



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

% **Judgment reserved on: 30 October 2023**
Judgment pronounced on: 17 November 2023

+ **CONT.CAS(C) 262/2018 and CM APPL. 37671/2019 (For bringing on record fresh address of respondent)**

M/S DRISHTI SOFTWARE PVT LTD Petitioner
Through: **Mr. Kundan Kumar Mishra,**
Adv.

versus

M/S VALAYA CLOTHING PVT LTD & ORS.
..... Respondents
Through: **Mr. Rajnish Kumar Gaiind, Mr.**
Hemant Kaushik and Mr.
Amritesh Krishna, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T
DHARMESH SHARMA, J.

1. This order shall decide a petition filed under Section 12 of the Contempt of Courts Act, 1971,¹ by the petitioner company seeking initiation of contempt proceedings against respondent no. 1 who is the Director of respondent no. 2 company(hereinafter mentioned as the respondents/ contemnors) for wilful disobedience of the final order and decree dated 29.05.2017 in C.S. (Comm.) No. 182/2017.

2. Briefly stating, the petitioner, which is a company incorporated

¹ The Act



under the Companies Act, 1956, having its registered office at Delhi, filed a suit through its authorized representative against the respondents /contemnors bearing case number C.S. (Comm.) No. 182/2017 titled M/s. Drishti Software Pvt. Ltd. v. M/s. Valaya Clothing Pvt. Ltd. & Ors. for recovery of rent, damages, mesne profits and for permanent injunction. Admittedly, a Lease Agreement was entered into and the same was executed by the parties on 21.02.2011 w.e.f. 15.08.2010 for an initial period of three years whereby the petitioner leased out the premises in question to the respondent company at a monthly rent of Rs.5,91,045/- exclusive of electricity, water and maintenance charges.

3. It is also an admitted position that the lease agreement expired by efflux of time. However, the respondent no. 2 company remained in possession as tenant on a month to month basis and it was the case of the petitioner company that the respondent company had not paid the rent since October, 2015. Apart from the aforesaid reliefs in the suit, a claim for an amount of Rs.1,22,27,932/- towards arrears of rent besides Rs.15,92,397/- towards interest was also claimed.

4. During the course of pendency of trial, the matter was referred to the Delhi High Court Mediation & Conciliation Centre and the petitioner through its Director Mr. Rohit Jain and contemnor no. 1 through its authorized representative Sh. Dayal Singh/ respondent no. 3 arrived at an amicable settlement, which resulted into a settlement agreement dated 23.05.2017; and consequently the parties jointly moved an application under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 before the Court and based on



the statement of the authorised representatives, the suit was finally disposed of resulting in a decree vide order dated 19.05.2017.

5. The grievance of the petitioner is that as per para 14 (b) of the settlement agreement dated 23.05.2017, the contemnors were enjoined upon to vacate the premises under the lease on or before 31.07.2017. However, they in wilful disobedience of the order passed by this Court failed to vacate and hand over the peaceful possession of the property to the petitioner within agreed time frame and thus vacated the premises only on 20.08.2017.

6. It is further the case of the petitioner that as per the terms and conditions of the settlement agreement dated 23.05.2017, the balance amount of Rs.43,88,880/- was stipulated to be paid by the respondents / contemnors in 22 monthly instalments for which post dated cheques were drawn and issued on Kotak Mahindra Bank, which cheques are detailed in *Annexures – 'C'* to the instant application.

7. The grievance of the petitioner is that the cheque towards 3rd, 4th, 5th and 6th instalments were returned dishonoured on presentation for the reasons stating “insufficient funds” in the bank account of the drawer-respondent/contemnor, and therefore, the petitioner has already initiated proceedings under Section 138 of Negotiable Instruments Act, 1881, which proceedings are pending trial before the competent court.

8. The petitioner company, therefore seeks, initiation of contempt proceedings against the respondents/contemnors No. 1 to 3 for wilful violation of the undertaking on the final decree dated 29.05.2017 passed by this Court in C.S. (Comm.) 182/2017 in accordance with



law.

SUBMISSIONS BY THE RESPONDENTS/CONTEMNORS

9. Respondent Nos. 1 & 2 in their joint reply, have contested the instant petition on the grounds that the petitioner has not approached this Court with clean hands and has deliberately concealed the relevant and material facts. The petitioner, being an “operational creditor” was well aware of the unsavoury financial position of respondent Nos. 1 & 2 in December, 2017 itself. Instead, the petitioner filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016², before the NCLT to initiate the Corporate Insolvency Resolution Process³ against respondent No. 1 company. The learned NCLT declared a moratorium effective from 26.11.2019, the date of order, until the completion of CIRP. Subsequently, Mr. Deepak Maheshwari, Registration No. IBBI/ IPA- 002/IP/N 00531/2017-18/11594 has been appointed as Interim Resolution Professional⁴ and the appropriate proceedings are still pending.

