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

+ **CONT.CAS(C) 619/2018**

RAM KISHAN & ANR.

..... Petitioners

Through: Mr. S.K. Bhaduri, Mr. Sumit Kumar,
Ms. Neetu Gupta, Advocates

versus

SHIV KUMAR & ANR.

..... Respondents

Through: Ms. Shalini Sharma, Advocate with
Respondent in person

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Reserved on: 19th April, 2023

Date of Decision: 18th July, 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 Petitioners are brothers of Respondent No. 1 and the present petition has been filed in view of the willful non-compliance by the Respondent No.1 of the Deed of Compromise dated 10.09.2015 ('Compromise Deed'), which was filed before this Court along with an application under Order 23 Rule 3 of Code of Civil Procedure, 1908 ('CPC') in TEST.CAS. No. 19 of 2013; and accepted by this Court *vide* order dated 17.09.2015. The Court in its order dated 17.09.2015 directed that the Petitioners herein and Respondent No. 1 shall remain bound by the terms and conditions of the said Compromise Deed.



2. The Respondent No. 2, since deceased, was the wife of Respondent No. 1 and the pleadings primarily state that Respondent No. 2 during her lifetime obstructed the compliance of the terms and conditions of the Compromise Deed.

3. However, even after the death of Respondent No. 2, Respondent No. 1 has taken the express stand that he does not intend to comply with the terms and conditions of the Compromise Deed.

4. The facts and legal proceedings which, led to the execution of the Compromise Deed are as under: -

4.1. The Petitioners and the Respondent No.1 are the three (3) sons of late Sh. Khazan Dutt Sharma, who passed away on 11.02.2013. Upon his death the Petitioners herein instituted the TEST.CAS. No. 19 of 2013 before this Court for grant of Letters of Administration with respect to his registered Will dated 11.10.2012.

4.2. The subject matter of the registered Will dated 11.10.2012 was three (3) existing shops at the ground floor; the room above the said shops and the terrace on the first floor; and the terrace above the first floor, forming part of property bearing No. 11, Aliganj, Kotla Mubarakpur, New Delhi ('subject property'), which was owned by the late Sh. Khazan Dutt Sharma.

4.3. The Shop situated at the extreme east side of the property and adjacent to the *Gali* was in possession of Respondent No.1, Shri Shiv Kumar ('Shop No. A'). The middle shop was in possession of Petitioner No.2, Shri Om Prakash ('Shop No. B'). The Shop at the western side of the subject property was in possession of Petitioner No. 1, Shri Ram Kishan ('Shop No. C').



4.4. The Respondent No. 1, four (4) daughters of late Sh. Khazan Dutt Sharma and legal heirs of a pre-deceased daughter were impleaded as respondents in the said TEST.CAS. No. 19 of 2013.

4.5. The 'no objection' of the four (4) daughters to grant of probate was recorded with respect to the registered Will dated 11.10.2012. The legal heirs of the pre-deceased daughter did not enter appearance despite service. Respondent No. 1 alone filed objections to the grant of probate.

4.6. The dispute was, therefore, only between the three (3) sons of late Sh. Khazan Dutt Sharma, i.e., the Petitioners and Respondent No. 1 herein.

4.7. In the aforesaid circumstances, during the pendency of the TEST.CAS. No. 19 of 2013, on 10.09.2015 the Petitioners and Respondent No. 1 arrived at a settlement with respect to their ownership rights in the subject property and also the mode and manner in which they would continue to use and occupy separate portions in the subject property. The substratum of the settlement was that the parties agreed to re-construct the subject property with their own funds and occupy distinct portions of the property as per the terms and conditions of the Compromise Deed.

4.8. The said Compromise Deed was annexed with the application filed under Order 23 Rule 3 CPC i.e., I.A. No. 19380/2015, wherein a prayer was made to the Court to direct the parties to abide by the terms and conditions of the Compromise Deed. The said application was signed by each of the three (3) parties and their respective Advocates. The said application was duly supported with the affidavit of each of the three (3) parties.

