

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

COC-1663-2020

Reserved on : March 27, 2023

Date of Pronouncement : March 29, 2023

Saroj Kanta

.....Petitioner

Vs.

Jai Parkesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Ashwani Bakshi, Advocate
for the respondent No.1.

Mr. Vikas Chatrath, Advocate
for respondent No.3.

ARVIND SINGH SANGWAN, J.

The petitioner alleges violation of the order dated 10.3.2014, vide which while adjourning the RSA No.2142-2013 to 29.8.2014, it was directed that "In the meantime, execution of the impugned decree shall remain stayed."

The case file of RSA No.2142-2013 is summoned and interim orders are perused.

Brief facts of the case are that a civil suit was filed by respondent No.1/Jai Parkesh-plaintiff on 20.4.2007 praying for decree of

possession by way of specific performance of an agreement to sell dated 28.12.2006 regarding 01 Bigha 12 Biswas of land for a total consideration of Rs.3,85,000/-. This suit was filed by respondent-plaintiff Jai Parkesh against Chatter Singh @ Kaptan/defendant No.1 and petitioner Saroj Kanta/defendant No.2. Defendant No.1 in his written statement denied the execution of agreement to sell. The defendant No.2 set up a plea that she is a *bona fide* purchaser. The trial Court vide its judgment and decree dated 23.3.2010 partly decreed the suit regarding return of Rs.1,00,000/- earnest money along with interest @ 12% per annum till its realisation.

In appeal filed by respondent Jai Parkesh, the same was accepted and defendant No.1 Chatter Singh @ Kaptan was directed to execute the sale deed of the disputed property within two months of the date of judgment, failing which the plaintiff-appellant-Jai Parkesh was held entitled to get the sale deed executed through trial Court.

The petitioner/defendant No.2 filed the present RSA No.2142-2013, which was listed on 16.5.2013 and notice of motion was issued only to Jai Parkesh for 20.8.2013.

On 20.8.2013, the trial Court record was requisitioned for 10.3.2014.

On 10.3.2014, the aforesaid order granting stay of execution of the impugned decree was passed and the case was adjourned for 29.8.2014.

On 29.8.2014, on request of the counsel for the appellant, it was adjourned to 23.2.2015, however, there was no extension of stay. Thereafter, the case was adjourned to 15.9.2015, 22.3.2016, 1.8.2016, 13.12.2016, 23.5.2017, 6.11.2019, 5.3.2018, 9.8.2018 and 1.2.2019 but no order of extension of stay was passed.

Again, the case was adjourned to 7.8.2019, 17.1.2020 and 15.5.2020 and stay was never extended and even no application was filed by petitioner (who is appellant) for extension.

Thereafter, it appears that the case was not listed due to COVID-19 situation and now it is listed for 2.5.2023.

A perusal of all the orders, subsequent to order dated 10.3.2014 would show that till 17.1.2020, for a period of 6 years, when the case was actually listed before different Benches, the case was simply adjourned on the request of either of the parties and neither there was any prayer made by the petitioner-appellant for extension of stay nor it was ever extended.

The present contempt petition is filed in 2020 with the allegation that in violation of the interim order dated 10.3.2014, respondent No.1 Jai Parkesh has executed a sale deed in favour of respondent No.2 Chatter Singh @ Kaptan on 15.8.2020.

The petitioner has relied upon an order dated 19.11.2018 passed by the executing Court, i.e. respondent No.3-Civil Judge as

under :-

"Jai Parkash Vs. Chattar Singh etc.

Present : Sh. N.S. Kataria, counsel for the DH.
JD No.1 Ex-parte VOD 3.2.2014
Sh. Karan Singh, counsel for the JD No.2.

The DH has put appearance and through his separately recorded statement submitted that the sale deed vasika No.2136 dated 14.11.2018 has been executed in his favour. The DH has requested that the Court may order for the incorporation of such sale in the revenue record. It is also stated that in view of registration of above-mentioned sale deed, he withdraws the present execution petition. Heard. The perusal of record shows that the plaintiff had agreed to purchase 32/978 share in the property of JD and in pursuance of the same, the above-mentioned sale deed was executed. The plaintiff/DH shall be entitled for the physical possession of the property after partition of the same and as per the provisions of law. However, it is ordered that such sale be incorporated in the revenue record as to show the symbolic possession of the DH over the suit property. The decree stands fully satisfied and accordingly, the present execution stands dismissed as fully satisfied. File after due compliance be consigned to records."

Separate replies have been filed by both the respondents.

In the affidavit of respondent No.1 Jai Parkesh, it is stated that during execution proceedings, the petitioner was afforded a numbers of opportunities to produce the extension of the stay order.

