

(2016) 12 DEL CK 0015

DELHI HIGH COURT

Case No: CONT. CAS(C) 1321 of 2016 and C.M. Nos. 45710-45711 of 2016

Vivekananda College

APPELLANT

Vs

Sanjay Kumar Chandok

RESPONDENT

Date of Decision: Dec. 8, 2016

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 27(5)
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A

Citation: (2017) 2 ADDelhi 75 : (2016) 235 DLT 517

Hon'ble Judges: Mr. Manmohan, J.

Bench: Single Bench

Advocate: None, for the Respondent; Mr. Santosh Kumar, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

Manmohan, J. (Oral)—Present contempt petition has been filed alleging wilful disobedience of consent order dated 16th July, 2016, passed by learned Arbitrator.

2. Learned counsel for the petitioner states that the respondent has neither removed his belongings nor has he removed the Chaukidar/Guard from the work site. He also states that the respondent has now refused to attend the arbitration proceedings.

3. In the opinion of this Court, the petitioner has an alternative effective remedy under Section 27(5) of the Arbitration and Conciliation Act, 1996, which reads as under:-

" Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in

suits tried before the Court."

4. At this stage, learned counsel for the petitioner refers to a judgment of this Court in Sh. Krishan v. Anand, wherein it has been held as under:-

"9. At the outset I may state that if able to find an answer to the grievance raised by the petitioner of the order under Section 17 being unenforceable and toothless, I am reluctant to hold that such repetition of orders can be sought from the court. Such an interpretation would make Section 17 otiose and redundant and open the floodgates of the court to petitions under Section 9. The legislative intent in Section 17 of the Act appears to be to make the arbitral tribunal a complete fora not only for finally adjudicating the disputes between the parties but to also order interim measures. If it were to be held that to give teeth to orders under Section 17, petitions under Section 9 are to be filed, no purpose would be served in the parties approaching the arbitral tribunal first under Section 17 of the Act inasmuch as in such situation they might well approach the court directly under Section 9. Both the court as well as the arbitral tribunal ought not to be vexed with the same issues, not only at the expense of their time but also at the costs of the parties. Such interpretation which makes one of the provisions of the statute meaningless has always to be avoided.

10. In going through the Act minutely with such intent, Section 27(5) under the heading "Court assistance in taking evidence" has been discovered. The same reads as under:

27. (5). Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the court.

11. Though neither of the Counsel had drawn attention to the aforesaid provision but in my opinion the same is a complete answer to the cause of action for the present petition. The petitioner seeks same interim orders from the court as already granted to him by the arbitral tribunal only for the reason of the breach of the order of the arbitral tribunal being remediless. But that is not the position. The aforesaid provision provides the remedy for such breach. Any person failing to comply with the order of the arbitral tribunal would be deemed to be "making any other default" or "guilty of any contempt to the arbitral tribunal during the conduct of the proceedings". Thus the remedy of the other party is to apply to the arbitral tribunal for making a representation to the court to meet out such punishment, penalty to the guilty party, as would have been incurred for default in or contempt of the court. Naturally, the arbitral tribunal would make such a representation to the court only upon being satisfied that the party/person is in default or in contempt.

Once such a representation is received by this court from the arbitral tribunal, this court would be competent to deal with such party in default or in contempt as if in contempt of order of this court i.e., either under the provisions of the Contempt of Courts Act or under the provisions of Order 39, Rule 2A CPC."

5. Having perused the aforesaid judgment, this Court is of the opinion that it fortifies the view of this Court that the petitioner in the present case has an alternative effective remedy under Order 39, Rule 2A , CPC as a consensual interim injunction has been allegedly violated by the respondent.

6. A Division Bench of this Court in **Bimal Chandra Sen v. Kamla Mathur; 1982 Law Suit (Del) 152** has held that the process of contempt cannot be used to compel performance of a civil obligation. The relevant observation of the Division Bench is reproduced herein below:-

"4. At the very outset the question arises whether such a petition under Sections 10 and 12 of the Act is maintainable in this court on the averments made by the plaintiff. The suit was brought by the plaintiff against the wife of Mr. Mathur. She is the sole defendant in the suit. Against her the injunction order was issued by the subordinate judge under Order 39 rules 1 and 2, Civil Procedure Code enjoining her not to make construction.

This was later on modified. Now the plaintiff complains of violation of the injunction order and says that the wife as the principal offender and the husband as an "aider and abettor" be punished for contempt of court under Sections 10 and 12 of the Act and Article 215 of the Constitution. Will such a petition lie in this Court in respect of an injunction order issued by the subordinate Judge."

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20. From the above rulings two propositions emerge, Firstly, a person not a party to the suit cannot be proceeded against for contempt for aiding and abetting the breach. Secondly, the jurisdiction to punish for disobedience of the injunction order vests in the court which granted the injunction.

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39. The Code of Civil Procedure does not contemplate this. It expressly provides for grant of injunctions and the punishment for their disobedience. Appeals lie against grant of injunctions.

