

(2013) 12 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : C.R.O.C.P. No. 27 of 2013

Court on its own motion

APPELLANT

Vs

Rajinder Kumar Chauhan and Another

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 2 BC 479 : (2014) 173 PLR 802

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Vikas Behl, for the Appellant; Mukul Aggarwal, for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—A Division Bench of this Court while dismissing CWP No. 10111 of 2013 filed by M/s. Raj Transmission Engineering Ltd. & others including the respondents herein on 05.10.2013 found that the conduct of the respondents herein (petitioner Nos. 2 & 4 namely Rajinder Kumar Chauhan and Ravi Chauhan respectively) is contemptuous. The Court concluded as under:

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We cannot, however, let the matter rest at this, as the conduct of both petitioners No. 2 and 4 is contemptuous in terms of endeavor to affect and circumvent the order passed by the Tribunal, a judicial forum. Not only that, the subsequent conduct of the said persons in the Court is contempt in the face of the Court. The endeavor of these two persons was to browbeat and scandalize the Court in order to obtain interim relief.

In view of the aforesaid, we may take note of the Contempt of Courts Act, 1971. In case of a criminal contempt other than a contempt in the face of the High Court or the Hon'ble Supreme Court in terms whereof the Supreme Court or the High Court may take action on its own motion or a motion made by any of the persons specified u/s 15(1) of the Act *ibid*.

We, thus, consider it appropriate to issue notice of criminal contempt against petitioners No. 2 and 4 as to why they should not be proceeded against and punished in accordance with law.

Let the petition be registered and placed before this Court.

The two persons, namely, Rajinder Kumar Chauhan/petitioner No. 2 and Ravi Chauhan/petitioner No. 4 be arrayed as contemnors. Rajinder Kumar Chauhan/petitioner No. 2 accepts notice. Learned counsel for petitioners No. 2 and 4 states that he is entering appearance for the contemnors and will file a reply within a week.

The said order came to be passed in a writ petition filed by the respondents herein along with M/s. Raj Transmission Engineering Ltd. and Ms. Sunita Chauhan (hereinafter referred as "the borrowers"). The borrowers availed banking facility from Allahabad Bank in the year 2009 in the sum of Rs. 26 crores. Since the borrowers defaulted in making the payment of the loan amount, a notice was served by the said Bank on 14.07.2011 u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") to the effect that a sum of Rs. 22,22,65,138.87 is due and outstanding as on 14.07.2011.

2. From the perusal of the record, it transpires that the borrowers invoked the jurisdiction of the Debts Recovery Tribunal (for short "the Tribunal") on or about 9.11.2011 in terms of Section 17 of the SARFAESI Act vide SA No. 324 of 2011. In the said proceedings, the Bank filed an application (I.A. 35 of 2012) for appointment of a local commissioner to prepare inventory of the stock lying in the factory premises, plant and machinery etc. The Tribunal on 24.01.2012 appointed Shri Shammi Khan, Advocate as Local Commissioner, in the presence of the counsel for the borrowers. The relevant extract from the order dated 24.01.2012 passed by the Tribunal reads as under:

To safeguard the interest of the applicant/respondent Bank on the one hand side and also to have a fair play in the whole process and to ensure that no one is able to misuse the process of law, I hereby appoint Sh. Shammi Khan, Advocate (Mobile No. 9417143375) as Local Commissioner. He is directed to visit the premises on 04.02.2012 at 11 a.m. with an advance notice/intimation to the parties concerned and will prepare inventory of the machinery, stocks and other goods lying in the property in question in presence of the concerned officers of the Bank and the applicant in the SA. The whole process of making inventory shall be duly video-graphed and the CD of the proceedings shall be placed on record along with inventory and report of Local Commissioner on or before the next date of hearing.

