

(2009) 04 DEL CK 0538

In the Delhi High Court

Case No : C.C.P. No. 132 of 2008 in C.S. (OS) No. 214 of 2002

Sh.Vijay Pandit

APPELLANT

Vs

GR Investments India Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Contempt of Courts Act, 1971 — Section 11, 12, 2

Citation : (2009) 159 DLT 78 : (2010) 7 RCR(Civil) 343

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Vikas Sharma, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—This is a petition under Sections 11 & 12 of the Contempt of Courts Act read with Section 151 of the CPC for initiating contempt proceedings against the respondent for disobeying and disregarding the order dated 8th August, 2005 and for violating the alleged undertaking given to the Court and for violating the terms of the family settlement dated 16th July, 2005.

2. The plaintiffs had filed a suit for permanent injunction seeking restraint against the defendant company from evicting the plaintiffs from second floor of the property bearing No. D-178, Defence Colony, New Delhi and from obstructing their ingress and egress to the said property. Smt. Nutan Pandit, alleged contemnor, is stated to be Director of the defendant company and is also the wife of plaintiff No. 1.

3. The disputes regarding the divorce and other proceedings were also pending between Smt. Nutan Pandit, Director of defendant company and the plaintiff. A settlement was arrived at between the plaintiff and the defendants pursuant to which a joint application dated 5th July, 2005 supported by the affidavits of Sh.Vijay Pandit, plaintiff and Smt. Nutan Pandit, Director of the defendant

company was filed.

4. On the application of the parties, the statement of Sh.Vijay Pandit and Smt. Nutan Pandit were recorded who had stated that they have signed the settlement after reading and understanding the same and the joint application incorporating the terms of settlement is signed by them. No undertaking was given by them to the Court nor any undertaking was accepted by the Court.

5. On the basis of their joint application the Court had passed the following order:

The parties have filed his application contending that they have settled the suit in terms of settlement arrived at between them and the plaintiff prays for withdrawal of the suit in terms of the settlement arrived at. The settlement is incorporated in Annexure `A? annexed with the application.

The Counsel for the parties stated that the settlement is signed by the parties. The application for compromise also includes the terms of settlement. Application is signed by the parties and is also supported by the affidavit of the plaintiff and the affidavit of the director of the defendant, Mrs. Nutan Pandit. The application is marked as "Exhibit P-1". The counsel states that the party shall be bound by the terms and settlement as incorporated in application which is exhibited "P-1". In view of the settlement arrived at between the parties, the plaintiff is allowed to withdraw the suit in terms of settlement set out in the application leaving the parties to bear their own costs. The suit is disposed of.

6. Therefore, pursuant to the settlement between the parties the plaintiff was permitted to withdraw the suit in terms of the settlement leaving the parties to bear their own cost and no decree was passed as it was not prayed by the plaintiff and defendant that a decree in terms of the settlement be passed.

7. The petitioner is now aggrieved by a suit for declaration filed by Smt. Nutan Pandit to the effect that the settlement dated 16th July, 2005 entered between the parties be declared null and void because her consent was obtained by fraud and misrepresentation. According to the petitioner the respondent Smt. Nutan Pandit cannot claim that the part of the settlement is valid and other part of the settlement is not valid as her consent has been allegedly obtained by misrepresentation and fraud.

8. According to the petitioner since the respondent is violating the terms of settlement and a false and frivolous case has been filed by the respondent against the petitioner, therefore, the respondent has committed contempt of this Court and proceedings be initiated for committing contempt of this Court against the respondent.

9. The application is contested by the respondent contending that the application is an abuse of process of law. It is contended that the respondent is within her right to enforce her right when the settlement dated 16th July, 2005 was got executed from her on account of misrepresentation and fraud and, therefore, filing a suit for declaration regarding the alleged settlement dated 16th July,

2005, is not a willful and deliberate violation of any of the orders passed by this Court and cannot tantamount to committing contempt of the Court.

10. I have heard the learned Counsel for the petitioner. A settlement dated 16th July, 2005 was arrived at between the parties and on the basis of the said settlement the suit for injunction was withdrawn by the plaintiff. While withdrawing the plaint, pursuant to a joint application, the plaintiff had not sought for passing a decree in terms of the settlement arrived at between the parties. No undertaking had been given to the Court nor has any undertaking been accepted by the Court that the respondent, Smt. Nutan Pandit will not be entitled to challenge the settlement dated 16th July, 2005 on any grounds.

11. The respondent has filed a suit challenging the settlement dated 16th July, 2005 contending inter-alia that the settlement was arrived at on account of misrepresentation and fraud committed on her.

12. If the petitioner wants to invoke her civil rights seeking that the settlement arrived at with her was on account of misrepresentation and fraud, the same cannot be a ground for initiating Contempt of Court proceedings against the respondent. The learned Counsel for the petitioner has vehemently argued that part of the settlement cannot be valid while other part not suitable to the respondent is being challenged by her as being void on account of misrepresentation and fraud. The respondent had also stated before withdrawal of the suit that the settlement was signed by her and she had also given an affidavit in support of the joint application filed for the withdrawal of the suit.

13. These are the grounds the petitioner may take in contesting the suit filed by the respondent, however, in the present facts and circumstances it does not tantamount to willful and intentional violation of the order dated 8th August, 2005 by which the plaintiff was permitted to withdraw the suit on account of settlement arrived at between the parties.

14. Exercise of power under Contempt of Courts Act of 1971 is comparatively a rarity and has to be used sparingly and in the larger interest of society and for proper administration of justice. Mere disobedience of an order may not be sufficient to amount to a " Civil Contempt" within the meaning of Section 2(b) of the Act of 1971. The element of willingness and intention is an indispensable requirement to take action. If two interpretations are possible as to the action of alleged contemnor and one of such interpretations raises doubts about the willful nature of his conduct, contempt will not be made out. The Supreme Court of India in the case *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, has observed at page 230, inter alia thus:

The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

Per Grover, J.

Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide *Bukhtiarpur Bihar Light Rly. Co. Ltd. Vs. State of Bihar and Others*, *A. Ramalingam Vs. V.V. Mahalinga Nadar*, and *Ram Rup Pandey Vs. R.K. Bhargava and Others*,

Having carefully considered the allegations made in the contempt petition, it is apparent that the action of the respondent does not fall within the ambit of Contempt of Courts Act. No undertaking was given to or accepted by the Court. Filing a suit seeking a declaration that the compromise arrived at with her was on account of misrepresentation and fraud will not be ground for initiating the Contempt of Court proceedings against the respondent. The grounds raised by the petitioner may be good ground for dismissal of the suit filed by the respondent, however, no grounds have been made out for initiating Contempt of Court proceedings against the respondent. The petition in the facts and circumstances is misconceived and it is, therefore, dismissed. Notice issued to the respondent is discharged and the parties are left to bear their costs.