However, she failed to produce and even JD, i.e. Chatter Singh @

Kaptan-defendant No.1 was proceeded *ex parte* on 3.2.2014. It is submitted that the order dated 19.11.2018 was passed in the presence of the counsel for the petitioner and even on that day, no stay order was produced.

Defendant No.1 has also relied upon various interim orders passed by the executing Court to submit that for a considerable long time, the execution remain pending to await the further orders from the High Court.

Counsel for the petitioner submits that on 15.10.2018, the executing Court passed an order interpreting the stay order dated 10.3.2014 in terms of the judgment of the Hon'ble Supreme Court in **Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation**, 2018 (2) RCR (Criminal) 415 in Criminal Appeal Nos.1375/1376 of 2013, as there was no extension of stay order beyond six months.

Counsel for the respondent No.1 submits that even subsequently when a Local Commissioner was appointed on 29.10.2018, the counsel for the petitioner Mr. Karan Singh, Advocate never produced any stay order by the High Court.

Reply has been filed by the Judicial Officer giving similar explanation. It is stated that the execution remained pending for many years and vide interim orders Annexure R3 to R3/9, passed by the

executing Court, the petitioner was directed to produce the extension order, however, the same was never produced.

It is further stated that the deponent, while discharging the duties as a Judicial Officer, interpreted the judgment in **Asian Resurfacing** case (*supra*) to hold that if the stay has not been extended beyond six months, and rather for a period of about 5 years, he can proceed further with the execution proceedings.

Learned counsel appearing for respondent No.3 has relied upon judgment of the Hon'ble Supreme Court in **Ram Kishan Vs. Sh. Tarun Bajaj and others Vs. Tarun Bajaj and others** 2014(3) PLR 765, wherein the Hon'ble Supreme Court has held as under :-

"9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof

required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. (Vide: [V.G. Nigam & Ors. v. Kedar Nath Gupta & Anr.](#), AIR 1992 SC 2153; [Chhotu Ram v. Urvashi Gulati & Anr.](#), AIR 2001 SC 3468; [Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors.](#), AIR 2002 SC 1405; [Bank of Baroda v. Sadruddin Hasan Daya & Anr.](#), AIR 2004 SC 942; [Sahdeo alias Sahdeo Singh v. State of U.P. & Ors.](#), (2010) 3 SCC 705; and [National Fertilizers Ltd. v. Tuncay Alankus & Anr.](#), AIR 2013 SC 1299).

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or

involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct". (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman; AIR 1985 SC 582; [Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao & Anr.](#), AIR 1989 SC 2185; Niaz Mohammad & Ors. etc.etc. v. State of Haryana & Ors., AIR 1995 SC 308; [Chordia Automobiles v. S. Moosa](#), AIR 2000 SC 1880; [M/s. Ashok Paper Kamgar Union & Ors. v. Dharam Godha & Ors.](#), AIR 2004 SC 105; [State of Orissa & Ors. v. Md. Illiyas](#), AIR 2006 SC 258; and [Uniworth Textiles Ltd. v. CCE, Raipur](#), (2013) 9 SCC 753).

11. In Lt. Col. [K.D. Gupta v. Union of India & Anr.](#), AIR 1989 SC 2071, this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs. 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that "withholding the amount cannot be held to be either malafide or was there any scope to impute that

the respondents intended to violate the direction of this Court."

12. In *Mrityunjay Das & Anr. v. Sayed Hasibur Rahaman & Ors.*, AIR 2001 SC 1293, the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to complainants held that it would not give rise to a contempt petition. The court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this court was not applicable to the said complainants while dealing with the case under the provision of West Bengal Land Reforms Act, 1955.

13. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (See: *Sushila Raje Holkar v. Anil Kak (Retd.)*, AIR 2008 (Supp-2) SC 1837; and *Three Cheers Entertainment Pvt. Ltd. & Ors. v. C.E.S.C. Ltd.*, AIR 2009 SC 735)."

It is submitted by the learned counsel that neither there was any willful disobedience or there was any intention on the part of respondent No.3/Judicial Officer to violate the order passed by this Court and rather with due diligence and by applying the judicial mind, he has relied upon the judgment in **Asian Resurfacing's** case (*supra*).

The counsel has submitted that it has been held in **Ram Kishan's case** (*supra*) that in order to punish a contemnor it has to be established that the disobedience is willful and if two interpretations are possible and the action is not contumacious, the contempt proceedings will not be maintainable.

