

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 1st May, 2023**
+ CS(OS) 153/2007
SMT. ASHA GUPTA Plaintiff

Through: Mr. Rajiv Talwar and Mr. Diwakar
Sinha, Advocates

versus

SHRI SANDEEP GUPTA AND OTHERS Defendants
Through: Mr. Rajat Sehgal, Advocate for D-
1, D-2 and D-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 2104/2022 (Under Order XXXIX Rule 2A)

1. The instant application under Order XXXIX Rule 2A read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the defendants no. 1 and 2/applicants seeking the following reliefs:

"A. Pass an Order taking cognizance under Order 39 Rule 2A of the Civil Procedure Code, 1908 of the disobedience of Order dated 04.10.2013 passed by this Hon'ble Court in the present Suit;

B. Pass an Order under Section 151 of the Civil Procedure

Code, 1908 directing the police officials to ensure the implementation of the Order dated 04.10.2013 passed by this Hon'ble Court in the present Suit;

C. Pass an Order directing Mr. Naresh Chopra to vacate the Property located at 22, Rajpur Road, Civil Lines Delhi – 110054;

D. Pass an Order directing Mr. Naresh Chopra to remove the lock from the main gate and/or any other lock(s) on the Property located at 22, Rajpur Road, Civil Lines Delhi – 110054;

E. Pass an Order restricting Mr. Naresh Chopra from committing acts/ommissions that result in violation of the Order dated 04.10.2013 passed by this Hon'ble Court in the present Suit;

F. Pass an Order restricting Ms. Sangeeta Kalevar from taking physical possession of the Property located at 22, Rajpur Road, Civil Lines Delhi - 110054;

G. Pass an Order directing Mr. Naresh Chopra and Ms. Sangeeta Kalevar to deposit the key(s) to the Property located at 22, Rajpur Road, Civil Lines Delhi - 110054 with this Hon'ble Court till the pendency of the present Suit;

H. Pass any other further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this Hon'ble Court.”

2. The learned counsel appearing on behalf of the applicants submitted that the captioned suit has been filed on behalf of the plaintiff against the defendants seeking *inter alia* the cancellation of the registered Sale Deed dated 12th January 2006. In the said suit proceedings, the Predecessor Bench of this Court granted an interim injunction restraining the defendants from selling, encumbering, alienating and /or parting with possession of the suit property vide the order dated 29th January 2007.

3. It is submitted that on 2nd October 2013, during the pendency of the suit and operation of the interim order, the defendant no. 2 visited the suit

property and found a Notice Board put up by the plaintiff and her Power of Attorney holder on which they had written that the said suit property belongs to the plaintiff, Ms. Asha Gupta (now deceased). It is submitted that the letter was put up with the *mala fide* intention of selling, alienating the suit property to the detriment of the applicants. Therefore, an interim application bearing I.A. No. 16064/2013 under Order XXXIX Rule 2 of the CPC was filed by and on behalf of the defendant no. 2 seeking *inter alia* issuance of directions to the plaintiff to remove the aforementioned Notice Board.

4. It is submitted that during the course of the proceedings on 4th October 2013, the counsel appearing on behalf of the plaintiff made a statement before the Predecessor Bench that Mr. Naresh Chopra is the duly constituted Power of Attorney of the plaintiff, late Ms. Asha Gupta. The counsel for the plaintiff also assured that the Notice Board put up on the suit property would be removed. It is submitted that the Power of Attorney holder is bound by the statement made before the Court and hence, is also bound to obey the same.

5. The learned counsel submitted that the alleged contemnor/Power of Attorney holder of the deceased plaintiff wilfully, deliberately and intentionally disobeyed the order dated 4th October 2013 passed by the Predecessor Bench of this Court. It is submitted that he has directed the plaintiff's security guards to lock the main gate of the property, he visits and occupies the suit property every day, and moreover, he has converted a room in the suit property to his personal office as a property dealer.

6. It is further submitted that the applicants apprehend that the Power of Attorney holder is looking for prospective buyers and has entered into

transactions for the sale of the suit property on behalf of the deceased plaintiff to the detriment of the applicants. Therefore, it is prayed that this Court may take cognizance of the wilful disobedience of the order dated 4th October 2013 by the Power of Attorney holder of the deceased plaintiff.

