

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CONTEMPT PETITION (L) NO.16 OF 2022
IN
COMMERCIAL APPEAL (L) NO.25945 OF 2021
WITH
INTERIM APPLICATION (L) NO.22585 OF 2022
WITH
INTERIM APPLICATION (L) NO.22583 OF 2022
WITH
INTERIM APPLICATION (L) NO.7802 OF 2022
WITH
INTERIM APPLICATION (L) NO.10284 OF 2022
WITH
INTERIM APPLICATION (L) NO.14383 OF 2022
WITH
INTERIM APPLICATION (L) NO.15939 OF 2022
WITH
COURT RECEIVER'S REPORT NO.94 OF 2022
IN
CONTEMPT PETITION NO.16 OF 2022

Axis Finance Ltd.

....Petitioner

V/s.

Orbit Ventures Developers & Ors

...Respondents

Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Rashmin Khandekar with Mr. Nishit Dhruva, Ms Khushbu Chhajed, Ms Niyati Merchant and Mr. Yash Dhruva i/b MDP & Partners for Petitioner

Mr. Firoz Bharucha a/w Mr. Kiran Jain, Mr. Duj Jain, Ms Hita Chandrana and Ms Mehak Jain i/b Kiran Jain and Co. for Respondent Nos.1 to 4

Mr. Premlal Krishnan a/w Ms Rehmat Lokhadwala and Mr. Prashant Bothre i/b Pan India Legal Services LLP for Applicants in IAL/10284/2022

Mr. Rishikesh Soni a/w Mr. Parag Samant for Applicant in IAL No.14383 of 2022

Mr. Karl Tamboly a/w Ms Miloni Sanghvi and Mr. Rishikesh Soni i/b Omkar Khanvilkar Law Chambers for Applicant in IAL No.22585 of 2022 and IAL No.22583 of 2022.

Ms Shoma Maitra i/b Wadia Ghandy & Co. for Indiabulls Housing Finance Ltd.

Mr. S. K. Dhekale, Court Receiver present.

Mr. Rajen Dhruv, Respondent No.2 and Mr. Hiren Dhruv, Respondent No.3 present.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 21st JULY 2022**

P.C. :

1 On 23rd March 2022, a detailed order came to be passed by this court [S.J. Kathawalla and Milind N. Jadhav, JJ] by which respondent nos.2 and 3 (also referred as these respondents) were held guilty of wilful breach of undertakings given to this court. The court also observed that the conduct of these respondents has been dubious and they have been repeatedly making false statements and were systemically and fraudulently diluting the security of petitioner. The court also observed that these respondents have wilfully disobeyed the orders of the court. The court further observed that respondent no. 2 and 3 on being caught of fraudulently and systemically diluting the security given in favour of petitioner, repeatedly played fast and loose with the court and made false statements to the court and every attempt was made by them to perpetuate the fraud. These respondents were given indulgence and accommodated when time was sought though breach of undertakings given to the court was clearly deliberate, wilful and contumacious. The court held respondent nos.2 and 3 guilty of contempt of

court on account of wilful disobedience of its order dated 15th February 2022 and respondent nos. 2 and 3 were sentenced to civil imprisonment for a period of 180 days. Paragraphs 10 to 16 of the order dated 23rd March 2022 read as under:

“10. The Consent Terms recorded various undertakings which were given by the Respondents to this Court. In fact, Mr. Rajen Dhruv and Mr. Hiren Dhruv also gave their personal undertakings to this court to give an amount due and payable in the manner provided therein. These were absolutely unconditional.

11. The undertakings in this regard are also therefore breached. The terms were filed and taken on record on 15th February, 2022. The first instalment due on 27th February, 2022 was not paid. The second instalment due on 5th March, 2022 was also not paid. The promised security by way of second charge has also not been created. Disobedience has therefore started as soon as the terms were filed. There is wilful and contumacious breach on the part of the Respondents. It is inconceivable that a party who solemnly undertakes to pay and execute documents, is unable to do so a few days later. There appears to be no intention on the part of the Respondents to comply with the Consent Terms, on the date on which they were executed.

12. Accordingly, the Petitioners filed the above Contempt Petition and accordingly, the Court vide its order dated 15th March, 2022, recorded that prima facie a case has been made out for issuing of Show Cause Notices against the Respondents.

13. In view of the submissions aforesaid and particularly in paragraphs 6 to 11 above, it is apparent that there is a willful breach of the undertakings given to this Court. The matter has a chequered history and the conduct of the Respondents has throughout been dubious. Such conduct has been recorded in various orders which have been passed by this court.

