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

+ **CONT.CAS(C) 481/2020**

RASHMI SEHRAWAT

..... Petitioner

Through: Mr. Ashutosh Dubey and Mr. Amit P. Shahi, Advocates with Petitioner in person.

versus

PRAVEEN SEHRAWAT

..... Respondent

Through: Mr. Bhagat Singh and Mr. Ashwini Kumar, Advocates with Respondent in person

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Reserved on: 17th February, 2023
Date of Decision: 10th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present contempt petition has been filed by the Petitioner, wife stating that the Respondent, husband is in wilful disobedience and deliberate non-compliance of the order dated 18.09.2019 passed by the Mahila Court: 01, Patiala House Courts, New Delhi ('the Trial Court') in CC No. 10740/18, whereby the Respondent was directed to pay a monthly maintenance amount of Rs. 35,000, including rent, for the two minor sons and the Petitioner from the date of filing the application i.e., 18.05.2018 till the disposal of the case.

1.1. By the said order, the Trial Court directed maintenance of Rs. 10,000 each for minor children, i.e. (10,000 X 2) and Rs. 10,000 for the Petitioner herein, inclusive of all expenses. The Respondent was directed to additionally make a payment of Rs. 5,000 towards the rent of accommodation. This made the amount of maintenance a sum total of Rs. 35,000.

2. This contempt petition was filed by the Petitioner on 24.08.2020, in view of the absolute non-compliance of the said order dated 18.09.2019. It was stated in the petition that no payment was made by the Respondent since the date of the order.

3. Both the parties had assailed the said order dated 18.09.2019 and the cross appeals were disposed of *vide* order dated 12.11.2020 by the Additional Sessions Judge-03, Patiala House Courts, New Delhi ('the Appellate Court'). The Appellate Court returned a finding that the monthly income of the Respondent is Rs. 65,000.

3.1. The Respondent was directed by the Appellate Court to pay to the Petitioner an amount of Rs. 5,000 per month for the maintenance of each child (Rs. 5000 x 2 = Rs. 10,000) and apart from that he was further directed to pay the school fee of the child as demanded by the school, directly to the school. After perusing the previous school receipts, the Appellate Court observed that the school fees of each child were Rs. 10,000 per month and thus, the Appellate Court held that the interim compensation payable for each child is Rs. 15,000 per month.

3.2. In addition, the Respondent was directed to pay Rs. 10,000 per month for the Petitioner herein towards maintenance and Rs. 5,000 towards the rent.

3.3. Thus, the sum total of the monthly amount of maintenance was determined by the Appellate Court as Rs. 45,000, subject to variation on account school fees.

4. The judgment in this matter was reserved on 17.02.2023.

5. The arguments of the learned counsel for the parties are set out as herein under:

Arguments of the Petitioner

5.1. The learned counsel for the Petitioner states that arrears as on date, towards the maintenance of the Petitioner and her minor children is in the sum of Rs. 15,45,000. He states that this is exclusive of the outstanding school fees of the minor children.

5.2. He states on instructions from the Petitioner that the Respondent herein has a substantial rental income of 10-12 lakhs per month. He states that the Respondent herein along with his family owns 32 flats in Mahipalpur.

5.3. He also refers to the averments made by the Petitioner in CM Appl. No. 36685/2022, wherein it has been stated that the Respondent has sold the villa at Greater Noida (Villa No. C-99, Paramount, Golf Forest, Greater Noida) for Rs. 49,00,000 in the year 2018. He states that the Trial Court had directed the Respondent to produce the account of the said transaction and details of the expenditure of the said amount. He states that the Respondent has willfully failed to comply with the said direction and till date has not produced the same. In this regard, he specifically relies on paragraph 13 of the order dated 18.09.2019 passed by the Trial Court. He states that no reply has been filed to the said application till date.

5.4. He also states that owing to the conduct of the Respondent in not paying the school fees of the minor children on time, they are facing harassment for demand of fee and ridicule from the respective school.

Arguments of the Respondent

6. In reply, the learned counsel for the Respondent states that the amount of arrears due and payable as on 01.02.2023 is Rs. 8,52,333 and filed a computation in this regard. The said computation and the statement of payments annexed was disputed by the Petitioner, who did not admit the entries made therein.

6.1. On 15.02.2023, he reiterated the arguments raised on 13.02.2023 to the effect that the Petitioner cannot maintain the present contempt proceedings as she has filed execution petition being Ex. Crl. No. 44/2019, which is pending adjudication before the Trial Court.

