

Court No. - 10

1. Case :- APPLICATION U/S 482 No. - 4496 of 2022

Applicant :- Suresh Kumar Tanwar And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Sectt. Lko. And Another

Counsel for Applicant :- Manish Soni

Counsel for Opposite Party :- G.A.

2. Case :- APPLICATION U/S 482 No. - 2977 of 2022

Applicant :- Suresh Kumar Tanwar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko And Another

Counsel for Applicant :- Manish Soni

Counsel for Opposite Party :- G.A.,Nadeem Murtaza,Sudhanshu S. Tripathi

Hon'ble Dinesh Kumar Singh,J.

1. This Court vide order dated 14.07.2022 considering the submissions of the learned counsels for the petitioners that the petitioners are willing to refund the money contributed by opposite party No.2 in pursuance of the partnership deed entered into between the parties, stayed the proceedings in respect of Charge-sheet No.1 of 2022 dated 09.04.2022 in Case Crime No.271 of 2021.

2. Vide order dated 08.08.2022, this Court considering submissions on behalf of the petitioners and the respondents and with their consent passed following order:-

"2. The petitioners undertake to deposit a sum of Rs. 35 Lac in favour of respondent no. 2 within a period of one month from today. Amount of Rs. 15 Lakhs to be deposited by the petitioners in favour of respondent no. 2 on or before 31-12-2022. For any other amount which remains outstanding, the cases are referred to Mediation and Conciliation Centre of this court.

3. In compliance of the order dated 24-05-2022 passed by this court in petition under section 482 Cr.P.C. bearing no. 2977 of 2022, the petitioners shall deposit an amount of Rs. 1 Lac through the bank draft, which shall be submitted before the Mediation and Conciliation Centre of this court.

4. Accordingly,both the aforesaid cases are referred to Mediation and Conciliation Centre of this court and the parties are directed to remain present before the Mediation and Conciliation Centre of this Court on 25-08-2022 at 10.15 A.M.

5. The Bank Accounts of the petitioners shall be opened so that they may go on with doing their business.

6. List these cases after the report of Mediation and Conciliation Centre is received.

7. Till the next date of listing, interim orders shall continue to operate in both the cases."

3. Neither amount of Rs.1,00,000/- as directed by this Court was deposited before the Mediation and Conciliation Centre of this Court nor bank draft for an amount of Rs.35,00,000/- favouring respondent No.2 was brought before this Court as directed.

4. On 29.08.2022, learned counsel for the petitioners submitted that the petitioners had every intention to comply with the order dated 08.08.2022. In view thereof, believing the bonafide of the petitioners, this Court *inter alia* passed the following order:-

"6. It is made clear that if the applicants fail to comply the order dated 08.08.2022, this Court will take serious view of the matter and, will pass appropriate order.

7. Mr. Manish Soni, learned counsel for the applicants, submits that the applicants have every intention to comply the order dated 08.08.2022.

8. Applicants and respondent no. 2 are directed to remain present before the Mediation & Conciliation Center of this Court on 13.09.2022.

9. Let the case be referred to the Mediation & Conciliation Center of this Court again for settling the dispute between the parties amicably."

5. Instead of complying the said directions issued by this Court in aforesaid two orders, an application came to be filed on behalf of the petitioners being I.A. No.8 of 2022. Stand taken in the application is that the ICICI Bank has communicated to the petitioners that though vide order dated 08.08.2022, this Court directed for defreezing the accounts of the petitioners but since the account details were not mentioned in the order dated 08.08.2022, therefore, ICICI Bank would be unable to defreeze the accounts, therefore, the petitioners could not bring Bank Draft of Rs.35,00,000/- as directed by this Court vide order dated 29.08.2022.

6. Relevant paras of the application read as under:-

"2. That the applicants are keen to deposit the entire amounts as per

the order of this Hon'ble Court dated 08.08.2022 but even there is a specific order of this Hon'ble Court to open the accounts of the company and applicants but the bank concern not open the accounts even after submitting the application and order of this Hon'ble Court before him lastly applicant no 1 submitting the application before him on 15.09.2022 but till today he is not opened the account of company as well as applicants therefore applicants could not comply the order of this Hon'ble Court .copy of the application dated 15.09.2022 is being appended here and marked as Annexure SA-1 to this affidavit.

