

(1998) 10 DEL CK 0082**Delhi High Court****Case No:** CCP. 162/95 in S. 2622/95

Electro Appliances and Others

APPELLANT

Vs

Ramesh L. Vadodaria and Others

RESPONDENT

Date of Decision: Oct. 7, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 10, Order 22 Rule 9

Citation: (1998) 47 DRJ 274**Hon'ble Judges:** K. Ramamoorthy, J**Bench:** Single Bench**Advocate:** Ajay Sahani and H.P. Singh, for the Appellant; Maninder Singh and K. Pratibha, for the Respondent**Judgement**

K. Ramamoorthy, J.

The petitioners have filed this contempt petition against three respondents. The respondents are:-

1. Mr.Ramesh L.Vadodaria,

S/o Shri Laxman Bhai Vadodaria,

IIInd Floor, Chandan Bldg.,

23, Swastik Society,

Juhu Scheme, 2nd Road,

Vile Parle (West),

BOMBAY-400 056.

and also C/o

M/s.Crystal Kitchenware"s

Private Limited,
Mittal Industrial Estate,
Unit No.2, Building No.2,
Andheri Kurla Road,
BOMBAY.

2. Mr. Amit J.Patel
S/o Jairam Bhai Patel,
IIInd Floor, Chandan Bldg.,
23, Swastik Society,
Juhu Scheme, 2nd Road,
Vile Parle (West),
BOMBAY-400 056.

and also C/o
M/s.Dynapack,
Ansa Industrial Estate,
Gala No.E-116,
Saki Vihar Road,
Sakinaka, Andheri(East),
Bombay.

3. Shri Rupesh Gandhi
C/o M/s.Dynapack,
Ansa Industrial Estate,
Gala No.E-116,
Saki Vihar Road,
Sakinaka, Andheri(East),
Bombay.

2. On the 13th of November, 1995, this Court appointed the Local Commissioners and they were directed to visit the premises of the third and fifth defendants in S.No.2622/95. On the 16th of November, 1995 at about 11.45 a.m. the Local

Commissioners reached the premises and commenced to implement the order passed by this Court. The petitioners have referred to the report of the Local Commissioner, Mr. G.D. Gupta, who visited the premises of the fifth defendant in S.No.2622/95.

3. It is stated in paragraph 6 of the contempt petition:-

"That on a perusal of report filed by Mr.G.D. Gupta, Local Commissioner who visited the premises of the defendant No.5, it is clear that one Mr. Amit J.Patel and Mr. Rupesh Gandhi wilfully obstructed the said Local Commissioner from executing the orders of this Hon"ble Court and in fact, the said persons were responsible to remove from the custody of the Court the infringing goods which had been inventoried by the Local Commissioner. The said Shri Amit J.Patel showed no respect and regard for the orders of this Hon"ble Court and in fact, the said Shri Amit J.Patel "started shouting at the top of his voice and not even a single piece would go out from this factory, he also mentioned that he did not care for any court orders." In fact, so serious was the interference in the working of the Local Commissioner in executing the commission that the Local Commissioner Shri G.D.Gupta had to seek police aid for the execution of the commission which eventually could not be executed due to the obstructive and non-cooperative attitude of the above mentioned persons."

4. The Local Commissioner, Mr.G.D. Gupta, had stated in his report:

"The undersigned was appointed as Local Commissioner by this Hon"ble Court vide order dated 13th November, 1995 to visit the premises of defendant No.5, M/s.Dynapack, Ansa Indl. Estate, Gala No.E-116, Saki Vihar Road, Saki Naka, Andheri East, Bombay.

