

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Contempt)

ORIGINAL SIDE

CC 21 of 2016

**Karnani Properties Limited
V.
Mr. Abhishek Kejriwal & Anr.**

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioners : Ms. Lapita Banerjee, Adv,
Mr. N. Chowdhry, Adv.
Ms. A. Poddar, Adv.

For respondents : Mr. Dilip Mukherjee, Adv,
Mr. Lord Chatterjee, Adv.
Mr. P.K. Nandi, Adv.

Judgment on : 14.12.2023

Arijit Banerjee, J. :-

1. This contempt application has been filed alleging wilful violation of an order dated January 18, 2016, passed on an interlocutory application being T.A. no. 2 of 2016 filed in C.S. no. 8 of 2016.

2. The petitioner is the owner of premises nos. 25A, 25B, 27A and 27B Park Street, Kolkata 700 016, popularly and collectively known as "Karnani Mansion". The respondent no. 1 herein is the General Secretary of Karnani Mansion Residents Association (in short 'KMRA') and the respondent no. 2 is the Joint Secretary of KMRA.

3. It appears that some time in or around 2002, Kolkata Municipal Corporation (in short 'KMC'), issued water dis-connection notice to the owners of Karnani Mansion for property tax having fallen due. The notice was challenged by KMRA by filing a writ petition being W.P. no. 1619 of 2002. The matter was carried to the Appeal Court by filing APOT No. 582 of 2002. It appears that the Appeal Court by an order dated August 27, 2002, permitted KMRA to collect the rent and maintenance charges from the residents of the various flats/apartments in Karnani Mansion and other occupiers and utilize the same for payment of property tax.

4. C.S. No. 8 of 2016 was filed by Karnani Properties limited (in short KPL), the owner of Karnani Mansion, primarily for a declaration that two circulars dated December 24, 2015, and December 31, 2015, issued by KMRA, are bad in law and should be quashed. The said circulars were issued by KMRA requesting the tenants/occupants of Karnani Mansion to pay rent/maintenance/parking/cleaning charges, etc., to KMRA which is the defendant no. 1 in the suit. The defendants contend that the said circulars were issued rightly and in consonance with the order dated August 27, 2002, passed by the Hon'ble Division Bench of this Court in APOT no. 582 of 2002.

5. KPL filed an interlocutory application in the suit to restrain the defendants in the suit from giving any effect to the said 2 circulars.

6. When the interlocutory application was moved on January 14, 2016, an assurance was given on behalf of the defendants that no effect would be given to the impugned circulars till January 19, 2016. On January 18, 2016, I had recorded an order, violation of which is alleged in this contempt

application. The said order dated January 18, 2016 is reproduced hereunder:-

“The Court : The plaintiff in the suit is the owner of the properties collectively known as Karnani Mansion. The defendant no.1 is the Karnani Mansion Residents’ Association and the defendant nos.2 and 3 are office holders of the said Association. The dispute in the present suit involves only four premises being 25A, 25B, 27A and 27B, Park Street, Kolkata – 700 016.

The defendants have issued two circulars dated 24th December, 2015 and 31st December, 2015 respectively thereby requesting the tenants/occupants of the said four premises to pay rent/maintenance/parking/cleaning charges, etc. to the defendant Association. This, the defendants contend, is in consonance with the order dated 27th August, 2002 passed by the Hon’ble Division Bench in APOT No.582 of 2002. Mr. Mazumdar, learned Senior Counsel submits that the said order was confirmed by the Hon’ble Appeal Court by its order dated 21st July, 2006.

Mr. Mukherjee, learned Senior Counsel representing the plaintiff submits that the defendants have no right to collect the rent, parking fees, etc. in respect of the said premises. According to him, the order dated 27th August, 2002 does not survive any more. These are questions that this court will have to consider after affidavits are exchanged

When this matter was moved on 14th January, 2016, an assurance was given by the learned Advocate for the defendants,

on instruction, that no effect would be given to the aforesaid two circulars dated 24th December, 2015 and 31st December, 2015 respectively till 19th January, 2016. The matter was accordingly fixed for today.

Mr. Mukherjee, learned Senior Counsel produces a receipt dated 15th January, 2016 issued by the defendant Association which shows that the Association received rent for December, 2015 for flat no.232 from one Mr. Mukesh Mirchandani. This, according to me, prima facie is in violation of the assurance given on behalf of the defendants.

