

(2014) 11 DEL CK 0028

Delhi High Court

Case No: Cont. Cas (C) No. 765/2012

Sanjay Gupta

APPELLANT

Vs

Rajiv Gupta

RESPONDENT

Date of Decision: Nov. 19, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: Manish Vashisht, Sameer Vashisht and Dhruv Rohatgi, Advocate for the Appellant; Rahul Gupta, Advocate for the Respondent

Judgement

V.K. Shali, J.

The present contempt petition has been filed by the petitioner, Sanjay Gupta, against respondent No. 1, Rajiv Gupta and his sister-in-law (respondent No. 2), Alka Gupta on account of the alleged wilful disobedience of the judgment dated 9.1.2006.

2. Before dealing with the allegations of contempt, it would be worthwhile to give brief background of the case. Rajiv Gupta, respondent No. 1 herein, filed a suit for partition, rendition of accounts and injunction in respect of the properties allegedly owned and possessed by his father L.R. Gupta in the capacity of karta of HUF. The details of the immovable properties were mentioned in schedule "A" attached to the plaint and details some of the properties were given in schedule "B". Sanjay Gupta, present petitioner and their mother, Smt. Pramod Gupta was also impleaded as defendants.

3. In the year 2003, an application being I.A. No. 220/2006 was filed jointly by the parties under Order 23 Rule 3 CPC stating that the suit be disposed of in terms of the compromise arrived at between the parties. According to the compromise, the respondent, Rajiv Gupta, was to get two properties, namely, Property No. 4, Palam Marg, Vasant Vihar, New Delhi and Property No. 5, Vasant Marg, Vasant Vihar, New

Delhi, as his absolute properties and the present petitioner, Sanjay Gupta, who had power of attorney in respect of Property No. 4, Palam Marg, Vasant Vihar, New Delhi, handed over the documents of the said property in original to Rajiv Gupta and signed all the necessary documents in order to perfect his title. In addition to this, Sanjay Gupta, the petitioner, also gave an amount of Rs.3.50 crores through pay order dated 5.1.2006 drawn on American Express Bank Ltd. and another sum of Rs.3 crores through two post dated cheques of RS.1.50 crores each dated 5.1.2009, which were subsequently replaced by a pay order dated 6.1.2009 for a sum of Rs.3 crores drawn on Standard Chartered Bank. A sum of approximately Rs.80 lacs was also paid to Rajiv Gupta on 5.1.2006 on account of payment to DDA for conversion of Property No. 4, Palam Marg, Vasant Vihar, New Delhi, from lease hold to freehold. Thus, so far as rights of respondent No. 1, Rajiv Gupta, and his family members in respect of the properties in HUF were concerned, those were allegedly perfected by the present petitioner, Sanjay Gupta.

4. The respondent, Rajiv Gupta, and his other family members were not to claim any remaining properties, the details of which are given in schedules "A" and "B" of the suit. These properties were (i) 14, Anand Lok, New Delhi; (ii) House No.A-2/14, Safdarjung Enclave, New Delhi; (iii) 47, Amrita Shergill Marg, New Delhi; (iv) Dabur Farms, Village Bijwasan; (v) Pramod Farms, Village Chadanhola, Delhi; (vi) Flat No. 34, Hailey Road, New Delhi and (vii) a plot in Vrindavan measuring 2000 square yards. These properties were either owned in the name of Sanjay Gupta, L.R. Gupta or various companies, details of which are mentioned in the contempt petition of which Rajiv Gupta and his wife, Alka Gupta, were also the Directors. It is alleged that respondent Nos. 1 and 2, that is, Rajiv Gupta and his wife, Alka Gupta, after having got benefit in terms of the compromise order having been passed by the court in I.A. No. 220/2006 have claimed themselves to be the Directors of the company in terms of the compromise having been arrived at. For this purpose, various letters/correspondence have been exchanged between the respondents and the Registrar of Companies apart from lodging of FIRs, etc. It is alleged that they are in wilful disobedience of the order passed on 9.1.2006 by the court on the basis of the compromise application.