4.9. The said application was listed before this Court on 17.09.2015 and each of the three (3) parties appeared before the Court in person along with



their respective counsels and affirmed before the Court that they have entered into the said Compromise Deed. The Respondent No. 1 herein categorically withdrew his objections to the registered Will dated 11.10.2012.

4.10. The Court on 17.09.2015, after recording the stand of the four (4) daughters of late Sh. Khazan Dutt Sharma and in view of the withdrawal of objections by Respondent No. 1, disposed of the petition binding the Petitioners and the Respondent No. 1, herein, to the terms and conditions of the Compromise Deed.

4.11. The parties thereafter acted upon the terms of Compromise Deed and took the following steps:

- (i) The parties demolished the old structure existing on the suit property in the end of the year 2016.
- (ii) The re-construction began in the year 2017, plinth was built and concrete pillars on the ground floor were erected.
- (iii) However, no further work was carried out thereafter and roof over the pillars for the ground floor was not cast. Even the walls have not been constructed on the ground floor.
- (iv) Resultantly, the proposed construction at the ground floor, first floor, second floor and third floor as per the terms and conditions of the Compromise Deed could not be erected.
- (v) The Petitioners stated that the cost of demolition and construction of pillars on the ground floor was borne by Petitioners alone and Respondent No. 1 failed to contribute his 1/3rd share.

5. In the aforesaid circumstances, the Petitioners have filed the present petition contending that the Respondent Nos. 1 and 2 are colluding with each



other and are not permitting any further construction on the subject property in willful violation of the Compromise Deed.

6. Ms. Shalini Sharma, learned counsel for the Respondent No. 1 on instructions from the said Respondent, who was present in Court, states that the Respondent No. 1 is not willing to permit the re-construction.

6.1. She states that the re-construction as per the terms and conditions of the Compromise Deed was to be done in a time bound manner and since the time lines were not adhered to by the Petitioners herein, Respondent No. 1 is not bound by the same. She places reliance upon paragraph 9 and 10 of the Compromise Deed in this regard.

6.2. She further states that the construction which has been undertaken by the Petitioners was without obtaining the prior sanction from the Municipal Corporation of Delhi ('MCD').

7. In response, Mr. S.K. Bhaduri, the learned counsel for the Petitioners states that since the subject property is located in *Lal Dora* area, no municipal sanction is required for erecting the building.

7.1. He relies upon the photograph filed with this petition and the rejoinder to contend that the parties are using their respective premises in the subject property which is in an unfinished condition and are suffering immeasurably due to the violation of the terms of Compromise Deed by Respondent No. 1.

7.2. He states that Respondent Nos. 1 and 2 herein made successive complaints to the Delhi Police objecting to the construction on the subject property in contravention to the terms and conditions of the Compromise Deed. He further states that Respondent No. 1 has threatened Petitioners that he will implicate them in false complaints, if they pursue this matter.



7.3. He states that the Petitioners continue to remain ready and willing to abide by the terms and conditions of the Compromised Deed and are willing to re-construct the subject property.

8. This Court has perused the paper book and considered the submissions of the parties.

9. It would be relevant to refer to the contents of the pleas raised by Respondent Nos. 1 and 2 in the common reply dated 13.09.2019 filed to this petition. The pleas raised can be summarized as under:

9.1. Due to the non-adherence of the timelines for commencing demolition of the existing structure and completion of the new structure, the Compromise Deed has become null and void.

9.2. The Respondent No. 2, i.e., the wife of Respondent No. 1, was not in agreement with the terms of the settlement and therefore, she is well within her rights to object to the demolition and re-construction.

9.3. Late Sh. Khazan Dutt Sharma was not the absolute owner of the subject property, which is an ancestral property. Therefore, he could not have executed the registered Will dated 11.10.2012 and therefore, the TEST.CAS. No. 19 of 2013 was not maintainable in law.