In compliance of the above said order of this Hon"ble Court, the undersigned along with Mr. Hemang Patel and Mr. S.G. Khadilkar representatives of the plaintiffs went to the above premises of the defendant No.5. We reached the said premises at 11.45 A.M. on 16.11.95. On reaching the premises I met Mr. Rupesh Gandhi, an employee of defendant No.5 to whom I showed the order of this Hon"ble Court and explained the purpose of my visit. Mr. Rupesh Gandhi went through the order and thereafter permitted me to take an inventory of the various infringing goods bearing the trade mark "Crystal". At a single glance around the premises, I saw huge stock of table forks, desert spoons, table knives bearing the trade mark "Crystal" and also saw huge quantity of packing material on the mezzanine floor inside the premises. I proceeded to inventoried the said infringing goods bearing the infringing trade mark "Crystal". The said inventory was signed by Mr. Hemang Patel but Mr. Rupesh Gandhi refused to sign the same as he said "I am not the owner". The said list of inventory, duly signed by Mr. Hemang Patel, is annexed as Annexure A to this Report.

All the inventoried items thereafter were put in gunny bags and cartons (numbering total 36) and the same were taken into possession by me for handing on superdari to the representative of the plaintiffs, as directed by this Hon'ble Court. On my instructions, the said gunny bags and cartons were removed from the premises of defendant No.5 to the outside verandah. While I was in the process of handing over the above said gunny bags and cartons on superdari to Mr. Hemang Patel and in fact one gunny bag containing 1900 spoons (without handle) bearing trade mark "crystal" had been handed over to Mr. Hemang Patel one Mr. Amit J.Patel came at the site at about 12.50 p.m. He started shouting at the top of his voice that not even a single piece would go out from this factory. He also mentioned that he did not care for any court orders and he did not allow me to hand over the balance inventoried goods to the representative of the plaintiffs. On reaching of Mr. Amit J.Patel, Mr. Rupesh Gandhi also joined him and obstructed in my working and did not permit me to execute the commission. On seeing the atmosphere being tensed, I was left with no alternative but to seek police aid for the execution of the commission. I personally went down to the police station at Saki Naka and met the police authorities there and showed them the order of this Hon'ble Court. On request of the police authorities, I made an application, copy of which is annexed as Annexure B to this report. Four policemen accompanied me to the spot and on reaching the spot I found that the gunny bags and cartons, which I had taken in my possession, were not lying at the spot where I had left them. A large crowd had gathered there and I came to know that Mr. Hemang Patel and Mr. Sanjay Patel had been manhandled by the said Mr. Amit Patel and one Mr. Ramesh L.Vadodaria and the said material had been transferred back into the premises by Mr. Amit J.Patel, Mr. Rupesh Gandhi and Mr. Ramesh L.Vadodaria and their labourers and they had pulled down the shutters and locked the premises and gone away. For this reason, the balance inventoried goods could not be handed over to the representative of the plaintiffs. One bag containing 1900 spoons (without handle) bearing the trade mark "Crystal", as aforementioned, was sealed and handed over on superdari to Mr. Hemang Patel, representative of the plaintiff. The said super adginama is hereby annexed as Annexure C.

In the above mentioned circumstances, the execution of this commission could not be completed due to the obstruction and non cooperative attitude of above mentioned persons. The Report is submitted along with Annexures."

5. Regarding the visit by the Local Commissioner of the premises of the third defendant, the petitioners have referred to the report of the Local Commissioner, Mr. Balram Chopra. In paragraph 7 of the contempt petition, it is stated:-

"That as regards the execution of the commission at the premises of the defendant No.3 the report of the Local Commissioner Shri Balram Chopra has been filed and is on record. The said Shri Balram Chopra has also clearly indicated in his said report that the orders of this Hon'ble Court could not be executed due to the

non-cooperative and obstructive attitude of Shri Ramesh Vadodaria and in fact the representative of the plaintiffs who was permitted to accompany the Local Commissioner vide order of this Hon"ble Court was pushed out of the premises by the said Shri Ramesh and was later slapped by the watchman employed by the defendant No.3 in the presence of the Local Commissioner, the lawyer of the plaintiffs and the said Mr. Ramesh."