5. It may be pertinent here to refer to the exact language of the order which was passed on the basis of compromise application, which reads as under :-

"2. Now, the parties have resolved all those differences and disputes and have recorded the terms of compromise in the present application which is signed by the plaintiff as well as the defendants 2 and 3. Insofar as the defendant No. 1 is concerned, it is common ground that the said HUF had already been dissolved in 1993. However, Mr. L.R. Gupta has signed on behalf of the defendant No. 1 by way of abundant caution. Insofar as defendant No. 4 is concerned, the learned counsel for the plaintiff states that no relief is claimed against the defendant No. 4 and the learned counsel for both the plaintiff as well as the defendants state that there is no

dispute with regard to defendant No. 4 who happens to be the daughter of Mr. L.R. Gupta, the defendant No. 2, and the sister of the plaintiff and she has also not chosen to appear in these proceedings throughout, despite service. Therefore, this compromise which is being effected is essentially between the plaintiff on the one hand and defendants 2 and 3 on the other hand. Other terms of the compromise are set out in the application which is exhibited as Exhibit C-1.

3. The only two formalities which remained to be completed were the handing over of the pay order and two postdated cheques. The pay order is of the sum of Rs.3.50 crores and the two cheques are for Rs.1.50 crores each. This pay order and the two cheques have been handed over to the plaintiff who is present in court and he acknowledges the receipt of the same. The defendant No. 3 has signed these two cheques and he undertakes that the same shall be honoured on presentation on the due dates. The keys of 4, Palam Marg, Vasant Vihar, New Delhi are also handed over by the defendant to the plaintiff who is present in court and who had taken the same. It is clear that handing over of the keys means that the plaintiff now will have vacant physical possession of the said premises. In addition to the pay order and the two cheques which have been handed over in court today, the defendants have earlier made a payment of Rs.80,65,861/- by way of pay order dated 5.1.2006 favouring the DDA which is a payment on account of the plaintiff.

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sd/-"

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The main contention of Mr. Vashisht, the learned counsel for the petitioner is that respondent Nos. 1 and 2, after having obtained the benefit in terms of the said compromise order by perfecting their title in respect of two properties at Vasant Vihar and taken substantial amount of money, have wilfully disobeyed the orders of the court by writing letters to the Registrar of Companies, Delhi, copies of which are placed at page Nos. 143, 158, 174, 182, 190 and 197 of the paper book. In these letters Rajiv Gupta, respondent No. 1, has written to the Registrar of Companies that he continues to be the Director of various companies which are claimed to be the owners of properties other than the two properties which have been received by Rajiv Gupta in terms of the compromise decree. Similar letters are purported to have been written by respondent No. 2, Alka Gupta, wife of Rajiv Gupta, copies of which are placed at page Nos. 150 and 160.

8. It is contended by Mr. Vashisht that notwithstanding the fact that he has already filed an execution petition in respect of this very compromise decree before the concerned court, which is pending adjudication, it does not detract from proceeding being taken against the respondents for contempt on account of the alleged wilful disobedience of the order passed by the court on 9.6.2006. For this purpose, the

learned counsel has sought to place reliance on case titled [Rama Narang Vs. Ramesh Narang and Another, .](#)

9. It is also contended by the learned counsel for the petitioner that merely because a formal decree is not drawn, that is not a ground for the respondents to refuse to obey the orders passed by the court. In this regard, it has been contended that drawing of a decree is a ministerial act which is to be performed by the court and not by the petitioner. In this regard, reliance is placed by the learned counsel on the judgment passed in C.S. (OS) No. 1938/2008 titled Radhesh Singh vs. Vineet Singh decided on 22.5.2014 as well as on [Union of India \(UOI\) and Others Vs. Subedar Devassy PV, .](#)

10. It is also contended by Mr. Vashisht that so far as the contention of the learned counsel for the respondents that there is no undertaking given by the respondents or that there is an arbitration agreement in the compromise application or that the present contempt petition is barred by limitation having been filed on 8.11.2012, are of no consequence inasmuch as on the face of it, the respondents have failed to carry out their respective obligations in terms of the order passed by the court.

11. The learned counsel for the respondents have vehemently contested the contempt petition. A short reply has been filed apart from various objections regarding the maintainability of the petition on the ground of limitation and availability of an alternative efficacious remedy by way of arbitration. Further, it is stated that the petitioner can seek execution of the decree which has already been availed of.

12. The respondents have also taken the plea that in terms of the compromise, Sumangli Gupta, daughter of L.R. Gupta has already filed an application for setting aside the judgment dated 9.1.2006 to the effect that she had been made as a party to the suit yet she was not served and a compromise was arrived at, at her back without her knowledge and acceptance.

13. It is also contended by Mr. Rahul Gupta, the learned counsel for the respondent that Sonakshi Gupta, daughter of Rajiv Gupta, respondent No. 1, has also filed an independent suit for partition being C.S. (OS) No. 1965/2012 titled Sonakshi Gupta vs. L.R. Gupta (HUF) & Ors. in respect of subject properties which are shown in annexures A and B to the suit which is purported to have been compromised between the parties. It has also been disputed by the learned counsel that any undertaking, whatsoever has been given by the respondents and consequently, there is no question of their being any wilful disobedience of the order having been passed by the court.