3. In pursuance of such direction, the Local Commissioner submitted its report dated 13.02.2012 (Annexure R-1/5) to the effect that after entering in the premises, he along with other bank officials was taken to the office room, but the videographer and photographer were not allowed to record or click photographs

in the office room. The Local Commissioner asked the bank officials to start with the process of preparation of inventory of machinery, stock and other goods lying in the premises as per the directions of the Tribunal in the presence of the respondents herein. But the respondents asked the Local Commissioner to produce the order of the Tribunal. The Local Commissioner informed that the copy of the orders of the Tribunal dated 24.01.2012 was already been served upon them along with notice dated 27.01.2012 that he will be visiting the premises on 04.02.2012 at 11 a.m. On their insistence, the Local Commissioner showed the certified copy of the order to the respondents. But the respondents disputed the genuineness of the order and also made adverse remarks against the Presiding Officer. The respondents instead of allowing the Local Commissioner to prepare inventory, pointed out that there is no order to do the same and videography/snaps taken on the spot by the videographers is without any permission and authority. Thereafter, the respondents herein and one Uday Chauhan gave direction to their staff to close the main gate from inside and not to allow any videographer/photographer to go out until they delete the recording made in the premises. On their direction, the staff present at the spot caught the videographer and photographer and brought them inside the room, where they were manhandled and roughed by them and forcibly compelled to delete the video as well as still recording from their cameras, which was done to avoid any more unpleasant situation and apprehending danger to life or any physical injury.

4. Another application (I.A. 69 of 2012) filed by respondent No. 1 namely Rajinder Kumar Chauhan was taken up for hearing on 14.02.2012 alongwith an application filed by the Bank for preparation of inventory. Respondent No. 2, who was present in person, in support of such application sought to withdraw the original petition on the ground that they were not getting natural justice and that they are not satisfied with the intention of the Tribunal. At the time of hearing of I.A. 69 of 2012, the Debts Recovery Tribunal recorded to the following effect:

While appearing in this case, the applicant No. 4 verbally in an aggressive and agitated manner shown disrespect and even by gesture and appearance repeated his words that he is not satisfied with the proceedings of this court and while leaving the court room he hurled this IA towards the Dias of the Presiding Officer and stated that he withdraws his case from this Court.

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After going through the documents and hearing the counsel for the bank, I have also heard the applicant, who used derogatory language for the court itself. The applicant states that he is present only to withdraw the case as no counsel is ready to appear in their case.

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In view of above discussion. I am of the considered opinion that the orders of this Court cannot be executed without the assistance of necessary police help.

It is ordered that adequate necessary police help be provided to the authorized officers of the respondent bank to execute the orders of this Court for preparing the inventory of the mortgaged properties, stocks and other goods lying in the property in question.

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5. On 15.02.2012, the learned Presiding Officer recorded another order on receipt of letter dated 15.02.2012 by Ravi Chauhan respondent No. 2 herein. The said order reads as under:

File taken up today as a letter dated 15.02.2012 which was diarized vide dairy No. 102 dated 15.02.2012 has been received from the Registry written by Ravi Chauhan (Applicant No. 4) addressed to the Presiding Officer/Registrar, without mentioning the title and number of the case. But the Registry after going through the contents of the said letter, lagged the same with the file, wherein the applicant has reiterated his stand of withdrawal again. Few relevant lines of the said letter is reproduced below:

.....Due to which I personally reached at the Honourable Tribunal on 14.02.2012 as per your informing letter in which the Presiding Officer asked about my Council and on reasoning I replied Can't we proceed the hearing without the counsel as no other advocate was ready to proceed with our case because as per them they all had a regular cordial relationship with the respective Presiding Officer and don't want to get involved in this case against the Presiding Officer. The hearing came to an end with the verbal conversation by the respective Presiding Officer that the applicants are fully independent to withdrawal their case at any instant or at any time.

The above lines clearly shows that the applicants have no faith in the court and are not satisfied with the proceedings of this case. Looking into the observations/allegations, I rescued myself from passing any further order in this case.

6. The Presiding Officer requested the Debts Recovery Appellate Tribunal to transfer of the case to any other learned Debts Recovery Tribunal. The matter was transferred to Debts Recovery Tribunal-land listed for hearing on 24.02.2012. It was on 21.03.2012, the borrowers S.A. No. 324 of 2011 was dismissed for non-prosecution.

7. Subsequently, without disclosing the factum of dismissal of their application filed in terms of Section 17 of the SARFAESI Act, the borrowers invoked the writ jurisdiction of this Court.

