

Jamna Datwani Vs. Kishin Datwani and Ors.

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SooperKanoon Citation : sooperkanoon.com/60926

Court : Delhi

Decided On : Jul-23-2015

Judge : V.K.Shali

Appellant : Jamna Datwani

Respondent : Kishin Datwani and Ors.

Advocate for Pet/Ap. : Ms. Tara V. Ganju

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + Cont. Cas. (C) No.652/2014
Decided on :

23. d July, 2015 Petitioner JAMNA DATWANI Through: Ms. Tara V. Ganju, Advocate. Versus KISHIN DATWANI & ORS. Respondents CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

C.M. No.20444/2015 (for delay) 1. This is an application seeking condonation of 11 days delay in filing the review petition.

2. I have heard the learned counsel. For the reasons stated in the application, the same is allowed and delay of 11 days in filing the appeal is condoned as sufficient cause has been shown.

3. The application stands disposed of. Review Petition No.553/2014 1. This is a review petition filed by the petitioner against the order dated 24.9.2014 by virtue of which the petition seeking initiation of contempt proceedings against respondent No.1, Kishin Datwani was disallowed.

2. If one reads the said order, three essential features are reflected. Firstly, that no case of wilful disobedience of the order dated 2.5.2014 passed by the Division Bench was held to be made out. Secondly, even if it is assumed that there was disobedience on the part of the respondent is made out, initiation of contempt proceedings being a discretionary power to be exercised by the court and the petitioner cannot claim issuance of notice to the respondent as a matter of right more so when there is an alternative remedy of invoking provision under Order 39 Rule 1 & 2 CPC and lastly, in essence, the petitioner was seeking recovery of monies from the respondent, her son, which in terms of the judgment of the Supreme Court in the case of Kanwar Singh Saini vs. High Court of Delhi; (2012) 4 SCC307 could be effected by filing execution petition.

3. By the present review petition, a fresh attempt seems to have been made to convince the court with regard to initiation of contempt proceedings by urging that there is an error apparent on the face of the record; however, if one sees the written submissions and the judgment relied upon by the petitioner in essence, an attempt is made to reargue the matter afresh and get the notices issued. While doing so, it has been pointed out that in similar circumstances, the Division Bench which had passed the order in question had issued notice to the other son who fell in line unfortunately the present respondent was not a party at that point of time in the said contempt petition. Secondly, provisions of Order 39 Rule 2A CPC cannot be invoked as this is not an order passed under Order 39 Rule 1 & 2 CPC. Lastly, it has been contended that the respondent does not have any property in India. Therefore, the order could not be enacted.

4. All these submissions were made earlier except that he does not have the property in India but was pointed out that he is a US citizen. So far as the question of not owning of the property is concerned, it is presumptuous and that cannot be a ground for review.

5. I am not at all convinced that there is any error apparent on the face of the record in the order dated 24.9.2014 which may warrant review of the same. As a matter of fact, reading of the written submissions given by the petitioner would show that the petitioner is making an averment that the court has failed to appreciate that disobedience on the part of the respondent was wilful and a presumptuous statement has been made that even if the petitioner goes for execution of the order dated 2.5.2014 passed by the Division Bench then it cannot be executed as the respondent does not have any property in India. All these facts which are sought to be urged were submitted before this court earlier and are not grounds for seeking review.

6. The learned counsel has also relied upon the four judgments in this review petition given by the Apex Court and various High Courts which are *Lopaben Patel vs. Hitendra Rambhi Patel*; 2000 Cri. LJ2709 *Shankerpuri Chanpuri Goswami vs. Abdulhakim Asmadmahamad*; (1985) ILLJ281Guj., *Mira Bose vs. Santosh Kumar Bose*; AIR1973 Calcutta 483 (V60C111; *Jyotirmoyee Debi vs. Assistant Settlement Officer and Others*; AIR1973 Calcutta 486 (V60C112 and *Sarladevi Bharatkumar Rungta vs. Bharatkumar Shivprasad Rungta & Anr.*; 1988 Cri. L.J.

558 which were cited earlier also.

7. I had carefully gone through the same and observed that these judgments are distinguishable for which reasons are given therein. In the order which has been sought to be reviewed, it has been specifically mentioned by this court that in most of the judgments which have been relied upon by the petitioner, the contempt action was initiated as the issue of grant of maintenance order was sought to be enforced which was the only source of livelihood in the case of the petitioners or the applicants in the said cases. While as in the instant case, though the question of monies for sustenance of the petitioner, who happens to be the mother of the respondent Kishin was involved but it was felt that he is not the sole person who was saddled with the responsibility of payment of monies to her mother. Brother and the sister of the respondent Kishin were also saddled with the payment of monies which in fact was being paid. Even the respondent had initially paid a sum of Rs.3,60,000/- out of the total sum of Rs.5 lacs and the only grievance was that

he had not paid the monthly payments of Rs.35,000/-, which were payable from the month of May, 2014 onwards and Rs.1,50,000/- which was to be paid for the purchase of a car. The aforesaid facts are the distinguishing features so far as the judgment in these four cases is concerned.

8. There is no dispute about the proposition of law laid down in all these judgments including Rama Narang vs. Ramesh Narang & Anr.; (2006) 11 SCC114 which has been cited now by the petitioner but one essential feature which the learned counsel for the petitioner has failed to appreciate is that law is not to be applied mechanically and in abstract but it must fit into the factual matrix in which the pronouncement is made and also in the light of the facts which are involved in that particular case which is in hand.

9. So far as Rama Narangs case (supra) is concerned, the facts of that case are also distinguishable because that was a case where as many as 7-8 cases were sought to be settled with the active intervention of the Apex Court which were pending before Bombay High Court and a company court being a family dispute. The parties had got their statements recorded before the Apex Court and yet after recording the statement, one of the parties tried to retrace his steps and rock the boat by stating that he would not abide by his earlier statement as a consequence of which the entire compromise would have fallen through. It was in such a contingency that the Apex Court in Rama Narangs case (supra) observed that no doubt a consent decree may be executable but that does not preclude the court from initiating any contempt action against any party who is indulging in wilful disobedience by a court order. Therefore, the facts of Rama Narangs case (supra) are nowhere near the facts of the present case.

10. For the aforesaid reasons, I feel it too difficult to change the view which has already been taken in the present petition and initiate any contempt action against the respondent Kishin. I do not find it to be a fit case where it can be said that there is any error apparent on the face of the record to warrant review. Hence, the review petition is dismissed. V.K. SHALI, J.

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