6.2. He also states the non-compliance of the orders by the Respondent is not wilful or deliberate. He states that the Respondent has meagre income and is unable to pay the arrears in terms of the maintenance order despite his best efforts.

Brief Facts and Findings

7. This Court has heard the learned counsel for the parties and perused the record.

8. The facts relevant for deciding the present contempt petition are as follows:

8.1. The marriage between the parties was solemnized on 30.06.2006 in Ghaziabad (U.P.) as per Hindu rites and customs and two sons were born out

of the wedlock, who are currently minors and are presently studying in class VIII and VI in DPS Siddharth Vihar, Ghaziabad, U.P.

8.2. The Petitioner instituted a Criminal Case, CC No. 10740/18 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 ('the DV Act') seeking interim maintenance from the Respondent, wherein order dated 18.09.2019 was passed by the Trial Court directing the Respondent to pay monthly maintenance of Rs. 30,000 per month (Rs. 10,000 each for two minor sons and Rs. 10,000 for the Petitioner, inclusive of all the expenses). The Respondent was further directed to make payment of Rs. 5,000 towards the rent of the accommodation of the Petitioner.

8.3. Aggrieved by the aforesaid order, the Petitioner and the Respondent preferred appeals bearing C.A No. 256/2019 and C.A No. 259/2019 respectively before Appellate Court, which was disposed of *vide* a common order dated 12.11.2020 as noted in paragraphs 3 to 3.3 above.

8.4. Despite the directions issued by the Trial Court and Appellate Court *vide* order 12.11.2020, the Respondent failed to pay the interim monthly maintenance.

9. The Appellate Court's order dated 12.11.2020 has been challenged by, both, the Petitioner and the Respondent in Crl. Rev. P. 112/2021 and Crl. Rev. P. 190/2021 respectively. However, there is no stay granted against the order dated 12.11.2020 in the said revision proceedings.

9.1. By order dated 04.03.2021 passed in these proceedings, the Respondent was found to be in arrears of Rs. 12,47,160/-, wherein the Court also held that the Respondent is in evident breach of this Court's directions as well and issued notice of contempt to the Respondent.

9.2. It is also pertinent to mention that, in Crl. Rev. P. 112/2021 pending before the Coordinate Bench of this Court, order dated 09.08.2021 was passed, taking note of the submission of the Respondent that the arrears shall be positively cleared within a period of one week from the date of the order (1st undertaking). The relevant portion of the order dated 09.08.2021 reads as under:

“3. Learned counsel for the respondent, on instructions from the respondent, submits that arrears, if any, shall be positively cleared within one week. He further submits that he will ensure that school fees, till date, is paid at the respondent's end. Let the needful be done within one week as prayed.”

(Emphasis supplied)

9.3. Subsequently, *vide* order dated 02.02.2022, the Respondent gave an assurance to this Court as well that he will abide by the directions of the Trial Court passed on 18.09.2019 and 12.11.2020 for further payments towards maintenance (2nd undertaking) and on this basis, he also secured an order of visitation from this Court. The relevant portion of the order dated 02.02.2022 reads as under:

“1. The petitioner's claim for medical expenses has been registered with the insurance company. The learned counsel for the respondent assures the court that the respondent will pursue the matter with the insurance company and every possible assistance for reimbursement of monies will be rendered to the petitioner, in terms of the medical insurance policy. The learned counsel for the parties assures the court that they will coordinate with each other in this regard.

*2. As regards the children school fees which have been paid by the respondent till November 2021, the learned counsel for the respondent submits that rest of the monies will be paid in a month, **and in the interim, the respondent-father will ensure that the children will not suffer any adverse action by the school; that their schooling will not be disturbed in any manner.** The learned counsel for the respondent further submits that since 25.03.2021, the respondent has paid an amount of Rs.2,64,294/- including the amount mentioned in the aforesaid order. **The respondent assures the court that the monies will be further paid in terms of the directions of the learned Trial Court dated 18.09.2019 and 12.11.2020.***

3. The learned counsel for the petitioner submits that there is noncompliance of the aforesaid orders of the learned Trial Court and that the respondent still owes arrears of about Rs.14 lacs, the respondent refutes the said figures and admits to outstanding arrears of about Rs.9.25 lacs.

