
(2012) 07 DEL CK 0339

In the Delhi High Court

Case No : CO. A. (SB) 43 of 2007 and CO. App. No. 1182 of 2007

Dr. Raj Kachroo and Another

APPELLANT

Vs

Sumer Misri and Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Companies Act, 1956 — Section 397, 398
Contempt of Courts Act, 1971 — Section 11, 12

Citation : (2013) 112 CLA 220 : (2012) 175 CompCas 523

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Arun Kapthalia and Mr. Rohan Thawani, for the Appellant; Neeraj Sharma and Ms. Archana Lakhotia, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Indermeet Kaur

1. This appeal has been filed against the impugned order dated 03.09.2007 whereby the application filed by Dr. Raj Kachroo (hereinafter referred to as the "petitioner") seeking initiation of contempt proceedings under Sections 11 & 12 of the Contempt of Courts Act, 1971 against Sumer Misri and others (hereinafter referred to as the "respondents") for non-compliance of the directions contained in the order dated 21.12.2006 had been dismissed. The impugned order had noted that in terms of its earlier directions dated 21.12.2006 if the petitioners/appellants are interested in taking over the control of the company, they should reimburse the respondents of all amounts which they had brought in for discharging the liabilities of the company after the order dated 21.12.2006 (which sum is admittedly a sum of Rs. 16 lacs.). Record shows that the petitioner had filed the present petition under Sections 397 & 398 of the Companies Act, 1956 before the Company Law Board (CLB) alleging oppression and mismanagement. Various allegations were leveled against the respondent and its directors; these allegations may not be relevant to answer the issue before this

Court.

2. The order dated 21.12.2006 had noted that the company was not functioning for two years and from the collections made, the secured creditors had been paid to the extent of Rs. 67 lacs on 01.04.2005; as the company was not functioning, its machinery had been leased out at a monthly rent of Rs. 20, 000/- per month. The allegation of siphoning the funds based on the audit report had not been established by the petitioner. This order had further noted that the machinery of the company had been removed and placed in another premises. The concluding para of the said judgment which is relevant to answer this appeal is herein reproduced below and reads as follows:-

Considering the fact that the company remains closed for over two years and that the machinery stand relocated and that the respondents have offered to hand over the company along with the machinery to the petitioners without any consideration, the petitioner may chose the option of either taking the ownership/control of the company or file a petition for winding up of the company. No other relief can be granted in the facts of the case like asking the 2nd respondent to pay back the investments made by the petitioner as in a business venture, one has to take a risk and in the present case, both the sides appear to have lost their investment.

3. From the aforementioned order, it is clear that the respondents had offered to handover the company along with its machinery to the petitioner without any consideration; the petitioner was given the choice of either taking over the ownership and control of the company or in the alternate to prefer a petition for winding up of the company.

4. It is these directions which as per the submission of the petitioner have been flouted; submission being that there has been a willful disobedience of the directions contained in this order dated 21.12.2006 for which the respondents are liable for contempt.

5. Record shows that Co. Application No. 152/2007 seeking relief under Sections 11 & 12 of the Contempt of Courts Act had been filed before the Company Law Board (CLB) on 01.03.2007 but the impugned order has noted that this application was mentioned before the Board only on 03.05.2007. The contention of the petitioner is that inspite of its communications dated 01.01.2007 & 27.01.2007 asking the respondents to handover the company's machinery and documents to them, the respondents have not responded; this is a deliberate attempt on the part of the respondent not to give effect to the directions of this Court and to flout it.

6. Admittedly there is no proof of dispatch of the aforementioned letters dated 01.01.2007 & 27.01.2007 receipt of which have been vehemently denied by the respondents. Learned counsel for the petitioner also fairly concedes to this point.

7. Reply had been filed by the respondents to the aforementioned application. In para

5 details of 10 payments had been given which had been made by the company to the State Bank of India to liquidate the debts of the company; the contention of the respondents being that this sum of Rs. 16 lacs which has been funded from the individual account of the respondents be paid back to him as this money has been used by him to discharge the liabilities of the company and he has no objection for the petitioner taking over the company along with its machinery subject to his clearing this amount of Rs. 16 lacs.

8. Attention has been drawn to the aforementioned payments. Except for four payments, all other payments had been made prior to the order dated 21.12.2006 and not the subject matter of dispute as these payments were admittedly made prior to 21.12.2006. Four payments i.e. a sum of Rs. 6, 50, 000/- on 24.01.2007, another sum of Rs. 6, 50, 000/- on 24.01.2007, Rs. One lac on 12.05.2007 and Rs. 2 lac on 17.03.2007 had been made after 21.12.2006; contention of the respondent being that this money had been deposited by the respondent in the account of the company to pay the State Bank of India in order to clear the dues of the company.

9. There is no dispute to the factum that this money has been paid to the respondents.

10. In the rejoinder affidavit, the petitioner has submitted that these moneys which have been deposited are not out of the personal funds of the respondents but it is the money of the company which has been collected from the market.

11. Learned counsel for the petitioner further submits that in fact a copy of the lease agreement dated 28.01.2007 has been furnished to him only in the course of mediation proceeding (which had been ordered by the Court) which shows that a sum of Rs. 13 lacs had been received by the company for leasing out this machinery on a license basis; submission being that there is no explanation by the respondent as to why he remained silent about this agreement dated 28.01.2007 in his reply which was filed much later i.e. on 06.08.2007.

