

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

Date of decision: 19<sup>th</sup> APRIL, 2022

**IN THE MATTER OF:**

+ **CONT.CAS(C) 768/2018 & CM APPL. 685/2020**

**INDRA PASRICHA**

..... Petitioner

Through Mr. Ashutosh Lohia, Mr. Soumya  
Kumar, Advocates

versus

**DEEPIKA CHAUHAN & ORS**

..... Respondents

Through Mr. Ravi P Mehrotra, Senior  
Advocate with Mr. Vibhu Tiwari,  
Advocate for R-1 & R-3  
Mr. Gautam Narayan, ASC for  
GNCTD with Mr. Aditya Nair,  
Advocate for SHO, Hauz Khas

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The instant contempt petition has been filed for wilful disobedience of the Order dated 14.03.2012, passed by this Court in C.S.(O.S) No.1547/2006.
2. Facts, in brief, leading to the instant contempt petition are as follows:
  - a) It is stated that the Petitioner herein had inherited the property bearing No. E-54, Pachsheel Park, New Delhi -110017 (hereinafter referred to as 'the property in question'), from her late sister, Kamla Gupta. It is stated that the brother-in-law of

the Petitioner herein, namely, R.N. Kapur, resided on the ground floor of the said property along with his wife, Raksha, who was also a sister of the Petitioner herein. It is stated that on the death of the Petitioner's sister, i.e. Raksha, the husband of Raksha, i.e. R. N. Kapur, filed a suit before this Court being C.S. (O.S.) No. 1547/2006, claiming to be the owner of the ground floor of the property in question.

- b) It is stated that the said suit was settled before the Delhi High Court Mediation and Conciliation Centre. Relevant portion of the settlement agreement dated 24.10.2011 reads as under:

*"ii. The defendants agree and undertake that the plaintiff shall continue to live in the entire ground floor of the property bearing No. E-54, Panchsheel Park, New Delhi during his entire life time and they shall not either dispossess him or interfere in his peaceful use and enjoyment of the said portion of the said property.*

*iii. The defendants further agree and undertake that they shall not sell, alienate or otherwise incumber property No. E-54, Panchsheel Park, New Delhi during the life time of the plaintiff. In case of violation of this condition, the defendants shall be liable to pay 50% of the value of the said property to the plaintiff forthwith.*

*iv. The defendants also agree and undertake that they will not carry out any structural changes in the aforesaid property during the life time of the plaintiff. The plaintiff further also undertakes not to part with possession or otherwise create any third party interest in the portion occupied by him during his life time. The parties shall continue to maintain status quo as on today in respect of property No. E-54, Panchsheel Park, New Delhi.*

v. *On the aforesaid agreement and undertaking given by the defendants, the plaintiff does not wish to press his claim in the present suit and does not object if the suit is disposed off in terms of the aforesaid undertaking after the same is accepted by the Hon'ble Court. The plaintiff declares and assures "the defendants that after his death, the defendant shall become the sole and exclusive owner of the entire property no. E-54, Panchsheel Park, New Delhi. The defendant shall, in such event, be entitled to take physical possession of the ground floor of the Panchsheel Park property after the expiry of 3 months from the date of his death"* (emphasis supplied)

- c) In terms of the settlement, a joint application under Order XXIII Rule 1/3 read with Section 151 CPC was filed before this Court. On 14.03.2012, this Court passed a decree in terms of the settlement deed. The decree was passed in presence of the Plaintiff and the Defendants.
- d) It is stated that R. N. Kapur lived alone on the property in question along with his domestic help till he breathed his last on 05.02.2018. The Petitioner, thereafter, in accordance with the directions of this Court in order dated 14.03.2012 rendered in C.S. (O.S.) No. 1547/2006, took possession of the property in question on 07.05.2018.
- e) It is stated that on the night of 24.05.2018, the Petitioner received a call in the evening from the tenant, who was residing on the first floor of the property in question, informing her that some people had trespassed in the property, i.e. the ground floor of the property in question. It was found that the Respondents No.1, 2 & 3 had trespassed the property in question.

Consequently, the Petitioner filed a complaint before the local police on 20.05.2018 and on 01.06.2018. An FIR, bearing No.81/2019 dated 09.03.2019, was also registered at Police Station Hauz Khas under Sections 448/34 IPC.

- f) The Respondents herein were made aware of the undertaking given by R.N. Kapur. Despite being made aware of the undertaking, the Respondents have not vacated the premises which has resulted in the filing of the instant contempt petition.

