



2023:DHC:8004



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

% **Date of order : 17th October, 2023**

+ **CONT.CAS(C) 871/2022**

KISHAN SWAROOP SHARMA

..... Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

SH. AMITABH CHATTERJEE

..... Respondent

Through: Mr.Rajiv Kapur and Mr.Akshit Kapur, Advocates for SBI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL.36611/2022 (condonation of delay)

1. The application has been filed by the petitioner, seeking the following reliefs:

“Condone the delay of 1023 days in filing the contempt petition...”

2. Learned counsel appearing on behalf of the petitioner submitted that there has been a delay of 1023 days in filing the contempt petition owing to the COVID-19 pandemic, the petitioner was unable to contact his counsel and was later apprised of the unfortunate death of his previous counsel, as a



result of the pandemic.

3. It is submitted that Hon'ble Supreme Court took *suo moto* cognizance of the difficulties faced by the litigators and issued certain guidelines, whereby, the period between 15th March 2020 to 28th February 2022, was exempted in order to compute the period of limitation, making the present petition, well within the limitation period.

4. It is further submitted that the bank, where the petitioner was employed, extended certain false promises with regard to timely grant of the back wages to the petitioner, as a result of which the petitioner deferred approaching this Court.

5. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the submissions made on behalf of the petitioner.

6. It is submitted that the present petition has been filed after an inordinate delay of 1023 days and the same is not liable to be condoned.

7. It is submitted that the delay in filing the contempt petition is nothing but negligence at the hands of the petitioner and as per the Contempt of Courts Act, 1971 (hereinafter "Act"), the statutory time period to file a contempt petition is capped to one year from the alleged period when contempt has been committed, therefore, the petitioner has lost out on the opportunity to file the said contempt petition.

8. In view of the foregoing submissions, it is prayed that the present application may be dismissed, being devoid of any merit.

9. Heard the learned counsel for the parties and perused the record.

10. In cases where there has been a substantial delay on account of the



COVID-19 pandemic, it becomes important for the Courts to take into consideration the orders issued by the Hon'ble Supreme Court, whereby, the period between 15th March 2020 to 28th February, 2022, was exempted in order to compute the period of limitation.

11. By way of order dated 23rd March, 2020 in *Suo Moto* Writ Petition (C) NO. 3 OF 2020, the Hon'ble Supreme Court issued certain guidelines, whereby, the period commencing from 15th March, 2020 stood excluded while computing the period of limitation. The said Order has been reproduced herein:

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue



notice to all the Registrars General of the High Courts, returnable in four weeks. "

12. Subsequently, the Hon'ble Supreme Court, vide order dated 8th March 2021, concluded the previous order dated 23rd March 2020. Through the order dated 8th March 2021, the Hon'ble Supreme Court emphasised that the relaxation of period between 15th March 2020 and 14th March, 2021 had concluded and the period of limitation would commence from 15th March 2021. The relevant portion of the order dated 8th March 2021, has been reproduced herein:

"1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end."

13. In furtherance of the order dated 8th March 2021 the Hon'ble Supreme Court, vide order dated 27th April 2021, restored the order dated 23rd March



2020 and the same was concluded vide order dated 23rd September 2021.

14. However, the country saw a surge in cases as a result of the Omicron variant, which brought a halt to the Court proceedings yet again. In context of the Omicron variant, the Supreme Court Advocates on Record Association filed a Miscellaneous Application, thereby, seeking restoration of order dated 23rd March 2020. In view of the said Miscellaneous Application, the Hon'ble Supreme Court restored the order dated 23rd March 2020, which reads as follows:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021 it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.,

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply...."

15. The aforesaid orders were applicable under any general or special laws in respect to all judicial or quasi judicial proceedings. Bearing in mind the same, the cause of action for the instant petition arose on 19th September 2019, i.e., the date of the impugned order.