8. In the writ petition, an argument was initially raised that notice u/s 13(4) of the SARFAESI Act was only in respect of residential house and that no proceedings have been initiated in respect of other properties, which form part of notice issued u/s 13(2) of the SARFAESI Act. Even the said argument was controverted by the counsel for the Bank on 27.05.2013 pointing out that the Bank has taken symbolic possession of factory premises in pursuance of notice u/

s 13(4) of the SARFAESI Act. It was also stated that the District Magistrate has also passed an order to take physical possession of the property. It was noticed that the petitioners have not disclosed such fact in the writ petition.

9. On 29.07.2013, an argument was raised on behalf of the borrowers in the writ petition filed by them, that the objections were filed to such notice but thereafter there has been no decision communicated u/s 13(4) of the SARFAESI Act. Thereafter, on 20.09.2013, learned counsel for the Bank pointed out that reply to the objections of the petitioners (Annexure R-1/1) was communicated on 21.09.2011 through registered A.D. post.

10. The Division Bench later found on 05.10.2013 that there is no question of entertaining this petition under Article 226 of the Constitution of India, when the jurisdiction of the Debts Recovery Tribunal was invoked u/s 17 of the SARFAESI Act, but the borrowers choose to get the said petition dismissed for non-prosecution. It was also noticed that since the borrowers have not sought revival of the application filed u/s 17 of the SARFAESI Act, therefore, the borrowers cannot invoke the writ jurisdiction of this Court. Ultimately, the writ petition was dismissed and the contempt proceedings were initiated against the respondents herein, as mentioned above.

11. In the present contempt proceedings, respondent No. 1 filed his reply by way of affidavit dated 14.11.2013. Respondent No. 2 adopts the reply filed on behalf of respondent No. 1 as the reply filed on his behalf as well. Though in the first paragraph, the respondent has tendered his unqualified and unconditional apology, but in the subsequent paragraphs, it is pleaded that no proceedings of contempt can be initiated after the expiry of one year from the date on which the contempt is alleged to have been committed i.e. 04.02.2012, It is also pointed out that the Debts Recovery Tribunal is not a court subordinate to the High Court in terms of Section 10 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") relying upon Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation, It is pointed out that show cause notice is without jurisdiction, as the Tribunal is neither a court nor a court subordinate to this Court. It is also pleaded that in a case of criminal contempt of subordinate court, a reference has to be made to this Court as per Section 15 of the Act, therefore, the show cause notice is liable to be dropped.

12. Mr. Behl, learned counsel for the Court, delineated the following acts of criminal contempt by the respondents:

(i) Misbehavior with the Local Commissioner namely Shri Shammi Khan, Advocate, an officer of Court; manhandling of the photographer/videographer; confining them in a room and forcing them to delete the video as well as still recording from their cameras taken in terms of the order of the Tribunal dated 24.01.2012;

(ii) Misbehavior before the Debts Recovery Tribunal as recorded by the Presiding Officer on 14.02.2012;

(iii) Writing of a letter by respondent No. 2 to the Presiding Officer, which was received by the Presiding Officer on 15.02.2012;

(iv) Filing of a writ petition (CWP No. 10111 of 2013) without disclosing that an application filed by the borrowers u/s 17 of the SARFAESI Act stands dismissed for want of prosecution and, thus, concealing material information from this Court;

(v) Making a wrong submission at the time of hearing of the writ petition on 10.05.2013 that notice u/s 13(4) of the SARFAESI Act was only in respect of residential house and that no proceedings have been initiated in respect of other properties, which was found to be incorrect on 27.05.2013, as is evident from the written statement in the writ petition filed by the bank; &

(vi) The statement made before the Court on 29.07.2013 that no decision has been communicated to the borrowers to the objections filed by them to the notice u/s 13(2) of the SARFAESI Act. However, the reply to the objections was communicated to the respondents on 21.09.2011.

13. It is, thus, submitted that at every stage the respondents have abused the process of administration of justice such as misbehavior with the Local Commissioner or the Presiding Officer of the Tribunal and also of misstatement of the facts before this Court so as to obtain a favorable order. Such conduct of the borrowers is a criminal contempt within the meaning of Section 2(c) of the Act, as it obstructs and interferes with the administration of justice and also with the due course of judicial proceedings.