3. Notice was issued on 20.11.2018. Reply has been filed. In the reply, it has been stated that the Respondent No.1 is the Niece of R. N. Kapur, in whose favour R. N. Kapur has executed a registered will dated 05.03.2009. It is stated that the Respondents have not given any undertaking to the Court. It is further stated that since the Respondents were not a part of the proceedings in C.S. (O.S.) No. 1547/2006, the Respondents cannot be held liable for the contemptuous act of wilfully disobeying the Orders of this Court. It is further stated that by way of the will dated 05.03.2009, R. N. Kapur has handed over the property to Respondent No.1 and only a civil suit can decide the title of the parties. It is stated that the principles of third-party liability cannot be adopted in the contempt proceedings.

4. The Police has also filed a Status Report stating that pursuant to the filing of FIR No.81/2019, 21 witnesses have been examined during the course of the investigation. After completion of the investigation, it was found that there is sufficient evidence against the Respondents herein. A Charge-sheet dated 16.03.2020 was filed before the Court of learned Metropolitan Magistrate, South Saket Courts, New Delhi, against the Respondents herein for offences under Sections 448, 453 read with Section

34 of the IPC.

5. Mr. Ravi P Mehrotra, learned Senior Counsel appearing for the Respondents No.1 & 3, apart from reiterating the averments made in the Reply, submits that the Petitioners have filed a Suit (C. S. No.1092/2018) for recovery of possession of the property in question against the Respondents before the Court of Additional District Judge, Saket Courts, New Delhi, and the same is pending. He submits that there is no contempt till the ownership of the property in question is decided. He further submits that the remedy of the Petitioner does not lie in filing a Suit, but by executing a decree.

6. Heard Mr. Ashutosh Lohia, learned Counsel appearing for the Petitioner, Mr. Ravi P Mehrotra, learned Senior Counsel appearing for the Respondents No.1 & 3, Mr. Gautam Narayan, learned ASC for the GNCTD, and perused the material on record.

7. The short question which arises for consideration before this Court is whether the Respondents have committed contempt of Court or not. Section 2(b) of the Contempt of Courts Act, 1971 defines "civil contempt" as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court.

8. The law of contempt has been brought primarily to secure public respect and confidence in the judicial process and provide a sanction for any act or conduct which is likely to destroy or impair such respect and confidence. It is well settled that contempt must not be resorted to when there are provisions for execution, but at the same time, just because remedy of execution lies, it does not mean that contempt proceedings cannot be initiated. (Refer: Reliance Petrochemicals Ltd. v. Proprietors of Indian

Express Newspapers Bombay (P) Ltd., (1988) 4 SCC 592).

9. In U.N. Bora v. Assam Roller Flour Mills Assn., (2022) 1 SCC 101, after analysing the various principles of law on the point rendered, the Apex Court itself has laid down the parameters as to when action under the Contempt of Courts Act should be initiated.

*"9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] , has been quoted. The following paragraphs would govern the aforesaid principle : (Hukum Chand Deswal case [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] , SCC paras 20-21 & 25-27)*

*"20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)*

*'11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the*

*entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)*

**12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence,**

*requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararaao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararaao, (1989) 4 SCC 255] , Niaz Mohd. v. State of Haryana [Niaz Mohd. v. State of*

*Haryana, (1994) 6 SCC 332] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .*

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*15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592] ]*

*21. Similarly, in R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400] , this Court expounded in para 7 as follows : (SCC p. 404)*

*'7. We may reiterate that 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 the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, the appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.'*

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25. Pertinently, the special leave petitions were filed by the respondent against the order dated 28-1-2019 [Sagu Dreamland (P) Ltd. v. Jingal

*Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720] , which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing court. The plaintiff-petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly [Jhareswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352 : 2002 SCC (L&S) 703] , in para 11, opined thus : (SCC p. 360)*

*'11. ... 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.'*

*(emphasis supplied)*

10. Respondent No.1 claims ownership of the property in question through the will given by R. N. Kapur which was executed on 05.03.2009, i.e. before the decree was passed on 14.03.2012 which was passed in pursuance of the Settlement Agreement which was based upon the undertaking that had been given by R. N. Kapur. The undertaking given by R. N. Kapoor before this Court will undoubtedly take precedence over the will executed by him prior to giving the said undertaking. This Court is of the opinion that the undertaking given to the Court has to be respected and cannot be permitted to be circumvented by saying that the respondents were not parties to the suit and have not given the undertaking. In view of the above, the contention of Mr. Mehrotra that the Respondents cannot be held liable for the contempt of the Court as they were not parties to the Suit and

had not given the undertaking to the Court cannot be accepted.