16. Moreover, the law regarding filing of contempt petition has been reiterated by different Courts time and again. A bare perusal of the Contempt of Courts Act, 1971 makes it evident that there is a prescribed time limit for filing of a contempt petition. The relevant portion of the said Act is reproduced herein:

“20. Limitation for actions for contempt.-No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

17. As per the above stated statute, there is a time limit prescribed to contempt petitions, which is capped at one year from the date on which the alleged contempt has been committed. The Hon’ble Supreme Court has analysed Section 20 of the Contempt of Courts Act, 1971 on numerous instances. In the case titled ***Pallav Sheth v. Custodian, (2001) 7 SCC 549***, it held as follows:

“43. A question arose before a Full Bench of the Punjab and Haryana High Court in the case of Manjit Singh v. Darshan Singh [1984 Cri LJ 301 : (1984) 86 Punj LR 9 (P&H) (FB)] with regard to the application of Section 20 to the proceedings of criminal contempt. After coming to the conclusion that on the language of Section 20 the date when the time begins to run is fixed from the point on which the criminal contempt is alleged to have been committed the Court had to decide the terminating point or the terminus ad quem for the limitation under Section 20 of the Act. Four possibilities which fell for consideration in this regard were: (i) the date on which the actual notice of contempt is issued by the court; (ii) the date on which the Advocate-General moves the motion under Section 15(1)(a); (iii) the date on which a subordinate court makes a reference of



the criminal contempt under Section 15(2) of the Act; and (iv) the date on which any other person prefers an application to the Advocate-General for his consent under Section 15(1)(b) of the Act. On behalf of the State, the contention raised before the Full Bench was that the sole terminus ad quem was the date of the actual issuance of the notice of criminal contempt by the court and reliance in this behalf was inter alia placed on the abovementioned decision of this Court in Baradakanta Mishra case [(1975) 3 SCC 535 : 1975 SCC (Cri) 99] . The Full Bench, in our opinion, rightly came to the conclusion that the sole question which arose for consideration in Baradakanta Mishra case [(1975) 3 SCC 535 : 1975 SCC (Cri) 99] related to the interpretation of Section 19 of the Act and no question of interpreting or applying Section 20 was at all in issue. Following the dictum of Lord Halsbury in Quinn v. Leathem [1901 AC 495 : (1900-3) All ER Rep 1 : 70 LJPC 76 : 85 LT 289] that a case is only an authority on what it actually decides and cannot be quoted for a proposition that may even seem to follow logically therefrom, the Full Bench correctly observed that Baradakanta Mishra case [(1975) 3 SCC 535 : 1975 SCC (Cri) 99] was no warrant for the proposition that the issuance of a notice of criminal contempt by the High Court is the sole terminus ad quem for determining limitation under Section 20 of the Act. The Court then proceeded to observe in paras 13 and 19 as follows: (Cri LJ pp. 305-06 & 308)

“13. Once that is so, one must now proceed to analyse and construe Section 20 independently. A plain reading thereof would indicate that the legislature drew a clear line of distinction betwixt proceedings for contempt initiated by the court on its own motion, and those not so done. Suo motu action by the High Court is thus clearly a class by itself. Consequently the statute in express terms refers to these two classes separately, namely, any proceedings for contempt on court's own motion, and proceedings for contempt initiated ‘otherwise’.



The use of the word 'otherwise' is significant and indeed provides the clue to the true interpretation of Section 20. Therefore, initiation of contempt proceedings otherwise than on court's own motion would include within its sweep a motion by the Advocate-General, a reference by a subordinate court to the High Court to take action for contempt and an application before the Advocate-General seeking his consent by any other person under Section 15 and lastly in cases of civil contempt the motion by a private litigant directly in the court.

19. To finally conclude it must be held that the terminus a quo for limitation begins under Section 20 of the Act on the date on which the contempt is alleged to have been committed. The terminus ad quem in case of criminal contempt would necessarily vary and be related to the modes of taking cognizance thereof provided for in Section 15. In cases where it is initiated on the court's own motion it would necessarily be from the issuance of the notice for contempt by the court. In case of a motion by the Advocate-General under Section 15(1)(a), the proceedings would initiate from the date of the filing of such a motion in the High Court. Where any other person moves the Advocate-General for his consent in writing as prescribed in Section 15(1)(b), the initiation of proceedings would be with effect from the date of such application. Lastly, in cases of criminal contempt of a subordinate court on a reference made by it the proceedings must be deemed to be initiated from the date when such reference is made. ””

