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

Decided on : 03.05.2023.

+ **CONT.CAS.(CRL) 2/2021**

COURT ON ITS OWN MOTION

..... Petitioner

versus

LALIT MODI

..... Respondent

Through: Mr. Saad Shervani, Mr. Tushar Parashar, Mr. Elvin Joshy, Mr. Vatsal Kumar, Ms. Anumeha Singhai, Advocates along with respondent in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CONT.CAS.(CRL) 2/2021, CRL.M.A. 6391/2021, CRL.M.A. 20585/2021 & CRL.M.A. 4213/2023

1. The learned counsel for the contemnor says that the contemnor, who is present in court, tenders an unqualified apology to the court. However, there is no affidavit of apology filed to that extent. This apology through counsel comes at a stage when the case is listed for sentencing after the contemnor has been found guilty. No remorse, contrition or apology was offered despite the pendency of these proceedings for over two years.

2. Notice of contempt was issued on 12.02.2021. The learned counsel for the contemnor refers to a reply dated 19.08.2021, wherein the contemnor had said that he was ready to offer an apology. However, if he so desired he could have tendered the apology but he chose not to apologize.
3. Even after the contemnor was held guilty, he showed no remorse or contrition and chose not to file an affidavit of unconditional apology. Albeit, in the interim he had all the convenience of and time for moving an application for stay of the proceedings initiated by the Receiver.
4. On 24.05.2022, this court had noted that despite directions to R-1 and R-2 to be present in court, they had defaulted in appearance. The reason offered for their default was that the mother of contemnor-Mr. Lalit Modi had passed away, therefore, they were out of Delhi. The court had noted, *inter-alia*, as under:

“ ...

3. An e-copy of the affidavit filed by the petitioner in EFA(OS) 1/2021 has been received by the learned Senior Advocate for the respondent in EFA(OS) 1/2021 during the course of hearing. He submits that the delay in filing of the affidavit is much to detriment of the respondent/ BDR Builders and Developers Pvt. Ltd especially, since the schedule of payments was to have been filed way back in October 2021, last year.

4. Even the present affidavit officially makes no mention of the amount of over Rs.6 crores which is still to be deposited by Lalit Modi. In terms of the order dated 12.02.2021, more than 23 months have

gone by and the respondent/ BDR Builders is deprived of monies as well as the valuable property which continues to be in the possession of Lalit Modi. The said respondent submits that the issue is not only about Rs.6 crores, but of a larger amount of about Rs. 52 crores, which is to be paid by Lalit Modi, to whom the respondent/BDR Builders has paid an amount of Rs. 34 crores.

5. The learned counsel for R-3 submits that R-3 too has paid an amount of Rs.18.50 crores to Lalit Modi for the same property, in which both parties claim their respective rights.

6. The learned counsel for Mr Lalit Modi and Ms Sonia Modi submits that the said persons are in a personal difficulty on account of demise of mother of Mr Lalit Modi. Let an affidavit be filed by the said persons apropos their presence in Delhi for the last one week.

7. The learned Senior Advocate for the respondent submits that their phone records be looked into to ascertain whether they are in Delhi today.

8. The schedule of payments shall be filed before the next date of hearing. In any case, an amount of Rs. 3 crores shall be deposited in this court by Mr. Lalit Modi within four weeks, to be kept in a FDR, till further orders.

... ”

5. Although an affidavit, in compliance of the aforesaid order, was filed by the contemnor reiterating his presence in Delhi at the relevant time, his telephone records providing locational evidence have not been filed.

6. The Rs.3 crores, as directed in the said order has not been

deposited. Thereafter, at the request of the contemnor, more time was granted to him on 29.11.2022 and 17.04.2023 to deposit the monies. The said orders said are reproduced hereunder:

Order dated 29.11.2022

“...2. Mr Mukul Talwar, the learned Senior Advocate for Mr. Lalit Modi states, upon instructions from the contemnor/respondent that there is an admitted delay in compliance of this court’s directions. The outstanding amount is Rs.6 crores which ought to have been deposited in the court about four years earlier. There is default in compliance. Mr. Talwar states upon instructions, that the respondent/contemnor undertakes to deposit Rs.1 crore with the Registrar General of this court in two instalments. The first instalment of Rs.40 lacs shall be deposited on or before 20.12.2022 and the remaining amount of Rs.60 lacs shall be deposited on or before 30.01.2023. Thereafter, an amount of Rs.45 lacs shall be deposited by the respondent/contemnor each month with the Registrar General, till it totals-up to Rs.6 crores. Let the said monies be kept in interest-bearing FDRs till further orders, without prejudice to the rights and contentions of the parties. The learned counsel for BDR Builders submits that the delay should be accounted for, therefore the issue of interest too may be considered. This issue would be taken up on the next date....”

Order dated 17.04.2023

“1. The respondent is present in court. He seeks time to deposit the entire Rs.7 crores which he took from Romi Garg (less the already deposited amount). Through counsel he submits that he is in conscious breach of the order dated 29.11.2022 whereby he has

undertaken to deposit an amount of Rs.6 crores which has been pending for the last six years. In furtherance of returning the monies, he undertook to deposit an amount of Rs.1 crore with the Registrar General of this court in two instalments. The said order reads inter alia as under:

“2. Mr Mukul Talwar, the learned Senior Advocate for Mr. Lalit Modi states, upon instructions from the contemnor/respondent that there is an admitted delay in compliance of this court’s directions. The outstanding amount is Rs.6 crores which ought to have been deposited in the court about four years earlier. There is default in compliance. Mr. Talwar states upon instructions, that the respondent/contemnor undertakes to deposit Rs.1 crore with the Registrar General of this court in two instalments. The first instalment of Rs.40 lacs shall be deposited on or before 20.12.2022 and the remaining amount of Rs.60 lacs shall be deposited on or before 30.01.2023. Thereafter, an amount of Rs.45 lacs shall be deposited by the respondent/contemnor each month with the Registrar General, till it totals-up to Rs.6 crores. Let the said monies be kept in interest-bearing FDRs till further orders, without prejudice to the rights and contentions of the parties. The learned counsel for BDR Builders submits that the delay should be accounted for, therefore the issue of interest too may be considered. This issue would be taken up on the next date.”

2. The respondent admits that he is in clear breach of the said directions. His counsel says, upon instructions, that the said amounts will be deposited by the 24th of April 2023. In any case to prove his bonafides he will deposit Rs.2.5 crores by 20.04.2023, failing which further orders apropos this default and breach of the directions would be passed....”

7. The court would note that not only has the contemnor breached the first injunction order, but has shown consistent recalcitrance to obey and a consistent conscious breach of the further directions and a trail of repeated dishonouring of the various assurances and undertakings given to this court apropos deposit of monies. All this is compounded by the fact that the contemnor has at no such stage shown any remorse or contrition or tendered an apology.
8. In the circumstances, the contemnor is sentenced, under section 12 of the Contempt of Courts Act, 1971, to undergo simple imprisonment for a period of four months and to pay a fine of Rs.2,000/-.
9. This sentence shall be kept in abeyance for a period of twelve weeks from the date of uploading the order on the court's website, so as to accord him sufficient opportunity to the contemnor to avail his legal remedies as maybe available to him. Should this order not be altered or stayed, then upon the expiry of the twelve weeks, the contemnor shall present himself before the Registrar General of this court for him to be sent to judicial custody.

10.The petition, along with pending applications, is disposed-off in terms of the above.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

MAY 3, 2023
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