12. At the outset, it is relevant to note that the dispute before this Court is whether the respondent is liable to be hauled for proceedings under Sections 11 & 12 of the Contempt of Courts Act i.e. whether there has been any willful disobedience of the directions contained in the order dated 21.12.2006. The controversy before this Court has to be restricted to the prayer made in the said application and its scope cannot be enlarged. This power has to be cautiously exercised. It may not be used as a tool for revenge; this discretion also may not be exercised on mere allegations.

13. It is in this background that the averments of the respective parties have to be appreciated.

14. Admittedly the directions contained in the order dated 21.12.2006 were two-fold. The respondent had made an offer to handover the company and its machinery to the petitioner; the petitioner had the option of either taking over

the company and its machinery or to prefer a petition for winding up. This was a choice which was given to the petitioner; he had choose; he had to elect between either of the two options i.e. either to take over the ownership and control of the company or to file a petition for winding up. Admittedly there is nothing on record to show that any communication had been sent by the petitioner to the respondent in terms of his submission that two letters dated 01.01.2007 & 27.01.2007 had been sent. There is no proof of dispatch; on queries put to the learned counsel for the petitioner on this point, he has fairly conceded to this. As noted supra, these communications had also been vehemently denied by the respondent. As such the respondent had nothing before him till the date of filing of this application (which was filed on 01.3.2007 but the date for mentioning before the CLB was 03.05.2007) that the petitioner was interested in electing for his first choice i.e. for taking over the ownership and control of the company. This was only on 03.05.2007. The liability of Rs. 16 lacs incurred by the company are prior in time thereto (except one payment of Rs. One lac which was made on 12.05.2007). This has also been explained by the respondent; submission being that a compromise/settlement had been arrived at between the company and the State Bank of India on 07.03.2007 and this is clear from the communication of the State Bank of India dated 26.04.2007 (Annexure "G" page 176 of the paper book) which states that the compromise proposal for Rs. 16 lacs has been accepted by the Bank and all suits/complaints in the DRT/Courts shall be withdrawn by the Bank; submission of the respondent being that the company could not endlessly wait for the petitioner to approach the respondent.

15. This factual scenario was correctly noted in the impugned order. It had inter-alia recorded as follows:-

There is no indication in these letters that they would take over the company as a whole including the liabilities. Since the respondents have given personal guarantees, the petitioners should have also agreed to replace the personal guarantees of the respondents. These two letters do not talk of personal guarantees or taking over of liabilities. From the list of payments made by the respondents, I find that in addition to Rs. 16 lacs paid to the bank as an one time settlement, the respondents have also made payments before and after the order of this Board dated 21.12.2006. In so far as the payments made before the said, the respondents cannot make any claim on the petitioners as the petitioners were to take over the management and control of the company as on the date of the said order. In so far as the liabilities cleared by the respondents after the date of the said order is concerned, the petitioners in case they desire to take over the ownership and control of the company, are bound to reimburse the respondents especially since the company has not been functioning since long and all the payments have been out of their personal funds of the respondent. In view of this, if the petitioners are still interested in taking over the control of the company, they should reimburse the respondents of all the amounts that they have brought in for discharging the liabilities of the company

after the order dated 21.12.2006. The petitioners should communicate their decision to the respondents within 15 days from the date of this order whether they are prepared to reimburse the respondents o all amount brought in by them for discharging the liabilities of the company after 21.12.2006 and also take over the assets and liabilities as on date indicating the time schedule within which they would reimburse. In case they do so, the respondents should hand over the complete control and management of the company to the petitioners. In case, the petitioners are not interested in doing so, then nothing survives in the application and they may seek for winding up of the company.

16. For a second time, this order of the CLB has granted an option to the petitioner to exercise his option to take over the management and control of the company but obviously after the payment of Rs. 16 lacs which has been made by the respondents out of their personal funds. Relevant would it be to also state that in para 5 of the reply filed by the respondent, he has categorically stated that he has made a payment of Rs. 16 lacs on behalf of the company to discharge the liability of the company which payment had been discharged by respondent No. 1 on behalf of the company in his capacity as a guarantor and he has a legal right to recover the aforementioned payment. In the rejoinder affidavit, the corresponding para 5 of the reply it has been accepted by the petitioner that the payments have been cleared on behalf of the company; there is no specific denial to the specific submission made by the respondent that these payments had been made by him in his personal capacity to which he is entitled to be reimbursed.

17. This also appears to be a case where the petitioner has not come to the Court with clean hands; submission of the respondent that the petitioner has learnt about the one time settlement arrived at by the respondent with the Bank; and it was only then that he approached the CLB this is clear from the fact that he had filed the contempt application before the CLB on 01.03.2007 but he did not choose to mention it before the Board till more than two months later; i.e. on 03.05.2007; it appears that only when the petitioner learnt about the aforementioned settlement that he chose to approach the Court. His approach does not appear to be honest; he appears to be nursing some personal vendetta/ grievance which cannot be addressed under the provisions of Sections 11 & 12 of the Contempt of Courts Act. In this background, it can in no manner be said that the impugned suffers from any infirmity. Appeal is without any merit. Dismissed.