

(2020) 07 GUJ CK 0019

In the Gujarat High Court

Case No : R/Misc. Civil Application No. 819 Of 2019 In R/Special Civil Application No. 17676 Of 2011

Ketankumar Hasmukhlal Shah

APPELLANT

Vs

Kirtidaben Wd/O Kanubhai Someshwar Dave

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Citation : (2020) 07 GUJ CK 0019

Hon'ble Judges : Sonia Gokani, J;N.V.Anjaria, J

Bench : Division Bench

Advocate : Indravadan Parmar, Punam G Gadhvi, Vaishali J Shah

Final Decision : Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Indravadan Parmar for the applicant and learned advocate Mr.Punam Gadhvi for opponents.

2. In this application filed under the Contempt of Courts Act, 1971, the prayers reads as under.

[A] to prosecute and punish Opponent No.1 to 4 for committing willful disobedience of directions issued by this Honâ??ble Court as per : (i) an order

dated : 04.10.2012 passed in SCA No. 17676 of 2011, (ii) an order dated : 23.07.2013 passed in Misc. Civil Application No.3379 of 2012, (iii) an order

â?" dated : 01.02.2016 passed in Misc. Civil Application No.3569 of 2015, and (iv) an order â?" dated : 17.07.2018 passed in Misc. Civil Application

No.920 of 2017;

[B] to issue appropriate directions and pass suitable orders against Opponent No.1 to 4 for remedying and rectifying the things

3. It appears that the applicant herein had a shop rented from opponents. The opponent No.2 got it vacated for the purpose of demolition and reconstruction. The rented shop was to be returned after two months completing the above purpose, even after passage of fourteen years, the applicant was not given back the shop. This gave rise to litigation between the parties.

3.1 In Special Civil Application No.17676 of 2011 filed by the opponent No.2 herein, this Court finally issued Rule on 04th October, 2012 and passed interim direction in the nature of relief to the opponents by directing the petitioners-respondents herein to pay amount of Rs.05,000/- till the final disposal of the petition. It was further directed that if any arrears are to be paid on the date of passing of the order, the same shall be cleared within four weeks. The said amount of Rs.05,000/- was required to be paid every month to the applicant.

3.2 As the order of payment of Rs.05,000/- every month was not complied with, it led to filing of the present Miscellaneous Civil Application. In the present proceedings, on 22nd October, 2019, this Court (Honâ??ble the Chief Justice Vikram Nath & Honâ??ble Mr. Justice A. J. Shastri), passed the following order, which is reproduced herein to give the background. Thereunder the matter was referred to the mediation center.

â??3. The contents of the contempt application indicate that the opposite parties (contemner) have been negligent, rather deliberately flouting the interim order obtained by them in their Special Civil Application which required them to pay Rs.5000/- per month to the present applicant and they have not been honouring the same. On the one hand, they got the shop let out to the applicant vacated for purpose of demolition and construction of new shop and to return the same after 2 months but, it has been almost 14 years that opposite parties have not returned the shop to the applicant and when order by the executing court were passed, they approached this Court and obtained an interim order in their favour, subject to conditions that they will continue to pay Rs.5000/- to the applicant, which also they defaulted and as and when contempt application is filed and the opposite parties are summoned, that amount which has fallen due in arrears is paid. Such conduct of the opposite parties requires strict action against them and to award them maximum punishment under the Contempt of Courts Act. However, on the assurance given by Shri Gadhvi, learned counsel, that opposite

parties would continue to regularly pay the amount, we are not passing any further orders against the opposite parties, expecting that they would

continue to honour their assurance. We, however, feel that the matter may be settled between the parties amicably, if referred to the Mediation

Center of this Court.

4. We, accordingly, direct that a Xerox copy of the record may be forwarded to the Mediation Center. The opposite parties will deposit an amount of

Rs.20,000/- with the Mediation Center within 15 days from today, which in turn will be paid to the applicant for participating in the said proceedings.

5. The Mediation Center may take up the matter and submit its report within 3 months.â??

3.3 On 26th June, 2020, the Court noted that the mediation had failed and it was further observed that amount of rent was to be paid upto March, 2020

and for the remaining period of three months, due to pandemic, the opponent No.2 was unable to pay the same and the same shall be paid on 29th

June, 2020.

4. While it is stated that it is true that the amount is paid including the arrears till the month of June, 2020, the record shows that opponent No.2 was

whiling away the time for compliance of the direction in the nature of interim directions noted as above. This was indeed noted and observed by this

Court while passing the order on 07th October, 2019

(Coram: Honourable the Chief Justice and A.J.Shastri, JJ).

4.1 In paragraph-9 of the aforementioned order, following was specifically stated and observed by the Court recording the conduct of the opponent

No.2 in not ensuring the regular compliance of the order.

â??[9] Having heard learned advocate Mr.Indravadan Parmar appearing on behalf of the applicant and having gone through the averments contained

in the application, it appears to be a repeated non-compliance by the opponents in respect of making payment, as indicated above and we have also

noticed that whenever the contempt proceedings are being filed, the payments are being released gradually. So the tendency developed by the

opponents is to commit a non-compliance and only after the applicant filed contempt proceedings one after the other, the order is complied with. This

has been repeatedly found from the record and as such we are of the opinion that this tendency deserves to be curbed. A clear direction is given after

hearing the parties that till disposal of the main proceedings, the opponents have to make the payment as ordered, and there was no earthly reason for

opponents to ignore the same on every occasion and then to make the payment. This, in our considered opinion, is a contemptuous which clearly

indicates the intentional disregard to the orders passed the competent court.â??

