

(2024) 08 BOM CK 0047

In the Bombay High Court

Case No : Contempt Petition (L) No.17118 Of 2021

Dr Ravinder Kumar Anand S/o. Late O. P. Anand

APPELLANT

Vs

Ashok Mahindru & Ors

RESPONDENT

Date of Decision : 22-08-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 40 Rule 1
Contempt of Courts Act, 1971 — Section 12

Citation : (2024) 08 BOM CK 0047

Hon'ble Judges : Madhav J. Jamdar, J

Bench : Single Bench

Advocate : Mangal Bhandari, Pranjali Bhandari, Pandit Kasar, Mohd. Asadullah Shaikh, S. K. Dhekale, N. C. Pawar

Judgement

Madhav J. Jamdar, J

1. The present Contempt Petition is inter alia preferred as the Respondents/ Contemnors have violated order dated 29 th July 2016 passed by a learned Single Judge by which modified/amended Consent Minutes of Order are taken on record and order is passed in terms of said modified/amended Consent Minutes of Order. The clause No.3 of the modified/amended Consent Minutes of Order (Page No.276) is relevant which reads as under:

"(3) Clause 3 of the Consent Minutes of modified amended as under:

"Defendant No.1 agrees to deposit, in one single payment within 120 (one hundred twenty) days from the date of removal of blogs etc., as above, in this Court the following:-

(i) the Principal sum of Rs.8,03,35,285/- (Rupees Eight Crores Three Lakhs Thirty Five Thousand Two Hundred Eighty Five Only); and

(ii) interest @ 81/2%p.a. as already directed by this Hon'ble Court vide Order dated 17th December, 2015 read with Order dated 17th February, 2016, payable

from the date of respective advance (s) [as particularized in Annexure 1 to the Consent Minutes] till the date of deposit.

This deposit shall be accompanied by a statement particularizing the details of the Principal sum and the interest calculations qua each Plaintiff and a copy of such Statement will be supplied by Defendant No.1. to the Plaintiff. "

(Emphasis added)

2. A learned Single Judge has passed in the Contempt Petition the following order on 28th April 2023:

"1. The above Contempt Petition is filed to initiate the contempt proceedings and to punish the Contemnor Nos. 1 to 3 for willful, deliberate and intentional violation/disobedience/defiance /disregard/contempt of the the order dated 17 th December, 2015 read with the orders dated 17 th February, 2016, 29th July, 2016 and 14th August, 2019 respectively.

2. After I heard the matter for some time, the parties agreed that Respondent Nos.1 and/or 2 shall deposit in one single payment, on or before 31 st October, 2023(i) the principal sum of Rs.8,03,35,235/-; and (ii) interest at 8.50% p.a. as already directed by this Court vide its order dated 17th December, 2015 read with the order dated 17 th February, 2016, payable from the date of the respective advance(s) [as particularized in Annexure 1 to the Consent Minutes dated 11 th December, 2015 and which were taken on record by order dated 17th December, 2015] till the date of deposit.

3. In the event, the amounts are not deposited as directed above, the parties have agreed that the Court Receiver, High Court Bombay shall stand appointed in relation to suit land more particularly described in Exhibit A-1 to the Plaint and also described in Clause 9 of the Consent Minutes dated 11th December, 2015. All further directions to the Court Receiver shall be given by the Court thereafter.

4. Place the above matter on board for compliance on 1st November, 2023.

5. In the meantime, notwithstanding this order, the parties are at liberty to amicably try and negotiate to reduce the rate of interest.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order."

(Emphasis added)

3. Thus, it is clear that by the said order dated 28 th April 2023 time was granted to the Respondents to comply with above clause No.3 till 31st October 2023 and it has been specifically recorded that parties have agreed that Court Receiver, High Court, Bombay shall stand appointed in relation to the property in question. It is an admitted position that payment as directed by said order dated 28th April 2023 has not been made.

4. Thereafter, a learned Single Judge has passed detailed order on 1st November 2023. The said order dated 1st November 2023 reads as under:

"1. Heard Ms. Bhandari, learned Advocate for Petitioner and Mr. Kasar, learned Advocate for Respondents / Contemnors.

2. Proceedings in the present case would show how Contemnors/Respondents have taken this Court and various orders passed by this Court for granted within impunity over a period of time. Facts in the present case show the grossest form of abuse of the orders of the Court. The present Contempt Petition is filed by one Mr. Ravinder Kumar Anand.

