the parties shall maintain an order of status-quo as on September 25, 2023 over and in respect of the said land sites and the five numbers of Weighbridges to the extent of the issues and subject matter involved in the interlocutory application being CAN 1 of 2023 in so far as the subject tender process is concerned which is also the subject matter of CAN 1 of 2023.**

With the above observations and directions, this contempt proceeding being **C.P.A.N. 1553 of 2023** stands **dropped and closed.**

Consequently, the contempt application being **CPAN 1553 of 2023** stands **disposed of**, without any order as to costs.

**(Aniruddha Roy, J.)**