Learned counsel for the respondent has further relied upon **Fazalullah Khan Vs. M. Akbar Contractor (D) By Lrs. And others** 2019(5) RCR (Civil) 648 to submit that the judgment in **Asian Resurfacing's** case (*supra*) has been further clarified by the Hon'ble Supreme Court by making the following observations :-

"3. In the present case, the issue is of specific performance of an agreement which was granted by the first appellate court. The appellant is a tenant in the suit premises in whose favour the decree has been passed. The second appellate court reversed the decree. Leave has been granted by this court and the interim protection was granted on 20th March, 2009.

4. Learned counsel for the appellant submits that relying on the aforesaid judgment of this court in Asian Resurfacing of Road Agency's case (*supra*) in the eviction proceedings against the appellant as a tenant, the revisional court seeks to proceed on the basis of a submission of the respondents that on the expiry of period of six months, the interim stay is no more in force. He further states that the appellant undertakes before this court that if he loses in the present appeal, he will hand over vacant and peaceful

possession within a time to be fixed by the Court without any further objection.

5. We are constrained to pen down a more detailed order as the judgment of this Court in Asian Resurfacing of Road Agency's case (*supra*) is sought to be relied upon by difference courts even in respect of interim orders granted by this Court where the period of 6 months has expired. Such a course of action is not permissible and if the interim order granted by this Court is not vacated and continues beyond a period of 6 months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated.

6. Thus, the interim order granted by this Court on 20th March, 2009 must continue to be in force till the appeal is decided.

7. The aforesaid observation made by us should be kept in mind by both the trial Court and the High Court while dealing with this aspect."

Counsel for the petitioner has submitted that in **Fazalullah Khan's** case (*supra*), the Hon'ble Supreme Court at a subsequent stage has extended the stay, wherein in the instant case, even after the execution of the sale deed on 17.3.2017, till date, no application is moved before the High Court to extend the stay.

After hearing learned counsel for the parties; going through the facts and circumstances of the case as well as the affidavit of the

Judicial Officer, it is apparent that after the order dated 10.3.2014 was passed by this Court in RSA staying execution of the impugned decree in the meantime, while adjourning the case to 29.8.2014, at no point of time, the stay order was extended and the case remain listed before different Benches for more than 5 years.

It is also on the record that JD No.1 Chatter Singh was proceeded *ex parte* in executing proceedings. A perusal of the *zimni* orders in the RSA as well as of the *zimni* orders passed by the executing Court, awaiting the further orders to be passed in the RSA, would show that a considerable long period has passed when in the execution proceedings, a Local Commissioner was appointed to execute the sale deed in order to finally decide the execution petition.

Even subsequent to the execution of the sale deed in the year 2013, no further application was moved before the Court in RSA for extension of the say order till date.

The Judicial Officer has given a plausible explanation that as per his judicious conscious, he has interpreted that in the absence of any extension of stay order dated 10.3.2014, which was granted till the next date, i.e. 22.8.2014, with a rider "**in the meantime**" in the light of the judgment in **Asian Resurfacing's** case (*supra*) was interpreted that there is no extension of stay beyond six months, rather a period of five years has elapsed. It is further stated by the Judicial Officer that

there was no *mala fide* on the part of the respondent and there was no intention or willful disobedience of the order of the Court.

It is worth noticing that even the conduct of the petitioner, who is appellant in the RSA, is also self-speaking as after passing of the order dated 10.3.2014, neither she made any request before the Benches where the appeal remain pending for a period of about 6 years nor till date she has filed any application for extension of stay.

In view of the above, no willful disobedience on the part of the Judicial Officer is made out, who due to non-cooperation by the petitioner in the execution proceedings has proceeded further.

Accordingly, this contempt petition is dismissed.

Needless to say, the right of the petitioner is protected by the principle of *lis pendens* and the petitioner can avail her alternative remedy, in accordance with law.

However, one disturbing fact is noticed that a number of contempt petitions are filed against the serving young Judicial Officers (majority from Punjab), who are daring to interpret the order in Asian Resurfacing's case (*supra*) as per their convenience.

It is worth noticing that in **Asian Resurfacing's** case (*supra*), the Hon'ble Supreme Court, has made the following observations :-

“35. In view of above, situation of proceedings

remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. **In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended.** In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under [Sections 397](#) or [482 Cr.P.C.](#) or [Article 227](#) of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in

any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the [PC Act](#) cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to [PC Act](#) or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage.”

In the aforesaid case, the Hon'ble Supreme Court was dealing with a case under the Prevention of Corruption Act.

It is also relevant to refer to some interpretations made by the different High Court qua the aforesaid judgment.