9.4. It is alleged that the Compromise Deed was executed by Respondent No. 1 under influence and pressure of the Petitioners.

9.5. The Shop No. A in the subject property, which existed prior to the demolition, is the only source of income of Respondents, and is required to feed the family. It is stated that they do not have any other financial resources for cost of re-construction.



10. As noted herein before, even after the passing away of Respondent No. 2, Respondent No. 1 persists with the stand that he does not want the subject property to be re-constructed on the grounds which were raised by Respondent No. 2.

11. This Court finds no merit in the submissions and reply of the Respondent No. 1 for the following reasons: -

11.1. *Firstly*, late Respondent No. 2 i.e., the wife of Respondent No. 1 has no right, title or interest in the subject property and therefore, she had no locus to raise any objections to the demolition or re-construction in the subject property.

11.2. *Secondly*, the contention of the Respondent No. 1 that the subject property was not the absolute property of late Sh. Khazan Dutt Sharma, but an ancestral property is also of no effect in law, since in either case, the parties were well within their right to enter into the Compromise Deed. Even if it is assumed that the subject property was an ancestral property, the said property became the absolute property of late Sh. Khazan Dutt Sharma and his legal heirs are well within their rights to record a deed of compromise, which settles their rights in the said property. The Petitioners and Respondent No. 1, similarly in the Compromise Deed arrived at a duly mediated settlement with respect to re-construction and the said compromise is equally effective and binding on Respondent No. 1 even if his contention of 'ancestral property' is accepted. In this regard, it would be relevant to refer to decision of a learned Single Judge of this Court in ***Sunny (Minor) & Anr. v. Sh. Raj Singh & Ors., 2015 SCC OnLine Del 13446***, wherein the Court has held as under:



“7(i). As per the ratio of the Supreme Court in the case of *Yudhishter (supra)* after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latter's paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person ‘A’ inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son, grandson and great grandson had a right equal to ‘A’. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same. There are two exceptions to a property inherited by such a person being and remaining self-acquired in his hands, and which will be either an HUF and its properties was existing even prior to the passing of the Hindu Succession Act, 1956 and which Hindu Undivided Family continued even after passing of the Hindu Succession Act, 1956, and in which case since HUF existed and continued before and after 1956, the property inherited by a member of an HUF even after 1956 would be HUF property in his hands to which his paternal successors-in-interest upto the three degrees would have a right. The second exception to the property in the hands of a person being not self-acquired property but an HUF property is if after 1956 a person who owns a self-acquired property throws the self-acquired property into a common hotchpotch whereby such property or properties thrown into a common hotchpotch become Joint Hindu Family properties/HUF properties. In order to claim the properties in this second exception position as being HUF/Joint Hindu Family properties/properties, a plaintiff has to establish to the satisfaction of the court that when (i.e date and year) was a particular property or properties thrown in common hotchpotch and hence HUF/Joint Hindu Family created.

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12. I may note that counsel for the plaintiffs sought to place reliance upon a certified copy of the written statement filed by the defendants in an earlier suit filed by Smt. Poonam and attention of this Court was drawn to para 5 of the said written statement which as per the plaintiffs shows the admission of the defendants that property No. 93, Village Adhichini, Hauz Khas, New Delhi was an ‘ancestral’ property. This argument of the plaintiffs is liable to be rejected for two reasons. Firstly, this document has not been proved