6. The report of the Local Commissioner, Mr. Balram Chopra reads as under:-

"The undersigned was appointed as a Local Commissioner to visit the premises of defendant M/s.Crystal Kitchenware's Pvt. Ltd. at Mittal Indl. Estate, Unit No.2, Building No.2, Andheri Kurla Road, Bombay.

In compliance with the aforesaid order of the Hon"ble Court the undersigned along with Mr. H.P. Singh, counsel for the plaintiff, and Mr. K.G. Khiwani, Management Consultant of the plaintiff reached the aforesaid premises of the defendant at 11.45 A.M. on 16.11.95. On reaching the above premises the undersigned met Mr. Amit J.Patel, who was sitting in the office on the first floor of the aforesaid premises. The order of the Court was shown to the said Mr. Patel and the purpose of my visit was also told to Mr. Patel .On this Mr. Patel informed the undersigned that Mr.Ramesh L.Vadodaria, who was the owner of the said firm, will be arriving in about 10 minutes" time and it will be only thereafter that the proceedings can be started by the Local Commissioner. As Mr. Ramesh L. Vadodaria did not come even after waiting for about 20 minutes the undersigned went to the factory premises of the said defendant located on the ground floor of the above said premises with the aforesaid two persons. There it was noticed that large quantity of kitchenware as also empty boxes and wrappers etc. were lying there bearing the mark Crystal. Details of another said articles lying there are given in the inventory prepared at the spot which is annexed as Annexure "A" to this Report. The undersigned has also taken into possession one User's Manual and one wrapper, which are annexures B and C respectively. The said inventory is duly signed by Mr. H.P. Singh Advocate. About 50 minutes thereafter i.e. at about 12.35 p.m. Mr.Ramesh L.Vadodaria arrived there. He was shown the order of this Hon"ble Court dated 13.11.1995. He was also given a photocopy of the order but he insisted for the original certified copy, which was given to him by the undersigned. After going through the order Mr. Ramesh Vadodaria told another undersigned to show him my identity card on which I showed my High Court Identity Card to the said Mr. Ramesh Vadodaria. Mr.Ramesh objected to the presence of Mr. H.P. Singh and Mr. K.G. Khiwani there. On this I brought the order of the Court to the notice of Mr.Ramesh wherein it is clearly written that "The Local Commissioners shall be accompanied by the representative (s) of the plaintiff and counsel, if any". The said Mr. Ramesh refused to recognise Mr. H.P. Singh on which Mr. H.P. Singh showed his I.Card issued by Delhi Bar Council but Mr.Ramesh insisted that unless the photocopy of the I.Card is left with him he will not allow Mr. H.P. Singh to be present in the premises. I offered Mr.Ramesh to

identify Mr. H.P. Singh as I knew Mr. H.P. Singh for last many years. Then Mr. Ramesh asked Mr. K.G. Khiwani to get out of the premises as he did not recognise him as the representative of the plaintiff. Mr. Khiwani left with aforesaid office portion and while going out he was pushed by Mr. Ramesh from the door to go out of the premises. While Mr. Khiwani was going towards his car, a watchman of the said firm slapped Mr. Khiwani in my presence and in the presence of Mr. H.P. Singh and Mr. Ramesh.

I then requested Mr. H.P. Singh not to come inside and also requested Mr. Ramesh to hand over the infringing goods bearing the mark Crystal to me so that I could deliver possession of the same to the plaintiff on Superdari. On this Mr. Ramesh told that he has to consult his advocate who has to come all the way from Bombay Central and it will not be possible for another 2 to 3 hours and it is only if his advocate consents for the delivery of the goods, then he will do so. Seeing the attitude of the said Mr. Ramesh that he is not willing to hand over the possession of the aforesaid articles to the undersigned and it will be an exercise in futility to wait there for another few hours, the undersigned left the premises, in the aforesaid circumstances.

As the accounts books maintained by the said, firm were not shown to me, Therefore, none could be signed by the undersigned.