Â 5. While referring the matter to the process for mediation, the opposite party was required to deposit the amount of Rs.20,000/-. As the Court was

highly unsatisfied about the approach of the opponent No.2 towards the direction of the Court and the non- compliance thereof, in order to solicit

regular compliance, the opponent No.2 was called upon to make the submission.

5.1 In response, opponent No.2 has filed additional affidavit dated 02nd July, 2020. In the said additional affidavit, in paragraph-6, in principal it is

stated on oath by the deponent that he has got bank account with State Bank of India, Dakor Branch and that he has instructed the Bank to transfer

every month Rs.05,000/- to the account of applicant-Ketankumar. It was at the same time stated by learned advocate for the opponent No.2 that the

said account is a joint account along with his wife.

5.2 Reproducing para-6 of the aforementioned affidavit,

â??The opponents humbly submits that opponents are law binding citizens and obeying the all order of this Honâ??ble Court but the present

pandemic situation of Corona Virus which is beyond their control of opponents and locked down was de- clared by the Union of India in the entire

coun- try during the Month of March to May 2020 and in June month some relaxation were given in the various states and therefore such delay was

oc- curred for paying the rent to the applicant, which is not an intentional one on part of the opponents and in addition to that the opponent no-2 will

abide that whatever is directed by this Honâ??ble Court as on date as dim fit in the present case is concerned and in the interest of justice that will

be abide by the opponents and that will be comply by the opponents and oppo- nent no-2 assured to this Honâ??ble Court that in future onwards from

July 2, 2020 the opponent no-2 will instruct to the State Bank of India, Dakor Branch Manager, whereas opponent no-2is holding joint Saving account

of is name and his wife joint name from where every English calen- dar months, direct to the SBI bank, Dakor Branch to debit of Rs. 5000/- from his

account and credited in the account of applicant i.e. Ke- tankumar Hasmukhlal

Shah account on or before 10th day of the respective months till the final outcome of the petition being No SCA 17676 of 2011, & without any single default in the future months and if any default would be done in that case whatever deem fit action can be initiated by this Honâ??ble Court against the opponent no-2 say deponents who is sworn this additional affidavit before this Honâ??ble Court.â??

6. Learned advocate for the applicant herein has made detailed submissions about the conduct of the opponent No.2 in not regularly complying with the direction of depositing and dilly-delaying the payment on one or the other reason or excuse. He highlighted various proceedings the applicant was required to pursue to seek the compliance and to get the amount as per the direction. It was submitted that payment of Rs.05,000/- by the opponent No.2 to the applicant meant a lot for him.

7. Now that the opponent No.2 has stated on oath in the aforementioned affidavit dated 02nd July, 2020 in paragraph-6 that he will ensuring payment of Rs.05,000/- every month through his bank account and the amount will be transferred every month in the account of the applicant as per the instructions given to the bank, we direct the opponent No.2 to ensure that balance is sufficiently maintained to adhere to the aforesaid commitments made on oath.

7.1 The savings bank account of the opponent No.2 is in the joint name with his wife-Mandakiniben Kalpeshkumar Dave. Therefore, it would be appropriate and hereby we require that said Mandakiben Kalpeshkumar Dave files her own independent affidavit before this Court within a week also stating that she is agreeable to transfer Rs.05,000/- every month from the said account to the account of the applicant and that she, along with her husband-opponent No.2 herein ensure it that the amount is regularly transferred and paid to the applicant.

7.2 It is also directed that opponent No.2 shall file an undertaking before the Branch Manager, State Bank of India, Dakor Branch, with specific request of auto-debit the sum of Rs.05,000/- to the account of the applicant on or before 10th day of every English calendar month by way of NEFT.

The details of the bank account of the applicant shall be shared by learned advocate for the applicant with the learned advocate for the opponent

No.2.

7.3 In the totality of the facts, while the aforesaid directions would ensure the compliance and abiding of the order of this Court of payment of

Rs.05,000/- every month till final disposal of Special Civil Application No.17676 of 2011, the Court cannot be oblivious to the conduct of the opponent

No.2 which is evident from the record of not regularly paying the amount of Rs.05,000/- and causing the hardship and harassment to the applicant to

say the least.

8. In Baranagore Jute Factory Plc Mazdoor Sangh (BMS) v. Baranagore Jute Factory Plc [(2017) 5 SCC 506], the Apex Court had before it more or

less similar set of facts and it observed in paragraph-23, after referring to its own judgment, as under.

As held by this Court in DDA v. Skipper Constructions Co. (P) Ltd. and going a step further, the Court has a duty to issue appropriate directions

for remedying and rectifying the things done in violation of the orders. In that regard, the Court may even taken restitutive measures at any stage of

the proceedings. (Para 23)

9. The lethargic approach towards compliance of the direction of the Court could hardly be countenanced. Such approach and conduct on part of the

respondents is manifest in the facts and circumstances of the present case. Therefore, it would be appropriate to saddle the opponent No.2 with cost

to be paid to the applicant. In addition to Rs.20,000/- which is directed to be deposited by the opponent No.2 while referring the matter to the

mediation, we additionally impose cost of Rs. 7,500/- The said additional amount of cost shall be paid to the applicant within a period of three weeks

from today. The applicant shall be entitled to withdraw the above sum of Rs. 20,000/-.

10. It is provided that in the event of non- compliance of the directions in the present order, State Bank of India shall not take any unilateral decision of

stopping the reciprocal transaction from the account of opponent No.2 to the account of the applicant and the Bank shall be at liberty to approach this

Court by making appropriate application. In such an eventuality, the applicant is at liberty to revive the present proceedings.

11. With the aforesaid observations and directions, the present Miscellaneous Civil Application is disposed of.