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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 916/2019 & CM APPL. 3943/2023, CM APPL. 44046/2021**

ARUN KHANNA

..... Petitioner

Through: Mr. Sudhir Sharma, Advocate
with Petitioner in person.
Mob: 7673323196
Petitioner through SPA holder
Smt. Vaneeta Khanna in person.

versus

VINOD KHANNA

..... Respondent

Through: Mr. Ashwin Vaish, Advocate.
Mob: 9650022033
Email: ashwinvaish@gmail.com

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Date of Decision: 15th February, 2024

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed seeking initiation of contempt proceedings against the respondent alleging that the respondent has not complied with the order dated 20th February, 2018 passed by this Court in *FAO No. 51/2018*, wherein this Court had recorded the settlement between the parties vide settlement deed dated 20th February, 2018.
2. On the last date of hearing, this Court had directed both the parties to file their short written note.



3. The wife of the petitioner, as well as the learned counsel for the petitioner, has made extensive submissions before this Court. The issue raised by the wife of the petitioner, as well as the learned counsel for the petitioner, is that there is illegal construction and non-compoundable deviations pending in the property in question. She further submits that there is no water supply from the Delhi Jal Board (“DJB”) and has also raised the objection with respect to non-existence of an independent electricity meter on the portions, which are in the possession of the petitioner, i.e., first and second floor of the property in question, viz. Property bearing no. 39/71, Punjabi Bagh West, New Delhi, admeasuring 1088 Sq. Yards (“subject property”). She further submits that the sanitary fittings, tiles in kitchen and bathroom, which have been put by the respondent, are substandard and are not of the same standard used in the portions, which were under the ownership of the respondent viz. the ground floor and the third floor of the subject property.

4. The wife of the petitioner has further raised an objection that there is no modular kitchen that has been provided in the portions under the ownership of the petitioner. Thus, she submits that no Completion Certificate has been issued qua the property on account of the deviations. Therefore, it is submitted that the petitioner is not able to sell the portions of the property, which have fallen to the share of the petitioner.

5. Learned counsel appearing for the respondent on the other hand, submits that the property in question is divided into three portions viz. portions ‘A’, ‘B’ and ‘C’. He submits that portions ‘A’ and ‘B’ are not subject matter of the present petition and that the present petition is concerned only with portion ‘C’ of the said property.



6. He further submits that the aforesaid property consists of four floors, wherein first and second floor have fallen to the share of the petitioner and ground and the third floor have fallen to the share of the respondent. He submits that the respondent has already sold his portions of the property viz. the ground floor and third floor.

7. I have heard the wife of the petitioner, the petitioner and learned counsel for the petitioner, along with learned counsel for the respondent.

8. At the outset, this Court notes the order dated 20th February, 2018 passed in *FAO No. 51/2018*, which is the subject matter of the present proceedings, that reads as under:

“The respondent had sought to argue the case himself as he did not have a counsel. The Court appoints Mr. Pankaj Seth, Advocate as Amicus Curiae. He states that the parties have since interacted between themselves and have settled the lis amicably in terms of the Settlement Deed signed today.

A copy of the Settlement Deed has been handed over. It is supported by affidavits of undertaking by Mr. Arun Khanna and Mr. Vinod Khanna, the contesting parties.

The Settlement Deed and the Undertakings are taken on record. The learned counsel for the appellant and Mr. Pankaj Seth, Advocate have identified the parties, who are present in Court. The Undertakings are accepted. The appeal is disposed off in terms of the Settlement Deed.

Mr. Ashwin Vaish, the learned counsel for the appellant clarifies, upon instructions, that Clause-5 of the said Settlement Deed confers absolute freedom to the Second Party to sell off his share of two floors independently, without any hindrance, when they are delivered to him. However, the First Party would have a lien of only Rs. 25 lacs on the sale consideration.

The Court expresses its gratitude to the learned amicus curiae for his assistance.

The appeal is disposed-off in the above terms.”

9. Perusal of the aforesaid order shows that the aforesaid petition was disposed of on the basis of a Settlement Deed dated 20th February, 2018



between the parties, which reads as under:

“SETTLEMENT DEED

That the present settlement deed dated 20.02.2018 is being entered into today at New Delhi.

Between

Shri Vinod Khanna, S/o late Shri H.L. Khanna, Appellant, herein after referred to as first party (which include his legal heirs, nominees appointees, successor and legal representative).