The Bombay High Court in **Raosahed Yesba Sartape Vs. Balveer Shankar Sartape and others**, 2021(5) AIR Bom.R 496 has made the following observations :-

"17. Further, while deciding Miscellaneous Application No.1577 of 2020 in the same case, i.e. Asian Resurfacing of Road Agency Pvt. Ltd. And Anr. (supra) on 15th October, 2020, the Hon'ble Apex Court had given further directions and has reiterated that all the Magistrates all over the country will follow the order especially Para No.35 of the earlier judgment, in its letter and spirit and it appears that this prompted the Executing Court to pass the said order on 3.11.2020. However, the further observations made by the Hon'ble Apex Court on 15th October, 2020 in the said case, are required to be considered, which are thus, - "... Whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same." This would clarify that those directions are in respect of the stay to the trial and

not the execution proceedings and, therefore, it appears that the said decisions in Asian's case (supra), either that was pronounced on 28th March, 2018 or 15th October, 2020, referred to above, appear to have been misunderstood by the learned Executing Court for making it applicable to the execution proceedings and, therefore, that order deserves to be set aside and it is accordingly set aside."

The High Court of Andhra Pradesh in **Grandhi Yugandher and another Vs. M/s Jyothi Financiers, represented by its Managing Partner Samayamantula Umamaheswara Rao, 2012 (6) Andh.LD 195** has interpreted the order as under :-

"4. A plain reading of the above precedent indicates that the direction of the Supreme Court is related to all pending cases, where the stay against proceedings of a civil or criminal trial is operating and in such cases only, the stay order operating will come to an end after expiry of six months. Hence, the said direction does not apply to cases other than the cases where trials are in progress. Thus, the stay orders granted in the second appeal are continuing to operate. Further, the stay orders also continue to operate till either they are vacated or till the second appeal is disposed of by the High Court. Since MSRM, J C.R.P.no.1635 of 2019 the stay orders are communicated to the executing Court and the executing Court is aware of the stay orders, and the said orders are in operation and are in force,

the orders of the executing Court in permitting to file stamp papers and its further actions in executing the sale deed and permitting registration of the sale deed are non-est in the eye of law.”

Similarly, High Court of Andhra Pradesh in **Bolisetty Prem Sai Vs. Rallapali Venkata Lakshmana Swamy**, 2022(3) Law Summary 27 has also observed as under :-

“6. The main grievance of the revision petitioner is that in spite of an absolute order passed by the appellate Court staying the execution of the decree which is the subject matter before the executing Court, the impugned order was passed with an erroneous view that the decision of the Supreme Court in **Asian Resurfacing of Road Agency Private Limited Vs. Central Bureau of Investigation**, 2018 SC Online SC 310 is applicable even to the proceedings in execution. Learned counsel for the revision petitioner submitted that in spite of the earlier decisions of this Court in **K. Ranga Prasad Varma Vs. Kotikalapudi Sitarama Murthy and another** 2019(4) ALT 345 (A.P) and **Grandhi Yugandher Vs. M/s Jyothi Financiers, rep. By its Managing Partner, Samayamantula Umamaeshwara Rao**, 2019(6) ALT 461 (AP) clarifying the legal position that the said decision of the Supreme is applicable to the proceedings of a civil or criminal trial only and not to the execution proceedings, the execution Court, in the present case, has passed the impugned order.”

As noticed above, in **Fazalullah Khan's** case (*supra*) the Hon'ble Supreme Court has observed to pen down a more detailed order as the judgment of the Hon'ble Supreme Court in **Asian Resurfacing's** case (*supra*) is sought to be relied upon by the different High Court in respect of interim orders granted by the Hon'ble Supreme Court.

In all the cases, the interpretation made by Andhra Pradesh High Court and Bombay High Court is that the same relates to stay of trial and not executing proceedings.

In view of the above, the following directions are required to be issued :-

- (a) All the Civil Judges/Judicial Magistrates in the States of Punjab, Haryana and U.T., Chandigarh, before interpreting the direction in **Asian Resurfacing's** case (*supra*), will seek the opinion of their respective District and Sessions Judges, being the administrative Judges of the Districts. The District and Sessions Judge as and when receive such matters with regard to interpretation of the order passed by the High Court, shall give his/her opinion within a period of three weeks from receiving thereof.
- (b) The Director, Judicial Academy, Chandigarh is also directed to hold online seminar of all the Civil

Judges/Judicial Officers in the States of Punjab,
Haryana and U.T., Chandigarh with regard to
interpretation of the **Asian Resurfacing’s** case
(*supra*).

Registrar General is directed that copy of this order be
circulated to all the District and Sessions Judges in the States of Punjab,
Haryana and U.T., Chandigarh.

Disposed of accordingly.

March 29, 2023
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO