

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

Date of decision: 26th APRIL, 2022.

IN THE MATTER OF:

+ **CONT.CAS(C) 640/2018 & CM APPLs. 16138-39/2022**

NAVIN SONI

..... Petitioner

Through: Mr. Vikas Arora, Ms. Radhika Arora,
Mr. Mohit Dagar and Mr. Siddharth
Singh, Mr. Ayush Kumar, Advocates

versus

MUNISH SONI & ORS

..... Respondents

Through: Mr. Varinder Kumar Sharma, Mr.
Akshay Soni, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant contempt petition has been filed for initiating contempt proceedings against the Respondent No.1 for violating the undertaking given to the Court in the Order dated 21.09.2012 passed by this Court in CS (OS) 2077/2006.
2. Shorn of details, the facts leading to the filing of the instant contempt petition are that a suit for possession, permanent injunction and for *mesne* profit/damages was filed against the Respondents by one Badri Prakash Soni, who was the father of the Petitioner and the Respondent No.1. During the pendency of the suit, the parents Badri Prakash Soni and Asha Soni

passed away, and Vikas Soni and Navin Soni (Petitioner herein) were impleaded in lieu of the deceased parents.

3. In the suit, the parties, who are related to each other, entered into a compromise. Under the said compromise, the Respondents Munish Soni and Piyush Soni agreed to handover the ground floor of the premises, i.e. B-2/103, Safdarjung Enclave, New Delhi, to the Petitioner on or before 30.09.2017. Apart from this, the Defendants therein (this includes the Petitioner herein) were made to pay a sum of Rs.1 Crore under the said compromise. An application under Order XXIII Rule 3 of the CPC was filed. The relevant portions of the said application reads as under:

“f) That the defendants also admit that Smt. Asha Soni plaintiff no.2 now deceased, was the absolute owner of property bearing No.B-2/103 Safdarjung Enclave, New Delhi - 110 029 and after her death by virtue of her registered Will dated 23rd July, 2009 the said property has now devolved upon Shri Vikas Soni and Shri Navin Soni absolutely without any right, title or interest to any other class I legal heirs including defendants. Thus, the said entire property bearing No.B-2/103 Safdarjung Enclave, New Delhi - 110 029 is absolutely owned by Shri Vikas Soni and Shri Navin Soni alone.

j) That since the defendants are hard pressed of the money and the marriage of defendants Shri Piyush Soni and Ms. Shristhi Soni have to be solemnized in December and October, 2012 respectively, the defendants have requested Shri Vikas Soni and Shri Navin Soni to contribute a sum of Rs. 1,00,00,000/- (Rupees One crore only) towards the expenses to be incurred by defendant no.1 on the marriage of defendant nos.2 and 3 which Shri Vikas Soni and Shri Navin Soni have voluntarily agreed to give the same to defendant no.1 for enabling him to incur the expenses of marriages of Shri Piyush Soni and

Ms. Shristhi Soni. Since the marriage of Ms. Shristhi Soni is fixed on 29th October, 2012, and immediate expenses have to be incurred, therefore, on the request of defendant no.1, Shri Vikas Soni and Shri Navin Soni have agreed to pay the substantial amount in cash and accordingly have paid Rs.80,00,000/- (Rupees Eighty lacs only) in cash to defendant no.1 and Rs.20,00,000/- (Rupees Twenty lacs only) by means of cheque No.937034 dated 17/09/2012 drawn on Indian Overseas Bank, the receipt of which the defendants both hereby acknowledges to have received.

m) That though the applicants have agreed to gift Rs.1 crore to defendants, but it has been agreed to be gifted to the defendants only upon the conditions that defendants shall positively vacate the portion of the said premises i.e. ground floor of property bearing No.B-2/103 Safdarjung Enclave, Delhi on or before 30th September, 2017 and shall hand over physical vacant possession of the same to Shri Vikas Soni and Shri Navin Soni or any other person or persons claiming under them without any demur and condition and in this regard undertake to this Hon' ble Court to abide by the said undertaking punctually and absolutely.

n) That the said undertaking has been given by the defendants knowing fully well the consequences of the same and it is agreed between the parties that in case the defendants for any reason whatsoever delays the delivery of possession of the entire ground floor to Shri Vikas Soni and Shri Navin Soni beyond 30th September, 2017 then not only Shri Vikas Soni and Shri Navin Soni would not only be entitled to execute the decree for possession against the defendants, but in that eventuality shall also be entitled to recover back the aforesaid amount of Rs.1 crore with interest @ 12% p.a."

4. The said application was also accompanied by affidavits of

Respondents Munish Soni and Piyush Soni. The relevant portion of the said affidavits read as under:

“2. That I hereby undertake to this Hon'ble Court to vacate the ground floor of property bearing No.B-2/103 Safdarjung Enclave, New Delhi and shall positively hand over the physical vacant possession of the same to Shri Vikas Soni and Shri Navin Soni on or before 30th September, 2017.

3. That I know the consequences of violation of the said undertaking and after knowing the consequences I have voluntarily given an undertaking with the assurance to this Hon'ble Court that the same shall be positively complied with.”

5. The said application was also accompanied with a receipt of Rs.1 Crore. The receipt reads as under:

RECIEPT

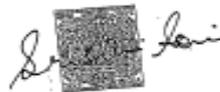
Received the sum of Rupees One Crore only as per details: Cheque number 937034 Dated 17/09/2012 Drawn on Indian Overseas Bank, Safdar Jung Enclave, New Delhi-110029 for Rupees Twenty Lacs and Cash Rupees Eighty Lacs Only from Shri Vikas Soni and Shri Navin Soni (Both Plaintiffs) as per the terms of Compromise in Suit: CS(OS)No.2077 of 2006 Tittle as Shri Badri Prakash soni, Now Deceased, Now represented through his Legal heirs & Anr. Versus Shri Munish soni & Ors.



Shri Munish Soni (Defendant No.1)



Shri Piyush Soni (Defendant No.2)



Ms. Shrishti Soni (Defendant No.3)

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Examiner Judicial Department
High Court of Delhi
Authorised Under Section 193
Indian Evidence Act.

6. The said application was disposed of *vide* Order dated 21.09.2012 and the suit, thereafter, was decreed on the terms of the compromise and the parties were directed to remain bound by the terms and conditions of the settlement. The relevant portion of the said Order dated 21.09.2012 reads as under:

“ The present joint application has been filed by the parties stating inter alia that during the pendency of the present proceedings, they have arrived at an out of court settlement. The terms and conditions of the settlement arrived at between the parties have been reduced into writing and set out in para 8 of the application.

Counsels for the parties state that the aforesaid settlement has been arrived at between the parties of their own free will and volition and without any undue influence or coercion from any quarters. Counsel for the defendants confirms that a sum of 1 crore, agreed to be paid by the plaintiffs to the defendants, has already been received by his clients and nothing further is due or payable to them by the plaintiffs. He further concedes that the defendants are not left with any right, title or interest in the properties mentioned in sub para (k) of para 8 of the application and that they undertake to vacate the ground floor of the residential premises No.B-2/103, Safdarjung Enclave, New Delhi-110029 on or before 30.09.2017 and hand over vacant peaceful possession thereof to the plaintiffs.

The Court has perused the application. The same has been signed by the plaintiffs and the defendants as also their respective counsels. The application is duly supported by the affidavits of all the parties, who are also present in Court, and they confirm having arrived at the

aforesaid settlement. They undertake to remain bound by the terms and conditions thereof. The application is supported by a receipt dated 17.09.2012 executed by the defendants No.1 to 3 confirming having received a sum of 1 crore from the plaintiffs as per the terms of compromise.

In view of the aforesaid position, the compromise application is allowed and disposed of. The suit is decreed in terms of the compromise application. The parties shall remain bound by the terms and conditions of the settlement.

The suit is disposed of while leaving the parties to bear their own costs.”

7. A Memorandum of Settlement dated 18.02.2017 was also arrived at between the Petitioner and his brother, Vikas Soni, whereby absolute ownership of the premises in question was given to the latter. Consequently, a Relinquishment Deed dated 06.03.2017 was executed by Vikas Soni in favour of the Petitioner. Thereafter, the Petitioner got the premises in question converted into freehold by paying conversion charges to the DDA and a conveyance deed was registered in favour of the Petitioner by the DDA on 06.07.2017.

8. Since the Respondents did not vacate the premises in question, the instant contempt petition has been filed. The notice was issued in the petition on 21.08.2018. The Reply has been filed.

9. Learned Counsel appearing for the Petitioner has taken this Court through the Memorandum of Settlement entered into between the parties, the application under Order XXIII Rule 3 of the CPC, the affidavits filed by Respondent Nos.1 and 2 as well as the receipt of Rs.1 Crore that was paid by

the Petitioner to the Respondents. He submits that the undertaking given to this Court stands violated. He further submits that the Respondents were the duty bound to vacate the premises on or before 30.09.2017 which they have failed to do so. Relying upon a judgement of this Court in Som Datt Enterprises Limited v. Vijay Cable Industries and Ors, (2016 SCC OnLine Del 6089), the learned Counsel for the Petitioner argues that the execution of a decree does not take away a decree holder's remedy of alleging contempt.

10. Learned Counsel appearing for the Respondents contends that the instant contempt proceedings cannot be entertained for violation of a consent order when there are provisions for execution of the same under Order 21 CPC. He further contends that Clause (n) of the application filed under Order XXIII Rule 3 CPC specifies that in case the possession is not handed over, the Petitioner would be entitled to recover the amount of Rs.1 Crore, along with interest at the rate of 12%. He relies upon the judgment of the Supreme Court in Babu Ram Gupta vs. Sudhir Bhasin, 1980 (3) SCC 47 wherein it is stated that there exists a clear cut distinction between a compromise arrived at between the parties or a consent order passed by the Court at the instance of the parties, and a clear and categorical undertaking given by any of the parties. He states that the judgment clarifies that in case of the violation of the compromise arrived at between the parties by the consent order, there is no question of contempt and the decree can be executed.

11. Learned Counsel for the Respondents further places reliance upon the judgment of the Apex Court in Ashok Paper Kamgar Union vs. Dharam Dhoda & Others, (2003) 11 SCC 1 to contend that the instant case is a case of breach of compromise decree and undertaking given to the party which

cannot result in a contempt of Court. He states that only a violation of undertaking given to the Court can result in a contempt of Court which is not there in the present case. He also states that a fraud has been played on the Respondent on account of the fact that a sum of Rs.1 Crore has not been handed over to the Respondents. He states that only a draft of Rs.20 lakhs has been given to the Respondents and a sum of Rs.80 lakhs is yet to be handed over to them.

12. Learned Counsel for the Respondents further tries to indicate that the lawyer who appeared for the Respondents had appeared for the Petitioners as well in the same case. He states that there was a collusion between the Petitioners and the said lawyer for the Respondents which has resulted in passing of the said decree against the Respondents. He further states that the Petitioner has criminal antecedents and he has defrauded the Respondents. He states that the Petitioner has not given the sum of Rs.1 Crore to the Respondents. He states that the Respondents were orally asking the Petitioner to pay the money which has not yet been paid. He, therefore, states that this Court ought not to exercise its discretion in favour of the Petitioners.

13. Heard learned Counsel for the parties and perused the material on record.

14. The Apex Court has repeatedly held that all decrees and orders are executable under the CPC, including consent decrees and orders, but merely because an order or decree is executable, it would not take away the jurisdiction of the Court to deal with the matter under the Contempt of Courts Act, 1971. Furthermore, the Apex Court has also held that in view of the purpose of the Contempt of Courts Act, 1971, i.e. preventing

interference in the course of administration of justice, it would not be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the wilful violation of the terms of a consent decree and violation of a decree that has been passed on adjudication.

15. In Rama Narang v. Ramesh Narang, (2006) 11 SCC 114, the Supreme Court had observed as follows:

“18. The Act has been duly widened. It provides inter alia for definitions of the terms and lays down firmer bases for exercise of the court's jurisdiction in contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt as meaning “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”. (emphasis supplied) Analysed, the definition provides for two categories of cases, namely, (1) wilful disobedience to a process of court, and (2) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word “any” further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. Interestingly, the courts in England have held that the breach of a consent decree of specific performance by refusal to execute the agreement is punishable by way of proceedings in contempt (see C.H. Giles and Co. Ltd. v. Morris [(1972) 1 All ER 960 : (1972) 1 WLR 307 (Ch D)]).