Shri. Arun Khanna S/o Late Shri H.L. Khanna Respondent No. 1 herein after referred to as second party (which includes his legal heirs, nominees, appointees, successors and legal Representative).

The following terms of settlement between both parties are by way full and final settlement in respect of the dispute between the parties. The same are as under:

1. *That first party shall construct four floors of 1600 sq ft each on portion 'C', which is the center portion and shall include so much area of portion 'B' of plot no. 39, road No. 71, Punjabi Bagh, New Delhi, which may be necessary to ensure 1600 Square Feet per floor. That the Second Party undertakes to extend all possible cooperation in fulfilling the terms of this agreement and will create no hindrance in the permission to be secured and works to be carried out by the First Party. It goes without saying that in case the Authorities create any legal hindrance in construction of the 3rd floor, the First party shall not hold the Second party responsible for the same and shall hand over First and Second floor as and when ready within the stipulated period.*

2. *That it shall be the sole responsibility of First Party to get four Floors constructed on the said portion and get the plans sanctioned and do all what is required for construction and handing over possession of the said property with his funds and it goes without saying that 2nd party shall extend all possible cooperation in doing so.*

3. *That the First Party shall complete the construction of four floors on the said portion with his funds within 18 (eighteen) months starting from 09.04.2018 and ending on 30.09.2019.*

4. *That after completion of construction of four floors on the said portion, First Party shall hand over peaceful, physical and vacant possession of the said stated 1st and 2nd floors, along-with completion certificate to Second Party.*

5. *That the Second Party after taking over possession of First and*



Second Floor shall sell either of the two floors and shall pay Rupees Twenty Five Lacs to First Party by way of full and final settlement, before registration of the sale deed pertaining to the said sale of the floor and prior to selling of the Second Flat.

6. *That it is also agreed between the parties that the First Party shall not put to use or part with the possession of or create any Third Party interest in respect of built up Ground' Floor of portion C before handing over possession of the First and Second Floor to the Second Party.*

7. *That it is also agreed between the parties that before handing over possession of First and Second Floor, First Party shall ensure that there will be no lien or encumbrance of any kind on the said two floors.*

8. That First Party undertakes that he shall use same quality of material fittings, fixtures on all Floors of the agreed portion.

9. *That it is also agreed between the parties that Ms, Vaneeta Khanna W/o. Second Party, shall have visiting rights to the on-going construction in agreed portion for inspection.*

10. *That in the view of the aforesaid settlement terms it is hereby agreed and undertaken by the parties that they shall cooperate with each other in withdrawal of all pending civil/criminal cases and complaints before the Authorities, if any, and/or secure quashing/withdrawal of criminal case, if any, against each other within a span of two weeks from today.*

11. *That the suit bearing no. 612987/2016, titled, Arun Khanna v. Vinod Khanna and another shall stand compromised by virtue of this Deed and all misc applications therein shall stand disposed of in terms herein recorded. That the present settlement deed has been executed by both parties willingly without fraud or coercion and after reading the terms of the same.*

xxx xxx xxx”

10. Reading of the aforesaid Settlement Deed demonstrates that construction in the subject property was required to be done by the respondent herein, to be completed by 30th September, 2019. Further, after completion of the construction of the four floors in the subject property, the respondent was to handover the peaceful and vacant possessions of the first and second floor to the petitioner herein. Further,



it is also noted that the respondent herein by way of the Settlement Agreement had undertaken to provide the same quality of material fittings and fixtures on all the floors.

11. The undisputed fact is that the respondent herein has already completed the construction of the four floors in terms of the Settlement Agreement and has duly handed over the two floors viz. first and second floor to the petitioner herein. Further, the respondent has already sold his portions of the property viz. the ground and the third floor.

12. However, contentions have been raised by the petitioner that the material fittings used by the respondent on the floors that have fallen to the share of the petitioner, are of substandard quality and not of the same quality as fitted in the portions that had fallen to the share of the respondent.

