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

+ **CCP(CO.) 4/2019**

M L AGGARWAL

.....Petitioner

Through: **Ms. Priyanka Sethia and Ms. Poonam
Shekhawat, Advocates.**

versus

PUNJAB NATIONAL BANK

.....Respondent

Through: **Mr. Ajay Shanker with Sh. Dinesh
Kumar Pandey, Manager, PNB.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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01.08.2024

1. The instant contempt petition under Section 11 and 12 of the Contempt of Courts Act, 1971 has been filed on behalf of the petitioner/ex-management of the respondent Company (in liquidation) seeking initiation of contempt proceedings against Punjab National Bank/respondent for the alleged violation of the order dated 6th February, 2019 passed by the Predecessor Bench of this Court.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had filed an application bearing CA no. 1478/2018 under Rule 6 and 9 of the Company (Courts) Rules, 1959 seeking identification and removal of the stocks and raw material lying in the premises of the Company (in liquidation) situated at land and building measuring 71 Bigha, 13 Biswa situated at Village Bir Plasi No. 101, Pargana Plasi, Tehsil Nalagarh, District Solan, Himachal Pradesh (hereinafter “subject



premises”).

3. It is submitted that in the aforesaid application it was specifically alleged that vide letter dated 21st August, 2018, Punjab National Bank (hereinafter “PNB”) issued a notice of sale only *qua* the plant and machinery lying at the subject premises of the Company (in liquidation) and did not mention about the other assets, spare parts and raw material as well as stock of the Company (in liquidation) which was not a part of the auction to be carried out by PNB.

4. It is further submitted that the said application was listed before the Predecessor Bench of this Court on 6th February, 2019 and on the said date, the following order was passed:

“...Learned counsel for the applicant pleads that the sale notice deals with only plant and machinery and land and building. However, he submits that there is a stock and inventory worth about Rs. 2 crores also lying in the building which has not been described in the advertisement and in case, a sale is affected by PNB as advertised, buyer/auction purchaser would be entitled to take away the said stock and inventory without having paid for the same. In case, there is any worthy stock or raw material lying, they may not be sold by PNB based on this notice...”

5. Learned counsel appearing on behalf of the petitioner further submitted that vide the aforesaid order, PNB was directed to not sell any worthy stock or raw materials lying in the subject premises, and despite passing the said directions, PNB handed over the possession of the subject premises along with the other assets, spare parts and raw material as well as stock lying therein on 17th December, 2018 to the auction purchaser and the said action is contemptuous and shows wilful disobedience of the order of the Predecessor Bench of this Court.



6. Learned counsel appearing on behalf of the petitioner also submitted that when the matter was listed on 19th December, 2018 and 6th February, 2019, when the aforesaid orders were passed PNB did not disclose the fact that the auction has already taken place, therefore, the official of the PNB has violated the directions issued by the Court and contempt proceedings may be initiated for not disclosing the facts.

7. *Pet contra*, learned counsel appearing on behalf of PNB along with the Officer Mr. Dinesh Kumar Pandey, who appeared in pursuance of order dated 23rd April, 2024, vehemently opposed the instant petition.

8. It is submitted that the instant petition is nothing but gross misuse of the process of law as the petitioner has failed to put forth any substantial argument with respect to the facts to show as to how the alleged contemnor has violated and not complied with the order dated 6th February, 2019 passed by the Predecessor Bench of this Court. It is also submitted that PNB had given possession of the subject premises on 17th December, 2018 which was much prior to the order dated 6th February, 2019.

9. It is also submitted that if any counsel appeared on the said date and did not disclose the aforesaid facts, the same doesn't attract the applicability of the provision of Sections 11 and 12 of the Contempt of Courts Act, 1971. If any fact was not disclosed earlier, the same was not intentional and only due to a *bona fide* mistake committed by the earlier counsel appearing on behalf of the party. It is further submitted that PNB has filed its reply to the instant contempt petition and reliance is being placed upon paragraph nos. XV, XVI and XVII in support of the arguments. Therefore, the instant petition may be dismissed being devoid of any merits.

10. During the course of arguments, the petitioner has relied upon the



contents of the rejoinder to the reply filed by PNB dated 3rd September, 2019. The same is taken on record.

