

Rakesh Jain vs.preeti Jain

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Court : Delhi

Decided On : Feb-23-2018

Appellant : Rakesh Jain

Respondent : Preeti Jain

Judgement :

\$~28 & 29 IN THE HIGH COURT OF DELHI AT NEW DELHI * + OMP (CONT.)
2/2017 RAKESH JAIN Through: Decree Holder in person Decree Holder
PREETI JAIN alongwith his son. versus Judgement Debtor Through: Mr Avadh
Kaushik, Advocate. AND + OMP (CONT.) 3/2017 RAKESH JAIN Through: Decree
Holder in person Decree Holder alongwith his son. versus Judgement
Debtor Through: Mr Avadh Kaushik, Advocate. YOGESH JAIN CORAM: HON'BLE
MR. JUSTICE VIBHU BAKHRU %

ORDER

2302.2018 VIBHU BAKHRU, J1 The petitioner has filed the present petitions
under Section 27(5) of the Arbitration and Conciliation Act, 1996 (hereafter the
Act) read with Section 11 and 12 of the Contempt of Courts Act, 1971.

2. The petitioner prays that the proceedings for the Contempt of Courts Act, 1971
be initiated against the respondents for wilful disobedience of the order dated
14.10.2004 and interim award dated 01.04.2010 passed by the Sole Arbitrator.

3. Mr Yogesh Jain, (the respondent in OMP (CONT.) 3/2017) is OMP (CONT.) Nos. 2 & 3 of 2017 Page 1 of 7 the brother of the petitioner and Ms Preeti Jain (the respondent in OMP (CONT.) 2/2017) is the petitioners sister-in-law (Yogesh Jains wife).

4. The petitioner claims that after the demise of Sh N.K. Jain (the father of the petitioner and Sh Yogesh Jain), the relationship between the said two brothers became strained and it was decided to separate the family properties and business, which were jointly owned by them.

5. The petitioner claims that the disputes were referred to an Arbitrator in terms of an agreement dated 07.06.2002 (hereafter the Agreement). The Arbitrator passed an order dated 14.10.2004 restraining the two family groups - the petitioner and his family and Mr Yogesh Jain and his family - from alienating or transferring any of the family assets, business or companies owned by them. The petitioner states that thereafter on 01.04.2010, the Arbitrator also passed an interim award, whereby the petitioner and his group was allotted various business and assets subject to clearing the joint family liabilities.

6. The petitioner claims that the said order dated 14.10.2004 and the interim award dated 01.04.2010 has been wilfully violated and the respondents have misappropriated certain properties, which fall to the share of the petitioner and his groups.

7. It was also pointed out on behalf of the petitioner that the respondents had preferred applications under Section 34 of the Act (OMP4552012 and OMP6882012), inter alia, impugning the interim award dated 01.04.2010. However, the said applications were dismissed by a Coordinate Bench of this Court by a judgment dated OMP (CONT.) Nos. 2 & 3 of 2017 Page 2 of 7 18.04.2017. The respondents have appealed against the said judgment which is pending before a Division Bench of this Court.

8. The principal question that falls for consideration is whether the proceedings for contempt of the said order/interim award is maintainable in view of Section 20 of the Contempt of Courts Act, 1971.

9. The petitioner and his son are present in Court and the petitioner requested that his son be permitted to advance contentions on his behalf. This Court acceded to the said request and heard the petitioners son.

10. The petitioners son submitted (on behalf of the petitioner) that the powers of the Court to initiate proceedings for Contempt under Article 215 of the Constitution of India could not be curtailed by any legislation made by the Parliament and, therefore, Section 20 of the Contempt of Court Act, 1971 would not come in the way of this Court in initiating action against the respondents for wilful disobedience of the order dated 14.10.2004 and the interim award dated 01.04.2010 rendered by the sole arbitrator.

11. He also referred to the decision of this Court in Shri Ram Phal & Anr. v. B.S. Bhalla & Ors. : (2004) 112 DLT193 and the decision of the Supreme Court in Pallav Sheth v. Custodian and Others: (2001) 7 SCC549 in support of his contention.

12. At the outset, it is relevant to mention that the petitioner does not dispute that he became aware of the alleged violation in the year 2012. However, he had moved the Arbitrator and this Court for initiation of the proceedings for Contempt five years later (in the year OMP (CONT.) Nos. 2 & 3 of 2017 Page 3 of 7 2017).

13. Before proceeding further it is relevant to refer to Section 20 of the Contempt of Courts Act, 1971, which reads as under:-

"20. Limitation for actions for contempt.-No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. 14. It is apparent from the plain reading of the aforesaid Section that no proceeding for Contempt of Court can be issued after expiry of a period of one year from the date on which the contempt is alleged to have been committed.

15. The Supreme Court in the case of Pallav Sheth v. Custodian and Others (supra) had considered the question whether the power of the Court under Article 129 and Article 215 of the Constitution of India is absolute or whether the manner and to the extent of which the said power can be exercised can be guided by a

legislation. After considering the said issue, the Supreme Court held that the power under Article 129 and/or 215 should be exercised in consonance with the validly enacted provisions of law. The relevant extract of the said decision is set out below:-

"30. There can be no doubt that both this Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised?. If there is any OMP (CONT.) Nos. 2 & 3 of 2017 Page 4 of 7 provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.

31. This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature, it would stand to reason that the power under Article 129 and/or Article in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously. 215 should be exercised 32. The Contempt of Courts Act, 1971 inter alia provides for what is not to be regarded as contempt; it specifies in Section 12 the maximum punishment which can be imposed; procedure to be followed where contempt is in the face of the Supreme Court or in the High Court or cognizance of criminal contempt in other cases is provided by Sections 14 and 15; the procedure to be followed after taking cognizance is provided by Section 17; Section 18 provides that in every case of criminal contempt under Section 15 the same shall be heard and determined by a Bench of not less than two Judges; Section 19 gives the right of appeal from any order or decision of the High Court in the exercise of its jurisdiction is no challenge

to the validity of any of the provisions of the Contempt of Courts Act as being violative or in conflict with any provisions of the Constitution. Barring to punish for contempt. There OMP (CONT.) Nos. 2 & 3 of 2017 Page 5 of 7 observations of this Court in the Supreme Court Bar Assn. case where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power, this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 125 of the Constitution. In Sukhdev Singh Sodhi case it recognised that the 1926 Act placed a limitation on the amount of punishment which could be imposed. Baradakanta Mishra case was decided on the interpretation of Section 19 of the 1971 Act, namely, there was no right of appeal if the Court did not take action or initiate contempt proceedings. In the case of Firm Ganpat Ram Rajkumar case the Court did not hold that Section 20 of the 1971 Act was inapplicable. It came to the conclusion that the application for initiating contempt proceedings was within time and limitation had to be calculated as for the purpose of limitation date of filing was relevant and furthermore that was a case of continuing wrong. In Kartick Chandra Das case the provisions of to be applicable in dealing with application under Section 5 in connection with an appeal filed under Section 19 of the Limitation Act. A three-Judge Bench in Dr L.P.Misra case observed the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article 215 of the Constitution. It would, that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided. the Limitation Act were held that therefore, follow 16. In view of the above, it is clear that in terms of Section 20 of the Contempt of Courts Act, 1971, no proceedings of contempt can be OMP (CONT.) Nos. 2 & 3 of 2017 Page 6 of 7 initiated.

17. The petitions are, accordingly, dismissed. VIBHU BAKHRU, J FEBRUARY23 2018 pkv OMP (CONT.) Nos. 2 & 3 of 2017 Page 7 of 7