13. Having heard learned counsel for the petitioner as well as the petitioner in person and wife of the petitioner, it comes to the fore that disputed questions of facts are being raised before this Court. This Court in the present proceedings cannot undertake the exercise as to whether the material fittings and fixtures, that have been fixed by the respondent on the first and second floor of the subject property are of substandard quality and different from the quality as installed in the other floors that had fallen to the share of the respondent. The fact remains that the construction of the property was completed in the year 2019 and subsequently the respondent has already sold his portions of the property. Therefore, it is not possible for this Court to assess in the present proceedings as to the quality of the fittings and fixtures used in the floors under the ownership of the petitioner. This Court cannot



adjudicate upon the issue of wear and tear, as raised by the petitioner, as regards the fittings and fixtures installed on their floors, as to whether such wear and tear has taken place due to substandard material or due to lapse of time, as undisputedly the construction was completely approximately five years ago.

14. This Court records the contention of the petitioner that there is unauthorized construction in the property in question, as there are deviations in the construction from the sanctioned building plan. The petitioner has contended that due to the unauthorized construction in the property, the petitioner has been unable to sell the floors that have fallen to this share.

15. This Court also records the submission made by learned counsel for respondent, upon instructions from the respondent who is present in court, that the respondent shall assist the petitioner in selling his portion in the subject property. He further submits that the respondent has been able to sell his portion in the property and that he has buyers who would be willing to purchase the floors under the ownership of the petitioner. However, the petitioner has rejected the said offer on the ground that he would not get the market price of the property. Therefore, the contention of the petitioner that he is unable to sell his portion of the property, holds no water, and cannot be considered in the present proceedings.

16. As regards the contention of the petitioner with respect to the non-issuance of the Completion Certification on account of deviations etc., this Court notes that the petitioner has already approached the Appellate Tribunal: Municipal Corporation of Delhi (“ATMCD”) in this regard. The learned ATMCD is already dealing with the issue as regards any



deviations and unauthorized construction that may exist in the property in question.

17. As regards the contention of the petitioner with respect to the water connection from DJB as well as the electricity connection from the BSES, the petitioner is directed to approach the concerned authorities, who may consider the application made by the petitioner in this behalf, in accordance with law.

18. In view of the aforesaid discussion, it is manifest that substantial compliance of the order in question and the settlement deed, has been done by the respondent.

19. Law in this regard is very clear that disputed questions of fact cannot be dealt by a contempt court. Thus, Supreme Court in the case of ***Jhareswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others, (2002) 5 SCC 352*** has held as follows:

“xxx xxx xxx

11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. 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.
xxx xxx xxx”

(Emphasis Supplied)

20. This Court also notes that it has been held time and again that mere unintentional disobedience is not enough to hold anyone guilty of contempt and in absence of willful disobedience, the court will not hold a person guilty, unless the contempt involves a degree of fault or misconduct. Thus, Supreme Court in the case of **Dinesh Kumar Gupta Versus United India Insurance Company Limited and others, (2010) 12 SCC 770** has held as follows:

“xxx xxx xxx

23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the



disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

24 [Ed.: Para 24 corrected vide Official Corrigendum No. F.3/Ed.B.J./146/2010 dated 14-12-2010.] . To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali v. Supdt., District Jail [1987 Cri LJ 1845 (Gau)] as also in B.K. Kar v. High Court of Orissa [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar v. Rani Sonabati Kumari [AIR 1954 Pat 513] and N. Baksi v. O.K. Ghosh [AIR 1957 Pat 528].

xxx xxx xxx”

(Emphasis Supplied)

21. Likewise, cautioning that exercise of powers under the Contempt of Courts Act shall have to be used rather sparingly after addressing itself to the true effect of the contemptuous conduct, Supreme Court in the case of ***Mrityunjoy Das and Another Versus Sayed Hasibur Rahaman and Others, (2001) 3 SCC 739***, has held as follows:



“xxx xxx xxx

13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide *Murray & Co. v. Ashok Kr. Newatia* [(2000) 2 SCC 367 : 2000 SCC (Cri) 473]). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of this Court in *Murray* case [(2000) 2 SCC 367 : 2000 SCC (Cri) 473] in which one of us (Banerjee, J.) was party needs to be noticed: (SCC p. 373, para 9)

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus would forfeit the trust and confidence of the people in general.”

xxx xxx xxx”

(Emphasis Supplied)

22. Noting the aforesaid, no further orders are required to be passed in the present contempt petition.
23. Accordingly, the present contempt petition is disposed of, along with pending applications.

MINI PUSHKARNA, J

FEBRUARY 15, 2024

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