4. The learned counsel for the respondent submits that the father has not met his children physically since 23.08.2021. The mother has and can have no objection to the father meeting with the children. The rights of the children to have unhindered affection from both the parents cannot be curtailed because of the inter se disputes between the parents, they will be free to interact with the father whenever they so desire. The father may interact with the children between 11:00 am to 05:00 pm on every second and fourth Saturday of the month. If there are change in plans, or the same is inconvenient to the parties, the meeting shall be rescheduled mutually. On festivals and birthdays of the children, the father will free to meet with the children for few hours as may be convenient to the parties.

5. The learned counsel for the respondent submits that an endeavour could well be made to settle the lis amicably, to which the learned counsel for the petitioner has no objection.

6. In the circumstances, the case is referred to Delhi High Court Mediation and Conciliation Centre where the parties shall appear on 10.02.2022 at 15:00 hours, through videoconference or physically or as may be scheduled by the said centre. The case shall be assigned to a Senior Mediator.”

(Emphasis supplied)

9.4. Thereafter, on 21.04.2022, the predecessor Bench interacted with the parties in chambers and directed the Respondent to pay a sum of Rs. 40,000 per month towards maintenance for the months of April, May, June and July, 2022. The relevant portion of the order dated 21.04.2022 reads as under:

“3. It is stated by learned counsel for the petitioner that in the appeals being C.A No. 256/2019 and C.A. No. 259/2019 which were filed against the order dated 18.09.2019 passed by the learned Metropolitan Magistrate, Mahila Court, the respondent has been directed to pay a sum of Rs. 40,000/- (Rs. 15,000 for each child and Rs. 10,000/- for the mother) towards maintenance.

4. **The respondent is, therefore, directed to pay a sum of Rs. 40,000/- per month towards maintenance for the months of April, May, June and July, 2022.** The amount payable for the month of April, 2022 should be paid within five days from today. A sum of Rs. 40,000/- for the months of May, June and July will be paid on 15th day of each month.”

(Emphasis supplied)

9.5. However, on 26.07.2022, this Court was apprised that the Respondent has breached the directions (dated 21.04.2022) regarding payment of maintenance for the months of April, May, June and July, 2022. This Court, therefore, *vide* order dated 26.07.2022, observed that the Respondent has shown scant regard for the orders passed by this Court. It was further noted that despite the indulgence granted by this Court, there appears to be no 'serious effort' or 'willingness' on the part of the Respondent to seek and find a resolution to the matter. The relevant portion of the order dated 26.07.2022 reads as under:

"2. The Court has interacted with the petitioner, who is present in person, along with her Advocate Mr. Ashutosh Dubey.

3. Respondent is not present in person, however, Mr. Ashwini Kumar, Advocate, appears on his behalf.

4. It appears that the respondent is in breach of the directions regarding payment of maintenance for the months of April, May, June and July, 2022, as directed vide order dated 21.04.2022. Apart from the amount due in respect of the said period, the total arrears payable by the respondent to the petitioner towards maintenance are more than Rs. 14,50,000/-.

5. It appears that respondent has scant regards for the orders passed by this Court. Despite the indulgence granted by this Court, there appears to be no serious effort or willingness on the part of the respondent to seek to find a resolution to the matter.

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7. At request of learned counsel for the respondent, the matter is adjourned to 3rd August, 2022 at 4.30 P.M.

8. In the meantime, respondent is directed to clear the arrears of maintenance for the months of April, May, June and July, 2022 and as directed vide order dated 21.04.2022.

9. Further orders with regard to the remaining arrears and for payment of maintenance amount on ongoing basis, will be passed on the next date of hearing.

10. Both the parties are directed to remain present in person on the next date of hearing."

(Emphasis supplied)

9.6. The Respondent, however, failed to appear on 03.08.2022 despite the specific directions issued on 26.07.2022, as noted above.