10. Relying on Section 14 of the IBC, it was submitted that it prohibits the institution or continuation of pending suits or proceedings against corporate debtors. Suffice to state that the factual narrative is more or less admitted on merits, except for refuting any wilful disobedience on the part of the respondent/contemnor to the final order/ decree dated 29.05.2017. The reply is supported by an affidavit of Mr. Tribhavan Singh Ex. Director of respondent company /contemnor no. 2.

² IBC

³ CIRP



ANALYSIS AND DECISION

11. Having heard learned counsels for the parties and on perusal of the record, at the outset, although grievance of the petitioner is genuine that its legitimate outstanding dues have not been paid by the opposite party, however, there are no grounds to assume that there was any wilful or contumacious disobedience on the part of the respondent/contemnor to comply with the memorandum of understanding as given its seal by this Court vide order dated 23.05.2017.

12. It is well settled by the Act that a civil contempt is the one which demonstrates a wilful disobedience of a decision of the Court. After examining plethora of case laws on the subject matter, it was held in the case of **U.N. Bora v. Assam Roller Flour Mills Assn.**⁵, that:

“(i) It should be shown that there was due knowledge of the order or directions and that the disobedience is a deliberate, conscious and intentional act.

(ii) When two views are possible, the element of wilfulness vanishes as it involves a mental element.

(iii) Since the proceedings are quasi-criminal in nature, what is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.

(iv) 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.

(v) 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.”

13. In **Hukum Chand Deswal v. Satish Raj Deswal**⁶, the

⁴ IRP

⁵ (2022) 1 SCC 101

⁶ (2021) 13 SCC 166



celebrated judgment in **Ram Kishan v. Tarun Bajaj**⁷ was quoted with the following principles:

“20. 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 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 concerned forum/Court on merits in accordance with law. We say no more.

14. In a subsequent decision by the Supreme Court in the case of **Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain**⁸, the proposition of law laid down in earlier the case **R.N.Dey**⁹ was referred with approval, which is as follows:

“19.2. *R.N.Dey v. Bhagyabati Pramanik*, wherein this Court held that the weapon of initiating contempt proceedings could not be used for execution of a decree or implementation of an order. That is, a court should not invoke contempt jurisdiction, where alternate remedies are available to secure the terms of an order. We are mindful of the fact that contempt proceedings should not be of the nature of ‘execution proceedings in disguise.’”

15. Reverting to the instant matter, in the first place, the delay of about one month by the respondent in handing over the possession of the subject property to the petitioner cannot be said to be deliberate, contumacious or in any manner ill-motivated. In fact, not much cudgel is made by the petitioner on this point, and thus, this Court says no

⁷ (2014) 16 SCC 204

⁸ (2022) 6 SCC 662



more. Secondly, it is an admitted position that, three of the initial cheques towards part payment as per the MOU were indeed honoured. Thirdly, the plea of the respondent/contemnor that the petitioner was aware of its precarious financial position is also fortified by the fact that an application under Section 9 of the IBC¹⁰ was filed at the behest of the petitioner on 22.12.2017 being the 'operational creditor' before the NCLT. There is no denying the fact that since the moratorium¹¹ was in force in terms of the order dated 26.11.2019, passed by the NCLT, the respondent/contemnor was in no position to honour its commitments in terms of the MOU. Eventually, the respondent/contemnor company was ordered to be wound up and dissolved in terms of the order dated 27.01.2021.

16. The aforesaid chain of events leaves no doubt that the non-performance of the undertaking to pay the outstanding amount in terms of the MOU, is not an outcome without justifiable excuse.

⁹ (2000) 4 SCC 400]

¹⁰ Section 9(3) The operational creditor shall, along with the application furnish--

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt ¹ [by the corporate debtor; if available;]

² [(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

¹¹ SECTION 14 Moratorium.

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



Although there has been disobedience so to say, but it is due to patently compelling financial circumstances under which it was not possible for the respondents/contemnors to comply with the order dated 29.05.2017 passed by this Court in C.S. (Comm.) No. 182/2017. 17. In view of the foregoing discussion, the present petition is dismissed. The parties shall bear their own costs.

DHARMESH SHARMA, J.

NOVEMBER 17, 2023

ss

Signature Not Verified

Digitally Signed By: PRAMOD
KUMAR VATS
Signing Date: 17.11.2023
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