

(2001) 12 DEL CK 0098

Delhi High Court

Case No: CCP No. 331 of 2001

Bank of India

APPELLANT

Vs

Raman Malhotra and Others

RESPONDENT

Date of Decision: Dec. 12, 2001

Acts Referred:

- Constitution of India, 1950 - Article 215
- Contempt of Courts Act, 1971 - Section 11, 12

Citation: (2002) 1 AD 636 : (2003) 115 CompCas 369

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: Milanka Chaudhary, Proxy Counse, for the Appellant; M.N. Krishnamani D.K. Garg and Saurabh Chauhan, for the Respondent

Judgement

A.K. Sikri, J.

Bank of India, who is the petitioner in this case, has filed this contempt petition under Article 215 of the Constitution of India as well as under Sections 11 and 12 of the Contempt of Courts Act, 1971. The petitioner Bank has prayed for initiation of the contempt proceedings against the alleged contemnors/respondents herein. The cause for filing the present petition is the alleged willful breach, disregard, violation and disobedience of the undertakings and assurances dated 24th May and 25th May, 2000 given to this court by the respondents in CWP No. 265 of 1997.

2. In order to appreciate the grievance of the petitioner Bank, it would be appropriate to scan through the salient facts which led to giving of the aforesaid undertakings and assurances dated 24th and 25th May, 2000:

3. The respondents No. 6, namely, M/s Usha Micro Process Controls Limited, is a company incorporated under the Indian Companies Act (hereinafter referred to as the "respondent No. 6 company"). It made a reference to Board for Industrial and Financial Reconstruction (for short "BIFR") under the provisions of Sick Industrial

Companies (Special Provisions) Act, 1985 on the ground that it was a sick company and for its rehabilitation. Order dated 29th April, 1996 was passed by BIFR declaring it to be a sick company and returning the findings that the company cannot be rehabilitated. It accordingly recommended the winding up of the company. Against this order the respondent No. 6 company filed appeal before the Appellate Authority for Industrial and Financial Reconstruction (for short "AAIFR") which was also dismissed by order dated 28th October, 1996. The respondent No. 6 company and one Mr. S. Vishwanathan filed CWP No. 265/97 in this court challenging the aforesaid orders of BIFR and AAIFR. It also moved CM No. 429/97 for grant of ad interim orders.

4. At this stage, it may be apposite to point out that the petitioner Bank herein is one of the creditors of the respondent No. 6 company which filed a suit for recovery of Rs. 4,73,67,035.92 paisa besides costs and interest against the respondent No. 6 company on 24th November, 1993 before the Debt Recovery Tribunal (DRT). During the pendency of the aforesaid writ petition in this court, the respondent No. 6 company expressed its intention to settle the dues of different creditors including the petitioner Bank hereby and to show its bona fides deposited sums of Rs. 5 lacs and Rs. 16 lacs which the petitioner Bank kept in a "No-lien Account". Thereafter the proposals for settlement were discussed between the parties from time to time. On 20th December, 1999 the counsel for the respondent No. 6 company stated before the court in the aforesaid writ petition that vide letter dated 25th November, 1999 the petitioner Bank had accepted the offer of one time settlement as proposed by the respondent No. 6 company and on this submission, the court passed the following order:

"On payment of the same and subject to other conditions, contained in the letter, the matter with Bank of India will stand settled."

5. However, the respondent No. 6 company did not comply with the terms and conditions contained in the letter dated 6th September, 1999 of the respondent No. 6 company which was accepted by the petitioner Bank. Instead, the respondent No. 6 company filed an affidavit of undertaking of Mr. D. Kar, respondent No. 2 herein and one of the Directors of the respondent No. 6 company as per which following undertaking was given:

"1. That I am the director of the petitioner company and Therefore competent to give this undertaking.

2. That the petitioner company undertake to pay Rs. 1,39,73,008/- on or before 31.7.2000 towards full and final settlement with the Bank of India in terms of the settlement dated 25.11.1999 between the petitioner and Bank of India (respondent No. 6).

3. That I have deposed correctly."

6. When the matter came up before the court on 25th May, 2000 acting on the basis of the aforesaid affidavit of undertaking and the statement of the learned senior counsel for the respondent No. 6 company, made on instructions, the aforesaid undertaking was accepted by this court. Following order was passed:

C.W. 265/97 and CM 429/97

"Mr. Nayar, learned senior counsel for the petitioner says that he has instructions to state that petitioner shall deposit a sum of Rs. 1,39,73,008/- in this court towards the liability of the New Bank of India on or before 31st July, 2000. He points out that the petitioner has executed and undertaking to that effect. Learned senior counsel for the petitioner also says that undertaking be recorded. We order accordingly. At the same time we clarify that the deposit made by the petitioner shall be without prejudice to the rights and contentions of the parties.

In so far as Canara Bank is concerned, Mr. Nayar says that Mr. Raman Malhotra, Director of the petitioner company is present and he would like to make a statement.