9.7. It is pertinent to note that *vide* order dated 03.08.2022, this Court issued a show cause notice to the Respondent as to why action be not taken against the Respondent under Section 2(b) read with Sections 11 and 12 of the Contempt of Courts Act, for committing contempt of the order dated 18.09.2019 passed by the Trial Court and also contempt of orders dated 21.04.2022 and 26.07.2022. The order dated 03.08.2022 reads as under:

- “1. The present matter has been taken up in Chamber.
2. Neither the respondent nor the counsel for the respondent is present today. Directions as contained in the order dated 21.04.2022 and 26.07.2022 regarding payment of arrears of maintenance for the months of April, May, June and July, 2022 have also not been complied with.
3. Despite specific directions to the parties to remain present in person today, the respondent has not appeared.
4. As recorded in the order dated 26.07.2022, the total arrears payable by the respondent to the petitioner towards maintenance are more than Rs. 14,50,000/-.
5. Issue show cause notice to the respondent as to why action be not taken against the respondent under Section 2(b) read with Sections 11 and 12 of the Contempt of Courts Act, for committing contempt of the order 18.09.2019 passed by the learned MM, Mahila Court-01, Patiala House Courts, New Delhi in CC No. 10740/2018 as also contempt of orders dated 21.04.2022 and 26.07.2022 passed in these proceedings.
6. Let non-bailable warrants be issued against the respondent to be executed through the concerned SHO to compel the presence of the respondent in court on the next date of hearing.”

(Emphasis supplied)

9.8. The matter was next listed on 22.08.2022 wherein the Court noted that the Respondent was ‘unwilling’ to make even a partial/interim payment to the Petitioner. The order dated 22.08.2022 reads as under:

“C.M. Appl. No. 36044/2022 (for cancellation of NBW issued against the respondent)

It transpires during the course of hearing that the respondent has still not complied with the directions contained in the orders dated 21.04.2022

and 26.07.2022 passed by this Court with regard to payment of arrears of maintenance for the month of April, May, June and July, 2022.

During the course of hearing, the respondent continued to be evasive as to the timelines for complying with the directions, with regard to maintenance, contained in the order dated 18.09.2019 passed by the learned MM, Mahila Court-01, Patiala House Courts, New Delhi in CC No. 10740/2018, as modified in appeal by order dated 12.11.2020 passed by learned Additional Sessions Judge-03, Patiala House Courts, New Delhi in CA No.256/2019 & CA No.259/2019

As recorded in order dated 26.07.2022 passed by this Court, the total arrears payable by the respondent to the petitioner towards maintenance are more than Rs.14,50,000/-.

A suggestion of the Court to the respondent, who is present in person, to at least make some partial/interim payment to the petitioner also did not meet with a favourable response.”

(Emphasis supplied)

9.9. The Petitioner filed two applications CM No. 36684/2022 and CM No. 36685/2022 to state that the Respondent had transferred immovable assets in favour of his sisters to defeat the maintenance order dated 18.09.2019 as modified by Appellate Court's order dated 12.11.2020.

9.10. In light of the averments made in the said applications, on 24.08.2022, this Court directed the Respondent to maintain *status quo* with respect to properties mentioned in paragraph 6, 8 and 9 of the application which included flat bearing No. B126 KST Whispering Heights, Faridabad. The relevant portion of the order dated 24.08.2022 reads as under:

“C.M. Appl. No. 36684/2022 (for impleadment)

1. This is an application filed by the petitioner, seeking impleadment of Sharmila, W/o Ranbir Solanki, Poothkalan, Rohini, Delhi and Aruna W/o Rajesh Birman R/o Bahadurgarh, Jhajjar, Haryana, being the sisters of the respondent.

2. It is stated in the application that certain properties in the name of the respondent have been transferred by the respondent in favour of his sisters, so as to defeat the rights of the petitioner and to circumvent the order dated 18.09.2019, passed by learned Metropolitan Magistrate, Mahila Court – 01, Patiala House Courts, New Delhi, in CC No. 10740/2018.

3. Issue notice to the non-applicant and to the proposed respondents on steps being taken by the applicant/petitioner through all permissible modes, including electronically, returnable on 9th September, 2022.
4. Let reply be filed within a period of one week from today. Rejoinder thereto, if any, be filed before the next date of hearing.
5. List on 9th September, 2022.

C.M. Appl. No. 36685/2022 (for directions)

6. This is an application filed by the petitioner, seeking the following reliefs:-
 - (a) Restrain the respondent and /or his men or agent from creating third party right, interest or encumbrance on the properties mentioned in para 6, 8 and 9 hereinabove.
 - (b) Direct the respondent to transfer the ownership of Flat No. B 126 KST Whispering Heights, Faridabad in the name of petitioner.
 - (c) Direct the respondent to provide the medical insurance policy of the children and petitioner to the petitioner as the petitioner is in urgent need of it for her surgery.
 - (d) Direct the respondent to pay/clear the school fee of children directly to school on or before 10th of every month.”
7. In view of the averments made in the application, it is agreed that status quo shall be maintained with respect to the properties mentioned in paragraphs 6, 8 and 9 of the application.
8. The respondent states that he will maintain status quo with respect to flat bearing No. B126 KST Whispering Heights, Faridabad. The aforesaid statement is taken on record. He further undertakes to provide to the petitioner, the medical insurance policy in the name of the petitioner and the children within a period of two days from today. He further assures that the arrears of school fees of the children will be cleared, latest within a period of seven days from today. Let the needful be done, as stated by the respondent.”

