



\$~97

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 20th August, 2024**
+ **CONT.CAS(C) 1293/2024**

SHALINI THAKURPetitioner
Through: **Mr.Gaurav Mishra, Advocate.**

versus

SHASHANK THAKURRespondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J.(ORAL)

CM APPL. 47424/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CONT.CAS(C) 1293/2024

3. The petitioner is seeking initiation of contempt proceedings against the respondent for wilfully violating the order dated 19.08.022023 andfor the deliberate non-compliance with the directions issued thereafter by the learned Metropolitan Magistrate-02 (Mahila Court), South, Saket Courts, New Delhi ["MM"] in complaint case bearing CT Cases 837/2023.
4. No one is present for the respondent despite sending advance notice.
5. The learned counsel for the petitioner submits that the learned MM *vide* order dated 19.08.2023,directed the respondent, under



Section 23 of the Protection of Women From Domestic Violence Act, 2005 [“**DV Act**”], to deposit a sum of Rs. 1,98,011.80 paisa into the petitioner’s bank account within a week, thereof so as to enable the complainant/petitioner to repay the gold loan amount before the maturity date.

6. It appears that the respondent assailed the aforesaid order in Criminal Appeal bearing No. 262/2023, which was dismissed by the learned Additional Sessions Judge-05, South District, Saket Courts, Delhi *vide* judgment dated 15.04.2024 and thereby the directions passed by the learned MM were upheld.

7. Evidently, the petitioner has approached this Court without first seeking enforcement of the aforesaid order from the learned MM. It is the consistent opinion of this Court that not every breach of a judicial order or directions passed by the Court warrants contempt proceedings under the Contempt of Courts Act, 1971. The contempt powers must be exercised sparingly and only in exceptional cases where the respondent/contemnor is guilty of something which is unconscionable and exhibiting grave misconduct.

8. Faced with the above said situation, learned counsel for the petitioner relied on decision in the case of **HSBC PI Holdings (Mauritius) Limited v. Pradeep Shantipershad Jain¹** and it was urged that the contempt proceedings and execution proceedings are two separate remedies and can be invoked simultaneously. Reference was also invited to decision in the case of **Rama Narang v. Ramesh**

¹ MANU/SC/0840/2022



Narang², wherein it was held that merely because an order or decree of Court is executable, the same would not take away the Court's jurisdiction in contempt proceedings. However, in the same case it was also held that much would depend on the facts and circumstances of the case or the contextual background in which the Court may or may not decide to exercise contempt jurisdiction. It was reiterated that normally, the parties should resort for execution of the decree or implementation of an order, which is the effective alternate remedy in law.

9. This Court may also invite reference to a decision in the case of **R.N.Dey & Ors. v. Bhagyabati Pramanik & Ors.**³, wherein a petition was filed under the Contempt of Courts Act, 1971 for non-payment of the amount awarded consequent to acquisition of land and it was held as under :

“7.....the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. ...”

10. It was further held that:

“8. ...the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree.”

11. Avoiding a long academic discussion, we may refer to the decision in **Soorajmull Nagarmull v. Brijesh Mehrotra & Ors.**⁴,

²(2006) 11 SCC 114

³(2000) 4 SCC 400

⁴ 2021 SCC Online SC 1252



where the proceedings arose under the Land Acquisition Act, 1894. The Supreme Court observed that since the Land Acquisition Act, 1894, is a comprehensive code in itself and provides a detailed procedure for acquisition of land and payment of compensation based on common law principles of justice, equity and good conscience, the parties should seek remedies under the same Act, rather than expanding the scope of the directions by filing contempt petitions.

12. Before parting with this cases, insofar as the decision in the case of *HSBC PI Holdings (Mauritius) Limited (supra)* is concerned, the same is distinguishable since the respondent/contemnor in the aforesaid was in deliberate and wilful disobedience of the judgment/order passed by the Supreme Court in Civil Appeal, as well as in the pending proceedings before the Supreme Court and also involving an issue of valuable foreign exchange towards payment of debts impacting public interest.

13. In view of the above, although the present petition is maintainable, however, this Court may refrain from passing any directions for now. The petitioner shall be at liberty to approach the learned MM and seek appropriate directions for enforcement of its order in accordance with law.

14. The present petition is accordingly dismissed without prejudice.

DHARMESH SHARMA, J.

AUGUST 20, 2024

Sadiq