23. The question which was before the Court in Babu Ram Gupta case [(1980) 3 SCC 47 : 1980 SCC (Cri)

527] was limited to the issue whether the appellant had given any undertaking to the Court, either expressly or impliedly, which he had violated. In other words it was limited to the second category of cases mentioned under Section 2(b) of the Act. The Court was not called upon to decide whether there was any contumacious conduct as envisaged by the first category of cases under that section. The observations made in that regard, are strictly speaking, obiter. The Court was not called upon to consider nor did it construe the language of Section 2(b) of the Act. If we were to accept the observations of the Court as an enunciation of the law, it would run contrary to the express language of the statute. As we have earlier noted, the section itself provides that wilful violation of any order or decree, etc. would tantamount to contempt. A compromise decree is as much a decree as a decree passed on adjudication. It is not as has been wrongly held by the Calcutta High Court in *Nisha Kanto Roy Chowdhury* [AIR 1948 Cal 294 : 49 Cri LJ 567] merely an agreement between the parties. In passing the decree by consent, the court adds its mandate to the consent. A consent decree is composed of both a command and a contract. The Bombay High Court's view in *Bajranglal Gangadhar Khemka* [AIR 1950 Bom 336 : 52 Bom LR 363] correctly represents the law that a consent decree is a contract with the imprimatur of the court. "Imprimatur" means "authorised" or "approved". In other words by passing a decree in terms of a consent order the court authorises and approves the course of action consented to. Moreover, the provisions of Order 23 Rule 3 of the Code of Civil Procedure require the court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement.

24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of

course also executable. But merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.

25. In such circumstances it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the wilful violation of the terms of a consent decree and wilful violation of a decree which is passed on adjudication. The decision in Babu Ram Gupta case [(1980) 3 SCC 47 : 1980 SCC (Cri) 527] must, therefore, be limited to its own peculiar facts.”

16. The learned Counsel for the Respondent's reliance on Babu Ram Gupta (supra) also does not hold any water. While rendering the decision in Rama Narang (supra), the Apex Court had comprehensively considered the decision given in Babu Ram Gupta (supra) and noted that the said decision was solely based on the facts of the case therein and that the observations made in that regard were *obiter*. The Apex Court went on to hold that Section 2(b) of the Contempt of Courts Act, 1971, itself provides that wilful disobedience of *any* order or decree, etc. would tantamount to contempt and that a compromise decree was as much a decree as a decree passed on adjudication.

17. A perusal of the material on record indicates that the Respondents have filed an affidavit in the suit for possession, permanent injunction and

for *mesne* profit/damages. In paragraph No.2 of the said affidavit, the Respondents have given an undertaking to this Court to vacate the ground floor of property bearing No.B-2/103, Safdarjung Enclave, New Delhi, and that they would positively hand over the physical vacant possession of the same to the Petitioner on or before 30th September 2017.

18. The said affidavit is a categorical undertaking given to this Court to vacate the premises. The said affidavit was prepared on 19.09.2012 and the premises were to be handed over to the petitioner on or before 30.09.2017. There is nothing on record to show that the Respondents have approached this Court by contending that a fraud has been played on them. A receipt has also been filed to show that the payment of Rs.1 Crore has been received when the Order was passed by the Court decreeing the suit on the basis of compromise entered into between the parties. The receipt of Rs.1 Crore has also been acknowledged in the application filed under Order XXIII Rule 3 in the case. The Respondents were also present in the Court when the learned Counsel for the parties stated before the Court that a settlement has been arrived at between the parties out of their own free will, volition, consent and without undue influence. The Respondents – in persons also confirmed the receipt of the Rs.1 Crore. It is now, therefore, not open to the Respondents to contend that they have not received the remaining sum of Rs.80 lakhs.