14. The aforesaid also leaves no manner of doubt that the Respondents have repeatedly made false statements and that the security of the Petitioner is being systemically and fraudulently diluted. The Respondents have wilfully disobeyed the orders of the Court. The fact that the disobedience is wilful is particularly clear from the fact that before taking the consent terms on record, this court has specifically enquired from the Respondents whether they would be in position to honor their undertaking or whether the undertakings were given merely to delay the proceedings. The Respondents who were present in court assured the court that the undertakings given to the court would be honored.

15. The totality of circumstances also show a very distressing situation viz. one where a party has scant regard for the Court and its orders and its obligations:

(i) the Respondents have created multiple rights in relation to properties secured in favour of the Petitioner;

(ii) the securities created in favour of the Petitioners were fraudulently and systematically diluted;

(iii) on being caught out, the Respondents have repeatedly played fast and loose with the Court;

(iv) false statements have been made to the Court, and every attempt was made to perpetuate the fraud. The shifting stance of the Respondents has been noticed, and set out in various orders passed by this Court;

(v) the Respondents repeatedly breached orders passed by this Court. This has also been documented systematically in various orders of this Court;

(vi) the Respondents were given indulgence, and accommodated when time was sought to come up with a suitable settlement contemplating repayment of monies to the Petitioner;

(vii) the undertakings are clear, unconditional and unequivocal;

(viii) the breach of the said undertakings is also clearly deliberate, wilful and contumacious;

(ix) even today, the Respondents are not willing to purge the contempt.

16. In view of thereof, Respondent Nos. 2 and 3 are found guilty of contempt of court on account of wilful disobedience of the Order 15th February, 2022. Respondent Nos. 2 and 3 are therefore, sentenced to civil imprisonment for a period of 180 days.”

[Emphasis supplied]

2 On the same day, i.e., 23rd March 2022, another order was passed in which, paragraphs 1, 2, 4, 8, 10 and 11 read as under:

1. For the reasons recorded separately we have found the Respondent Nos. 2 and 3 guilty of willful disobedience and breach of the Order dated 15th February, 2022. Accordingly, we direct the Respondent Nos. 2 and 3 to undergo civil imprisonment for a period of 180 days.

2. After this order was passed, Respondent Nos. 2 and 3 through their Learned Senior Advocates appearing for them have requested that the aforesaid sentence be suspended on a further undertaking given by them to make the following payments:

Sr.No.	Schedule of payment	Date of Payment
1	Rs.5 crores	31 st March 2022

2	Rs.20.5 crores	30 th April 2022
3	Rs.8.5 crores	31 st May 2022
4	Rs.17 crores	30 th June 2022
5	Rs.35 crores	31 st August 2022
6	Rs.17 crores	30 th September 2022

This suggestion is acceptable to the court and the Petitioner.

4. They further submit that a self-operative order i.e. an order by which the sentence of civil imprisonment will operate automatically be passed, on any default committed by the Respondents in terms of the aforesaid schedule and such default remaining un-remedied for a period of 7 days.

8. Respondent nos. 2 and 3 are present in court. They have been explained the consequences of non-compliance with the undertaking given by them in terms of the aforesaid schedule. They have given these undertakings with knowledge that they will have the means to honour the same.

10. In the circumstances, we pass the following order;

(i) The Respondents have been found guilty of committing wilful disobedience of the order dated 15th February, 2022, therefore, a case for Contempt of Court is made out.

(ii) Respondent Nos. 2 and 3 are sentenced to civil imprisonment for a period of 180 days.

(iii) The aforesaid sentence of civil imprisonment shall stand suspended in view of the Respondents' undertaking in terms of the schedule aforesaid.

(iv) If any default is committed in payment of any amount as agreed above,

the order sentencing Respondent Nos. 2 and 3 to civil imprisonment will automatically come into effect.

11. In the event of Respondents making payments as agreed hereinabove;

(i) all charges mentioned in clause 3, shall stand extinguished and the Petitioner shall execute the suitable documents/release deeds to reflect the same;

(ii) the conviction shall stand set aside;

(iii) the passports of Respondent Nos.2 and 3 shall be returned to them. In the meanwhile, the Respondents Nos.2 and 3 shall have the liberty to apply for the release of their passport in the event of any emergency.

[Emphasis supplied]

3 Therefore, another opportunity was given to respondent nos.2 and 3,

who were present in court to honour the undertakings given to this court. At that stage, respondent nos.2 and 3 were also explained the consequences of non-compliance of the undertakings given by them in terms of the schedule mentioned in the order. It is also recorded that respondent nos.2 and 3 have given undertakings with the knowledge that they will have the means to honour the same. By this order, the court, in view of the further undertakings given by respondent nos. 2 and 3, suspended the sentence of civil imprisonment and it was also made clear to respondent nos. 2 and 3 that if any default was committed in payment of any amount as mentioned in the schedule of paragraph 2 of the said order, the order sentencing respondent nos. 2 and 3 to civil imprisonment would automatically come into effect.

