



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 05 August 2024**
Judgment pronounced on : 25 September 2024

+ CONT. CAS (C) 488/2019

RAJIV OBEROI Petitioner

Through: Mr. Amit Sherawat, Adv.

versus

RAJESH GUPTA Respondent

Through: Ms. Prerna Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is seeking initiation of contempt proceedings against the respondent/contemnor under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971¹, for the wilful disobedience and non-compliance of the impugned order dated 30.05.2018, passed by the learned Additional District Judge-02, South- East, Saket Court, Delhi² in Execution Petition No. 742 of 2017 titled as "*Rajiv Oberoi v. Jatinder Oberoi*", whereby the Learned Executing Court had restrained the respondent/contemnor to make the payment of Rs. 10,00,000/- to Sh. Jatinder Oberoi, till further direction of the learned Executing Court.

2. Shorn of unnecessary details, the petitioner and one Sh. Jatinder Oberoi, who are real brothers, jointly own property L-10, Kalkaji,

¹ C.C. Act

² ADJ



New Delhi³. Sh. Jatinder Oberoi had previously initiated a partition suit⁴, in this Court and in order to resolve a long pending dispute with the respondent, he borrowed Rs. 10,00,000/- in cash from the petitioner on 25.04.2014, executing a promissory note in the process. However, Mr. Jatinder Oberoi did not settle the matter and continued pursuing the partition suit. Consequently, the petitioner had filed a Summary Suit No. 611/2015⁵ against Mr. Jatinder Oberoi before the District Court, Delhi.

3. The dispute between the petitioner and Sh. Jatinder Oberoi was resolved through the Mediation Cell at Saket Courts, resulting in a settlement decree dated 11.05.2017. According to the settlement, Sh. Jatinder Oberoi was obligated to pay Rs. 10,00,000/- to the petitioner by 11.08.2017. However, since no payment was made, the petitioner filed Execution No. 742/2017 before the learned Saket Court, Delhi. During the execution proceedings, on 03.02.2018 Sh. Jatinder Oberoi made a statement undertaking to pay the decretal amount within two months, but he failed to fulfil his obligation. Later, Sh. Jatinder Oberoi, holding a 50% share in the property in question, executed an Agreement to Sell in favour of the respondent on 13.02.2016, during the pendency of CS(OS) No. 140 of 2012.

4. It is stated by the petitioner that Sh. Jatinder Oberoi handed over possession of the first floor of the disputed property to the respondent, who continues to reside there. As per the Agreement to Sell, the respondent was required to pay a balance of Rs. 25,00,000/-

³ Property in question

⁴ CS(OS) No. 140 of 2012



to Sh. Jatinder Oberoi, and he issued two cheques: Rs. 10,00,000/- each, dated 01.06.2018 and 01.06.2019, drawn on Punjab National Bank, Kalkaji, New Delhi, and providing that the remaining Rs. 5,00,000/- would be paid at the time of registry. Thus, the petitioner filed an application under Order XXI Rule 46A CPC, seeking a order from the Executing court for a direction to the respondent to deposit the funds.

5. The learned Executing Court issued notice to the respondent on 28.04.2018, but the respondent failed to appear despite being served. On 30.05.2018, the matter was listed before the learned Executing Court on which date too the respondent did not appear despite due notice, and thus, the learned Executing Court passed a restrain order directing the respondent from making any further payment to Sh. Jatinder Oberoi. The operative portion of the order dated 30.05.2018 is reproduced below: -

“In view of the fact that JD has not made the payment as per DH, neither JD has appeared today, copy of agreement to sell and purchase dated 13.2.2016 and in view of the fact that Mr. Rajesh Gupta has not appeared either on LDOH and today, I hereby restrain Mr. Rajesh Gupta to make payment of Rs. 10 lacs to JD in any manner till further direction from this court.”

6. The order dated 30.05.2018 was served upon the respondent, as reflected by the order of the learned Executing Court on 07.07.2018. On 12.07.2018, the respondent submitted certain documents to the learned Executing Court and the respondent's counsel stated that while Rs. 10 lakhs had already been paid, Rs. 15 lakhs remained outstanding

⁵ New case No. 7301/2016



to the Sh. Jatinder Oberoi (JD⁶). The relevant portion of the order dated 30.05.2018 is reproduced below: -

“Counsel for Mr. Rajesh Gupta has submitted that Rajesh Gupta undertakes not to make further payment towards purchase of aforesaid property without permission of this court. He has submitted that though two cheque i.e. one for Rs.10 lacs and another for Rs.5 lacs have been given by Mr. Rajesh Gupta to JD in advance towards complete payment of consideration amount for purchase of aforesaid property but that Mr. Rajesh Gupta shall give instruction to his banker not to encash the cheque given.”

