
(1980) 01 RAJ CK 0036
In the Rajasthan High Court

The Incon (India) Ltd.

APPELLANT

Vs

A.L. Rungta and Others

RESPONDENT

Date of Decision : 24-01-1980

Acts Referred:

COMPANIES ACT, 1956 — Section 433, 439
Contempt of Courts Act, 1971 — Section 13
State Financial Corporations Act, 1951 — Section 29

Citation : (1981) CriLJ 144 : (1980) WLN 156

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Judgement

P.D. Kudal, J.—The petitioners have filed this application for contempt of this Court's order dated 30-1-1979.

2. The brief facts of the case which are relevant for the disposal of this contempt petition are that the shareholders of M/s. Incon (India) Ltd. filed a petition for winding up the Incon (India) Ltd. u/s 439 read with Section 433(f) of the Companies Act, 1956. This petition was admitted for hearing on 9-3-1978. An application was moved on behalf of the Rajasthan Financial Corporation, Jaipur that the Corporation may be allowed to intervene, and that the petition for winding up may be dismissed with costs. It was, inter alia, pleaded by the Rajasthan Financial Corporation that the assets of Incon (India) Ltd., Jaipur have been taken over by the Rajasthan Financial Corporation in exercise of the powers vested in the Corporation u/s 29 of the State Financial Corporation Act, 1951. It was further contended that in view of Section 29(5), the Corporation is entitled to sue and be sued in its name and that it is further entitled to oppose the winding up petition. It was also contended by the Financial Corporation that all efforts shall be made to restart the industry by leasing or disposing of the same.

3. After hearing the parties on 30-1-1979, the following order was passed:

Mr. Mehta states that the entire structure of the company has been exhausted and the shareholders have lost their entire assets as the working of the,

company has been taken over by the R.F.C. Mr. Agarwal appearing on behalf of the R. F. C. states that he is agreeable to any workable solution On which the Company can restart its work. Under these circumstances Mr. Agarwal is directed to submit a feasibility report whether the work and the functioning of the company can be restarted. This report may be submitted within one month.

Mr. Mehta is also directed to submit any workable scheme within one month stating the terms and conditions under which the company may restart its function and work.

Put up on March 5, 1979.

4. That the Rajasthan Financial Corporation appointed Shri S.S. Jain as a Director on the Board of Directors of the Company and took physical possession of the industrial premises of the Company on 1-8-1978, and a notice was also published in the local newspapers and the Times of India dated 9-8-1978, inviting offers for leasing out the industry. A Committee consisting of the Chairman, Shri R.D. Thapar, Shri A.L. Rungta and Shri T.N. Chaturvedi was appointed. This Committee met on 16th December, 1978 and interviewed the parties who had turned up in response to the advertisement in the newspaper dated 9-8-1978. The offers received from the various parties were considered by the sub-committee. Thereafter the offer was placed before the meeting of the Board of the Rajasthan Financial Corporation held on 30th January, 1979, at 11.00 a. m. The Board accepted the recommendations of the Committee to sell away the factory to M/s. United Agencies, Bombay for a consideration of Rs. 47 lacs.

5. The grievance of the petitioner company is that though all the steps had been taken but in the application dated 4-12-1978, the Rajasthan Financial Corporation deliberately omitted to state these facts and thus suppressed these material facts from the Court. It was after the filing of this application on 4-12-1978 that the matter came up for consideration before the Court on 30-1-1979, when the aforesaid order was passed. The Rajasthan Financial Corporation was then represented by late Shri C.L. Agarwal. The further contention of the petitioner company is that not only the information and facts were kept back from the Court, but the Rajasthan Financial Corporation did not take any steps in compliance with the order of this Court dated 30-1-1979. The contention of the petitioner is that these actions of the respondents undermines the sanctity of the Court proceedings and constitutes wilful and arrogant disregard of the direction of this Court which amounts to a contempt of Court's order.

6. On behalf of the respondents, it was contended that the moveable and Immovable properties and all the assets of the petitioner company were mortgaged with the Rajasthan Financial Corporation. It was further contended that as per requirement of Section 29 and other relevant provisions of the State Financial Corporations Act, 1951, the Corporation took the possession and

control of all the assets including the factory land, buildings, plant and machinery, Issue of the notice dated 9-8-1978 was admitted. It was further contended that in para 18 of the Annexure A it had been clearly stated that the Corporation had taken over assets of the company and efforts to restart the company, or leasing or disposing of the same would be made. It was further contended that it is wrong to allege that any material facts were suppressed from the Court. It was further contended that late Shri C.L. Agarwal made the statement in good faith that he was agreeable to any workable solution on the basis of which the Company could restart its work. At the time when this statement was made by Shri Agarwal he was not aware that a meeting of the Board of Directors was taking place at the registered office on 30-1-1979, at 11 a.m. The minutes and the relevant resolution were submitted before the Court as Annexure 3 on February 26, 1979. It has been further contended by the respondents that they have not failed to carry out any directions issued by the Court and according to the order dated 30-1-1979, a feasibility report was to be submitted as to whether the company could restart its working. It was also contended that the petition of Mrs. Suri was dismissed by the Court on March 2, 1979. It was further contended that the respondents have always kept the dignity of the Court above all and have all respects for the same. It was further contended that they have not disregarded the direction of the Court in any way.