11. Heard learned counsel appearing on behalf of the parties and perused the material available on record.

12. It is observed that in paragraph 2 of the contempt petition, the petitioner has admitted that *vide* letter dated 21st August, 2018, PNB had issued a notice of sale for the plant and machinery lying in the subject premises. Further, the respondent bank (PNB) had also filed an application before the Debt Recovery Tribunal, Chandigarh (hereinafter “DRT”) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, seeking recovery of approximately Rs. 220 Crores which was decided *vide* order dated 28th June, 2017 and recovery certificate had also been issued thereto.

13. As per the aforesaid recovery order of the DRT, PNB has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter “SARFAESI”) for selling the mortgaged property and an auction has already taken place *qua* the subject premises *vide* publication dated 2nd August, 2017 and 18th August, 2017 and last date of receipt of EMD was 2nd September, 2017 and bid date was 6th September, 2017.

14. The respondent PNB, who is a secured creditor, had also moved an application bearing no. CO. APPL 1501/2017 under Section 446 (1) of the Companies Act, 1956 read with Section 9 of the Company (Courts) Rules, 1959 and prayed to remain outside the winding up proceeding for enforcing its security interest in the secured assets. The said application was allowed *vide* order dated 3rd April, 2018 and PNB was directed to file an affidavit of authorized representative of the bank.



15. After the due permission of this Court *vide* order dated 3rd April, 2018, the respondent PNB sold the mortgaged subject premises in the name of the company (in liquidation).

16. As per the settled position of law, the condition '*willful disobedience*', which is the most essential ingredient, should be proved by the petitioner in order to be successful in the contempt proceedings against the alleged contemnor. Further, the term '*willful disobedience*' is not a mere formality which can be established by making certain assumptions, rather needs to be proven *in toto*. The same has also been held by the Hon'ble Supreme Court in the judgment titled *Niaz Mohd. v. State of Haryana*, (1994) 6 SCC 332 and *Anil Ratan Sarkar v. Hirak Ghosh*, (2002) 4 SCC 21 and therefore, the interpretation of the said term is well settled.

17. Therefore, this Court needs to be satisfied beyond doubt that PNB willfully disobeyed the orders passed by the Predecessor Bench of this Court and therefore, liable to be punished under the Contempt of Courts Act, 1971.

18. It is noted that the plant and machinery lying at the premises of the company and the sale certificate dated 12th December, 2018 was issued in favour of the auction purchaser and the order impugned herein was passed by the Predecessor Court dated 6th February, 2019.

19. Upon perusal of the aforesaid facts and circumstances, this Court is of the view that the contentions of the petitioner cannot be accepted to make out a case for contempt against the respondents. There is nothing on record to show that the particular direction has been out rightly violated by the respondents. As observed in the preceding paragraphs, it is admitted that the act which the petitioner herein alleges to be contemptuous had already taken



place prior to the passing of the order dated 6th February, 2019, thus, it is apparent on the face of the record that no act of contempt has been taken place on part of PNB.

20. Therefore, taking into consideration the above discussions, it is held that the respondents have not violated or willfully disobeyed the order/directions passed by the Predecessor Bench of this Court as the action alleged to be an act of contempt admittedly took place prior to the passing of the order dated 6th February, 2019. It is pertinent to mention here that a particular act which has been done prior to the passing of the order cannot be said to be an act of contempt as the same does not falls within the ambit of the Contempt of Courts Act, 1971. The crux of the same lies in the fact that as per the settled position of law, only intentional disobedience may be considered as contemptuous and nothing otherwise.

21. Further, this Court does not find any force in the arguments of the petitioner that non disclosure of the facts at the time of proceedings on 6th February, 2019 is an act of contempt as the same is not covered by the provisions of Contempt of Courts Act, 1971 as the said enactment is applicable only where the parties willfully disobey the directions of the Court. Moreover, as reiterated by the Hon'ble Supreme Court as well as this Court in a catena of judgments, 'wilful' disobedience of a judicial order by a contemnor excludes casual, accidental, *bona fide* or unintentional acts or genuine inability and the same does not encompass involuntarily or negligent actions. The act has to be done with malice or without a justifiable excuse or stubbornly, obstinately or perversely which is not the case in the instant matter.

22. In view of the above facts and circumstances, this Court is of the



considered view that that in terms of the admitted position of facts that no auction or sale has occurred after passing of the order dated 6th February, 2019, there is no violation or willful disobedience by PNB.

23. Accordingly, this Court is not inclined to allow the instant contempt petition and the same stands dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

24. The Officer appeared in person is discharged.

CHANDRA DHARI SINGH, J

AUGUST 1, 2024

Rk/ryp/av

[Click here to check corrigendum, if any](#)