4 Mr. Dhond states that out of total of Rs.51 crores that was due and payable by respondent nos. 2 and 3 by 30th June 2022 as per schedule in paragraph 2 of the second order dated 23rd March 2022, only a sum of Rs.15 crores has been paid and there is still an outstanding of Rs.36 crores. Mr. Bharucha states that an amount of Rs.19 crores has been paid which again would not help Mr. Bharucha's client, i.e., respondent nos.2 and 3. Certainly, item at Sr. No. 2 of the schedule i.e., Rs.20.5 crores by 30th April 2022 has not been paid.

5 On 10th June 2022, this court recorded in paragraphs 2 and 5 as under:

"2. Admittedly, the first installment of Rs.5 Crores due on 31st March, 2022 has been paid. As regards second installment that

was due on 30th April, 2022, Mr. Bharucha states that Respondent Nos. 2 and 3 are in breach of the undertaking given to the court. Mr. Bharucha states that arrangements are being made to pay this installment and it will be made on 17th June, 2022. Statement accepted as an undertaking to this court. As regards 3rd installment that was due on 31st May, 2022 an amount of Rs.10,39,85,726/- is already received by petitioner against which petitioner has released Flat Nos. 2702, 1201, 1301, 1802, 2302, 2801 and 2901. Mr.Khandekar on instructions confirms the same.

5. As regards second installment for which there has been breach, in view of what is recorded above for the third and fourth installment we would, without prejudice to rights and contentions of petitioner, defer the payment of second installment to 17th June, 2022. We make it clear that if by that date the entire amount is not paid we would proceed on the basis that the amount was due on 30th April, 2022 and no concession has been granted to Respondent No.2 and/or Respondent No.3.”

[Emphasis supplied]

Therefore, in view of the statement made by counsel for respondent nos. 2 and 3 in the presence of respondent no. 2, this court granted further indulgence to respondent nos. 2 and 3.

6 On 17th June 2022 this court recorded in paragraphs 1 and 3 as under:

“1. Mr. Bharucha states that respondent no.2 and 3 will be handing over cheques for total sum of Rs.20.5 crores to Mr. Khandekar’s client, bearing cheque nos.”001554” and “001555”, with request to deposit those cheques on 23rd June 2022. Mr. Khandekar (without prejudice his client’s rights and contentions) has no objection. Of course, others are not concerned with this issue.

3. Advocates for respondent no.2 shall send an e-mail not later than 10.00 a.m. on 23rd June 2022 confirming to petitioner’s advocate that there is sufficient balance in the account of respondent nos.2 and 3 to honour two cheques being handed over today.”

[Emphasis supplied]

On 17th June 2022, Mr. Bharucha on behalf of respondent nos. 2 and 3

informed the court that respondent nos. 2 and 3 will be handing over cheques for total sum of Rs.20.5 crores to Mr. Khandekar's client, i.e., Petitioner, being cheque nos.001554 and 001555 with request to deposit the said cheques on 23rd June 2022. In view thereof, Mr. Khandekar, without prejudice to petitioner's rights and contentions had no objection. Respondent no. 2's advocate was also to send an email not later than 10.00 a.m. on 23rd June 2022 confirming to petitioner's advocate that there is sufficient balance in the account of respondent nos. 2 and 3 to honour two cheques being handed over that day. In view of the statement made by respondent nos. 2 and 3 through Mr. Bharucha, this court granted further indulgence. These respondents informed the court that Indiabulls Commercial Credit Limited (India Bulls) was funding them and the documentation was also completed. All along Mr. Bharucha was instructed to say the amount will be released anytime by Indiabulls. The cheques were not deposited as advocates for these respondents requested petitioner's advocates not to deposit and sought further time.

7 On 24th June 2022, respondent nos. 2 and 3 started singing a different tune. Paragraphs 1 and 2 of the said order dated 24th June 2022 read as under:

"1 Mr. Bharucha states that respondent no.2 has received an email from India Bulls calling for original registration deed to be submitted. Mr. Bharucha states that the same has been submitted on 23rd June 2022. Mr. Bharucha relies on an email dated 22nd June 2022 and a letter dated 23rd June 2022, copies whereof have been handed over to Mr. Dhond's clients.

2 We have noted that respondent no.2 had made categorical statement to the court that the second installment of Rs.20.5

crores mentioned in paragraph 2 of the order dated 23rd March 2022 would be paid on or before 17th June 2022. Now we are on 24th June 2022 and the amount is yet to be paid. Now further week is sought. Mr. Bharucha on instructions stated that respondent nos.2 and 3 are ready for any terms this court may impose on them. Therefore, we direct respondent no.2 that the amount of Rs.20.5 crores will be paid alongwith interest thereon @15% beginning from 30th April 2022 upto the date of payment / realisation. Mr. Bharucha on instructions is agreeable to this. We hasten to add, this will not mean that the contempt alleged is purged. If amount is not disbursed as stated by Mr. Bharucha, the General Manager/ head of the Credit Department of India Bulls shall remain present on the next date.”