and mere filing of a certified copy of a written statement in an earlier suit will not amount to proof of the same. Written statement filed in a civil suit is a private document, and this private document in public record has to be proved by summoning the file containing the written statement and thereafter the certified copy being proved and exhibited in accordance with law, and which has not been done. The second reason is that even if we take into account the averments contained in para 5 of the written statement filed by the defendants in the earlier suit, it is seen that the averments only show that the property No. 93, Village Adhichini is an 'ancestral' property as defendant No. 1/Gugan Singh acquired it from his ancestors, however, mere acquiring of property by defendant No. 1 from his ancestor Sh. Tek Chand who died in 1982 will not make the property an HUF property in view of the ratio of the judgment of the Supreme Court in Yudhishter's case (supra) quoted above. Post 1956 the position is that even if Sh. Gugan Singh/defendant No. 1 inherited any property from his father Sh. Tek Chand, inheritance by Sh. Gugan Singh of the property of Sh. Tek Chand in 1982 would be as a self-acquired property of Sh. Gugan Singh and not an HUF property. A paternal ancestral property could be an HUF property only if such property was inherited by Sh. Tek Chand prior to 1956, but that is not the case which has been so pleaded and proved by the plaintiff for discharging the onus in this regard.

(Emphasis Supplied)

11.3. Similarly, the learned Single Judge of this Court in another decision in ***Sh. Surender Kumar v. Sh. Dhani Ram and Ors., 2016 SCC OnLine Del 333***, has held as under:

9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives. Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) there is no such presumption that



inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.

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12. This Court is flooded with litigations where only self-serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.”

(Emphasis Supplied)

11.4. In view of the settled law, notice hereinabove, the contention that the subject property is an ancestral property does not afford any ground to the Respondent No.1 to resile from the compromise recorded before this Court.

11.5. Thirdly, the contention that the subject property is ancestral and not the absolute property of late Sh. Khazan Dutt Sharma is merely an averment which is unsubstantiated from the record. No document in support of the said assertion has been placed on record. On the contrary, the parties herein have



recorded in the Compromise Deed filed before this Court with an affidavit that the subject property is an absolute property of late Sh. Khazan Dutt Sharma. This Court is of the opinion that the said plea is frivolous and the Respondent is estopped from raising the said plea in view of the Compromise Deed, I.A. No. 19380/2015 and order dated 17.09.2015.

11.6. *Fourthly*, the plea of the Respondent No. 1 that he had executed the Compromise Deed under pressure and influence of the Petitioner is *ex-facie* false. The parties have been litigating since the year 2013 and were duly represented by Advocates in the TEST.CAS. No. 19 of 2013. The Compromise Deed has been drafted and drawn up by a legal professional as is evident from the language of the said Deed. The Compromise Deed itself records at Clause 13 that it has been executed by the parties voluntarily. The relevant Clause 13 reads as under:

“13. The present compromise has been arising as volunteer without any force, fraud, or misrepresentation from any corner whatsoever.”

11.7. The terms and conditions of the said Compromise Deed was thereafter, duly pleaded in I.A. No. 19380/2015, which again was duly signed and affirmed by way of sworn affidavit by the Respondent No. 1. The relevant extract of affidavit of Respondent No. 1 reads as under: -

“I, Shiv Kumar S/o Late Khazan Dutt Sharma, aged about 41 years, R/o House No. 11, Aliganj, Kotla Mubarakpur, New Delhi, do hereby solemnly affirm and declare as under: -

1. That I being the respondent No. 2 in the above noted petition, am well conversant with the facts of the case and competent to swear this affidavit.

2. That the accompanying Application has been drafted by my counsel at my instructions, the contents thereof have been read over and explained to me in vernaculars which are true and correct to my



knowledge. *The contents of the said application may kindly be read and treated as part and parcel of this affidavit also as the same are not being reproduced herein for the sake of brevity.”*

(Emphasis Supplied)

11.8. The execution of the Compromise Deed was affirmed by Respondent No. 1 before this Court on 17.09.2015 as well. In these circumstances the plea of the Respondent No. 1 that he signed the Compromise Deed under pressure or influence is bogus and dishonest. The Respondent No. 1 as is evident from the documents executed in the year 2015 had full access to legal advice and as a matter of fact was being duly represented by his independent counsel in the TEST. CAS. No. 19 of 2013.

