
(1999) 03 DEL CK 0040

In the Delhi High Court

Case No : Civil Contempt Petition No. 7 of 1992 In Suit No. 39 of 1990

Balsara Hygiene Products Limited

APPELLANT

Vs

Kavita Trehan and Another

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Citation : (1999) 3 AD 598 : (1999) CriLJ 4276 : (1999) 79 DLT 153 : (1999) 49 DRJ 642 : (2000) 1 RCR(Criminal) 238 : (1999) RLR 438

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. Vijay Hansaria and Ms Jaya Kumari, for the Appellant; Mr. Mukul Rohtagi and Mr. Vipin Sanghi, for the Respondent

Judgement

Dalveer Bhandari, J.—The petitioner has filed this application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971 and Section 151 CPC for initiating contempt proceedings against the respondents/contemnors and for punishing them for wilfully disobeying the orders of this Court dated 25.5.1991. This Court while dismissing the suit filed by the plaintiffs/contemnors who are mentioned as respondents/contemnors in this petition, passed the following order :-

"In view of the above discussion, the suit is dismissed with costs which are quantified at Rs. 3,000/- and the plaintiffs are also directed to take out an FDR From a Nationalised Bank in the sum of Rs. 25.40 lacs in the name of the Registrar of this Court for a period of one year, in the first instance will be subject to further orders of this Court depending upon the outcome of the proceedings pending before the Court at Chandigarh and to the result of a claim, if any, made before a competent court by the defendant, if so advised, within the period prescribed by law. The FDR will be deposited in this Court within a period of 30 days. On the deposit of the FDR with the Registrar, the Security Bond dated 18th July, 1989 furnished by the plaintiffs to the tune of Rs. 16 lacs will stand discharged. Both the parties will be at liberty to bring the outcome of the

proceedings to the notice of this court and for seeking appropriate directions."

2. By the said order the respondents/contemnors were directed to:

"(i) take out an FDR from a Nationalised Bank in the sum of Rs.25.4 lacs in the name of the Registrar of this Court for a period of one year;

(ii) the FDR was to be deposited by the plaintiffs/contemnors in this Court within a period of 30 days;

(iii) on deposit of the FDR with the Registrar, the security bond dated 18.7.1989 furnished by the plaintiffs/contemnors to the tune of Rs.16 lacs will stand discharged;

(iv) the plaintiffs/contemnors were required to pay cost to the petitioner quantified by this Hon'ble Court at Rs. 3,000/-.

3. According to the above order, the respondents/contemnors were required to deposit a sum of Rs. 25.4 lakhs in the form of FDR with the Registrar of this Court within a period of 30 days but till date they have wilfully neglected and failed to deposit the same despite the directions of this Court. The contemnors have wilfully disobeyed and shown utter and willful disrespect to the orders of this Court dated 28.5.1991. It is also mentioned that this action on the part of the contemnors directly amounts to interference with the administration of justice and this act also amounts to lowering the dignity of this Court. The petitioner has prayed that the contemnors be punished in accordance with law and be directed to deposit the sum of Rs. 25.4 lakhs with interest as per directions of this Court.

Brief facts relevant for deciding this petition are recapitulated as under:-

4. On 27.3.1989, the respondents/contemnors instituted a Civil Suit No. 74/89 in the Court of senior Sub-Judge, Chandigarh. Along with the suit an application under Rules 1 and 2 of Order 39 C.P.C. for the grant of ad interim ex-parte injunction was also filed.

5. The respondents/contemnors were the clearing and forwarding agent for the product of petitioner M/s. Balsara Hygiene Products Limited. The respondents/contemnors admittedly had petitioner's goods in their possession to the extent of about Rs. 36 lakhs. Under the interim injunction granted in the suit, the contemnors had sold goods to the extent of Rs. 32.40 lakhs. Out of the said amount only the sum of Rs. seven lakhs was paid to the petitioner under directions of the Court, and the balance amount of Rs. 25.40 lakhs was retained by the respondents/contemnors. This amount could not be retained by the respondents/contemnors either in law or in equity. The learned Judge while deciding the suit in consonance with the principles of equity, justice and good conscience rightly directed the respondents/contemnors to deposit this amount. The suit was transferred from the Court of Chandigarh to this Court and the learned Single Judge who decided the suit, noticed two questions. These

questions are set out as under:-

"(a) The first one being whether the suit is liable to be dismissed in view of Section 69 of the Indian Partnership Act, partnership being unregistered on the date of filing of the suit and in case the suit is to be dismissed.

(b) The second question would be whether the parties are to be relegated to the original situation prevailing on March 27, 1989."

On the first question, the learned Single Judge observed:

"... insofar as the first point concerned, Mr. Sahai, learned counsel for the plaintiff fairly conceded that the suit is liable to be dismissed as the partnership was not registered on the date of institution of the suit. The position in law is that where the suit is filed by the partners it shall be taken to be a suit on behalf of the firm. In the present case the suit has been filed by the partners of a firm which was not registered on the date of filing of the suit and as such the suit would be hit by the provisions of sub-section 2 of Section 69 of the Partnership Act."