[Emphasis supplied]

8 Again the amount was not paid and on 1st July 2022 further time was granted to respondent nos.2 and 3 in view of the further statement made on that day. Paragraphs 1 and 2 of the said order dated 1st July 2022 read as under:

“1 Paragraph 2 of the order dated 24 th June 2022 reads as under:

2. We have noted that respondent no.2 had made categorical statement to the court that the second installment of Rs.20.5 crores mentioned in paragraph 2 of the order dated 23 rd March 2022 would be paid on or before 17th June 2022. Now we are on 24th June 2022 and the amount is yet to be paid. Now further week is sought. Mr. Bharucha on instructions stated that respondent nos.2 and 3 are ready for any terms this court may impose on them. Therefore, we direct respondent no.2 that the amount of Rs.20.5 crores will be paid alongwith interest thereon @15% beginning from 30 th April 2022 upto the date of payment / realisation. Mr. Bharucha on instructions is agreeable to this. We hasten to add, this will not mean that the contempt alleged is purged. If amount is not disbursed as stated by Mr. Bharucha, the General Manager/ head of the Credit Department of India Bulls shall remain present on the next date.

2 Mr. Dhond states that the amount has not been paid. Mr. Bharucha states that the Head of Credit Department of Indiabulls is present in Court whose name is Mr. Sandesh Vilas More. Mr. More states that in principle loan/funding has been sanctioned by Indiabulls, documents have been submitted by

respondent no.2 Rajen Dhruv and the final vetting of documents is going on before the amount is disbursed following clearance from the Managing Director. Mr. More states that this will be completed within eight to ten days from today. If for any reason, the sanction itself is getting rejected, the same will also be communicated to respondent no.2 within the said eight to ten days period. Though Indiabulls is not a party to this litigation and Mr. More has appeared only on the directions of this Court because the Court wanted to know whether Mr. Rajen Dhruv, respondent no.2 is giving correct instructions to his advocates, we would still expect Indiabulls to stick to the timeline mentioned above.”

9 On 15th July 2022, a statement was made on behalf of Indiabulls that they are not going to fund respondent no.2. Paragraph 1 of the said order reads as under:

1. Ms. Naziya Khan informed the court that Indiabulls Housing Finance Limited has instructed them to inform the court that it is not going ahead with the loan/funding of Respondent No.2 - Rajen Dhruv. Ms. Naziya Khan states that Mr. Sandesh Vilas More, West Head, Relationship and Credit Manager, Indiabulls Commercial Credit Department who was present in court on 1st July 2022 informed Wadia Ghandy & Co., this morning that Indiabulls Housing Finance Limited is not going to fund Respondent No.2. Ms. Naziya Khan tenders affidavit of Mr. Sandesh Vilas More affirmed on 15th July 2022 which is taken on record.

10 The matter was stood over to today thereby giving further indulgence to respondent nos.2 and 3 to honour the repeated undertakings given to this court. There is no sign of money and we are satisfied, looking at the past conduct of these respondents, that respondent nos. 2 and 3 have been only abusing the indulgence granted by the court with no intention of honouring the undertakings given to the court. We have to note that respondent no. 3 never remained present in court, certainly on 10th June 2022, 17th June 2022, 24th June 2022, 1st July 2022 and on 15th July 2022, notwithstanding

being held guilty of contempt, and the court not having granted any exemption. Respondent no. 3 had not even applied for exemption from personal appearance. Even today he was not present and the court was told he was sitting at home. He appeared in court when court directed he should remain present and the matter was passed over for respondent no.3 to appear. It is quite obvious that respondent no. 3 had decided not to remain present in court. Mr. Bharucha on instructions of his instructing advocates states that respondent no.3 was always advised to remain present in court, still he did not pay heed. This only reconfirms that Respondent no.3 and his brother Respondent no.2 have scant regard for the court and its orders.

11 In the circumstances, we are not inclined to grant any further indulgence to respondent nos.2 and 3. By virtue of what is stated in paragraph 10(iii) and 10(iv), of order dated 23rd March, 2022 (second order passed on that date), respondent no. 2 and 3 having committed repeated breach of the undertakings given to this court, the order sentencing respondent nos.2 and 3 to civil imprisonment, shall come into effect forthwith. Respondent no. 2 and 3 be taken into custody forthwith.

12 At this stage both Respondents undertake to this court to surrender tomorrow morning at 10:30 AM. Mr. Bharucha prays for indulgence.

13 Stand over to 22nd July 2022, first on board.

(A. S. DOCTOR, J.)

(K.R. SHRIRAM, J.)