As is apparent from the aforesaid report only an inventory of the articles lying in the aforesaid premises bearing the mark "Crystal" has been prepared and possession of the goods could not be taken and no registers could be signed by the undersigned. The commission was executed only to this extent. Possession of the above items and signing of the books could not be done because of the non-cooperative and hostile attitude of Mr. Ramesh purported to be the owner of the aforesaid firm.

The report is submitted please."

7. A perusal of the reports of the Local Commissioners would show that the respondents had acted in gross violation of the order passed by this Court. The respondents have filed their replies. The first respondent had filed a detailed reply dealing with the merits of the case and also denying what is stated by the Local Commissioners in their reports. It is stated in paragraph 38 of the reply filed by the first respondent:-

"That while denying the allegations made in the report of the learned Local Commissioner Shri Balram Chopra, it is respectfully submitted that there was no occasion for any inspection of M/s. Crystal Kitchen ware Pvt. Ltd., at Mittal Industrial Estate, in Bombay. It is M/s. Elegance Tableware which is situated at Mittal Industrial Estate, Unit No.2, Building No.2, Andheri Kurla Road, Bombay. There was no occasion for preparation of any inventory of the goods. Firstly there is no Crystal Kitchenware Pvt. Ltd. at Mittal Industrial Estate and in any case, no "Kitchenware" for which this Hon'ble Court had passed an order is manufactured at the said

premises. It is respectfully submitted that there was no occasion for preparation of any inventory. It is further respectfully submitted that a perusal of the alleged inventory shows that every item is shown in an indefinite number. All the items are shown either as "approximately" or "about" etc. Had there been any occasion for preparation of any inventory the exact numbers would have been given."

8. The first respondent Mr.Ramesh Vadodaria, further stated in paragraph 39 of the reply:-

"It is respectfully submitted that it is an established practice that whenever any inventory is prepared, it is duly countersigned by all the parties concerned and specially the parties at whose premises such an inspection is carried out. Admittedly, neither the alleged inventory was presented for signature nor it has been got signed from any one present on behalf of the defendant No.3. The report of the learned Local Commissioner is also conspicuously silent about whether any refusal was made by anybody on behalf of the defendant No.3 to sign the alleged inventory prepared by the learned Local Commissioner."

9. The first respondent had gone to the extent of saying that the report of Mr. Balram Chopra, the Local Commissioner, should not be taken as a report within the purview of the Order 22 Rules 9 & 10 of the CPC. The attitude of the first respondent clearly shows utter disregard for process of law. His deponent with the Local Commissioner is far from satisfactory. Whenever there is an order of Court, it is expected from every citizen to act in accordance with the tenor of the order. If a party feels aggrieved, it is always open to that party to file an appeal or apply to the Court to vacate the order. Before doing so, there shall be implicit obedience to an order passed by a court of law. If that is not done, the effectiveness of rule of law could be defeated by the parties. IA.2574/96 and IA.2575/96 filed by the third defendant stand dismissed.

10. Respondents 2 & 3 have also taken the same stand and it is not necessary to advert them in detail. They had only followed the instructions of Mr. Ramesh Vadodaria.

11. Mr. Maninder Singh, the learned counsel for respondents, relied upon the judgment of the Supreme Court in [M/s. Bengal Waterproof Limited Vs. M/s. Bombay Waterproof Manufacturing Company and Another](#) . A perusal of the judgment would show that it has absolutely no relevance to the facts of the instant case.

12. I am very clear in my mind that the respondents are clearly guilty of contempt of orders passed by this Court and they are liable to be dealt with in accordance with law. Having regard to the relationship of the parties, I impose a fine of Rs.2,000/- on each of the respondents. The fine shall be deposited in this Court within four weeks from today. If the respondents fail to deposit the fine, each of the respondents shall undergo simple imprisonment for a period of two weeks.

13. The CCP stands disposed of.