18. In the aforesaid case, the Hon'ble Supreme Court essentially established that the starting point for the limitation period on contempt cases, as stipulated under Section 20 of the Limitation Act (hereinafter "Act"), is the date on which the alleged contempt took place. The endpoint, in the context of contempt, varies and is associated with the methods specified in



Section 15 of the Act, for taking cognizance of such contempt. If the Court initiates the proceedings on its own accord, the limitation period commences from the moment the Court issues a notice for contempt. When the Advocate-General files a motion under Section 15(1)(a), the proceedings begin on the date of submission of that motion in the High Court. If any other individual requests the Advocate-General's written consent, as outlined in Section 15(1)(b), the proceedings start from the date of such an application.

19. Adverting back to the facts of the instant petition, the alleged contempt commenced on 19th September 2019. In accordance with Section 20 of the Contempt of Courts Act, 1971, the period to file the contempt petition ended on 20th September 2020. However, due to the *sou moto* cognizance taken by the Hon'ble Supreme Court, the period between 15th March 2020 to 28th February 2022, stood exempted and the period of limitation was to be computed from 1st March 2022.

20. The instant writ petition has been filed on 5th July 2022 therefore, the present petition has been filed within the period of limitation.

21. In view of the above facts and discussions, the delay has been condoned for the reasons so stated in the application as well as the above discussions and therefore, the application stands allowed.

22. Accordingly, the application stands disposed of.



CONT.CAS(C) 871/2022

1. The instant contempt petition under Sections 11 and 12 of the Contempt of Court Act, 1971, has been filed on behalf of petitioner seeking the following reliefs:-

- “a) Punish the contemnors in accordance with the law;*
- b) Direct the petitioners to start paying minimum wages alongwith appropriate interest for the delayed period; as directed by the Hon’ble High court in the judgment and order dated 19.09.2019.*
- c) Award the cost of the petition to the Respondent/ applicant...”*

2. The respondent herein had filed writ petition bearing no. 10177/2017, thereby, challenging award bearing ID No.65/2007, dated 4th August 2016, passed by the Industrial Tribunal cum Labour Court, Karkardooma, Delhi.

3. A Coordinate Bench of this Court, modified the said award vide order dated 19th September 2019, thereby directing the respondents herein to reinstate the petitioner/workman within two months after expiry of the remedy period available against the said award, alongwith payment of 25% backwages.

4. By way of the aforesaid order, this Court directed the respondent herein to file an affidavit undertaking to refund the differential amount between the last drawn wages and the minimum wages in the event that the writ petition is allowed. Following the said directions, the petitioner filed an affidavit on 14th October, 2019 and made a representation dated 22nd October, 2019 thereby, seeking minimum wage from the date of the award i.e. 4th August, 2016. However, the respondent has failed to comply with the



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order dated 19th September, 2019.

5. Aggrieved by the non-compliance of the said order, the petitioner has preferred the present petition.

6. Learned counsel appearing on behalf of the petitioner submitted that the respondents have wilfully disobeyed the order dated 19th September, 2019 passed by this Court, and have failed to sanction the backwages of the petitioner as directed by aforesaid order.

7. It is submitted that though the respondents have paid Rs. 2,34,160/- as on 27th September, 2019, due as backwages to the petitioner, the said amount is meagre in comparison to the wages due as on date of passing of the impugned award.

8. It is further submitted that the total payment due to the petitioner stands at Rs.12,22,362/-, however, the respondents have only paid Rs. 2,34,160/-, thereby owing the petitioner an amount of Rs.9,88,202/- along with Rs.16,518/- as monthly payment of last drawn wages.

9. In view of the submissions, it is prayed that the present petition may be allowed and the respondent may be held guilty of contempt of the Court.

10. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the respondent has been impleaded wrongfully, thereby, alleging him to be Chief General Manager, Local Head Office (LHO), New Delhi; whereas, he is Deputy Managing Director (DMD) at Corporate Office, Mumbai . The Controlling Authority of the workman/petitioner is Regional Manager, at, New Delhi and not the present respondent.

11. It is further submitted that the present respondent deals with the policy



matter and has no knowledge pertaining to the writ petition whose contempt has been allegedly committed.