14. I have carefully considered the submissions made by the respective sides and have also gone through the record. No doubt, Rajiv Gupta, respondent No. 1, had filed a suit for partition against L.R. Gupta (his father) in the capacity of HUF, his mother and his brother, Sanjay Gupta, which was compromised on 9.1.2006 in

terms of which, a compromise decree has been passed. Even if it is assumed that in terms of the compromise, the respondent herein has been able to obtain title to two properties situated in Vasant Vihar and has now tried to retrace his steps so as to wriggle out of the compromise after having obtained an advantage, it does not in my view result in any wilful disobedience of the order passed by the court. In the language of court which passed the order on 9.1.2006, there is no direction, order or judgment passed by the court. All that it is noted in the order is that this is a suit which has been settled in terms of the compromise arrived at between the parties. Thus, in my view, prima facie there is no undertaking given to the court.

15. Before an action for contempt is sought to be taken, a party must have given an undertaking to the court and further, it must be accepted by the court, only then, an action for contempt can be taken. Similarly, there is no order or direction or judgment giving a direction to the respondent to do a thing or not to do a thing. Therefore, the court had rightly observed that in terms of the compromise between the parties, a decree be drawn and that decree has to be executed through normal processes of law as provided under CPC and not under threat of imprisonment for having allegedly violated the court order.

16. The petitioner in his petition has already observed that he has already applied for execution of the decree. Having chosen to file an execution petition for getting the decree executed, it is not open, in my view, for the petitioner to file the present contempt petition or in other words, it can be assumed that the present petition has been filed by the petitioner only with a view to bring to bear pressure on the respondents to succumb to the settlement in terms of the compromise, which cannot be permitted to be done at the instance of one of the parties. The purpose of the contempt proceedings is not to satisfy the whims and fancies of one party nor compel the other party to submit to the dictates of the party, who has filed the contempt petition.

17. So far as reliance of the learned counsel for the petitioner on Rama Narang's case (supra) to support his contention that the present contempt proceedings are maintainable is concerned, I feel that the said judgment does not help the petitioner in any manner. The reason for this is that in Rama Narang's case (supra), it has been specifically noted that there were undertakings given by the parties to the Apex Court while arriving at a settlement that they would abide by the terms and conditions of the compromise which undertaking, in the instant case, is missing. Secondly, in Rama Narang's case (supra) there were as many as eight cases which were pending mostly before Bombay High Court which were sought to be given quietus in terms of the compromise between the warring factions, who were members of the same family, out of which all except one, had performed their respective obligations but the one who had tried to resile from her undertaking, that the court was called upon to decide as to whether he can be permitted to do so with impunity so as to flout the entire compromise. It was in such a contingency that the

Apex Court observed that merely because a compromise decree is executable in a court of law, does not take away the power of initiating the contempt proceedings against the party, who is trying to resile from his or her undertaking, therefore, the facts of the Rama Narang's case (supra) are totally different from the facts of the present case where there is no undertaking furnished by the respondents.

18. In addition to this, the compromise decree which has been passed is stated to have been already assailed by Sumangli Gupta, the sister of the parties, namely, Rajiv Gupta and Sanjay Gupta. The said application for recall of that order is still pending and therefore, it is just and proper for the petitioner to go back to the executing court and get the execution clubbed along with the said application so as to have a comprehensive view rather than use the contempt proceedings as a lever to bring to bear pressure on the respondents.

19. As regards the judgments which have been relied upon by the petitioner that drawing of a decree is a ministerial act, this court has no dispute about the same. So far as the judgment passed in Subedar Devassy PV's case (supra) is concerned, I have gone through the same but that does not help the petitioner in any manner. Similarly, judgment passed in [Smt. Komal Nagpal and Others Vs. Mr. Kamal Nagpal and Others,](#) in my view, is of no help to the petitioner. I fail to understand in what respect the learned counsel for the petitioner wants to derive the benefit from the said two judgments.

20. For the reasons mentioned above, I am of the considered opinion that the present contempt petition is totally misconceived. There is no majesty of law which has been lowered. There is no undertaking having been furnished by the respondent Nos. 1 and 2 to the court which can be said to be having been violated by them. This was a case where the parties arrived at settlement and a compromise decree was passed which has to be got executed from the civil court. Accordingly, the contempt petition is dismissed and the contempt notice discharged. However, the petitioner is free to take such appropriate action for execution of the decree, if not already taken.