(Emphasis supplied)

9.11. It was stated in the said application that Respondent has sold in 2018 a villa/house at Greater Noida for Rs. 49 lakhs, whereas the said villa was purchased in 2011 for Rs. 55 lakhs and the builder had stated that the market price of the villa is Rs. 1.18 crores. It was stated that in view of this fact the Trial Court *vide* order dated 18.09.2019 has directed the Respondent to place on record the sale documents of the villa; however, the said directions have not been complied till date.

9.12. Though notice in the said application was issued on 24.08.2022, the Respondent has not filed his reply to the said applications till date. Hence, it appears from the record that the Respondent herein has sought to transfer his assets to defeat the order of maintenance dated 18.09.2019 as modified by order dated 12.11.2020; and is also withholding documents from the Court (i.e., sale of the villa).

9.13. Further, on 24.08.2022 the Respondent undertook to this Court on this date that he will clear the arrears of school fees of the children within 7 days (3rd undertaking).

9.14. Subsequently, on 06.12.2022, this Court was apprised that the school fees of the children continue to remain outstanding despite the undertaking given by the Respondent on 24.08.2022. The Respondent, therefore, acted in wilful breach of the undertaking(s) and direction issued by this Court. The contempt was writ large on record. However, the Respondent assured this Court that the arrears of the school fees including the tuition fees of the two minor sons, upto the month of 21.12.2022 will be cleared within a period of seven (7) days from the date of the order (4th undertaking).

9.15. By the order dated 25.01.2023, the Respondent submitted before this Court that the outstanding amount payable to the Petitioner stands at Rs. 8,52,333/- and sought one week's time to clear the admitted arrears. However, the Petitioner disputed the amount and stated that the arrears stand approximately at Rs. 15,45,000, excluding the arrears towards the school fees of the two minor sons. The matter was adjourned by a week to enable the Respondent, who was present in person, to make payments of the admitted outstanding of Rs. 8,52,333.

9.16. Thereafter, when the matter was listed on 06.02.2023, this Court was apprised that no payment (at all) has been made by the Respondent after 25.01.2023 and further, the Respondent absented himself from the for proceedings. The non-payment of the admitted amount of maintenance was in violation of the assurance and undertakings given to this Court on 02.02.2022, 24.08.2022, 06.12.2022 and 25.01.2023.

9.17. When the matter was listed on 13.02.2023, a new counsel was engaged by the Respondent, who raised an objection to the continuation of the contempt proceedings on the plea that the Petitioner herein has already availed the remedy of execution.

9.18. In the opinion of this Court, the plea of alternative remedy raised by the Respondent belatedly on 13.02.2023 smacks of *malafide*. A perusal of the order sheet in these proceedings would show that this matter was listed 13 times alone in the year 2022 wherein the predecessor Benches of this Court made an extensive effort to amicably resolve the dispute between the parties and even granted visitation rights to the Respondent herein. The Respondent repeatedly gave assurances and undertakings to this Court that he shall comply with the orders of maintenance, however, as discussed hereinafter the same have been breached. This Court *vide* orders dated 21.04.2022 and 26.07.2022 directed the Respondent to clear the arrears of maintenance of the Petitioner. The non-payment is, therefore, disobedience of the orders dated 21.04.2022 and 26.07.2022 additionally.

9.19. The Respondent during the proceedings dated 15.02.2023, had sought a further opportunity to initiate a full and final settlement in the present matter by offering to transfer the title and possession of Flat No. B-126 in KST Whispering Heights Sector-88, Faridabad, Haryana. The possession of

the said flat has not been handed over by the developer to the Respondent and there is some portion of the sale consideration still outstanding. Accordingly, the same was declined by the Petitioner as insolvency proceedings have been initiated against the said developer, which is pending before the National Company Law Tribunal ('NCLT'), Delhi and therefore, the title of the project itself is under cloud.