12. It is submitted that the bank has complied with the order dated 19th September, 2019, wherein the Court had directed the respondent to pay last drawn/minimum wages which is higher pursuant to which the respondent made a payment of Rs. 2,34,247/- to the petitioner and hence the present petition stands to be infructuous .

13. It is further submitted that the delay in processing the backwages of the petitioner was a *bonafide* mistake and not a deliberate act of disobedience at the hands of the bank. The said delay was a result of transfer of certain officials and lack of staff at the offices of the bank where the petitioner was employed.

14. In view of the foregoing submissions, it is submitted that the present petition is devoid of any merit.

15. Heard the learned counsel for the parties and perused the records.

16. It has been contended that the present petition has been preferred against order dated 19th September 2019, in C.M. No. 15905/2018 under Section 17-B of the Industrial Disputes Act, 1947 in W.P.(C) No.10177/2017. The said writ petition was preferred by the State Bank of India, i.e., the employer of the petitioner, aggrieved by an award dated 4th August 2016, passed by the learned Central Government Industrial Tribunal in I.D. No. 65/2007 against the employee/petitioner herein and the same is pending adjudication before this Court.

17. It is the case of the petitioner that the respondent has wilfully



disobeyed the order of this Court whereby the respondents were directed to reinstate the petitioner/workman within two months after expiry of the period available remedy against the said award and pay 25% back wages. They have merely paid Rs. 2,34,160/- as against the amount of Rs.9,88,202/- due to the petitioner.

18. It has been contended that the respondent herein has been wrongfully impleaded since the Competent Authority of the workman/petitioner is Regional Manager, Local Head Office, New Delhi and not the respondent who is the Deputy Managing Director (DMD) at Corporate Office, Mumbai and moreover, there has been no wilful disobedience at the hands of the respondent.

19. In order to adjudicate the present petition, it is apposite to analyse the impugned order dated 19th September 2019. The relevant portion of the same has been reproduced herein:

“4. In these circumstances, the respondent/applicant is entitled to succeed, and the application is, accordingly, allowed. The petitioner is directed to pay last drawn wages/minimum wages, whichever is higher, to the respondent from the date of passing of the impugned Award. The upto date arrears would be paid to the respondent within a period of twelve weeks from today. The petitioner will during the pendency of the present petition, continue to pay the last drawn wages/minimum wages, as the case may be, to the respondent on or before the tenth day of every month. The respondent will within a period of four weeks, file an affidavit undertaking to refund the differential amount between the last drawn wages and the minimum wages in case the writ petition is allowed.

5.The application is disposed of.”



20. Pursuant to non-compliance of the direction of the Court by the respondent, the petitioner has preferred the present contempt petition.

21. Before advertng on the merits of the case. The Court will first discuss the necessary ingredients to establish contempt.

22. The term “Civil Contempt” has been defined under Section 2 (b) of the Contempt of Courts Act, 1971 and it reads as follows:

“2. Definitions

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”

23. The aforesaid provision makes it evident that the existence of ‘wilful disobedience’ is an essential ingredient in order to initiate contempt proceedings against any party. The said principle has been dealt with time and again by the Hon’ble Supreme Court.

24. In *U.N. Bora v. Assam Roller Flour Mills Assn.*, (2022) 1 SCC 101, has analysed the term ‘wilful disobedience’ and how it is a necessary ingredient for initiating contempt proceedings:

“Discussion

8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the “wilful” disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It



is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] , has been quoted. The following paragraphs would govern the aforesaid principle : (Hukum Chand Deswal case [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] , SCC paras 20-21 & 25-27)

“20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)



'11. The contempt jurisdiction conferred on to 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 citizen 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 be 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 the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. TuncayAlankus [National Fertilizers Ltd. v. TuncayAlankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)

12. 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 a 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, bona fide 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 v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255] , Niaz Mohd. v. State of Haryana [Niaz Mohd. v. State of Haryana, (1994) 6 SCC 332] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. DharamGodha [Ashok Paper Kamgar Union v. DharamGodha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753]

15. *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 [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592]]

21. Similarly, in R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400] , this Court expounded in para 7 as follows : (SCC p. 404)

‘7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, the appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of



the order, the initiation of contempt proceedings was wholly unjustified.'