13A. On the other hand, Mr. Aggarwal, learned counsel for the respondents argued that respondent No. 1 is not mentally and physically hale and hearty, therefore, such conduct of the respondents needs to be pardoned and their apology be accepted. It is also argued that the respondents are ready to pay fine so as to purge the contempt.

14. We have heard learned counsel for the parties and found that the respondents are not liable to be discharged on the basis of apology so tendered in the affidavit. The apology cannot be said to be made in a bona fide manner. Except from stating that the respondent tenders unqualified and unconditional apology, the conduct of the respondents is to justify their conduct before the Debts Recovery Tribunal and also the fact that the notice issued by this Court is without jurisdiction. It is also stated that this Court cannot suo-motu take cognizance of the contempt said to have been committed by the respondents. If the apology was to come from the heart, the pleas as are sought to be raised to dispute the jurisdiction of this Court would not have been raised. Therefore, the apology tendered is a technical apology with a view to evade the consequences of the proceedings and, therefore, the same cannot be accepted.

15. The first objection as per the reply filed is that the Debts Recovery Tribunal is not a court subordinate to this Court relying upon the judgment Nahar Industrial

Enterprises Limited's case (supra). The said case arose out of a transfer application filed by the Bank before this Court to transfer the proceedings pending before the Civil Court to Debts Recovery Tribunal, Mumbai. The application was allowed. The Supreme Court was considering the jurisdiction of this Court to transfer the civil suit to the Debts Recovery Tribunal, Mumbai considered the jurisdiction of the High Court to issue a direction and to transfer a suit beyond its territorial jurisdiction. While examining the question; whether the Debts Recovery Tribunal is subordinate court to the High Court, the Supreme Court observed that it would be a subordinate court to the High Court in terms of the CPC only in the event it comes within the purview of the hierarchy of the court as contained in Section 3 of the Code. While recognizing the fact that the orders passed by the Presiding Officer of certain Tribunals would be court subordinate to the High Court, it was held that the Presiding Officer must be holding a court, which would come within the purview of the hierarchy of the Court.

16. In terms of Section 17(7) of the SARFAESI Act, the Debts Recovery Tribunal is to decide the application filed u/s 17 of the Act in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 contemplates that the Tribunal and the Appellate Tribunal shall have the same powers as are vested in the Civil Court under the CPC while trying a suit in respect of matters enumerated in sub-section (2) of Section 22, whereas sub-section (3) contemplates that any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding. The relevant Section reads as under:

22. Procedure and powers of the Tribunal and the Appellate Tribunal-

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(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of the discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order

passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. The judgment in Nahar Industrial Enterprises Limited's case (*supra*) deals with the jurisdiction of the High Court to transfer a civil suit to a Tribunal that too beyond the territorial limits of the High Court. The issue before the Supreme Court was not whether the proceedings before the Debts Recovery Tribunal are judicial proceedings or the Tribunal is not dealing with the administration of justice. In terms of sub-section (3) of Section 22 of the aforesaid Act, the proceedings before the Debts Recovery Tribunal are judicial proceedings, therefore, the criminal contempt would be maintainable in respect of any inference in the due course of any judicial proceedings discloses criminal contempt (see Section 2(c)(ii)). Sub-clause (iii) of Section 2 deals with obstruction and interference in the administration of justice. Since the proceedings before the Tribunal are judicial proceedings to adjudicate upon the rights of the parties, the Tribunal is administering justice and, therefore, any interference or obstruction in the administration of justice falls within the scope of criminal contempt. In fact, the respondents had invoked the writ jurisdiction of this Court under Articles 226 & 227 of the Constitution of India, thus, admitting that the Debts Recovery Tribunal is a Tribunal subordinate to the High Court.

18. The other argument raised is that the show cause notice has been issued after the expiry of one year of the alleged contempt. The contempt disclosed in the order is not only of solitary act of misbehavior and mishandling with the staff attached to the Local Commissioner in terms of the order passed by the Tribunal, but the cumulative conduct of the borrowers culminating with the order passed by the Court on 05.10.2013 including misstatements made before this Court. The criminal contempt is not in respect of an isolated fact, but series of transaction which were invoked by the borrowers to defeat and obstruct the due administration of justice and orderly conduct of judicial proceedings.