3. Ms. Bhandari would inform the Court that there are identical 36 Contempt Petitions which have been filed by 36 Petitioners in respect of the same cause of action against the Contemnors/ Respondents. I have perused the first order passed by this Court which is at Exhibit-D, page No.29. It is dated 17.12.2015. This order came to be passed in 37 proceedings i.e. 37 Suits and 37 separate Notice of Motions filed in those respective Suits. Parties submitted Consent Terms of that date to the Court. Paragraph No.2 (i) and (ii) is relevant and reproduced below:-

"2. By consent, the following further order is passed :

(i) Interest rate determined by this Court payable by Defendant No.1 to the Plaintiffs on the principal sum of Rs.8,03,35,235/- (Eight Crores Three Lakhs Thirty Five Thousand Two Hundred and Thirty Five only) shall be paid @ 8.5% p.a. payable from the date of respective(s) [as particularized in Annexure I to the said Minutes] till the date of deposit.

(ii) The parties have agreed that if the principal amount with interest @ 8.5% is deposited on 30-01-2016, such deposit shall be in the sum of Rs.14,87,47,966/-. The deposit shall be accompanied by a statement particularizing the details of the principal sums and the interest calculation qua each of the Plaintiff's and the copy of such statement will be supplied by Defendant No.1 to the Plaintiffs."

4. I find it relevant to mention these paragraphs since the obligation stated in the Consent Terms have till this date in November, 2023 i.e. after almost 7 years have not been honoured by Defendants and more particularly by Defendant No.1. In paragraph No.2(iii) onwards obligations which were stated stood complied with further modification of the Consent Terms. Further orders were passed on 17.12.2016 and 29.07.2016 but modification of the obligations as noted above were finally passed in the order dated 14.08.2019 and have since been complied with only by the Plaintiff in only each Suit. This is the admitted position. It is pertinent to note that in the order dated 14.08.2019, paragraph No.24 records as under:

"24. In the circumstances I am of the view that the Plaintiff have duly complied with their obligations under the 2nd Consent Minutes, and particularly in Clause 6 thereof. Accordingly, Clause 3 as amended in the 2nd Consent Minutes must be

given full effect. Though I would be entitled to direct that the period of 120 days from the removal of the 293 blogs has long since lapsed, as a matter of indulgence to the Defendants, I am hereby directing that the period of 120 days contemplated in Clause 3 of the 2 nd Consent Minutes shall be deemed to have commenced from the date of uploading of this order and Defendant No. 1 shall deposit the sum stated therein, inclusive of interest at 8.5% per annum, payable from the dates of the respective advances as particularized in Annexure '1' to the 1st Consent Minutes till the date of deposit. Thereafter the remaining clauses of the 1st Consent Minutes and 2 nd Consent Minutes will take effect as already agreed.

5. As seen above, time frame of 120 days was thereafter given to Defendant No.1 to deposit the amount alongwith interest @ 8.5% p.a. On 13.12.2019, this period also expired. Thereafter in 2021, 37 Contempt Petitions were filed out of which one is listed before me today. The remaining 36 Contempt Petitions are not on Board today. It is seen that the original transaction between parties was of 2005 -2006 and Suits were filed in the year 2011.

6. Thereafter Contempt Petitions were listed before this Court on 22.10.2021, when time to file reply was extended to the Contemnors / Respondents. On 28.10.2021, once again time to file reply stood extended. On 04.10.2021, notice was issued to the Contemnors / Respondents as to why action under the Contempt of Courts Act, 1971 should not be taken against them for breach of these orders. On 22.10.2021, once again time to file Reply stood extended by 27.10.2021. Next on 28.10.2021, Contemnors / Respondents sought extension of time to file reply in the Registry and accordingly time stood extended. On 25.11.2021, this Court passed an order stating that Petition was admitted and Contemnors / Respondents were directed to remain present on 02.12.2021. Even today while passing this order and while dictating this order, when I asked Mr. Kasar whether all Contemnors / Respondents are present in Court, he would submit that only Contemnor / Respondent No.2 is present in Court whereas Contemnors / Respondent Nos.1 and 3 are not present. He would submit that Contemnor / Respondent No.1 is 70 years old and had suffered from COVID complications and is suffering till today with post COVID symptoms. In so far as Respondent No.3 is concerned he would submit that he is 37 years of age. There is no reason as to why he is absent when the Contempt Petition is heard. Both Contemnors / Respondent Nos.1 and 3 are directed to remain present on all future dates as and when this Contempt Petition and the other companion Contempt Petitions shall be heard by this Court. If Contemnor / Respondent No.1 is ailing he is permitted to appear virtually subject to the Contemnors/ Respondents filing appropriate Affidavit seeking his exemption from physical presence / appearance on valid and truthful medical grounds alongwith all supporting documents. Respondent No.2 is present in Court. He is the person who is constantly seen instructing Mr. Kasar in Court. In so far as Respondent No.3 is concerned, no such exemption is granted and he shall remain present physically on all future dates.