11.9. The falsity of the aforesaid plea is also evident from the letter dated 15.10.2015 issued by Respondent No. 1 to the SHO, PS Kotla Mubarakpur confirming the execution of settlement.

11.10.*Fifthly*, the plea with respect to lack of financial resources reveals that the underlying intent of Respondent No. 1 is to not bear the expense of re-construction of the subject property and it appears to this Court that he would prefer that the entire cost is borne by the Petitioners herein; and this entire dispute has been raised to avoid the financial obligations assumed under the Compromise Deed.

11.11.*Sixthly*, the assertion that the said agreement has become null and void on account of non-adherence to the timelines for re-construction is also without any merit. It is evident from the record that Respondent No. 2, filed police complaints and objected to demolition and re-construction. The Respondent No. 1 as well subsequently, filed police complaints against the



re-construction. It is, therefore, evident that Respondent Nos. 1 and 2 prevented the performance of the Compromise Deed. Even, otherwise, the said Compromise Deed would not expire by efflux of time in case of delay in re-construction.

11.12.*Seventhly*, the plea that the present contempt petition is barred by limitation is without any merit. The delay in demolition and reconstruction as noticed above was due to the acts and omissions of Respondent Nos. 1 and 2. The construction of the concrete pillars was being carried out in the year 2017 and as stated in the petition, the stalemate occurred in the year 2018 and this petition was filed on 10.08.2018.

12. It is evident from the record of the TEST. CAS. No. 19 of 2013 that the Respondent No. 1 has consistently shown disregard for the orders of the Court and has breached the said orders with impunity. This Court in the said case had passed an *ad-interim* order dated 01.03.2013. The Respondent No. 1 violated the said order and forcibly dispossessed the Petitioners from the room at the first floor of the subject property, which led to the filing of a contempt petition under Order 39 Rule 2A of CPC being I.A. No. 11538/2013. This Court issued notice in the said application on 25.07.2013. However, the said contempt petition was disposed of in view of the Compromise Deed and this was the specific plea in I.A. No. 19380/2015. The Respondent No. 1, therefore, represented to this Court that he has entered into the Compromise Deed with the Petitioner and had the said contempt petition disposed of along with the main petition.

13. The order dated 17.09.2015 passed by this Court is a consent order passed under Order 23 Rule 3 CPC. The I.A. No. 19380/2015, which annexes



Compromise Deed dated 10.09.2015 has been duly signed by the parties and their respective counsel. The Court after satisfying itself with respect to due execution of the application and the Compromise Deed, categorically directed that the parties shall remain bound by the terms and conditions of the Compromise Deed. As is duly recorded in the order dated 17.09.2015, Respondent No. 1 was present in Court and duly confirmed to the Court that he had executed the settlement with the Petitioners. The aforesaid facts evidence that all the ingredients necessary for binding the parties exists in the facts of this case. In these circumstances, the consent order dated 17.09.2015 is seal of the Court super added to the Compromise Deed dated 10.09.2015. Therefore, the said consent order operates as an estoppel against the Respondent No. 1 from resiling from the said Compromise Deed.

14. Even during the course of hearing before this Court 27.04.2023, this Court enquired from Respondent No. 1, if he was ready and willing to abide by the Compromise Deed and allow the Petitioners to re-construct the subject property. He, however, unequivocally stated that he will not permit the re-construction and is willing to face the consequences of contempt.

15. In view of the aforesaid facts and circumstances, there is not an iota of doubt that Respondent No. 1 is guilty of civil contempt within the meaning of Section 2 (b) of the Contempt of Courts Act, 1971. The Respondent No. 1 is guilty of willfully disobeying the consent order dated 17.09.2015 and the terms and conditions of the Compromise Deed dated 10.09.2015, which have been directed to bind the parties.

16. It is a matter of record that the Respondent No. 1 herein has not tendered any apology leave alone an unconditional apology to this Court. As



noted hereinabove, the Respondent No. 1 has sought to contend that the Compromised Deed dated 10.09.2015 does not bind him, a contention which has been considered and rejected by this Court.