25. Pertinently, the special leave petitions were filed by the respondent against the order dated 28-1-2019 [Sagu Dreamland (P) Ltd. v. Jingal Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720], which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing court. The plaintiff-petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly [Jhareswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352 : 2002 SCC (L&S) 703], in para 11, opined thus : (SCC p. 360)

'11. ... The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has



exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.’

26. Thus understood, we find force in the explanation offered by the respondent that as per its bona fide understanding, there was no outstanding dues payable to the petitioner. Moreover, as observed [Sagu Dreamland (P) Ltd. v. Jingal Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720] by the High Court, these aspects could be answered by the executing court if the parties pursue their claim(s) before it in that regard. Suffice it to observe that it is not a case of intentional violation or wilful disobedience of the order passed by this Court to initiate contempt action against the respondent. Instead, we hold that it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in respect of the issue(s) under consideration. In such proceedings, all aspects can be considered by the forum/court concerned on merits in accordance with law. We say no more.

27. Reverting to the allegation about damage caused to the suit property by the respondent at the time of vacating the same, in our opinion, the respondent has made out a formidable case that it did not cause any damage, much less permanent damage to the structure in the suit property. Whereas, the petitioner was relying on photographs concerning the debris on the site left behind at the time of vacating the suit property. The debris cannot cause damage and it is certainly not a case of defacement of the suit property. That position is reinforced from



the fact that the water park in the suit premises was started and became fully functional within 2-3 months. Viewed thus, it is rightly urged that it can be safely assumed that no damage was caused by the respondent to the structure in question. Minor repairs required to be carried out by the petitioner for making the water park functional cannot be painted as intentional disobedience of the order of this Court. In any case, that being a complex question of fact, need not be adjudicated in the contempt proceedings. We leave it open to the petitioner to pursue even that claim in execution proceedings or such other proceedings as may be permissible in law. We may not be understood to have expressed any final opinion in respect of condition of the suit premises, whilst handing over possession to the petitioner. We hold that even this issue under consideration does not warrant initiation of contempt action against the respondent.

(emphasis supplied)”

25. In view of the aforesaid judicial principles, it is clear that ‘wilful disobedience’ must be proved by the petitioner in order to be successful in the contempt proceedings against the contemnor. The term ‘wilful disobedience’ is something which must be proven as a whole, rather than on certain assumptions, making it imperative for this Court to analyse whether mere non-compliance with the order of the predecessor bench would amount to wilful disobedience.

26. In the instant petition, even though it has been alleged by the petitioner that the respondent herein has failed to pay last drawn/minimum wages, whichever is higher, as directed vide order dated 19th September 2019. However, the respondent bank has submitted that an amount of Rs.



2,34,247/- has already been paid to the petitioner, making the present petition infructuous. Moreover, it has been contended that the delay in sanctioning such payment was a result of certain personnel changes and lack of staff at the bank where the petitioner was employed and such delay is not a deliberate act of disobedience, but a *bonafide* mistake.

27. Furthermore, it has been submitted by the respondent that he has been wrongfully impleaded in the present petition. It is pertinent to note that the present respondent is the Deputy Managing Director (DMD) at Corporate Office, Mumbai and the Controlling Authority of the workman/petitioner is Regional Manager, at New Delhi and not the present respondent. Further, the respondent's responsibility is limited to policy changes only and is in no way the controlling authority of the workman/petitioner.

28. It is apparent, that for a contempt proceeding to fructify, there should be a clear presence of wilful disobedience at the hands of the contemnor, which should be proven by the applicant before the Court. In the instant petition, the applicant has failed to make a clear-cut case of contempt committed by the bank.

29. Since the respondent has already paid the petitioner Rs. 2,34,247/- as directed by this Court vide order dated 19th September 2019, there is no wilful disobedience established in the instant petition.

30. In view of the presented facts and circumstances, the Court is reluctant to commence civil contempt proceedings against the respondents. This decision stems from the petitioner's failure to meet the necessary criteria outlined in statutory provisions and judicial precedents.



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31. Accordingly, the instant petition stands dismissed.
32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 17, 2023

Dy/ds/db

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 21.11.2023
18:21:20

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