Appeals lie against punishment. Appeals lie against the order to punish or refusing to punish for disobedience. The High Court does not come into the picture at all. It is neither a case of civil contempt nor criminal contempt under the Act. It is a plain case falling within the four corners of Order 39 of the Code of Civil Procedure. To hold that the High Court has power to punish will be to hold that the subordinate judge has the power to grant injunction, but the High Court has the power to punish

for the disobedience of his order under Sections 10 and 12 for civil and criminal contempt because aiding and abetting is alleged.

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43. All that is at stake in the present case is the private rights of the parties. For defiance of the courts under the remedy is provided in the Code. It is attachment and detention in civil prison. For deliberate defiance of interim injunctions the court can send the contemner to prison. If the subordinate courts cannot enforce their injunctions the order virtually would be worthless. It is the deterrent effect of an injunction plus the liability to imprisonment for its breach which is the remedy. The subordinate judge can punish the defendant if he finds her to be guilty in flagrantly defying the order which he had made.

Contumacious disregard and contemptuous disobedience if the orders of the court have always been visited with committal to prison and attachment. Against the husband no case of criminal contempt has been made out. It seems to me that the application is wholly misconceived.

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48. In India the position is different. In this country the authoritative decision is of the Privy Council in *S.N. Banerjee v. Kuchwar Lime & Stone Co. Ltd.* (supra). The Privy Council has held that disobedience of the breach of injunction is a civil contempt governed by the Code of Civil Procedure. For their decision they relied on *Scott v. Scott* (supra). The Patna High Court had relied on *Seaward v. Paterson*. Reversing the High Court the Privy Council held that *Seaward v. Paterson* did not apply to the case before them. I would say the same. *Seaward v. Paterson* does not apply to the present case. This is a straight forward case of an injunction granted by the subordinate judge and the plaintiff alleging its disobedience by the defendant and her husband. The answer is : "Go to the court which issued the injunction"."

7. A Coordinate Bench of this Court in ***Jamna Datwani v. Kishin Datwani & Ors., Cont. Cas.(C) 652/2014*** has held as under:-

"5. It was pointed out to the learned counsel for the petitioner that the respondent is stated to have paid a sum of Rs. 3,60,000/- out of a sum of Rs. 5 lacs and for realisation of the balance amount, the petitioner is free to go to the civil court by invoking the provisions of Order 39, Rule 2A CPC or to seek execution of the order passed by the court for recovery of money. However, the learned counsel, instead of accepting the said course had contended that this is a case of gross contempt on the part of the respondent inasmuch as the directions of the court have not been complied. For this purpose, the learned counsel for the petitioner has relied on ***Lopaben Patel v. Hitendra Rambhai Patel; 2000 Cri. LJ 2709, Shankerpuri Chanpuri Goswami v. Abdulhakim Asmadmahamad; (1985) ILLJ 281 Guj., Mira Bose v. Santosh Kumar Bose; AIR 1973 Calcutta 483 (V 60 C 111), Jyotirmoyee***

Debi v. Assistant Settlement Officer and Others; AIR 1973 Calcutta 486 (V 60 C 112) and Sarla Devi Bharatkumar Rungta v. Bharatkumar Shivprasad Rungta & Anr.; 1988 Cri.L.J. 558.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the judgments cited. The questions which arise for consideration, in the instant case, are firstly, whether a case for initiation of contempt proceedings against respondent No.1 is made out and secondly, even if it is *prima facie* made out, whether the petitioner has an alternate efficacious remedy available to her in getting the order implemented, then she must, in the first instance, resort to the same.

Moreover, the grievance of the petitioner is essentially for recovery of monies which can be resorted to by filing an execution under Order 21 CPC in the court where the suit is pending adjudication.

Reliance in this regard can be placed on the judgment of the Apex Court in **Kanwar Singh Saini v. High Court of Delhi; (2012) 4 SCC 307.**

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8. The provisions of Order 39, Rule 2A CPC not only deal with a situation where an injunction order has been passed by the civil court but it also deals and contemplates to deal with a situation where an order passed by the court, of which there is alleged to be wilful disobedience, can be dealt with.

9. The only difference between the provisions under Order 39, Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the quantum of incarceration which a person can be sentenced to.

Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39, Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions.

Therefore, one of the remedies which is already available to the petitioner is under Order 39, Rule 2A CPC. She can also seek execution of the order for recovery of monies from respondent No.1 by getting his share in the property in Friends Colony attached or getting his other properties attached and getting recovery effected.

Therefore, there is ample mechanism prescribed under the CPC for the purpose of implementation of an order.

10. The contempt power under the Contempt of Courts Act is not only discretionary but is also to be used sparingly. A trend which has been noticed by this court is that parties invariably try to invoke the provisions of the Contempt of Courts Act in order to get orders implemented while there is machinery provided under the CPC for the

purpose of getting orders, decrees or directions executed."

8. The Supreme Court in **Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307** has made similar observations.

9. Consequently, the present contempt petition and applications are dismissed with liberty to the petitioner to file a petition under Section 27(5) of the Arbitration and Conciliation Act, 1996 read with Order 39, Rule 2A , CPC.

10. However, this Court clarifies that it has not made any observations with regard to the merits of the petition. The rights and contentions of all the parties are left open.