10. It is pertinent to observe that this Court *vide* orders dated 02.02.2022, 21.04.2022, 26.07.2022 and 24.08.2022 had given multiple opportunities to parties to explore the possibility of an amicable settlement. The matter was also referred to Delhi High Court Mediation and Conciliation Centre under the aegis of a Senior Mediator. However, the parties were unable to resolve the dispute despite several opportunities; and having interacted with the Respondent during the course of these proceedings, it is apparent to this Court that the Respondent is feeling assured that he will not suffer any consequences of the wilful disobedience. In this regard the observations made by the predecessor Bench on 26.07.2022 is relevant and reads as under:

"5. It appears that respondent has scant regards for the orders passed by this Court. Despite the indulgence granted by this Court, there appears to be no serious effort or willingness on the part of the respondent to seek to find a resolution to the matter.

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8. In the meantime, respondent is directed to clear the arrears of maintenance for the months of April, May, June and July, 2022 and as directed vide order dated 21.04.2022."

11. With respect to the argument of the Respondent that the Petitioner has an alternate remedy of pursuing execution proceedings before the Trial Court, it is pertinent to mention that the proceedings under contempt is between the contemnor and the Court and that the Respondent cannot in any

manner insist that this Court should not exercise the contempt jurisdiction in view of the execution proceedings which are pending before the Trial Court. In this regard, it is instructive to refer to the judgment of Supreme Court in ***HSBC PI Holdings (Mauritius) Limited v. Pradeep Shantipershad Jain and Others*, 2022 SCC OnLine SC 827**, wherein it was held as under:

“61. At this stage, a few decisions of this Court on contempt proceedings under the Contempt of Courts Act are required to be referred to. In the case of Rama Narang (supra) after referring to and taking into consideration the earlier decisions of this Court in the cases of R.N. Dey (supra), Rita Markandey v. Surjit Singh Arora; (1996) 6 SCC 14 and Bank of Baroda v. Sadruddin Hasan Daya; (2004) 1 SCC 360, it is specifically observed and held by this Court that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents. In the said decision, this Court also considered in detail (in para 31) the decision of this Court in the case of R.N. Dey (supra), which has been relied upon by the learned Senior Advocate appearing on behalf of the respondents in the present case. The para 24 of the decision is as under:—

“24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.”

62. Apart from the fact that the facts in the case of R.N. Dey (supra) is distinguishable in as much as in the present case, there is further specific directions issued by this Court vide order dated 06.05.2021 even in the said decision also it is observed and held by this Court that discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. It is further observed that the contempt is between a contemnor and the court and that an aggrieved party has no right to insist that the court should not exercise such jurisdiction.

63. In the case of Welset Engineers (supra), it is observed and held by this Court that a party in breach of any order of court whether interlocutory or final is subject to being proceeded against in contempt. Orders are meant to be obeyed and a person, acting in breach of the order does so at that person's peril.

64. In the case of SEBI (*supra*), it is observed and held by this Court that non-compliance with the orders passed by this Court shakes the very foundation of our judicial system and undermines the rule of law, which we are bound to honour and protect. This is essential to maintain faith and confidence of the people of this country in the judiciary. It is further observed that there is a need of iron hand to enforce rule of law, punish contemnors and maintain faith and confidence of the people in judiciary.

65. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the subsequent specific directions issued by this Court in its order dated 06.05.2021, the objection on behalf of the respondents that as the order passed by the learned Single Judge of the High Court is executable and therefore, the present contempt proceedings may not be entertained is overruled."

(Emphasis supplied)

12. This is more so in view of the fact that the Respondent has given four (4) undertakings to this Court (as noted above) assuring to comply with the order of maintenance and further, disobeyed the unambiguous directions issued by the predecessor Bench in these proceedings on 21.04.2022 and 26.07.2022.

13. It is also pertinent to mention that the aforesaid contention of the Respondent has already been rejected by this Court *vide* order dated 13.02.2023. Hence, the Respondent ought not have reiterated the same submissions, which has already been rejected by this Court. In the judgment of *HSBC PI Holdings (Mauritius) Limited*, (*supra*) it was further held that repeated submissions which was not accepted and/or rejected by this Court in itself shows the (mis)conduct on the part of the contemnor. The relevant portion of the judgment reads as follows:

"66. Now so far as the submissions on behalf of the respondents that there is no wilful disobedience as they have no sufficient funds to deposit the shortfall amount and despite their best efforts, they are unable to get the requisite funds to comply with the order passed by this Court is concerned, at the outset it is required to be noted that all these submissions were made earlier in I.A. No. 68388/2021 seeking exemption from deposit of shortfall pursuant to order dated 06.05.2021 and the same have not been accepted by this Court and vide order dated 02.07.2021 their application for exemption

has been dismissed. Thereafter, it shall not be open for the respondents to repeat and make the same submissions again and again. The respondents cannot be permitted to make the same submissions which have not been accepted and/or rejected by this Court earlier. Repetitive submissions which have not been accepted earlier by court that itself is a wilful disobedience and tantamount to contempt and it shows the conduct on the part of the contemnors.