Mr. Raman Malhotra, Director of the petitioner company states that he has the authority to state on behalf of the petitioner that a sum of Rs. 62.17 lakhs shall be deposited in this court on or before 31st July, 2000 towards the liability of Canara Bank. He states that his statement be treated as an undertaking on behalf of the petitioner and the same be recorded. We order accordingly. The undertakings and the deposit shall be without prejudice to the rights and contentions of the parties.

List the matter on 3rd August, 2000."

(It appears that name of the Bank "New Bank of India" has been wrongly typed which should have been "Bank of India").

7. This order reveals that respondent No. 1 also gave undertakings to the Court to clear the dues of Canara Bank.

8. As per the aforesaid undertaking, the amount of Rs. 1,39,73,008/- was to be deposited on or before 31st July, 2000. This amount was, however, not deposited and instead application for extension of time to deposit this amount by 31st October, 2000 was filed which was registered as CM 6549/2000. The payment was still not made as undertaken. Now on or about 18th October, 2000 another CM 9686/2000 was filed in which, inter alia, following prayer was made:

That the respondent Nos. 5 and 6 be directed to agree for settle the dues of the petitioner company being settled in accordance with the Reserve Bank of India guidelines for recovery of dues relating to non-performing assets of public sector banks dated July 27, 2000."

This application was dismissed with following observations:

"By means of the application, the petitioner wants to wriggle out of the undertakings given to the court on 25th May, 2000. The undertakings given by the petitioner were recorded and accepted. The petitioner cannot be allowed to breach the undertakings given to this court.

The application is accordingly dismissed."

10. Notwithstanding the aforesaid order, the amount in question was not deposited. This act of omission and commission has forced the petitioner Bank to file the present contempt petition stating that the action of the alleged contemnors/respondents in not depositing the amount as per the undertakings and assurances given to this court is intentional and willful. It amounts to willful disregard and disobedience of the undertakings dated 24th and 25th May, 2000.

11. Separate replies are filed by the respondents 1 and 2. An application has been filed on behalf of the respondents 3-5 (CM 348/2001) contending that the names of the respondents 3-5 be deleted as they are wrongly imp leaded as parties. We shall address to this aspect at a later stage in this order.

12. As already noticed above, the affidavit of undertaking dated 24th May, 2000 was given by the respondent No. 2 as a Director of the respondent No. 6 company in which he undertook, on behalf of the respondent No. 6 company, to make the payment of Rs. 1,39,73,008/- to the petitioner Bank which undertaking was accepted by the court vide order dated 25th May, 2000. On the basis of the aforesaid undertaking given on 25th May, 2000 the order dated 25th May, 2000 further shows that a sum of Rs. 62.17 lakhs was to be deposited by the respondent No. 6 company towards the liability of Canara bank. Therefore, so far as respondents 1 and 2 are concerned, both had given undertakings to this court which they have admittedly flouted.

13. It may be mentioned that in the replies by respondents 1 and 2, which are almost identical, both the respondents admit that there is a non-compliance of the undertakings given by them to this court. Therefore, factum of breach of the undertakings has been accepted by the respondents 1 and 2. Learned counsel for the respondents 1 and 2 was candid in accepting this position even at the time of arguments. However, his only plea was that there is no willful default or non-compliance on the part of these two respondents and in replies filed these respondents have tried to explain the circumstances because of which the deposit could not be made. It is sought to be urged that these respondents were only the employee Directors acting under the instructions of promoters, namely, the respondents 3-5 and the undertakings to this court were given by these respondents pursuant to the instructions given by the respondents 3-5 who had also promised to provide for the funds for making necessary deposits in terms of undertakings dated 25th May, 2000 given by the respondents 1 and 2 and accepted by this court. It is also stated that they have since resigned from the employment

and as also from the Directorship of the respondent No. 6 company. The learned counsel for these respondents was at pains to argue that these two respondents being only employees of the respondent No. 6 company, could not be made to pay the amount, and Therefore, there was no willful default or non-compliance and these respondents were tendering unconditional and unqualified apology to this court with request to accept the same. This apology is contained in para 7 the relevant portion of which reads as under:

"That though there was no willful default/non-compliance on the part of the answering respondent still, since the non-compliance of the said statement/undertaking is there, the answering respondent tenders the unconditional and unqualified apology to this Hon"ble Court with a request to this Hon"ble Court to accept the same."

14. The learned counsel for the respondents 1 and 2 further accepted the position that non-compliance of the undertakings amounted to contempt of the court and his submission was that the Explanation given in the replies being genuine, the matter be set at rest by accepting the apology of these two respondents.

15. The submissions on the basis of which non-compliance is sought to be explained away are totally irrelevant and misconceived. These two respondents were admittedly working as Directors of the respondent No. 6 company. They had given the undertakings to this court as Directors. In fact in the affidavit of the respondent No. 2, he had stated in no uncertain terms that he was authorised to give such an undertaking. Likewise, the respondent No. 1 appeared in the court and gave his undertaking. What was the arrangement between the respondents 1 and 2 or for that matter, between the respondent No. 6 company and the respondents 3-5 as alleged promoters, was neither disclosed nor the concern of the court in accepting the undertakings. Secondly, the same attempt of the respondents 1 and 2 to wriggle out of the undertakings on the same ground before the writ court by filing CM No. 9686/2000 failed as the said CM was dismissed by order dated 9th February, 2001 categorically recording that they cannot be allowed to breach the undertakings given to the court.