19. As stated earlier, that after a period of five years when the time came to vacate the premises, all these defences are being raised by the Respondents only when the instant contempt petition has been filed. The judgement of the Apex Court in Ashok Paper Kamgar Union vs. Dharam Dhoda & Others (Supra) will not apply for the reason that the instant case is

not only a violation of a compromise arrived at between the parties, but also a violation of an undertaking given to the Court as is evident from the affidavits which have been filed by the Respondents in the Court. This stands fortified by the statement made by the Counsel for the Respondents (Defendants therein) in the suit which has been recorded in the Order dated 21.09.2012 wherein the Respondents had undertaken to vacate the ground floor of the said premises.

20. The submission of the Respondents that the lawyer who appeared for the Respondents had appeared for the Petitioner as well in the same case is a complete afterthought and is a mischievous argument which cannot be entertained by this Court. The Respondents kept quiet for five years. They did not raise any issue regarding any fraud played on them for five years. Learned Counsel for the Respondents has further stated that the Petitioner has criminal antecedents. This Court observes that the so-called FIR registered against the Petitioner has resulted in the discharge of the Petitioner. In any event, the criminal antecedents of the Petitioner would be irrelevant for the purpose of contempt proceedings.

21. This Court is now concerned with upholding the majesty of the law and the undertaking given to this Court to vacate the ground floor of the said premises. The underlying purpose of the law of contempt is meant to serve public interest and build confidence in the judicial process. This flows from how the functioning of a democratic society is sustained by the rule of law and wilful violation of the same would enable anarchy. The Supreme Court in the case of In Re: Vinay Chandra, (1995) 2 SCC 584, had delineated the purpose of the law of contempt in building confidence in the judicial process. The relevant paragraph of the said judgement has been reproduced

as follows:

“39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the

judicial system gets eroded.”

22. The process of due course of administration of justice must remain unimpaired. Attempts to circumvent or undermine judicial decisions need to be viewed seriously in order to ensure that the functioning of our country is unhindered, especially during turbulent times. It is only the rule of law which not only cements the civilised functioning of a country, but also drives a country towards progress and development. Absence of rule of law or in the presence of utter disregard for the rule of law propels a country towards inevitable ruin. In light of this, it is the duty of the Court to take a strict view when there is non-compliance of an Order of the Courts, and Courts should not hesitate in wielding the sword of contempt when grappling with a situation pertaining to wilful disobedience.

23. In the instant case, a receipt of Rs.1 Crore signed by both the parties, which was also recorded in the Order dated 21.09.2012, was filed in the Court. This Court notes that there was no whisper on the part of the Respondents stating that they have not received the remaining sum of Rs.80 lakhs since the Order dated 21.09.2012 and that the said grievance has only been raised for the first time when the instant contempt petition was filed. The feeble contention of the learned Counsel for the Respondents that the Respondents were not literate and could not understand the consequences of the consent decree cannot be accepted at this point as it is observed that the Respondents were educated enough to comprehend the undertaking that they had given to the Court. This Court does not appreciate the defences that are being raised by the Respondents to subvert the authority of the Courts.

24. In view of the above, this Court is of the opinion that the Respondents

are guilty of the contempt of Court.

25. List on 05.05.2022, for arguments on sentence.

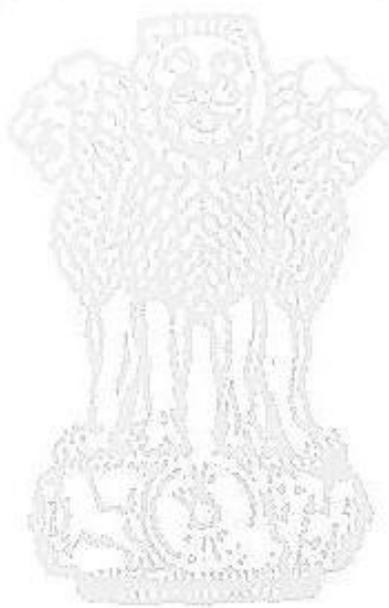
26. The Respondents/Contemnors are directed to be present in the Court on the next date.

SUBRAMONIUM PRASAD, J

APRIL 26, 2022

S. Zakir

HIGH COURT OF DELHI



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