67. Sufficient opportunities have been given to the respondents to deposit the shortfall amount so as to maintain a sum of USD 60 million in their Corporation Bank account. The first order passed by the learned Single Judge in their application under Section 9 of the Act, 1996 is passed in the year 2014 and even the same has been restored by this Court vide judgment and order dated 19.08.2020 and thereafter, further directions have been issued specifically directing the respondents to deposit the shortfall vide order dated 06.05.2021 and thereafter their application for exemption from depositing the shortfall amount has been dismissed by this Court. Despite the above, the respondents have failed to deposit the shortfall amount and therefore, they have rendered themselves liable for suitable punishment under the provisions of the Contempt of Courts Act for wilful disobedience of not only the judgment and order passed by this Court dated 19.08.2020 in Civil Appeal No. 5158/2016 but also for wilful disobedience and non-compliance of order passed by this Court dated 06.05.2021 in the present application. The defence on behalf of the respondents lack bona fides. To maintain the rule of law and majesty of justice and so as to see that the faith and confidence of the people in judiciary is maintained, this is a fit case to entertain the present contempt proceedings and to punish the respondents under the provisions of the Contempt of Courts Act."

(Emphasis supplied)

14. This Court is also unable to accept the contention that the Respondent does not have ample source of income to maintain the Petitioner and the two minor children as per the orders of the Trial Court and the Appellate Court. The Trial Court and the Appellate Court, which are the competent courts, after perusal of the record have assessed the monthly income of the Respondent based on the material available on the record and thereafter passed the order of maintenance. The Respondent herein in Crl. Rev. P. 112/2021 has also assured the coordinate Bench that he will make the payments in compliance with the order. The Respondent cannot be permitted

to set at naught orders passed by competent courts by raising bald plea of lack of resources. In this regard, it would be instructive to rely upon a recent judgment of Supreme Court in **Anju Garg v. Deepak Kumar Garg, 2022 SCC OnLine 1314**, in a matter pertaining similarly to award of maintenance to a wife, wherein it was held as under:

“13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs. 10,000/- per month to the appellant wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no. 2-son.”

(Emphasis supplied)

The Supreme Court in this judgment refuse to accept the submission of the respondent, husband therein, that he has no source of income as his business has now been closed and The Court further held that the respondent being an able-bodied individual is obliged to earn by legitimate means and maintain his wife and the minor child.

15. Additionally, the Respondent was also directed to ensure that the children will not face any adverse action by the school. By the order dated 15.02.2021, it has been categorically directed that the Respondent shall ensure that no adverse noting or observation is made against the children nor is the education of the children disturbed due to the non-payment of school fees.

16. The conduct of the Respondent taken note as hereinabove evidences that the he has shown scant regards for the orders of the court. This was also noted by the predecessor Bench *vide* order dated 26.07.2022. This Court takes note of the submission of the learned counsel for the Petitioner that the minor children have faced ridicule and harassment due to the non-payment of school fees on time. The action of the Respondent is clearly in breach of the maintenance orders passed by the Trial Court, the Appellate Court, the orders dated 21.04.2022 and 26.07.2022 passed by this Court, as well as the four (4) undertakings given to the Court on 09.08.2021, 02.02.2022, 24.08.2022 and 06.12.2022.

17. This Court also takes note of the averments made by the Petitioner that the Respondent has transferred certain properties in favor of his sisters so as to defeat the rights of the Petitioner in view of the order dated 18.09.2019 passed by the Trial Court. The said averments have been placed on record by CM Applications 36684/2022 and 36685/2022; however, the Respondent despite notice issued on 24.08.2022, has failed to file any reply to the said applications. Therefore, at this stage for determining the issue of contempt, the said averments are taken to be correct.

