
(2015) 08 DEL CK 0353
In the Delhi High Court
Case No : Cont. Cas(C) 958/2013

IFCI Limited

APPELLANT

Vs

S. Surendra and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Evidence Act, 1872 — Section 78(2), 81

Citation : (2015) 10 AD 456

Hon'ble Judges : Manmohan, J.

Bench : Single Bench

Advocate : Pawanjit Singh Bindra and Shweta Priyadarshini, Advocates, for the Appellant; Rajshekhar Rao, Mani Gupta, Abhishek Tripathi and Aakash Narang, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Manmohan, J.—C.M. APPL. 2430/2015 [by petitioner] C.M. APPL. 12825/2015 [by respondents] Keeping in view the averments in the applications, delay in filing the rejoinder by the petitioner and additional affidavit by the respondents is condoned and same are taken on record.

Accordingly, the applications stand disposed of.

CM APPL. 2345/2015 Present application has been filed by respondent No. 2 seeking exemption from personal appearance on 10th February, 2015.

The application is disposed of as infructuous.

CM APPL. 13914/2015 Keeping in view the averments in the application, respondent No. 2 is exempted from personal appearance today.

Accordingly, the application stands disposed of. CONT. CAS(C) 958/2013

Present contempt petition has been filed against the contemnors for willful disobeying consensual orders dated 24th January, 2013 and 12th August, 2013

passed in W.P.(C) 393/2013 titled as Coastal Projects Ltd. Vs. IFCI Ltd.

On 24th January, 2013, the contemnors had agreed to repay Rs. 100 crores to petitioner-IFCI in following manner:-

"(i) The first installment of Rs. 10 Crores will be paid by the petitioner to the respondent on or before 15.03.2013;

(ii) The second installment of Rs. 15 Crores would be paid by the petitioner to the respondent on or before 20.04.2013;

(iii) The balance amount of Rs. 75 Crores would be paid by the petitioner to the respondent on or before 30.06.2013."

2. Upon the respondents herein undertaking to pay the aforesaid installments, the interim Injunction order dated 23rd November, 2012 passed in OMP 1087/2012 was varied to the following extent:-

"a). the injunction obtaining qua the Immovable properties/asset of the promoters of the petitioner No. 1 company be lifted to enable the promoters to deal with their immovable properties/assets subject to the following undertakings:-

(a.1). the immovable properties/assets will be used by the promoters only to generate funds for day-to-day operation of petitioner company and/or for redemption of the CCDs issued to the respondent in accordance with the time line indicated in clause 2 above;

(a.2). the promoters shall raise funds either by way of loan/financial assistance by creating an encumbrance or by way of sale of properties/assets of the promoters;

(a.3). information as regards the lender/ financier or the vendee/purchaser of each immovable property/asset shall be supplied to the respondent. The respondent, however, shall not impede the culmination of any such a transaction unreasonably. The petitioner will make an endeavour to give at least (10) days prior notice to the respondent of the intended transaction;

(a.4). the monies generated either by way of loan/ financial assistance or by way of sale will be deposited in a designated account maintained with a nationalized bank, in the name of the petitioner company. The particulars of the designated account will be supplied to the respondent;

(a.5). the petitioner shall intimate to the respondent with regard to the usage of funds put in the designated account; and

(a.6). the funds put in the designated account shall be utilized only for the usual and ordinary day-to-day operations of the petitioner No. 1 company or for repayment of monies qua CCDs as indicated in clause 2 above."

3. Since the injunction order was being varied only on the respondents"

statement that they would repay the amount of Rs. 100 crores, the Managing Director of respondent-company was directed to file an undertaking. The Court at that stage had clarified that in case there was any breach of the statement, petitioner herein would have the remedy to approach this Court by way of a contempt petition.

4. In view of the settlement reached between the parties, the impugned notices dated 11th January, 2013 and 17th January, 2013 declaring the respondents to be willful defaulters, was stayed.

5. After making payment of Rs. 25 cores, the respondents herein sought modification of the order dated 24th January, 2013 seeking re-schedulement of the third installment of Rs. 75 cores. Since the petitioner was agreeable to the same, the order dated 24th January, 2013 was modified vide order dated 12th August, 2013, to the extent mentioned in the revised terms and conditions. One of the mutually agreed revised terms and conditions clearly stipulated that in case of default during the extended repayment period, present petitioner would have the right to move a contempt petition.

6. Thereafter as only a small payment of Rs. 4.66 crore was made, the petitioner filed the present contempt petition against the Managing Director, Promoter as well as Vice President (finance) of respondent No. 4-company.