7. It was further contended that the respondents have not disregarded any directions of the Hon'ble Court and have not committed any contempt. It has been further stated that if the Court holds that any direction of the Court has not been complied with, they submit that any such act of omission or commission was unknowingly and innocently done without any ill-will or any ulterior motive. It has been further contended that the respondents have been bona fide acting in the discharge of their official duties, and if in doing so any action has been innocently done, the respondents tender an apology for the same.

8. The respective contentions of the learned Counsel for the parties have been considered and the record of the case carefully perused. The meeting of the Board of Directors took place on 29-1-1979, and the proposal was accepted on 30-1-1979. The assets of the company were handed over on 1-2-1979, to the United Agency Pvt. Ltd., Bombay. The Corporation received Rs. 2 lacs on 1-2-1979 and Rs. 87,000 on 17-2-1979. A sum of Rs. 10 lacs was to be paid up to 3rd March, 1979.

9. The basic question for consideration is whether the respondents have committed contempt of the Court's order dated 30-1-1979. The learned Counsel for the respondents had agreed to any workable solution on which the Company can restart its work. Accordingly Shri Agarwal was directed to submit; a feasibility report whether the work and functioning of the Company can be restarted.

10. Such a feasibility report was never submitted. On the other hand, the assets of the Incon (India) Ltd., were transferred to M/s. United Agencies, Bombay on

30-1-1979. The only point for consideration is whether this action of the respondents constitutes a contempt of the order of this Court dated 30-1-1979.

11. In dealing with the allegations of contempt it is not for the Court to assume a vindictive attitude in judging the allegations made against the contemner. Such allegations should be considered dispassionately in order to see if there has been deliberate and wilful defiance to the order of the court so as to attract an order of conviction and sentence for contempt. Every infraction of the court's order does not amount to contempt of Court. It is only a wilful and deliberate violation of the Court's order and contumacious conduct on the part of the contemner which is to be condemned in contempt proceedings. Section 13 of the Contempt of Courts Act, 1971 provides that no court shall impose a sentence for the contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with due course of justice, A wilful and deliberate violation of the order of court must be shown to interfere with the due course of Justice before such conduct can be punished for contempt.

12. In Contempt of Court cases the Court should always proceed with the thought that law should be most jealously and carefully applied and the power is to be cautiously exercised with the greatest reluctance and anxiety, because of the betterment and welfare of the State and because the privileges of the Judges are involved. The Court should not be hypersensitive. It should not exercise this jurisdiction upon a mere question of propriety or on any exaggerated notion of the dignity of the Judges.

13. It should be borne in mind that the Court is the protector of public justice and the judges have no personal interest or concern in a case. Contempt of Court is an offence in the nature of sui generis and this summary jurisdiction in punishing for contempt exists in the courts for the very purpose of maintaining the authority of law and for affording protection to the interest of the litigants and the public, in the parity of the administration of justice.

14. In the instant case, the learned Counsel for the Rajasthan Financial Corporation was given a direction to submit a feasibility report within a month, At the time when these proceedings were being conducted before the Court, the meeting of the Board of Directors of the Rajasthan Financial Corporation was going on. It appears that both these proceedings happened almost simultaneously. Shri C.L. Agarwal has expired and his affidavit could not be taken on record. It is not known whether Shri Agarwal could communicate the directions of the Court to the Board of Directors of the Rajasthan Financial Corporation before they had taken a decision to transfer the assets and properties of M/s. Incon (India) Pvt. Ltd. to M/s. United Agencies of Bombay. Under these circumstances, it is difficult to hold that the action of the Rajasthan Financial Corporation was a wilful and deliberate action in disregarding the orders of the Court. It may also be mentioned that the Court had directed only for submitting a feasibility report, but it had in no way restrained the Rajasthan Financial Corporation from transferring the assets of the Incon (India) Ltd. to any

customer in response to their notice dated 9-8-1978.

15. The contemnors have tendered apology, and have assured the Court that they never intended to undermine the dignity of the Court and majesty of Law. Under these circumstances, it does not appear unreasonable to accept the apology tendered by the contemnors at the earliest stage.

16. Even though, taking an ultra-technical view there might be some infraction in not submitting the feasibility report, but transferring the assets of Incon (India) Ltd. on 30-1-1979 to M/s. United Agencies, Bombay cannot amount to a deliberate and wilful attempt on the part of the contemnors to subvert the process of law.

17. Under these circumstances, the apology tendered by the contemnors is accepted, and the contempt proceedings are dropped.