

(2011) 04 DEL CK 0273**Delhi High Court****Case No:** Cont. Cas (C) 450 of 2010

Vijay Pandit

APPELLANT

Vs

Nutan Pandit

RESPONDENT

Date of Decision: April 5, 2011**Acts Referred:**

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

Citation: (2011) 180 DLT 297**Hon'ble Judges:** G.S. Sistani, J**Bench:** Single Bench**Advocate:** Sandeep Sharma, for the Appellant; Hardik Luthra, Naveen Kumar and H.S. Jaggi, for the Respondent**Final Decision:** Dismissed

Judgement

G.S. Sistani, J.

Contempt is averred for willful disobedience of the order dated 08.08.2005 passed in the CS(OS) No. 214/2002 on the basis of a settlement arrived at between the parties on 16.07.2005 and statements made by the parties in court on 08.08.2005. The parties are husband and wife. On account of marital discord, various litigations had arisen between them, however, with the intervention of friends and relations, a settlement was arrived at and was filed in CS(OS) No. 214/2002.

2. Counsel for the Petitioner submits that Respondent has willfully disobeyed the settlement whereby it was agreed that the divorce petition which was pending between the parties would be amended into a petition for judicial separation. Counsel also submits that after the settlement, both the parties had approached the concerned court and the divorce petition was amended to a petition for judicial separation. Mr. Sharma, next submits that in the year 2007 in utter disregard to the settlement and the statements made in court whereby the Respondent had admitted that she has signed the statement after reading and understanding the

same, she has violated the terms of the settlement and a petition for grant of divorce has been filed.

3. A preliminary objection has been raised by counsel for the Respondent with regard to maintainability of the present contempt petition. Mr. Luthra, submits that the Petitioner had filed a contempt petition in the year 2008 which was dismissed by a speaking order on 06.04.2009 and appeal filed against the aforesaid order was withdrawn on 18.08.2009 and thus a second contempt petition would not be maintainable.

4. Counsel for the Petitioner submits that earlier contempt petition was filed in the and on a different cause of action. Counsel for the Petitioner clarifies that Respondent had filed a suit for declaration alleging that consent of the Respondent for signing the compromise deed, was obtained by coercion, undue influence, fraud and misrepresentation. Since the filing of the suit was against the terms of the settlement, the earlier contempt petition was filed. It is also submitted that the appeal was CONT.CAS(C) 450/2010 Page 3 of 6 withdrawn only on the ground that the Division Bench had observed that on account of pendency of the suit no contempt would be maintainable and in these circumstances the Petitioner withdrew the appeal, to pursue appropriate remedy including filing of contempt after decision in the suit.

5. Counsel for the Petitioner submits that the suit for declaration was withdrawn by the Respondent on 01.05.2010 and thereafter the present contempt petition has been filed. Counsel for the Petitioner submits that the order passed in the earlier contempt petition pertained only to filing of the suit for declaration by the Respondent and not for the reasons that a divorce petition had been filed by her.

6. I have heard counsel for the parties and perused the order dated 06.04.2009 whereby the contempt petition No. 132/2008 was dismissed as also the order of the Division Bench passed in appeal. The contempt petition was dismissed primarily on the ground that the court recorded a finding that no undertaking had been given nor any undertaking had been accepted by the court to the effect that Respondent would not be entitled to challenge the settlement dated 16.07.2005 on any ground. In the concluding portion of the order dated 06.04.2009, learned Single Judge had observed that no undertaking was given to or accepted by the court. While the order of the Division Bench did not grant express liberty to the Petitioner, it would be useful to reproduce the order dated 18.08.2009 of the Division Bench, which reads as under:

After some arguments, learned Counsel for the Appellant, states that he will pursue the appropriate remedy including contempt after the suit filed by the Respondent is decided.

He states that in these circumstances, he wishes to withdraw the Contempt Appeal.

The Contempt Appeal is dismissed as withdrawn accordingly.

7. While there is nothing on record to suggest that liberty was granted to the Petitioner to file a subsequent contempt petition after disposal of the suit, but the Petitioner has made a statement that he would pursue appropriate remedy including contempt after the suit filed by Respondent is decided. The Single Judge in the earlier contempt petition has come to a categorical finding that no contempt would be maintainable, as no undertaking was given to or accepted by the court. This observation of the Single Judge in the order dated 06.04.2009 has not been set aside by the Division Bench. To entertain present contempt petition would directly be in conflict with a view expressed by another Single Judge of this Court, who has come to a categorical finding that no contempt is made out and which order has attained finality.

8. To canvass his argument that the undertaking given to court may not be an express undertaking, but since the terms of the settlement were filed in court and statement was made in court, it would amount to an express undertaking. Counsel for the Petitioner has relied upon Rama Narang Vs. Ramesh Narang and Another, and more particularly paragraphs 24, 25 and 26, which read as under:

24. The question which was before the Court in Babu Ram Gupta case1 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 u/s 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 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 Khemka⁶ 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 CPC 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.

25. 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 u/s 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.

26. 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 case¹ must, therefore, be limited to its own peculiar facts.

9. I am afraid that the decision relied upon by counsel for the Petitioner cannot be looked into at this stage, as the order of the Single Judge in Contempt Case No. 132/2008 has attained finality and the appeal filed by the Petitioner herein was dismissed as withdrawn. Since another Single Judge has already held that a contempt is not maintainable, in view thereof, without expressing any opinion on the merits of the case, no grounds made out to initiate contempt proceedings. Dismissed.