7. Next order dated 02.12.2021 was passed and at the request of Mr. Kasar presence of one of the Respondent was exempted and he was directed to remain present only on the next date. Thereafter matter was listed on 20.12.2022 and when called out, none was present on behalf of Respondents and therefore a specific direction was passed directing Contemnors/Respondents to remain present in Court on the next adjourned date. On 19.01.2023, after hearing Mr. Kasar it was revealed that there was no restraint on proceeding with the Contempt Petition. I am not recording all other things which transpired on that day. Next on 16.02.2023, once again Contemnors / Respondents failed to appear and this Court issued notice to Contemnors / Respondents and noted that if they did not remain present on the next date, Court would be constrained to take coercive steps to secure their presence. The matter next reached hearing on 20.04.2023 on which date this Court gave specific directions to Respondents to remain present personally on the next adjourned date. On 24.04.2023, this Court recorded that despite the specific directions of the Court, Contemnors / Respondents were not present in the Court and Contemnor / Respondent No.1 was not present due to ill health. This Court permitted Respondent No.3 to appear through video conference since he was a resident of Delhi. However, in view of today's order, I have directed Respondent No.3 to remain present in-person considering the gross abuse of the orders passed by the Contemnors/ Respondents.

8. On 28.04.2023, Contempt Petition was heard and it is recorded by the Court that after hearing parties for some time the Respondent No.1 and/or 2 have agreed to deposit in one single payment on or before 31.10.2023 the principal sum of Rs.8,03,35,235/- alongwith interest @ 8.50% as directed by Court. For convenience paragraph No.2 of the order is reproduced below which reads thus:-

"2. After I heard the matter for some time, the shall deposit in one single payment, on or before 31 st October, 2023 (i) the principal sum of Rs.8,03,35,235/-; and (ii) interest at 8.50% p.a. as already directed by this Court vide its order dated 17th December, 2015 read with the order dated 17th February, 2016, payable from the date of the respective advance(s) [as particularized in Annexure 1 to the Consent Minutes dated 11th December, 2015 and which were taken on record by order dated 17th December, 2015] till the date of deposit."

9. The Court also recorded that in the event if the said amount was not deposited as directed by this Court, parties had agreed that Court Receiver, High Court shall stand appointed in relation to the suit land more particularly described in Exhibit A-1 to the plaint and also described in Clause 9 of Consent Minutes dated 11.12.2015. This Court specifically recorded that all further directions to the Court Receiver shall be given thereafter. For ease of reference, paragraph No.3 of the order dated 28.04.2023 is relevant and reproduced below:-

"3. In the event, the amounts are not deposited as directed above, the parties have agreed that the Court Receiver, High Court Bombay shall stand appointed in

relation to suit land more particularly described in Exhibit A-1 to the Plaint and also described in Clause 9 of the Consent Minutes dated 11th December, 2015. All further directions to the Court Receiver shall be given by the Court thereafter."

10. Today, when the matter is listed before me, Mr. Kasar, learned Advocate for the Respondents / Contemnors once again in the most casual but submissive manner would submit that the Contemnors/Respondents have not honoured the statement/agreement recorded by this Court in paragraph No.2 of the order dated 28.04.2023 and would require further time. Once again only Contemnor/ Respondent No.2 is present in Court whereas Contemnors / Respondent Nos.1 and 3 are are not present in Court.