7. The only defence taken by the respondents in the present proceedings is that subsequent to the order dated 12th August, 2013, a Corporate Debt Restructuring (CDR) package has been entered into between the respondents and their creditors. The respondent has also averred that the joining of CDR Cell by the petitioner was reported in the media. Mr. Rajshekhar Rao, learned counsel for the respondents contends that the petitioner cannot maintain the present contempt petition as it was one of the members of the CDR Core Group which had sanctioned the CDR package on 28th March, 2014. In support of his contentions, Mr. Rao relies upon the letter dated 22nd November, 2013 addressed by Deputy General Manager, CDR Cell to the Chief Credit Officer, IFCI Ltd. The said letter reads as under:-

"With reference to your letter dated July 8, 2013 and also your email dated August 23, 2013, we are pleased to inform you that CDR Core Group has favourably considered your application for once again becoming permanent member of the CDR Mechanism. While approving your application, CDR Core Group has observed as under:

"IFCI is expected to adhere to all the CDR guidelines particularly in respect of extending additional funding as may be envisaged in the packages. Suitable forbearance will have to be exercised by IFCI in respect of outstanding legal cases, if any, initiated in respect of accounts prior to its exit. IFCI would also have to comply with CDR guidelines in respect of cases approved during the interim period when it was not a member.

To complete the process IFCI will have to execute the Letter of Accession in format enclosed. This is to be supported by a board resolution. IFCI Ltd. will also have to pay the permanent membership fee of Rs. 5 lacs by way of DD drawn in favour of CDR Fund account payable at Mumbai or through RTGS the details for which are given below:

Name of account : CDR Fund A/c. No. 906103000000019 RTGS Code-IBKL0000126 IDBI Bank Ltd., Cuffe Parade A copy of latest Inter Creditor Agreement (ICA) executed by CDR members is enclosed for your information and record.

Should you require any further clarification, feel free to contact the undersigned."

8. Mr. Pawanjit Singh Bindra, learned counsel for petitioner-IFCI clarifies that petitioner was not a part of the CDR mechanism and as such the same is not binding on it. In support of his contention, Mr. Bindra has drawn this Court's attention to Master Restructuring Agreement dated 29th March, 2014 executed between M/s. Coastal Projects Ltd. and State Bank of India as its Monitoring Institution as well as other financial institutions mentioned in the Agreement. He points out that the said Agreement was not executed by any of the officers of the petitioner-IFCI.

9. In rejoinder, Mr. Rajshekhar Rao, learned counsel for respondents states that the petitioner-IFCI had been a permanent member of the CDR Core Group at the time of approval of respondent-company's CDR Scheme, that is, on 28th March, 2014. Mr. Rao also states that petitioner has not denied that it has executed an Inter Creditor Agreement with other creditors of the respondents.

10. Having heard learned counsel for the parties, this Court is of the view that this is a case of gross contempt inasmuch as despite the respondents being made aware of the consequences of the breach of the undertakings given by them to this Court at every stage, they have willfully disobeyed the order of this Court. In fact, after the undertaking given to this Court that Rs. 100 crores would be paid to the petitioner-IFCI, the respondents not only got the interim injunction order dated 23rd November, 2012 passed in OMP 1087/2012 vacated and varied but also got the notices dated 11th January, 2013 and 17th January, 2013 issued by petitioner-IFCI declaring them willful defaulters, stayed. Without fully paying the settlement amount, respondents used the vacation and variation of the interim orders as well as stay of the notices declaring them to be willful defaulters to settle and get concessions from other creditors.

11. The defence of the respondents that petitioner was either a party to CDR package or had given its consent to the same is not borne out from any document placed on record. There is also a specific averment by the petitioner in its rejoinder that the petitioner-IFCI was not a part of the CDR scheme and the same is not binding on it.

12. Respondents have also not placed on record any document to show that the

petitioner-IFCI was a party either to the Inter Creditor Agreement or the Master Restructuring Agreement executed between the respondents and its banks as well as other financial institutions or that petitioner had any time furnished a Letter of Accession as sought for by the Deputy General Manager, CDR Cell vide its letter dated 22nd November, 2013.

13. Further, the Supreme Court has repeatedly held that newspaper reports are inadmissible in evidence as they are secondhand secondary evidence. In *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, , the Supreme Court has held as under:-

"47.A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might got perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible....."

14. The Supreme Court in *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, , has also held:-

"25.We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliened. A report in a newspaper is only hearsay evidence, A newspaper is not one of the documents referred to in S. 78(2) or the Evidence Act, 1872 by which an allegation of genuineness attached under S. 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein.

26. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported....."

15. In the opinion of this Court, only bald averments have been made by respondents in their additional affidavits after the pleading had been completed. This Court has no doubt that the "strategy" of the respondents in making bald and baseless statements is to delay the inevitable.

16. Consequently, the defence of the respondents is rejected as a sham and respondents are held guilty of contempt for willfully disobeying the consensual orders and undertakings given to this Court vide orders dated 24th January, 2013 and 12th August, 2013 in W.P.(C) 393/2013. Before this Court sentences the respondents, they are directed to place on record their and their dependents personal income tax returns, wealth tax returns, personal bank account statements and balance sheets of any company or profit or loss account statements of any partnership firm/ company or sole proprietorship of any firm/ company in which they or their dependents own a share. The aforesaid detail

along with an affidavit shall be provided for period of 2010 to 2015 within six weeks. Since this Court will be sentencing the respondents, they are directed to be personally present in court on the next date of hearing.

List on 5th November, 2015.