17. In this regard, this Court in the case of ***D.K.C v. K.C. & Ors., 2016 SCC OnLine Del 185***, held as under: -

“57. In the opinion of this Court, it is important for parties to appreciate that an undertaking has all the force of an injunction. It is equally as important as an injunction, and it has the same penalties for failure to abide by it as an injunction. It is all too easy for people to promise and all too easy for them to break that promise. Then they, quite rightly, have to face the wrath of the court for having made promises which were not worth the paper which they have signed.

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61. It is the obligation of this Court to uphold the majesty of law and to ensure that judicial orders are not flouted by a party who believes that it shall be the judge of its own case. This Court is of the view that it is the duty of contempt court to ensure compliance of orders and if the respondent no. 1's conduct is not reprimanded, there shall be no rule of law. The Supreme Court has held so in the following judgments:

.....”

(Emphasis Supplied)

18. This Court further in the case of ***Navin Soni v. Munish Soni & Ors., 2022 SCC OnLine Del 1161***, has held as under: -

“21. This Court is now concerned with upholding the majesty of the law and the undertaking given to this Court to vacate the ground floor of the said premises. The underlying purpose of the law of contempt is meant to serve public interest and build confidence in the judicial process. This flows from how the functioning of a democratic society is sustained by the rule of law and wilful violation of the same would enable anarchy. The Supreme Court in the case of In Re: Vinay Chandra, (1995) 2 SCC 584, had delineated the purpose of the law of contempt in building confidence in the judicial process. The relevant paragraph of the said judgement has been reproduced as follows:

“39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In



a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

22. The process of due course of administration of justice must remain unimpaired. Attempts to circumvent or undermine judicial decisions need to be viewed seriously in order to ensure that the functioning of our country is unhindered, especially during turbulent times. It is only the rule of law which not only cements the civilised functioning of a country, but also drives a country towards progress and development. Absence of rule of law or in the presence of utter disregard for the rule of law propels a country towards inevitable ruin. In light of this, it is the duty of the Court



to take a strict view when there is non-compliance of an Order of the Courts, and Courts should not hesitate in wielding the sword of contempt when grappling with a situation pertaining to wilful disobedience.

23. In the instant case, a receipt of Rs.1 Crore signed by both the parties, which was also recorded in the Order dated 21.09.2012, was filed in the Court. This Court notes that there was no whisper on the part of the Respondents stating that they have not received the remaining sum of Rs.80 lakhs since the Order dated 21.09.2012 and that the said grievance has only been raised for the first time when the instant contempt petition was filed. The feeble contention of the learned Counsel for the Respondents that the Respondents were not literate and could not understand the consequences of the consent decree cannot be accepted at this point as it is observed that the Respondents were educated enough to comprehend the undertaking that they had given to the Court. This Court does not appreciate the defences that are being raised by the Respondents to subvert the authority of the Courts."

(Emphasis Supplied)

19. In these proceedings, the Petitioners took recourse to legal proceedings for enforcing their rights under the registered Will dated 11.10.2012. In these proceedings, Respondent No. 1 participated and after taking legal advice entered into a Compromise Deed. The Petitioners took abundant caution and had the Compromise Deed placed on the record of the Court. The Respondent No.1 undertook before the Court that he shall abide by the terms of the Compromise Deed; the Petitioners relied upon the same and had the proceedings disposed of, in terms of the Compromise Deed. The entire legal process was invoked between the parties and after fully understanding their respective rights, the parties herein arrived at a mutual settlement, which also received the imprimatur of the Court. However, the Respondent No.1's wilful defiance shows complete disregard for the legal process, which remain pending from 2012 to 2015. The present recanting by the Respondent No.1



shows that he intended to defraud the Petitioners and the Court; and mislead the Petitioners and the Court into disposing of the TEST. CAS. No. 19 of 2013. If parties are allowed in this casual manner to withdraw and recant from statements made before the Court, the general public will lose faith in the authority of the orders passed by the Courts.