11. Today when the matter was opened, Mr. Kasar would once again seek extension of time. Initially he sought extension of time for four months, then reduced it to two and finally to two days to enable the Contemnors to bring the amount and preclude the Court from passing any orders and simpliciter adjourn the matter. At one time he informed the Court that the Contemnor would deposit Rs.2 Crores within 2 months. The need and necessity to mention and narrate the above submissions and the timeline as stated and alluded to herein above is required because the Contemnors/Respondents have virtually no respect for the orders passed by this Court and honour the undertaking given by them. In view of the parties namely Contemnors / Respondents having agreed that in the event of default Court Receiver shall stand appointed in relation to the suit land being Plot No.1, Survey No.111D (Part), Village - Ambivali, CTS No.844, admeasuring 13,000 square feet, equivalent to 1,208 square meters together when the being land adjacent to the built up structure of 9,900 square feet, equivalent 920 square meters (for short "the subject property") being the said property as described in Exhibit A-1 and Clause 9 of the Consent Minutes and as reflected in this Court's order as stated above and the reluctance of the Contemnors / Respondents to honour their own commitment, I have no other alternative than to pass directions to appoint the Court Receiver as per the Contemnors / Respondents own wish and statement recorded by the Court. Paragraph No.3 of the order dated 28.04.2023 is clear and unambiguous.

12. In view of the above, prima facie, contumacious conduct of the Contemnors/ Respondents, the Court Receiver shall stand appointed as Court Receiver under Order XL Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') for the subject property. I have considered the submissions made by Mr. Kasar but I find that save and except seeking extension of time there is nothing more to it. Parties which take undue advantage of the Court's orders have to be dealt with strictly to send a strong message to those who with utmost ease defy Court orders despite recording their consent / statement . In view of the aforementioned orders, I find that this is a fit case to issue notice under provisions of Section 12 of the Contempt of Courts Act, 1971 read with Rule 1035 (1) and read with Rule 1036(1) of the High Court (Original Side) Rules, 1980 as to why proceedings in contempt should not be issued and tried against

the Contemnors/ Respondents. Registry is directed to issue the notice which is made returnable after 8 weeks.

13. In so far as further directions to the Court Receiver as recorded in the order dated 28.04.2023 are concerned, he is directed to take immediate possession of the subject property in accordance with law and make appropriate report to the Court by the next date as it is informed by Mr. Kasar that Respondent No.2 is in occupation of the subject property and there are 4 Restaurants which are presently running in the said property. Court Receiver, if required shall take necessary police assistance for taking over possession of the subject property and carry out all steps as are required to be taken in respect of the subject property which is now custodia legis. Any further directions to deal with or for sale of the subject property shall be passed after the Court Receiver makes an appropriate report to the Court, which shall be made by the next adjourned date when the Contempt Notice is made returnable.

14. After this order is dictated in open Court, Mr. Kasar would request the Court to stay this order. However considering the above timeline and the conduct and manner in which these proceedings have proceeded, I am not inclined to grant his request and hence any stay of this order is refused.

15. Stand over to 03rd January, 2024."

(Emphasis added)

5. By the said order dated 1st November 2023, direction was given to the Court Receiver to take immediate possession of the subject property in accordance with law and make appropriate report to the Court by next date. Further direction has been issued to the Court Receiver that if required, the Court Receiver shall take police assistance. The said order passed by a learned Single Judge on 1st November 2023 is challenged before the Supreme Court by filing Petition (s) for Special Leave to Appeal (C) Nos.26740 of 2023 and the Supreme Court by order dated 8 th December 2023 has disposed of the Petition for Special Leave to Appeal as withdrawn with liberty to the Respondents to take appropriate steps as may be permissible in law. Mr. Bhandari, learned Counsel appearing for the Petitioner states that no such steps as noted in order dated 8th December 2023 of the Supreme Court are taken by the Respondents till date.

6. Thereafter, a learned Single Judge by order dated 3 rd January 2024 adjourned the Contempt Petition to 1 st March 2024 and passed the direction as contained in paragraph No.3 of the said order, which reads as under:

"3 As per the request made by Mr. Kasar the hearing of the Contempt Petition is deferred till 1 March 2024 with a view to examine the bonafides of the Petitioners about their ability to arrange for funds for satisfying the dues payable to the Petitioner. It is made clear that if no substantial progress is made for satisfying the dues of the Petitioners by the next date of hearing, this Court will proceed ahead with taking physical possession of the subject property by use of police

machinery."

(Emphasis added)

7. A learned Single Judge passed following order on 2 nd May 2024:

"1. Mr. Kasar, the learned counsel appearing for the Respondents would inform that the cheque deposited by M/s.Trevenimudrai Project Ltd. with the Prothonotary and Senior Master has been dishonoured. This is the second occasion when representation made to this Court about sale of property has turned out to be false.