6. It was urged by the petitioner before the High Court that at least Rs. 25.40 lakhs, i.e. . (Rs. 32.40 lakhs less Rs. 7 lakhs paid) should be directed to be paid to the petitioner forthwith on the ground that the respondents/contemners were the clearing and forwarding agents and had no right to sell the goods and to appropriate the sale proceeds.

7. The learned Single Judge while dismissing the suit on the ground of non-registration of the partnership, issued following directions;

"...plaintiffs are also directed to take out an FDR from a nationalised bank in the sum of Rs. 25.40 lakhs in the name of the Registrar of this Court for a period of one year in the first instance which would be subject to further orders of this Court depending upon the outcome of the proceedings pending before the court at Chandigarh and to the result of a claim, if any, made by the competent court by the defendant, if so advised, within the period prescribed by law. The FDR will be deposited in this court within a period of thirty days. On deposit of the FDR with the Registrar, the security bond dated July 18, 1989 furnished by the plaintiffs to the tune of Rs. 16 lakhs will stand discharged."

8. The order was assailed in appeal before the Division Bench of the High Court. The Court by its order dated 29.1.1992 dismissed the appeal. Thereafter the SLP was filed in the Supreme Court and the matter ultimately was decided by their Lordships of the Supreme Court and Civil Appeals No. 1581-82/93 by a detailed Judgment. Hon"ble Mr. Justice Venkatachaliah, CJI, who spoke for the Court observed that "what the learned Single Judge of the High Court did, which has since been approved by the Division Bench, is both good sense and good law. There are, in our opinion, no legal infirmities in the orders under appeal. The appeals do not call for interference. Both the appeals are, accordingly, dismissed with costs. The cost payable to the respondents are quantified at Rs. 25,000/-.

9. Their Lordships of the Supreme Court in the said judgment observed that law of Restitution encompasses all claims founded upon the principle of unjust enrichment. "Restitutionary claims are to be found in equity as well as at law". Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum merit and quantum valebat claims". "The Law of Restitution" - Goff & Jones, 4th Edition page 3. Halsbury's Law of England, 4th Edition, page 434 states:

"Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution. For historical reasons, quasi-contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution"."

10. Their Lordships of the Supreme Court on the law of restoration of loss or damage caused, observed in the said judgment in following words:-

"...one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

11. Their Lordships also placed reliance on AIR 1922 269 (Privy Council) . The judicial committee referred the above passage with approval added :

"It is the duty of the Court u/s 144 of the CPC to "Place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed.

Nor indeed does this duty or jurisdiction arise merely under the said Section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved."

12. Their Lordships of the Supreme Court also placed reliance on Binayak Swain Vs. Ramesh Chandra Panigrahi and Another, , in which the Court stated the principles :

"....The principles of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of

the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the several or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from...."

13. The Court observed that the jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose....". The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.

14. In view of the aforesaid reasoning, the Supreme Court upheld the order of the learned Single Judge which was also approved by the Division Bench of this Court. I have heard the learned counsel for the parties at length. Admittedly, even after the lapse of eight years, the respondents/contemnors have not paid even one paisa. This clearly demonstrates that the respondents have deliberately flouted and disregarded the orders of the Court.

15. There have been number of hearings in this contempt application before this Court. A number of opportunities have already been given to the respondents/contemnors to comply with the directions given by the Court on 28.5.1991. Mr. Hansaria, learned counsel for the petitioner submitted that the respondents/contemnors have wilfully disregarded and disobeyed the order of this Court passed on 28.5.1991 and the respondents are guilty of contempt and the respondents be punished in accordance with law.

16. Mr. Hansaria, also prayed apart from punishing the contemnors they must be directed to deposit a sum of Rs. 25.4 lakhs with interest at the rate of 24% per annum w.e.f. 28.6.1991.

17. In order to show the conduct of respondents/contemnors the learned counsel for the petitioner also referred to the statement of Premnath Trehan, General Power of Attorney of Subhagya Agencies, recorded in this Court. In reply to a question he answered that we are maintaining "Books of Accounts". There is a statement relating to the defendant in our book. I have not filed copy of that statement of account in these proceedings. Despite the directions of this Court, the books of accounts were not deposited in Court. In answer to the Court question, this witness said that I do not have the address and telephone number of our accountant. He further mentioned that he used to come to the plaintiff firm. The witness submitted that he has got his office telephone number but it

was not available. The learned counsel for the petitioner has pointed out the question/answer to demonstrate how the respondents/contemnors have not only disregarded and flouted the orders of this Court but deliberately made false statements before the Court?

18. It may be relevant to mention that the hearing of this case was concluded on 23.9.1998 and thereafter, the counsel for the contemnors wanted to place some material on record by two applications being Nos. 8654 and 8655/98 which the Court did not permit.

