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

Date of decision: 26.09.2023

+ **CONT.CAS(C) 388/2009**

M.M.T.C. LTD.

..... Petitioner

Through: Mr. PK Jain, Ms. Rashmi Kumari,
Advs.

versus

PRIYANKA OVERSEAS LTD & ANR.

..... Respondent

Through: Mr. Kuljeet Rawal, Mr. Aditya Joshi,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking initiation of contempt proceedings for violation of the order dated 23.03.2007 in OMP No. 225 of 2004 as upheld by the Division Bench by the order dated 19.07.2007 in RFA(OS) No. 169/2007. As per the order dated 23.03.2007, it was directed as under:-

“

In these circumstances, the application is allowed. The security, offered by the respondent is rejected. In terms of order dt. December 9, 2004 the respondent is directed to deposit with the Registrar General a sum of Rs. 2,43,45,389.52 within 4 weeks from today.”

2. Mr. Rawal, learned counsel for the respondent has handed over a copy of the order dated 15.02.2017 passed in OMP 727/2010, titled

‘Priyanka Overseas Ltd & Anr.. v MMTC LTD.’ A perusal of the same shows that the arbitration between the petitioner and the respondent culminated into an Arbitral Award dated 30.07.2010 for a sum of Rs. 1.4 crores in favour of the petitioner. The same was challenged by the respondent by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 and the Coordinate Bench of this Court was pleased to allow the the petition and set aside the said Arbitral Award. Paragraph 18 of the order dated 15.02.2017 reads as under:-

“18. In sum, the Court holds as under:

(i) The rejection of the Priyanka"s claim in the sum of Rs.49,68,500 for loss on account of rain damage is unsustainable in law. The said claim ought to have been allowed by the learned Arbitrator.

(ii) The amounts awarded in favour of Priyanka ought to have been adjusted against the principal amount claimed by MMTC. With there being no clarity on what is the principal amount claimed by MMTC is, the sum worked out by the learned Arbitrator i.e. reducing the interest to Rs.18,35,114 after adjustment and determining Rs. 1.40 crores as due to MMTC is not based on any calculation which could be justified from the documents placed on record. To that extent the impugned Award is unsustainable and is hereby set aside. The award of corresponding interest on the said sum to MMTC is also set aside.

(iii) The denial of simple interest @ 8% and future interest @

9% simple interest to Priyanka on the amounts found due to it is not justified and the Award to that extent is again held unsustainable in law.”

3. The petitioner has filed the FAO(OS) No. 229/2017 challenging the order dated 15.02.2017. Paragraph 1 of the appeal reads as under:-

“1. The present appeal is directed against the order dated 15.02.2017 passed by the Ld. Single Judge of this Hon’ble Court in OMP No. 727/2010, whereby the Ld. Single Judge set aside the Award dated 30.07.2010.”

4. A combined reading of the aforesaid facts shows that the directions to deposit the sum of Rs. 2,43,45,389.52 merged into the final award dated 30.07.2010, wherein the petitioner was awarded Rs. 1.40 crores. That award was set aside on 15.02.2017, meaning thereby that no amount is due and payable by the respondent to the petitioner. Admittedly, the petitioner himself says in FAO(OS) No. 229/2017 that learned Single Judge set aside the award dated 30.07.2010 *vide* order dated 15.02.2017.
5. Mr. Jain, learned counsel for the petitioner has relied upon a judgment dated 19.10.2011 of the Coordinate Bench of this court in ***M/s Terra Manufacturing and Sales vs. M/s Alagendiraa Apparels***, Cont. Cas(C) 920/2009 to argue that once a direction has been passed in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996, the non-compliance of the same amounts to contempt and the directions contained therein do not merge in a final award.

6. The judgment of “*M/s Terra Manufacturing and Sales*” (*supra*) is based on its own peculiar facts, which is evident from para 12 of the said judgment. It reads as under:-

“12. In the instant case, a specific direction had been given to the contemnor to furnish a security. This order was passed at his behest and at his asking; this was on 27.01.2009; thereafter all efforts were made by him to delay the process; matter was assailed before the Division Bench and right up to the Apex Court; the respondent had sought a modification of the order asking him to furnish the security in the form of a bank guarantee; he could not get relief from any Court; even today before this Court on repeated queries, learned counsel for the respondent states that he is not ready to furnish any security as it is the petitioner in fact who is liable to pay him certain amounts and the Award which has been obtained by him has been obtained under fraud; his further contention is that he has in fact filed a counter claim against the petitioner which is also pending adjudication. Arguments of the respondent are without any merit. The respondent is guilty of contempt. He is represented by Mr.N.Ganeshan, Managing Director; he is convicted under Sections 12 & 15 of the Contempt of Court Act, 1971.”

7. The abovementioned paragraph 12 of the said judgment shows that on the date of judgment, i.e. 19.10.2011, the petitioner therein had an award in his favour and amounts were due and payable by the

respondent to the petitioner. Hence, non-compliance of the directions to furnish a security by the respondent was found to be an act of contempt.