11. The Apex Court in Firm Ganpat Ram Rajkumar v. Kalu Ram, 1989 Supp (2) SCC 418, has observed as under:

*"5. In the aforesaid view of the matter, the question that requires consideration is how will this order of eviction passed by the High Court and confirmed by this Court by dismissing the special leave petition on the terms mentioned hereinbefore on 24-8-1987 is to be enforced or implemented? In our opinion, the said order must be implemented and cannot be allowed to be defeated by the dubious methods adopted by the partners of the said firm of Ganpat Ram Rajkumar. The whole conduct betrays a calculated attempt to defeat the order of this Court and to mislead this Court. If that is the position, in our opinion, parties cannot be allowed to do so and get away by misleading this Court. This application was made for contempt. It may or may not be appropriate to pass any order punishing the wrongdoers. But there is no doubt that the order of this Court dated 24-8-1987 is being sought to be defeated and frustrated. Sons and grandsons of the partners or erstwhile partners of the firm cannot be allowed to frustrate the order of this Court."*

(emphasis supplied)

12. This Court in Krishna Gupta v. Sh. Narendra Nath And Anr., 2017 SCC OnLine Del 10990, has observed as under:

*"40. For taking action of contempt against a person who may not necessarily be impleaded in the suit, but has notice of an order, there must be sufficient material on record that can demonstrate that he is guilty of violating the injunction order or abetting/aiding such violation. At the same time, a party against whom allegations of violation of an injunction order are levelled, is entitled to prove his*

*innocence by demonstrating that the order passed was not to his knowledge or that the order was ambiguous and reasonably capable of more than one interpretation or that he did not have the intention to disobey the said order, but had conducted himself in accordance with his own bona fide interpretation of the said order.* The view taken above finds resonance in the cases of Ram Chand Verma (*supra*), Komal Nagpal (*supra*) and Bundu (*supra*), relied on by learned counsel for the respondent No. 2. In the case of Mohd. Sharfuddin (*supra*) relied on by both sides, a Division Bench of the Andhra Pradesh High Court had opined as follows:—

**“22. As can be seen from the aforesaid decisions, injunction is a remedy ‘in personam’ and not in rem. But at the same time, it is also cannot be disputed that a person who aids and abets and violates the order of the Court is also liable for contempt of the Court.**

**23. The prime question is whether the persons who are not parties to the proceedings when the Order was passed can be made liable for the violation of the Orders of the Court. It is beyond the pale of controversy that the Order binds the parties till such time they are in subsistence and they are liable for consequences for violation of the Orders. It is also basic principle that the person who is not a party to the proceedings cannot be proceeded with against them for the violation of the Order, but yet the third party cannot be said to absolve himself of this situation in certain circumstances. This issue came up for consideration in English Court more than a century ago and it was held that the disobedience of the Order by a person who is not a party to the proceedings held to amount to**

*contempt as it interfere with the administration of justice. In Seaward's case (supra), it was held that the Court has jurisdiction to commit for contempt, a person not a party to the action, who knowing of an injunction, aids and abets the injunction in breaching it. This principle was again reiterated in Acrow (Automation) Limited v. Rex Chambelt Inc. (1971) 3 All.ER 1175).*

(emphasis supplied)

13. It is, therefore, well settled that though broadly a person who is not a party to the proceedings cannot be proceeded against for violation of the order, but a third party cannot seek to absolve themselves if they are informed about the fact that their conduct amounts to a violation of the Court order and that despite the information, they choose to wilfully flout the mandate of the Court. If such a conduct is permitted, then it will encourage subversion of judicial orders, which are to be properly understood and complied with. Disobedience of an order of the Court, if permitted, will result in striking at the 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 an effective legal system and the Contempt of Courts Act, 1971 has been primarily legislated to prevent interference in the course of administration of justice.

14. In the present case, assuming that the Respondent No.1 was initially not aware about the consent decree, it is pertinent to note that the moment she was informed about the undertaking given by R. N. Kapur, through whom Respondent No.1 derives title, she ought to have respected the undertaking given to the Court and should not have persistently breached the same. This Court is of the opinion that obstinate and wilful act on the part of

the Respondent not to disobey the consent decree amounts to civil contempt under Section 2 (b) of the Contempt of Courts, 1971 Act.

15. The fact that the Suit is pending is no answer for the contemptuous disobedience on the part of the Respondent to violate the consent decree which is based on an undertaking given by R. N. Kapur through whom Respondent No.1 derives title. The Respondents have, therefore, committed contempt and are liable for punishment under Section 12 of the Contempt of Courts Act, 1971.

16. List on 25.04.2022 for arguments on sentence. The Contemnors are directed to be present in Court on that day.

**SUBRAMONIUM PRASAD, J.**

**APRIL 19, 2022**

*Rahul*