19. Mr. Hansaria, the learned counsel for the petitioner has placed strong reliance on the judgments of the Supreme Court in *Delhi Development Authority Vs. Skipper Construction and Another*, . The relevant portion of the Supreme Court judgment reads as under:

"In considering whether the action of the contemnors amounted to contempt of court we take into account the entire course of conduct of the contemnors. As our order dated 25.1.1995 would disclose, the contemnors have indulged in judicial adventurism by raiding one court or the other. Each of the such raids is a clear abuse of the process of court calculated to obstruct the due course of judicial proceeding and the administration of justice. Thus, we conclude that the contemnors are guilty of contempt of court. No doubt, the contemnors have tendered apology. This apology is coming forth after sensing that the adventures have turned out to be misadventures, Realizing that the contemnors have ended up on a cul-de-sac. An apology is not a weapon of defense forged to purge the guilt of the offences nor is it intended to operate as a panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power.

We do not find the apology to be so in this case. The conduct of contemnors is highly reprehensible. The question now is what sentence we should impose on the contemnors. Here, it is necessary to bear in mind that the second respondent is the wife of the first respondent. She does not seem to have played any active role in all these transactions and events. As an Indian wife, dutiful and obedient, she seems to have only followed the dictates and desires of her husband. In the process she has done no more than lending her name both as a Director to Skipper as well as to the various acts done by him in the name of the company. It will be unrealistic to ignore this fact against our social background. We must, Therefore, take a pragmatic view of the matter and distinguish her case from that of her husband as far as the punishment to be imposed on them is concerned. Such a distinction will in no way minimise the gravity of the contempt that she has committed."

20. In the said case, the Supreme Court exercised its power under Article 129 and 142 of the Constitution of India. Their Lordships of the Supreme Court had occasion to examine the decision in another case between the same parties *Delhi*

Development Authority Vs. Skiper Construction Company (P) Ltd. and another, . The observations which were made in these cases apply to the case in hand with greater force, I deem it appropriate to reproduce those observations:

"Before parting with this case, we feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which means the rich and the influential class of the society) have made "property career" the sole aim of their life. The means have become irrelevant - in a land where its greatest son born in this century said "means are more important than the ends". A sense of bravado prevails; managed. All it takes is to 'tackle' or 'manage' it in an appropriate manner. They have developed an utter disregard for law - nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The Courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, "what have we made of our country in less than fifty years"? Where has the respect and regard for law gone? And who is responsible for it?"

21. This is a matter of common knowledge and is rightly observed by their Lordships in the aforesaid case that some persons belonging to upper strata have adopted this attitude that everything can be tackled or managed. They try to tackle or manage the concerned officials of the institution failing which they take help of legal procedure for withholding the payments which is legitimately due either to individuals or the banks or other financial institutions.

22. Loans of thousands of crores of the banks are either not paid or not paid in time. It is not always because the borrowers cannot afford to pay or ran into genuine financial difficulties but some people have adopted this attitude that every authority or institutions can be managed or tackled then why return the amount? It is also a common practice that when they fail to manage or tackle the concerned officials of the institutions and authorities, then they rush to courts for some kind of relief or respite. The motto is not to pay or at least to defer the repayments as far as and as long as it is possible.

23. In this case also somewhat similar attitude has been adopted by the contemnors. Despite categoric orders of this Court and the Supreme Court, the contemnors have not paid any amount till date and have wilfully defied the orders.

24. In the contempt proceedings when the contemnors visualised that they are likely to be punished at that time they took defense that they do not have the

money to pay. This statement cannot be accepted as correct. During the period of the last eight years not a single paisa has been deposited despite the orders of this Court which have been ultimately approved by the Supreme Court. The Court is of the considered opinion that the respondents have deliberately flouted and defied the orders of the Court. The respondents have abused the process of law. They are not entitled to any further indulgence. Any further indulgence would not be only contrary to all the principles of equity, justice and good conscience but would give encouragement to the tribe of similar litigants.

25. Their Lordships of the Supreme Court in Mohd. Ikram Hussain Vs. State of U.P. and Others, observed "a direction given by the High Court in a proceedings for a writ of habeas corpus for the production of the body of a person has to be carried out and if disobeyed the contemner is punishable by attachment and imprisonment."

26. The question which arises is whether this Court in its jurisdiction under Article 215 of the Constitution of India would be justified in exercising its jurisdiction of punishing the contemnors in the facts and circumstances of this case.

27. When the orders/directions of this Court and the Hon"ble Supreme Court have been deliberately flouted and defied with impunity for almost a period of eight years then this Court is left with no other option but to exercise its power under Article 215 of the Constitution. Ordinarily powers of this Court under Article 215 are used sparingly. In the back drop of extraordinary facts and circumstances of this case not exercising the powers under Article 215 would lead to grave injustice.

28. On the consideration of totality of facts and circumstances of this case, I deem it appropriate to direct the respondents/contemnors to obey the directions given by this Court and approved by the Supreme Court to pay the amount of Rs. 25.40 lacs with interests. The respondents/contemnors are directed to pay the amount with 18% interest (from the order of this Court dated 25.5.1991) on or before 10th July, 1999. The Court is constrained to direct the respondents/contemnors to pay the interest because despite categoric orders of the Court the respondents have deliberately flouted and defied the orders and wrongfully withheld the amount for 8 years. In case the amount as directed is not paid, then the respondents/contemnors shall undergo simple imprisonment of four months.

29. With these observations, the contempt application is disposed of.