16. As already noticed above, this contempt petition is filed only on the ground that the undertakings given to this court have been breached. These undertakings were given by the respondents 1 and 2. It may be noticed that the writ petition filed by the respondent No. 6 company was adjourned from time to time to enable the respondent No. 6 company to settle the matter with the creditors i.e., different Banks including Bank of India and Canara Bank. The respondent No. 6 company dragged on the matter, which was filed in the year 1997, by representing that it was settling the matter with various creditors. Otherwise, as per the order of BIFR, which was upheld by the AAIFR also, the respondent No. 6 company would have been wound up long ago. Thus by giving solemn declaration to the effect that the amount in question would be paid within stipulated period, the respondents 1 and 2 made

this court to believe that they would abide by the same and in this manner, obtained benefit by not allowing the orders of BIFR to be implemented. The reason why breach of undertaking given to court amounts to contempt is that the contemnor by making false representations to the court obtains benefit and if he fails to honour the undertaking, he plays a serious fraud on the court and thereby obstructs the course of justice. An undertaking entered into with or given to the court by a party has exactly the same force as an order made by the court and accordingly breach of an undertaking amounts to contempt in the same way as breach of an injunction. Therefore, such breach is liable to be visited by the same punishment as breach of an injunction. (See: [Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others](#), and [Saleemuddin and Others Vs. Sharafuddin and Others](#), .

17. Thus when the undertaking is given to the court, it is to be treated as a solemn undertaking and the non-compliance/adherence of which clearly amounts to the contempt of court. As mentioned above, the respondents 1 and 2 have not disputed this position. The question of accepting the apology would have arisen only if the respondents 1 and 2 had purged the contempt by depositing the amount. However, that is not done. The contempt still persists. The stand taken by the respondents 1 and 2 in their replies and as also argued by their learned counsel is that they would not be complying with the undertakings as they have no means to do so. Therefore, having not purged the contempt, the unconditional and unqualified apology of the respondents 1 and 2 cannot be accepted. We accordingly reject this apology.

18. It is time now to decide the nature of punishment which is to be inflicted upon the respondents 1 and 2 for committing the contempt. Learned counsel for these contemnors made a fervent plea for taking a lenient view keeping in view the circumstances in which the undertaking was given. Here there are certain mitigating circumstances which persuade us to take a lenient view in the matter. The undertakings were given on behalf of the respondent No. 6 company of which the respondents 1 and 2 were the employee Directors. Position may have been different had the respondents been directors in control of finances and affairs of the respondent No. 6 company. They were not going to have any personal gain. Therefore, although the breach of undertakings may be willful in technical sense as the respondents 1 and 2 have intentionally and willfully refused to adhere to the said undertakings, fact remains that they have no control over finances and being employee Directors who were getting remuneration from the respondent No. 6 company, they could not have paid the amount from their own pockets. These considerations persuade us to take a lenient view of the matter. Therefore, while the respondents 1 and 2 have to be convicted for an offence of contempt of court to uphold the majesty of law, we convict them and sentence them to an imprisonment of one day i.e. till rising of the court. We also sentence them to pay a fine of Rs. 2,000/- each to be paid within a period of two months. We also impose cost of Rs. 10,000/- each on these two contemnors to be paid to Delhi Legal Aid and Advice Board.

19. In so far as the respondents 3-5 are concerned, they are implicated in this contempt petition only on the ground that they along with respondents 1 and 2 are also the Directors of the respondent No. 6 company and are in charge and responsible to the respondent No. 6 company for giving the undertakings and assurances on behalf of the respondent No. 6 company. However, in the CM No. 348/2001 filed by these respondents, it is explained that the respondent No. 3 remained Director of the respondent No. 6 company from 25th November 1981 to 15th February, 1989; respondent No. 4 was the Director from 25th November, 1984 to 6th April, 1985; respondent No. 5 was the Director from 23rd January, 1984 to 6th September, 1984 and again from 2nd February, 1985 to 18th August, 1986. Thus the respondents 3-5 ceased to be the Directors w.e.f. 15th February, 1989, 6th April, 1985 and 18th August, 1986 respectively. This position is not disputed by the petitioner Bank or the respondents 1 and 2. Thus the respondents 3-5 were not the Directors of the respondent No. 6 company on 25th May, 2000 when the undertakings given by the respondents 1 and 2 were accepted by the court. Even if the respondents 3-5, alleged promoters of the respondent No. 6 company, were providing the funds for repaying the creditors, which fact is however not borne from the record, such an arrangement, if any, was the arrangement of the respondents inter se. So far as the respondents 3-5 are concerned, they did not give any undertaking to this court. The present contempt petition is filed alleging breach of the undertaking which was given only by the respondents 1 and 2 and not by the respondents 3-5. Therefore, as far as the respondents 3-5 are concerned, no action can be taken against them.

20. This CCP stands disposed of.