2. In that view of the matter, it is necessary to proceed with hearing of Contempt Petition as breach of the orders passed by this Court is writ large. List the Contempt Petition on 14 June 2024."

(Emphasis added)

8. As Mr. Kasar, learned Counsel appearing for the Respondents was making request and assuring the Court that the payment as per the orders passed by this Court would be made, time was granted and this Court passed the following order on 15th July 2024:

"1. At the outset, Mr. Kasar, learned Counsel appearing for Respondent Nos.1 to 3 states that pursuant to the Order dated 12th July 2024, the Respondent No.2 and Respondent No.3 are personally present in Court. He also tenders Affidavit dated 15th July 2024 of the Respondent No.3 tendering unconditional apology for remaining absent on 12th July 2024.

2. Mr. Bhandari, learned Counsel for the Petitioner states that as per the Order dated 14th August 2019 passed by a learned Single Judge in Notice of Motion No.1009 of 2018 along with Notice of Motion No.1995 of 2018 and Notice of Motion (L) No.3095 of 2018 in Suit No.184 of 2011, an amount of Rs.20,41,99,087/- is due and payable by the Respondent Nos.1 to 3.

3. Mr. Kasar, learned Counsel for the Respondent Nos.1 to 3, on"instructions, states that the said amount, by adding the interest for further period, will be deposited in this Court on or before 12th August 2024.

4. It is made clear that if the said amount is not deposited in this Court by 12th August 2024, then this Court will be constrained to pass the Order directing that the actual possession of the premises in question shall be taken by the Court Receiver, as today the Court Receiver is only in symbolic possession of the said premises.

5. Stand over to 12th August 2024 at 2:30 p.m..

6. It is made clear that on 12th August 2024 as well shall remain present."

(Emphasis added)

9. Thereafter, this Court has passed the following order on 12 th August 2024:

"1. Mr. Kasar, learned counsel for the Respondent Nos. 1 to 3 states that further four weeks time is required to pay the amount as directed to be paid by a learned Single Judge by Order dated 14.08.2019. He seeks one week's time to tender an undertaking in this Court.

2. Stand over to 19.08.2024 at 2.30 p. m..

3. Pursuant to the earlier Order, Respondent Nos. 2 & 3 are present in Court today and they shall remain present in Court on each and every date of hearing."

10. It is required to be noted that when this matter was placed before this Court on 19th August 2024, Mr. Kasar, learned Counsel appearing for the Respondents submitted that the matter be placed on 21st August 2024 and on that day, entire payment would be made to the Petitioner. However, on 21 st August 2024, Mr. Kasar, learned Counsel states that the Respondents are not in a position to make the payment.

11. In the facts and circumstances of this case, I am satisfied that the Respondents are only taking time and they are not interested in complying with the orders of the Court. It is also required to be noted that a learned Single Judge by order dated 1 st November 2023 has directed the Court Receiver to take immediate possession of the property in question. However, thereafter, a learned Single Judge by order dated 1st March 2024 has granted time as Mr. Kasar, learned Counsel appearing for the Respondents assured that the payment would be made. The learned Single Judge, however, in order dated 2nd May 2024 observed that false representations are made to this Court. Today also Mr. Kasar, learned Counsel appearing for the Respondents states that the payment as per the orders passed by this Court shall be made within a period of four weeks. However, the position on record clearly shows that the Respondents are not willing to comply with the orders passed by this Court and making false statements. Thus, in terms of order dated 1st November 2023 passed by a learned Single Judge, the Court Receiver is directed to take immediate possession of the subject property particularly in terms of paragraph No.13 of order dated 1st November 2023. The said paragraph No.13 is reproduced herein below for ready reference:

"13. In so far as further directions to the Court Receiver as recorded in the order dated 28.04.2023 are concerned, he is directed to take immediate possession of the subject property in accordance with law and make appropriate report to the Court by the next date as it is informed by Mr. Kasar that Respondent No.2 is in occupation of the subject property and there are 4 Restaurants which are presently running in the said property. Court Receiver, if required shall take necessary police assistance for taking over possession of the subject property and carry out all steps as are required to be taken in respect of the subject property which is now custodia legis. Any further directions to deal with or for sale of the subject property shall be passed after the Court Receiver makes an

appropriate report to the Court, which shall be made by the next adjourned date when the Contempt Notice is made returnable."

12. Needless to clarify that the Court Receiver, High Court, Bombay is already in symbolic possession of the property.

13. Stand over to 7th October 2024.