3. That the opposite party no 2 run the site which is apt from the affidavits of Asish Tyagi, Sukh Lal Gram Pradhan ,Harendra Yadav and as per agreement she is liable to give the 2 crore to the applicant but even then applicants are anxious to finalize the entire dispute before the Hon'ble Court because during the mediation any mishappening could be taken place .The copy of the affidavits are being appended here and marked as Annexure -SA-2 with this affidavit.

4. That the bank manager send a letter to the applicant no l by which he informed that his legal cell advised him that in the order dated 08.08.2022 passed by Hon'ble Court the account no is not mentioned hence on the basis of this unfreezing the accounts is not possible. The copy of the letter is being appended here and marked as Annexure SA-3 with this affidavit.

5. That the account no of Shiv Ganga 023905601697,and saving account of Suresh Tanvar is 02390153632."

7. Along with this application alleged communication addressed to the petitioners by the ICICI Bank has been placed on record as Annexure-SA-3.

The said document reads as under:-

"To
Suresh Kumar tanwar
Jursh country jwalapur
haridwar-249407

Sub To Unfreeze Currect Account and saving account

Dear Suresh sir we have received your application regarding unfreeze your account with high court orders but our legal team members has said that account no not mention which have to unfreeze in such order's so bank unable to process to the same.

For ICICI Bank Ltd
Authroized Signatory"

8. The petitioners maintained the Bank account at Haridwar. However, this communication SA-3 has been allegedly issued by ICICI Bank, Raheja House, IMT Manesar, Gurugram. It bears a seal of the Bank. The seal are documents are undated. The Court considered the said document and the language employed in the said communication and became apprehensive and formed a *prima facie* view that this document did not appear to be a genuine document issued by the Bank. This Court, therefore, vide order dated 21.09.2022 directed Regional Head ICICI Bank, Salimar Tower, Hazratganj, Lucknow to place on record the report after verifying the said document Annexure SA-3. The Court also directed the Regional Head, ICICI Bank to communicate how much amount was lying in the Bank accounts of the petitioners. Relevant part of the order dated 21.09.2022 would read as under:-

"2. Sri Nadeem Murtaza, learned counsel for the complainant and Sri Rao Narendra Singh, learned AGA have submitted that the said letter appears to be forged and fabricated document. They have submitted that the language which is used in the letter does not appear to be a language of educated person well versed in the English language.

3. In view thereof, the Regional Manager, ICICI Bank, Lucknow is directed to get the said letter verified and submit a report before this Court by 26.9.2022.

4. Sri Nadeem Murtaza, learned counsel for the complainant is directed to submit the photocopy of the said letter before the Regional Manager, ICCI Bank, Lucknow for its verification during the course of the day.

5. The Regional Manager, ICICI Bank, Lucknow will also indicate that how much amount is lying in the bank account of the petitioners i.e A/c No.023905601697 in the name of Shiv Ganga Associate and S.B. A/c No.02390153632 in the name of Suresh Tanvar. It is also directed that the said bank accounts shall be de-frozen forthwith to enable the petitioners to bring a bank draft of Rs.35,00,000/- on 28.9.2022.

6. List this case on 28.9.2022, on which date, the petitioners shall

remain present before this Court.

7. The party shall file self attested computer generated copy of such order downloaded from the official website of High Court Allahabad and the concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

9. The petitioners were directed to remain present before this Court today. Despite specific order passed by this Court for petitioners' presence before this Court, they are not present today in clear and willful disobedience and defiance of the order passed by this Court.

10. Mr. Prashant Kumar, learned counsel appearing for ICICI Bank in compliance of the order dated 21.09.2022 has tendered an affidavit of Mr. Manoj Mehta, Regional Head of ICICI Bank, Shalimar Tower, Hazratganj, Lucknow with copy to the learned counsel for the petitioners. Along with the said affidavit, verification report of the document SA-3 has been placed on record.

The report would read as under:-

"Date 26.09.2022

To,

The Hon'ble Court,

Application under Section 483 No.4496/2022 pending before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

Subject: In compliance of Order/Direction dated 21.09.2022 in Application under Section 482, No.4496 of 2022.