8. In the present case, the facts are distinguishable as in view of the order dated 15.02.2017, no amount was found due and payable by the respondent to the petitioner. The petitioner cannot at this stage claim deposit of the amounts as it is beyond the scope of contempt proceedings and would require the petitioner to pursue its remedies as may be available against the order dated 15.02.2017. Reliance is placed upon the dicta of Hon'ble Supreme Court in *Abhishek Kumar Singh v. G. Pattanaik and Ors.*, 2021 5 S.C.R 305:-

“31. Per contra, the respondents would submit that the judgment dated 15.11.2018 had directed the respondents to act upon the High Court’s judgment dated 28.11.2017, wherein the petitioners were permitted to work on the post of Assistant Engineers. The respondents duly complied with the aforementioned judgment of this Court, by appointing the petitioners vide order dated 4.12.2018. It was then urged that this Court had granted liberty to the respondents to proceed in the matter in accordance with law. Therefore, contempt action cannot be maintained in respect of order dated 2.3.2020 in absence of any specific direction to afford opportunity to the petitioners despite the conclusion and opinion recorded by the competent authority that segregation of tainted and the untainted was not possible. The respondents contend that in such a case the entire selection process stood vitiated and no

*notice/opportunity need be given to the petitioners. Reliance is placed upon decisions of this Court in **Union of India & Ors. v. O. Chakradhar, Veerendra Kumar Gautam & Ors. v. Karuna Nidhan Upadhyay & Ors., M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors., Nidhi Kaim v. State of Madhya Pradesh & Ors., Kunhayammed & Ors. v. State of Kerala & Anr. and Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal** to contend that the respondents have not violated the judgment dated 15.11.2018. In law, the decision of High Court dated 28.11.2017 had merged in the judgment of this Court dated 15.11.2018. It was then submitted that no additional direction can be given in a contempt proceeding as the same would amount to exercise of review jurisdiction. In support of this plea, reliance is placed upon the decisions in **Bihar Finance Service House Construction Cooperative Society Ltd. v. Gautam Goswami & Ors. and Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited & Ors. v. M. George Ravishekarar & Ors.** It was then urged that civil contempt would require wilful disobedience. Passing of order dated 2.3.2020, assuming it to be a case of disobedience, the same cannot be termed as wilful. Thus, no contempt action can be maintained. Reliance was placed on decision of this Court in **Ram Kishan v. Tarun Bajaj & Ors., Dinesh Kumar Gupta v. United India Insurance Company Limited & Ors. and Kapildeo Prasad Sah & Ors. v. State of***

***Bihar & Ors.** It was then submitted that the implementation of orders can be insisted depending on its practicability. But, in the fact situation of this case, giving notice to the petitioners was not practical. Reliance is placed upon the decision of this Court in **Mohd. Iqbal Khanday v. Abdul Majid Rather**.*

....

*62. It is well settled that contempt action ought to proceed only in respect of established wilful disobedience of the order of the Court. This Court in paragraph 12 of the decision in **Ram Kishan** observed thus: -*

“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, Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, Niaz Mohammad v. State of Haryana, Chordia Automobiles v. S. Moosa, Ashok Paper Kamgar Union v. Dharam Godha, State of Orissa v. Mohd. Illiyas and Uniworth Textiles Ltd. v. CCE)."

(emphasis supplied)

*It is useful to recall the exposition in **Director of Education, Uttaranchal⁶³** and also in **K.G. Derasari & Anr. v. Union of India & Ors.** ; wherein this Court observed that in exercising contempt jurisdiction, the primary concern must be whether the acts of commission or omission can be said to be contumacious conduct of the party who is alleged to have committed default in*

complying with the directions given in the judgment and order of the Court. Further, the Court ought not to take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment and order. It is also not open to go into the correctness or otherwise of the order or give additional directions or delete any direction, which course could be adopted only in review jurisdiction and not contempt proceedings.”

9. Mr. Jain, learned counsel for the petitioner states that the contempt court is only to ascertain facts relevant to the date on which contempt has been committed and cannot take into consideration the subsequent events.
10. The same is unacceptable for the reason that the order of which contempt is alleged must be existing. In addition, it is a settled principle in law that punishment under contempt requires wilful disobedience of an existing and continuing direction of this court. Reliance is placed on the judgment of the Hon’ble Supreme Court dated 21.07.2008 in *Patel Rajnikant Dhulabhai and Anr. v Patel Chandrakant Dhulabhai and Ors.*, Cont.Cas.(C) 12-13 of 2006 in SLP(C) 7659-7660 of 2004. The operative portion reads as under:-

“48. Reading of the above clause makes it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt;

(i) there must be a judgment, decree, direction, order, writ or other process of a Court (or an undertaking given to a

Court);

(ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking given to a Court); and

(iii) such disobedience of judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking) must be wilful.

11. Reliance is further placed on *Star Residents Society (Regd.) and Others versus M.N. Bhardwaj and Others* (2001) SCC OnLine Del 1294, wherein the operative portion reads as under:-

“5. **Be it may, it would not be sufficient to proceed for initiating proceedings for contempt, which require blatant defiance of an existing order, which was missing in this case.** Counsel then attempted to urge that even after 19.1.2000, construction was carried out. He placed reliance on photographs taken on 26.1.2000 and 72.2000 to show the progress in construction. Examination of the photographs prima facie shows that the shutterings had been removed. Although on the first flush, it appears that there is progress of construction work. But a careful examination reveals it to be a case of removal of shuttering. In any case it is not one of those cases where it can be stated with certainty that there has been contumacious defiance of the order passed, which is required for initiating proceedings for contempt.”

emphasis supplied

12. As of today, no amount is found due and payable by the respondent to petitioner. Hence, the respondent cannot be said to be flouting the directions of this court, when in view of the subsequent developments, the order dated 23.03.2007, of which non-compliance is alleged, no longer stands or exists.
13. The contempt petition is accordingly dismissed.
14. Copies of the documents handed over in Court today are taken on record.

JASMEET SINGH, J

SEPTEMBER 26, 2023 / (MS)

Click here to check corrigendum, if any