7. However, later the respondent filed an application under Order 21 Rule 46C of the Code of Civil Procedure, 1908⁷, before the learned Executing Court, seeking conducting a trial to determine the liability of the Garnishee (Mr. Rajesh Gupta/respondent herein) towards Sh. Jatinder Oberoi (JD) and to vacate the attachment of the respondent’s bank account. The application of the respondent was dismissed by the learned Executing Court on 24.12.2018 and the relevant portion of the order is reproduced below: -

“20. Applicant by himself discharged his liability towards JD by making payment as per applicant despite restrain order dated 30.5.2018 being in knowledge of applicant. Applicant has tried to undermine authority of this court by making payment to JD despite being in the knowledge of restrain order dated 30.5.2018. The payment made by applicant to JD in these circumstances cannot be said to be valid discharge of his liability towards JD. No trial under order 21 Rule 46C CPC is required in these circumstances nor order dated 28.7.2018 is required to be vacated.”

8. The petitioner contends that despite there being a restraint order dated 30.05.2018, the respondent in wilful and deliberate disobedience of the order dated 30.05.2018 has made payments to Sh. Jatinder

⁶ Judgment Debtor

⁷ CPC



Oberoi (JD). It is submitted that the respondent was, and remains, fully aware of the restraining order and the clear terms of the learned Executing Court's order dated 30.05.2018, and thus, he was legally obligated to comply with the court's directions faithfully and diligently. The table below will reflect the payments made by the respondent to Sh. Jatinder Oberoi (JD): -

| S. No. | Amount | Date |
|---------------|----------------|-------------|
| 1. | Rs. 5,00,000/- | 28.06.2018 |
| 2. | Rs. 5,00,000/- | 03.07.2018 |
| 3. | Rs. 5,00,00/- | 11.07.2018 |

9. The petitioner submits that apart from the sum of Rs. 97,404.11 obtained from the attachment of the respondent's account at Laxmi Vilas Bank, no other payment has been made by the respondent. The respondent has challenged the order of the learned Executing Court dated 24.12.2018, before this Court in CMM No.755 of 2018, misleading the Court by incorrectly asserting that the restraining order was related to the payment of Rs. 10 lakhs due on 01.06.2018, which contradicts the order dated 30.5.2018 and the records. This misrepresentation led to a stay on any coercive action. Despite being fully aware of the order dated 30.5.2018, the respondent made payments to Mr. Jatinder Oberoi (JD), wilfully violating and disregarding the said order, as well as breaching the undertaking made on 12.7.2018 before the learned Executing Court. The respondent's contemptuous conduct demonstrates a lack of respect for the Court, thereby making the respondent liable for punishment by this Court.



ANALYSIS & DECISION:

10. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this Court finds that the case of the petitioner that the respondent committed wilful and deliberate disobedience of directions of this Court dated 30.05.2018 is clearly being made out.

11. The Contempt of Courts Act, 1971, envisages a civil contempt which should demonstrate a wilful disobedience of a decision of the Court. Avoiding long academic discussion, in the cited case of **U.N. Bora v. Assam Roller Flour Mills Assn.**⁸, after examining a plethora of case law on the subject, it was reiterated that:

- “(i) It should be shown that there was due knowledge of the order or directions and that the disobedience is a deliberate, conscious and intentional act.
- (ii) When two views are possible, the element of wilfulness vanishes as it involves a mental element.
- (iii) Since the proceedings are quasi-criminal in nature, what is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.
- (iv) when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971.
- (v) While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated.”

12. Thus, in order to punish a contemnor, it has to be established that the act of disobedience of the order is “wilful”. The word “wilful” introduces a mental element, and hence, requires looking into the

⁸ (2022) 1 SCC 101



mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly, intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. **It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions.** The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

13. In view of the aforesaid provisions of law, it is clear that the despite there being a restrain order dated 30.05.2018, the respondent made the abovementioned payments to Sh. Jitender Oberoi i.e., Rs. 5,00,000/- each on 28.06.2018, 03.07.2018 and 11.07.2018. The payment of such amount made by the respondent to Sh. Jitender Oberoi cannot be said to be casual, accidental, involuntary or negligent action. The act committed was fully deliberate and fully knowing the consequences, and therefore, this Court holds the



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respondent guilty of committing contempt of the order of this Court dated 30.05.2018.

14. Accordingly, the respondent is directed to appear physically before this Court and be heard on the quantum of sentence to be awarded to him and other reliefs.

15. Re-notify on 04.11.2024 in the 'Supplementary List'.

DHARMESH SHARMA, J.

SEPTEMBER 25, 2024

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