7. *Per contra*, the learned counsel appearing on behalf of the plaintiff/non-applicant vehemently opposed the contentions made in the instant application, specifically the averments made in paragraph 5, 7 and 9 thereunder. It is submitted that as per the reply given by the alleged contemnor to the application, in paragraph 4 sub-paras (a.) to (d.), the alleged contemnor has not used the suit property for any personal use and has not converted any room of the said property as his personal office as alleged in the instant application.

8. Learned counsel appearing on behalf of the non-applicant also relied upon and referred to paragraph 10 of the Report of Local Commissioner. It is submitted that as per paragraph 10, it is clearly stated by the Local Commissioner that nobody has occupied the said property except the security guards.

9. It is submitted that in view of the above facts and circumstances, the alleged contemnor has not violated any order of *status quo* passed by the Predecessor Bench of this Court.

10. Heard learned counsel for the parties and perused the *status quo* order dated 4th October, 2013, the Report of the Local Commissioner dated 17th February, 2022, reply filed by the plaintiff/non-applicant and the contents made in instant application.

11. The applicants have alleged that the alleged contemnor, i.e., the

Power of Attorney holder, has wilfully disobeyed the order of the Predecessor Bench of this Court. The applicants have not invoked the provisions of Contempt of Courts Act, 1971 and have instead sought relief before this Court under Section 151 of the CPC. However, while adjudicating a plea of contempt, it is pertinent to refer to the term 'wilful disobedience' in accordance with the interpretations that the Hon'ble Supreme Court has time and again given to the term with reference to the Contempt of Courts Act.

12. The Hon'ble Supreme Court in ***Kapildeo Prasad Sah vs. State of Bihar, (1999) 7 SCC 569***, while elaborating upon the term and its implication held as under:-

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

11. No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts

or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order."

13. Further, in ***Dinesh Kumar Gupta vs. United India Insurance Co. Ltd., (2010) 12 SCC 770***, the Hon'ble Supreme Court observed as under:-

"17. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.

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. 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] .”

14. Therefore, it is clear that a mere averment or a bald statement is not sufficient to initiate contempt proceedings or issue a Show Cause Notice against a person. The disobedience must be wilful and must be beyond a casual or accidental/genuine inability to comply with the terms of the order. Moreover, mere unintentional disobedience is not enough, an 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.

15. At this juncture, it is relevant to refer to the reply to the application made by the non-applicant wherein the alleged contemnor/non-applicant, the Power of Attorney holder, has categorically denied the averments made by the applicants. The non-applicant stated that he has neither constructed any office on the suit property nor has occupied the same or any part thereof.

16. The said statement of the alleged contemnor/non-applicant is substantiated by the Report made by the Local Commissioner appointed to look into the matter at hand. The relevant portion of the Report of the Local Commissioner is reproduced hereunder:-

“10. Upon inspection, I found out that there were no occupants except the guards at the property. They told me that they cook their food, live there and take care of the property.”

17. A bare reading of the aforesaid shows that the Local Commissioner had made the above statement after inspection of the site. He found that there were no occupants at the site except for the guards. There is no observation in the Report which suggests that the alleged contemnor/non-applicant was occupying the suit property or any part/portion thereof.

Hence, the allegations made on behalf of the applicants stand defeated.

18. Keeping in view the aforesaid, it is found that the applicants have failed to show that the alleged contemnor/non-applicant, the Power of Attorney holder, has wilfully disobeyed the order of the Predecessor Bench of this Court passed on 4th October 2013.

19. In light of the facts, circumstances, submissions made on behalf of the parties, the contents of the Report of the Local Commissioner, the averments made in the application and arguments in the reply as well as the precedents on what constitutes 'wilful disobedience' of an order by the Hon'ble Supreme Court, this Court does not find any cogent reasons to allow the instant application as the applicants have failed to substantiate and establish their averments.

20. Accordingly, the instant application is dismissed.

21. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 1, 2023

gs/ms

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