19. The similar argument as is raised in the present contempt petition to contend that the proceedings of criminal contempt are barred by limitation has been dealt with by a Full Bench of this Court in a judgment reported as *Manjit Singh and Others Vs. Darshan Singh and Others*, It has been held that Section 20 of the Act deals with initiation of contempt proceedings in two manners i.e. by "Court in its own motion" and "otherwise". The process of initiation of contempt proceedings "otherwise", includes a reference made by the subordinate Courts and by a private litigant after seeking consent of the Advocate General. It has been held that making of a reference by a subordinate Judge is the initiation of the

proceedings for criminal contempt. It was held to the following effect:

16.....That being the plain meaning of the word "initiate" one has to necessarily construe the same in Section 20 in the light of section 15 which prescribes the methodology of taking cognizance of criminal contempt apart from that in facie curiae in section 14. Can it be said that when a dignitary of the level of the Advocate-General files a motion in the High Court in accordance with the rules he still would not initiate, or begin, commence, or take the first step for the contempt proceedings? To hold that this would not amount to even initiation and it would be so only when the matter is heard and the Court after applying its mind actually directs the issuance of the notice, does not appear to me as sound either on principle or on the language employed in the statute. Similarly, when a responsible District Judge makes a reference for criminal contempt of the Subordinate Court expressly provided for u/s 15(2), can one still hold that he does not initiate the proceedings thereby? Similarly where a litigant presents a petition before the Advocate-General for getting his consent in writing which is a pre-condition for the High Court to take cognizance at his instance u/s 15(1)(b) would he not be initiating the proceedings for criminal contempt. Though we are focusing ourselves primarily on criminal contempt, the analogy of civil contempt is equally apt. If a litigant actually presents a petition in the High Court Registry under the rules for civil contempt, then the Court's action in entertaining such a petition would obviously be a beginning; a commencement or an entering upon and subsequently initiating the proceedings of civil contempt. Whether such a petition later fails or succeeds is another matter but to hold that till a decision for issuing notice thereon is made there will not even be initiation of proceedings, appears to me as unwarranted. On a true meaning of the words Initiate it has to be held that beginning the action prescribed for taking cognizance for criminal contempt u/s 15 would be initiating the proceedings for contempt and the subsequent refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation.

17. I believe that the aforesaid construction placed by me not only possible but appears to be the one most reasonable in view of the somewhat peculiar (and if one may say so) an imprecisely drafted provision of section 20 of the Act. However, the sound cannon of construction is that an interpretation which leads to anomalous and sometimes absurd results causing grave hardship to the parties has to be avoided.....

20. The said view was approved in a judgment reported as Pallav Sheth Vs. Custodian and Others, . The relevant extract from the judgment reads as under:-

39. In the case of criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the

High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the court the willful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a court was to take a suo motu action, the proceeding under the Contempt of Courts Act 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt u/s 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

21. Thus, this Court in terms of the judgment of the Full Court has the jurisdiction to initiate proceedings of criminal contempt. It is the cumulative effect of the various acts delineated by Mr. Behl culminating with the order of this Court on 05.10.2013, which compels us to hold that the respondents are guilty of committing criminal contempt.

No other argument was raised.

22. We have heard learned counsel for the respondents-contemnors on the question of sentence. The respondents prayed that they be pardoned on payment of fine. Keeping in view the consistent contemptuous conduct of the respondents firstly before the Debts Recovery Tribunal and later before this Court, we find that the respondents are not entitled to any indulgence sought by the respondents to impose fine. The apology tendered is not bona fide and the conduct is contemptuous. Therefore, we find that it is a fit case where the respondents be sentenced to undergo imprisonment for a period of 6 months and to pay a fine of Rs. 2000/- each. We order accordingly.

The operation of the order will remain suspended till 02.02.2014. The respondents shall surrender before the learned Chief Judicial Magistrate, Chandigarh on 03.02.2014.