Be that as it may, I am of the view that pending disposal of the application, a Special Officer should be appointed for collecting the rent from the tenants, who are members of the defendant Association. Accordingly, Mr. Sandwip Mukherjee, advocate, Bar Library Club, High Court, Calcutta is appointed as Special Officer for the purpose of collecting the rent and maintenance charges from the tenants/occupiers, who are members of the defendant Association. The Special Officer shall be entitled to a remuneration of 500 GMs. per month to come out from the monies collected by him. Such rent shall be kept in a separate account to be opened by the Special Officer with a nationalised bank of his choice or the State Bank of India. The money collected shall be deposited in an account, which would give the best possible return. In this matter, the Special Officer will be assisted by the Secretary of the defendant Association and Mr.

C.K. Karnani, director of the plaintiff company. The Special Officer shall maintain account of the collection made by him upon intimation to both the parties. In case any urgent maintenance work needs to be carried out to the aforesaid four premises in question or any one of them, the Special Officer in consultation with the aforesaid director of the plaintiff and the secretary of the defendant Association shall carry out such work, the cost of which will come out from the monies collected by the Special Officer

Mr. Mazumdar, learned Senior Counsel submits that the tenants/occupiers should not face any difficulty in the matter of parking of motor cars and ingress and egress thereof to and from the said premises. Mr. Mukherjee assures that no obstacles will come from the side of the plaintiff in that regard. However, Mr. Mazumdar shall always be at liberty to approach this court if his clients have any genuine grievance.

Let affidavit in opposition be filed by 15th February, 2016. Affidavit in reply, if any, be filed by 29th February, 2016. Let this matter appear before the Regular Bench in the monthly list of March, 2016 under the heading 'Adjourned Motion'.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities."

7. The contempt application was moved on or about February 17, 2016. The basic allegation is that in spite of the assurance meted out by learned Advocate for the defendants in the suit including the present respondents

who are office bearers of KMRA (defendant no. 1 in the suit), and in spite of the clear injunction order dated January 18, 2016, KMRA through the present respondents continued to give effect, to the circulars impugned in the suit, by collecting rent/maintenance/parking/cleaning charges, etc., from the tenants/occupants of Karnani Mansion. Wilful violation of the order dated January 18, 2016, has been alleged in this contempt application.

8. I heard learned Counsel for the parties at length. Learned Advocates for the parties also filed written notes of submission at the conclusion of the hearing of the application.

9. Learned Advocate for the petitioner submitted that with full knowledge of the order dated January 18, 2016, the respondents herein went on collecting rent etc. from the tenants/occupiers of Karnani Mansion. They have deliberately refused to disclose the particulars of the bank account in which such moneys have been deposited. This act of concealment is also an act of contempt. It was submitted that the respondents made payments for personal expenses from the bank account where the rent/maintenance/parking/cleaning charges were deposited. The respondents sought to siphon off funds despite appointment of a Special Officer and ought to usurp the power of the Special Officer appointed by this Court.

10. Photo copies of bank accounts were produced on behalf of the petitioner to try and demonstrate that monies were deposited by KMRA in the bank accounts after collecting rent/maintenance/parking/cleaning charges from the tenants /occupants of Karnani Mansion even after the order dated January 18, 2016 was passed.

11. The petitioner also filed a supplementary affidavit dated July 3, 2018, annexing thereto photocopies of diverse documents to establish that the respondents wilfully violated the order dated January 18, 2016.

12. The respondents filed affidavit-in-opposition to the contempt petition as also affidavit-in-opposition to the supplementary affidavit of the petitioner.

13. Learned Advocate for the respondents submitted that there was no violation of the order dated January 18, 2016, on the part of the respondents. He admitted that the respondents did deposit money in the bank account on January 19, 2016, but explained that such money was collected prior to the passing of the order dated January 18, 2016. Learned Advocate argued that none of the documents produced by the petitioner with the contempt petition or with the supplementary affidavit, would show that the respondents collected rent/maintenance /parking/cleaning charges from the residents of Karnani Mansion or any of them after the order dated January 18, 2016, was passed.

14. Learned Advocate for the respondents submitted that no receipt issued by the respondents for collection of money from the residents of Karnani Mansion after passing of the order dated January 18, 2016, could be produced by the petitioner. On the other hand, the petitioner has been obtaining copies of bank statements of KMRA by dubious methods.

15. Learned Advocate submitted that there is not a single complaint made by the Special Officer appointed by this Court that KMRA or its office bearers including the present respondents ever received any rent or other charges from the tenants/occupiers who are members of KMRA. On the

other hand KMRA had to make various complaints against the petitioner, KPL, for violation of the Court's orders.