20. Therefore, in these circumstances, where the Respondent No. 1 has not shown any remorse and neither accepted the offer to purge the contempt by permitting re-construction, this Court is of the opinion that in the facts of this case, the imposition of penalty alone will not be sufficient.

21. The Respondent No. 1 has a history of violating the orders of the Court as noted hereinabove. Accordingly, he is sentenced to simple imprisonment for a term of two (2) months and fine of Rs. 2,000/-. In case of default of payment of fine, the Respondent No. 1 shall further undergo 15 days of simple imprisonment.

22. Accordingly, this Court directs the Registrar General of this court to take necessary steps to have the convicted contemnor taken into custody and cause him to be sent to Central Jail, Tihar under appropriate warrant of commitment for undergoing the sentence awarded as above.

23. A copy of this judgment shall also be furnished to the convicted contemnor free of cost. He shall be informed by the Superintendent, Central Jail that he has the right to prefer an appeal against the conviction and order on sentence passed by this Court.

As there is clear breach of the consent order dated 17.09.2015 appropriate directions have to be issued to close the breach.



24. The facts recorded above would indicate that Respondent No. 1 has obstructed the implementation of the terms and conditions of the Compromise Deed. After demolition of the earlier shops, the parties agreed to re-construct the ground floor, first floor, second floor and third floor in the following manner:

S.no.	Area of Subject Property (Post settlement)		Right of access given to the Party	Cost of Construction to be borne by
1.	Ground Floor	Shop A (5.75 ft. x 10 ft.)	Shiv Kumar	To be borne equally by all the three parties
		Shop B (5.75 ft. x 10 ft.)	Om Prakash	
		Shop C (5.75 ft. x 10 ft.)	Ram Kishan	
2.	Terrace (Covering the 3rd Floor)	All three parties have common rights		
3.	Staircase (3ft. vacant area adjacent to Shop A)			
4.	First Floor (Covering all the 3 shops)	Om Prakash (Sole and absolute owner)	Om Prakash	
5.	Second Floor (Covering the 1st Floor)	Ram Kishan (Sole and absolute owner)	Ram Kishan	
6.	Third Floor (Covering the 2nd Floor)	Shiv Kumar (Sole and absolute owner)	Shiv Kumar	

Note –

1. Cost of demolition of the existing structure to be borne equally by the parties.
2. Staircase to be constructed by shifting all the walls of Shop A, B and C approximately by 2^{1/2} to 3 ft. (Clause 3 of the Settlement agreement)

24.1. Currently, as is evident from the photograph placed as Annexure P-4 to the petition, there are pillars standing on the ground floor (without any roof



and walls) and each of the party is continuing to run a shop from this unfinished ground floor by a make-shift arrangement and has also encroached on the public land. The non-implementation is therefore also leading to public nuisance and unauthorized encroachment.

24.2. The Supreme Court in ***Mohammad Idris and Another v. Rustam Jehangir Babuji and Others***, (1984) 4 SCC 216, has held as under: -

“On merits, the learned Counsel submitted that the undertaking given was not in respect of the property concerned and that in any case the learned Single Judge was not justified in giving certain directions in addition to punishing the petitioners for contempt of Court. We find no substance in the submissions made by the learned Counsel. There was a clear breach of the undertaking given by the petitioners and we are of the opinion that the Single Judge was quite right in giving appropriate directions to close the breach. The special leave petition is, therefore, dismissed.”

(Emphasis Supplied)

24.3. The Supreme Court in ***State of Orissa Vs. Ashwani Kumar Ballar Singh***, (2006) 6 SCC 759, has held as under: -

“8. The learned counsel, however, may be correct in contending that while exercising its contempt jurisdiction, the High Court may, in a given case, issue appropriate direction, although no penal action is taken against the contemnors. But, even in respect thereof, a finding would be required to be arrived at to the effect that the contemnors have disobeyed the order of the Court. Only when such a finding is arrived at, the Court may in exercise of its inherent jurisdiction put the parties to the same position as if its order was not violated.”