18. There have been 32 listings of the present matter. Even as on date of reserving the orders, the admitted arrears of maintenance payable by the Respondent stands at Rs. 8,52,333/- (which amount as per the Petitioner is Rs. 15,45,000/-). The Respondent has not made the payments of the admitted arrears even after repeatedly, seeking time from this Court to clear the same. In the present case as well, the Respondent is a 50-year-old professional, holding a degree and therefore, in accordance with the judgment of the Supreme in *Anju Garg* (supra) capable of earning and

maintaining his wife and children. This is in addition to the immovable assets owned by the Respondent.

19. This Court has shown due compassion and patience with the Respondent and granted opportunities since 14.09.2020, to comply with the orders of maintenance and purge the contempt. Despite ample opportunities and several undertakings, Respondent has failed to comply with the orders of maintenance.

20. In the aforesaid facts and circumstances, this Court is satisfied that the Respondent is in wilful disobedience of the directions contained in order dated 18.09.2019 passed by the Trial Court, and thereafter modified by the Appellate Court *vide* order dated 12.11.2020 and orders dated 21.04.2022 and 26.07.2022 passed in the present proceedings. This Court has already noted above that the Respondent had given atleast five (5) undertakings on 09.08.2021, 02.02.2022, 24.08.2022, 06.12.2022 and 25.01.2023 to this Court that he shall pay the maintenance to the Petitioner and his minor children.

21. This Court is of the view that by failing to comply with the undertakings and assurances given to this Court; even after being provided multiple opportunities to comply with the same, the Respondent has acted in complete disregard to the orders passed by this Court.

22. Consequently, in these circumstances, this Court is of the opinion that the Respondent is defiant and has willfully and intentionally disobeyed the undertakings given to this Court and orders passed by the Trial Court, Appellate Court and this Court, in these proceedings and hence, the Respondent is held guilty of having committed contempt of court and is liable for punishment under Section 12 of the Contempt of Courts Act, 1971.

Sentencing

23. In so far as the order on sentence is concerned, this Court sentences the Respondent, contemnor, Mr. Praveen Sehrawat to undergo two (02) months simple imprisonment along with a fine of Rs. 2,000 and in default of payment of fine, he shall further undergo fifteen (15) days simple imprisonment.

24. This Court has considered that mere imposition of fine of Rs. 2000/- would not meet the ends of justice, and that the sentence of imprisonment is necessary considering the facts that arrears owed by Respondent are far in excess of fine imposed, and the fact that he has deliberately, willfully, intentionally and defiantly disobeyed the directions issued to him by the Trial Court, as upheld by the Appellate Court and by this Court, despite grant of opportunities.

25. This Court's attention has been drawn to the judgment of the Division Bench of this Court in ***Sonali Bhatia vs. Abhivansh Narang*** passed in CONT. CAS (C) 429/2021 on 25.11.2021 and more particularly, paragraph 39 therein, where in similar circumstances the Division Bench after awarding sentence had given last opportunity to the Respondent to clear the arrears of maintenance. Following the said judgment, this Court directs that, in case, the Respondent exhibits his apology by complying with the orders of the Trial Court, as modified by the Appellate Court, and directions issued by this Court, makes payment of entire arrears of maintenance within ten (10) days and undertakes to continue to pay the maintenance until the order dated 12.11.2020 continues to remain in force, and tenders an unconditional apology to this Court, this Court shall consider recalling the punishment of

Respondent undergoing simple imprisonment, provided the Respondent complies with the aforesaid directions within ten (10) days. However, in case, he does not comply with the said direction within the time granted, he is directed to surrender before the Jail Superintendent, Central Jail, Tihar, New Delhi on 20.04.2023.

26. The Respondent is directed to appear before the Registrar General on 12.04.2023 to furnish a security bond for his surrender on 20.04.2023 in the sum of Rs. 50,000/- with one surety of like amount.

27. It is made clear that the non-compliance and disobedience arising in the present contempt petition pertains up to the maintenance dues for the period of January, 2023. Any further default by the Respondent will give rise to fresh cause of action.

28. The interim order dated 24.08.2022 restraining the Respondent from dealing with the assets enlisted in CM APPL. 36685/2022 is made absolute and it, shall continue to operate until the Respondent clears all the maintenance dues of the Petitioner. The assets mentioned in the said application cannot be sold by the Respondent without seeking written consent of the Petitioner herein and the prior permission of the Trial Court.

29. With the aforesaid directions, the present contempt petition is allowed and all pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2023/kv