16. Learned Advocate submitted that the deposits in the concerned bank accounts of KMRA for the period subsequent to January 18, 2016, were all donations/contributions to KMRA by its members for meeting various expenses including legal expenses.

17. I have carefully considered the rival contentions for the parties. I have gone through the pleadings and through the written notes of submission filed on behalf of the respective parties.

18. The contempt jurisdiction of the High Court is a Special Jurisdiction. It is quasi criminal in nature .The High Courts, it has now been held, have inherent power to punish a person for wilful violation of its order. The object is twofold. One is to uphold the dignity of the Court; and the other is to punish the violator. Article 215 of the Constitution of India and the contempt of Courts Act, 1971, recognize the power of the High Court to punish for contempt of Court.

19. No citizen is above the law. Rule of law must prevail and must be obeyed by all and sundry. An order of the Court passed in enforcement of the law of the land, must be carried out by a person against whom such order is passed. It is open to such person to challenge such order before a higher forum, if one is available. However, so long as the order stands, the same must be complied with by the person against whom such order is directed. He cannot act in disobedience to or in violation of such order with impunity. If the Court is satisfied that the concerned person acted in wilful

breach of the order, the Court may hold that person to be guilty of contempt of Court and either fine him or send him to prison or do both.

20. It is precisely because the consequences of the Court holding a person guilty of contempt of Court, are grave and serious for that person, the Court while exercising contempt jurisdiction, must act with restraint. Unless it is absolutely clear to the Court that the alleged contemnor, with the intention of violating an order has acted in breach thereof, the Court normally does not hold a person guilty of contempt of Court. If there is any ambiguity in the order, violation of which is alleged in a contempt application, the benefit of doubt would be given to the alleged contemnor. If an order is liable to more than one interpretation, which are all plausible, and if the alleged contemnor has acted on the basis of any one of such interpretations, then also, even if apparently he has violated the order, he will be let off.

21. In the present case, by the order dated January 18, 2016, I had in effect stayed the operation of the two circulars impugned in the suit and had appointed a learned Advocate as Special Officer for the purpose of collecting the rent and maintenance charges from the tenants/occupiers of Karnani Mansion, who are members of KMRA. Therefore, KMRA and its office bearers could not have collected rent or maintenance charges from the tenants/occupiers of the flats in Karnani Mansion who are members of KMRA, after the order dated January 18, 2016, was passed. The petitioner alleges that the respondents continued to collect rent/maintenance charges from the tenants/occupiers who are members of KMRA. The respondents deny the same. I have gone through the copies of the bank statements and other documents disclosed and relied upon by the petitioner. It does not

appear to me from such documents that the respondents in fact collected rent or maintenance charges from the tenants/occupiers of Karnani Mansions, who are members of KMRA after I had passed the order dated January 18, 2016. There is an instance of deposit of money in a bank account on January 19, 2016. But it could well be money collected prior to passing of the order dated January 18, 2016, of which violation is alleged in this contempt application, or even prior to the assurance that was given to the Court by learned Advocate for the defendants in the suit on January 14, 2016. That is a possibility which cannot be ruled out. Therefore, one cannot be sure that the said deposit was of money collected by the respondents herein in violation of the order dated January 18, 2016, or in breach of the assurance meted out on January 14, 2016.

22. By way of the supplementary affidavit, the petitioner disclosed further documents to buttress its case that various amounts were deposited, in the bank account of KMRA, for a continuous period of time in violation of the order dated January 18, 2016. From the documents on record, it cannot be said with any degree of certainty that such deposits are of monies collected by KMRA or the present respondents from tenants/occupants of Karnani Mansion who are members of KMRA on account of rent or maintenance charges. The respondents say that such deposits represent donations/contributions made by the members of KMRA for meeting diverse expenses including litigation expenses. Although the petitioner denies this contention of the respondents, there is nothing before me from which I can come to a definite conclusion that the said deposits are of monies collected

by KMRA from its members who are tenants/occupiers of Karnani Mansion on account of rent or maintenance charges.

23. In view of the aforesaid, it cannot be said that the respondents have definitely acted in wilful violation of the order dated January 18, 2016. Even if they have in fact collected rent/maintenance charges in violation of the order dated January 18 2016, the same does not appear from the records disclosed before me in this proceeding. Hence, I am impelled to give the benefit of doubt to the respondents and dismiss this contempt application. There will be no order as to costs.

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

(ARIJIT BANERJEE, J.)