Hon'ble Court,

The undersigned is working as a Regional Head with ICICI Bank, Lucknow, at Shalimar Tower, Hazratganj, Lucknow. This Hon'ble Court was pleased to pass a direction vide order dated 21.09.2022 to submit a report in respect to the verification of the undated letter sent by Shri Nadeem Murtuza, Advocate. Learned Counsel for the complainant, which is annexed for the kind perusal of this Hon'ble Court.

As directed by this Hon'ble Court, the undersigned took all possible efforts to verify the letter in question and found that no such letter has been issued by ICICI Bank limited, Raheja House, IMT Manesar,

Gurugram 122050.

The undersigned also inquired in respect to the account number mentioned in the order dated 21.09.2022 by this Hon'ble Court that is A/c No. 023905 60 1697 in the name of Shiv Ganga Associates and SB A/c No. 02390153632 in the name of Suresh Tanwar are incorrect. A copy of the bank's database response is enclosed for the kind perusal of this Hon'ble Court. However on perusal of the letter dated 15/09/2022 the two account number mentioned are as follows

-023905501697 in the name of Shiv Ganga Associates

Available balance Rs.1068.39 (rupees one thousand sixty eight and paise thirty nine only and Fixed deposit of Rs.100000 (one lac only) bearing FD number 023913012330

023901536321 in the name of Suresh Kumar Tanwar

Available balance Rs.1043.00 (rupess one thousand forty three only)

Are existing as pr the records of the bank. Statement of the account is enclosed herewith.

The undersigned was also directed that the said bank account shall be de-freeze the account as mentioned in the order of this Hon'ble Court (A/c No.023905601697 in the name of Shiv Ganga Associates and SB A/c No.02390153632 in the name of Suresh Tanwar), in this regard it is respectfully apprised that the account mentioned in the order are incorrect. However, if the court pleaseit may order to that effect for de-freezing the accounts as below

-02390551697 in the name of Shiv Ganga Associates

-023901536321 in the name of Suresh Kumar Tanwar

therefore, we request that the correct account number be provided to the Bank

Further enabling us to ensure the compliance of the order of this Hon'ble Court.

The aforesaid report is being submitted with utmost respect and regard to the Hon'ble Court.

With regards

Manoj Mehta

(Regional Head, ICICI Bank Ltd.)"

11. Report dated 26.09.2022 placed on record as Annexure-2 with the affidavit of the Regional Head of ICICI Bank clearly mentions that "No

such Letter has been issued by ICICI Bank, Raheja House, IMT Manesar, Gurugram." In respect of two accounts, it is mentioned that available balance is Rs.1068.3 and Rs.1043 in accounts of the petitioners.

12. Considering the fact that the petitioners have willfully disobeyed and defied the order dated 21.09.2022 inasmuch as they have remained absent despite specific direction for their presence before this Court, they have committed contempt of this Court. They have further committed criminal contempt of this Court as they have submitted a forged document before this Court on affidavit and, thus, they have tried to interfere with the course of justice and pollute the stream of justice by bringing on record a forged and fabricated document on affidavit to mislead this Court and obtain a favorable order. They have further committed criminal contempt of this court by falsely stating on affidavit that the two bank accounts of the petitioners mentioned in the application and referred to above have sufficient amount to honour the directions of this Court to bring a bank draft of Rs.35,00,000/- favouring respondent No.2 but for not defreezing the accounts by the Bank, they could not bring the Bank draft of Rs.35,00,000/- favouring respondent No.2.

13. In view thereof, this Court has no option but to take a Suo Moto action against the petitioners.

14. Let a separate criminal contempt proceedings be drawn against the petitioners by registering a Suo Moto criminal contempt against them.

Registry is directed to do the needful.

15. In the aforesaid facts and circumstances, let non bailable warrants of arrest be issued against the petitioners.

16. Director General of Police, U.P. and Director General of Police, Uttarakhand are directed to ensure arrest of the petitioners and their presence before this Court on the next date of listing of the case.

17. List this case on 12.10.2022.

18. Interim orders passed earlier stand vacated.

19. Learned counsel for the petitioners has accepted notice and he may file his response. The petitioners shall show cause why they should not be punished for committing criminal contempt of this Court by submitting forged document before this Court on affidavit and making false submissions on oath.

20. Let a copy of this order be communicated to Director General of Police, U.P. and Director General of Police, Uttarakhand for necessary compliance.

(Dinesh Kumar Singh, J.)

Order Date :- 28.9.2022
prateek