(Emphasis Supplied)

24.4. In view of the aforesaid judgments and facts of the case, this Court is issuing the following directions to ensure compliance of the Compromise Deed.



- i. The Petitioners are at liberty to construct and complete the ground floor, first floor and second floor expeditiously as per the terms and conditions of the Compromise Deed.
- ii. The $1/3^{\text{rd}}$ cost of the construction of the ground floor, which is to be borne by Respondent No. 1 shall be borne by the Petitioners initially. The Respondent No. 1 will not be entitled to occupy the shop at the ground floor or use the stair case until he makes the payment of his $1/3^{\text{rd}}$ cost to the Petitioners. The remaining $2/3^{\text{rd}}$ cost of construction for the ground floor is to be borne by the Petitioners as per the terms of the Compromise Deed.
- iii. The cost towards construction of the first floor and second floor will be entirely borne by Petitioner No.2 and Petitioner No.1, respectively as per the terms of the Compromise Deed.
- iv. The Respondent No. 1 shall be entitled to construct the third floor only after he has fully paid the $1/3^{\text{rd}}$ costs towards the ground floor.
- v. The Petitioners will maintain the accounts of the total cost incurred in completing the construction of the ground floor and the staircase, after the passing of this order. It is directed that the cost of construction material for entire ground floor (including the stair case) shall be subject to proof of proper tax invoice and payments made to the vendors through banking channels. The payment of cost incurred towards construction labour shall be admissible in cash, subject to maximum of 30% of the total construction cost.



vi. It is clarified that the cost incurred in demolition and re-construction during the years 2016-17, shall not be included or recoverable from the Respondent No.1.

vii. The cost recoverable from Respondent No.1, towards construction of the ground floor and staircase will be towards construction undertaken (material + labour) after the passing of this order.

viii. The SHO, P.S. Kotla Mubarakpur is being impleaded as Respondent No. 3 to this petition and is directed to ensure that there is no interference by the Respondent No. 1 or his family members or his friends in the re-construction of the subject property in pursuance to this order. It is directed that, if any, complaint is received from the Respondent No. 1 or his family members or their friends during the period of construction no action will be taken on the said complaint, without the leave of this Court. The Petitioners are directed to file an amended memo of parties within one (1) week.

ix. The Petitioners are directed to carry out the construction in accordance with the municipal law. In the event, the municipal sanction is required for the subject property, the Petitioners will obtain the said sanction and for that purpose, MCD is directed to process the application of the Petitioners for municipal sanction without insisting on the signatures of Respondent No. 1 on the said application. The Compromise Deed dated 10.09.2015 and the order dated 17.09.2015 shall constitute the consent of Respondent No. 1 for the said purpose and MCD will take note of the same in its records.



25. It is further made clear that if after serving the sentence of the aforesaid period of two (2) months, the Respondent No. 1 persists in violating the consent order dated 17.09.2015, it will amount to a fresh contempt of the order dated 17.09.2015 and directions issued in this order. Any further violation will be treated as an aggravated contempt.

26. It is further directed that in case of non-compliance of the aforesaid directions by the Respondent No.1, the Petitioners shall be at liberty to institute execution proceedings before appropriate Court for implementation of the aforesaid directions and the terms of the Compromise Deed.

27. With the aforesaid directions, the present contempt petition is disposed of.

28. A copy of this judgement be sent to the newly impleaded Respondent No. 3 i.e., SHO, P.S. Kotla Mubarakpur for compliance within one (1) week. A copy of the judgement be also sent to the learned Standing counsel, GNCTD for onward service to Respondent No. 3.

MANMEET PRITAM SINGH ARORA, J

JULY 18, 2023/rk/aa/asb