

**Amrish Arora Vs. Rameshkumar Sachdev**

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**Court :** Mumbai

**Decided On :** Jul-07-2011

**Judge :** J.H.Bhatia, J.

**Appeal No. :** CONTEMPT PETITION NO. 490 OF 2010 IN B.C.C.C. SHORT CAUSE SUIT NO. 273 OF 2008

**Appellant :** Amrish Arora

**Respondent :** Rameshkumar Sachdev

**Advocate for Def. :** Shri Milind Sathe; Mr. Jai Chabria; Mr. Shrinivasan Mudaliar; M/s. Federal; Rashmikant, Advs.

**Advocate for Pet/Ap. :** Shri Navroz Seervai; Mr. Ibrahim; Mr. K.V.Aiyar, Advs.

**Judgement :**

1. Heard the learned Senior Counsel for the parties. Perused the record and proceedings and the relevant documents.

2. This Contempt Petition is filed by the petitioner, who was defendant No.2 in Short Cause Suit Nos.272/2008 and 273/2008. The said suits were filed in the City Civil Court, Mumbai by the respondent restraining defendant No.1 - Kaloomal Shorimal Sachdev Rangwala Pvt.Ltd. and other defendants from calling Extraordinary General Meeting on 9.2.2008 and from restraining the present petitioner from acting as Chairman of the EGM. On 7.6.2008, the suit was

disposed of and decreed as per the consent terms filed by the parties. According to the petitioner, i.e. original defendant No.2, the respondent herein failed to comply with the consent terms and has committed breach of undertakings given to the Court and thereby has committed contempt of the Court. The respondent has filed affidavit in reply denying that he has committed any breach of the said undertaking or has intentionally disobeyed the orders or has failed to comply with the consent terms. According to him, the petitioner himself was silent for about two years after filing of the consent terms and had not fulfilled certain obligations under the said consent terms and therefore, it was not possible for the petitioner also to fulfill his obligations and undertakings under the said consent terms. According to him, no contempt was committed by the respondent when this petition was filed before this Court. The petitioner has also filed Execution Petition before the Civil Court for execution of the decree as per the consent terms and the proceedings in the said execution proceedings are going on and therefore, there is no reason to take any action against the petitioner for contempt of the Court. Several other contentions are raised against tenability of the contempt petition, but they are not necessary for decision of the matter.

3. To appreciate the rival contentions, particularly the contention of the petitioner that the respondent has committed contempt of the Court by violation of the consent terms and breach of undertakings, it will be necessary to state certain facts in brief.

4. Clauses 1 to 4, 6 and 7 of the consent terms read thus :-

**"1. Mr. Ambrish Arora, Defendant No.2 undertakes that he shall together with the Plaintiffs and all Defendants in High Court Suit No.1003 of 2004 unconditionally withdraw the same. Such withdrawal shall be with the Written Consent of all the Plaintiffs and defendants in the said High Court suit filed by way of Affidavits simultaneously with the events mentioned in clauses 2,3, 4, 6 & 7.**

**2. Mr. Ramesh Sachdev Plaintiff No.1 undertakes that he shall simultaneously with the withdrawal of the said High Court suit No.1003 of 2004 and simultaneously with receipt of payment of a sum of Rs.50 lakhs by Pay Order from Mr. Ambrish Arora/Sareeka Estates consent to surrender the rights of Kaloomal Shorimal Rangwalla Pvt.Ltd. (Defendant No.1 herein) to the Thane Land more particularly described in the Schedule Ex.A annexed hereto ("the Thane Land") and sign the necessary Resolution in that regard.**

**3. Mr. Ambrish Arora, undertakes to pay the aforesaid sum of Rs.50 lakhs to Mr. ramesh Sachdev towards reimbursement of legal, professional and other charges incurred by him simultaneously with surrender of rights, signing of resolution and execution of Power of Attorney and simultaneously with events mentioned in clause 1, 2 and 4 & 6 & 7 herein.**

**4. Mr. Ramesh sachdev also undertakes that simultaneously with the withdrawal of the suit and the payment of Rs.50 lacs above referred to he shall execute in favour of Mr. Ambrish Arora an irrevocable Power of Attorney in identical terms to the Power of Attorney executed by him in favour of Sareeka Estates provided Sareeka Estates and all its partners consent to the same in writing. It is clarified that vide the Power of Attorney Mr. Ambrish Arora shall have the power to convey the Thane Land subject to the rights of Tulsiram Rangwala Trust.**

**6. Mr. Ramesh Sachdev undertakes that if the terms mentioned hereinabove have been complied with he shall execute if asked for simultaneously with events mentioned in clauses 1, 2 to 4 & 7 herein in favour of Mr. Ambrish Arora or DLF Ltd. or Urvi Piramal Group as may be nominated by Ambrish Arora a Deed of Release/Conveyance of his undivided 50% share right title and interest in the Thane land subject to the rights of Tulsiram**

**Rangwala Trust to the Thane Lane and provided the prior written consent of Sareeka Estates and its partners has been given in writing and on Sareeka Estates and its partners joining in such Deed of Release/Conveyance as Confirming Parties. All costs charges and expenses including stamp duty and registration fees of such Release/Conveyance shall be borne by Mr. Ambrish Arora and/or DLF Ltd. or Urvi Piramal Group as the case may be.**

**7. Mr. Ramesh Sachdev undertakes that Mrs. Promila Sachdev and Mrs. Radhika Satsangi shall simultaneously with the above execute Deeds of Surrender of their rights, if any, in the Thane Land."**

From these consent terms, it is clear that the petitioner, who was defendant No.2, therein had undertaken to unconditionally withdraw High Court Suit No. 1003/2004 and to pay Rs.50 lakh to the respondent. As per clauses 2, 4 and 6, the respondent had undertaken to consent to surrender the rights of Kaloomal Shorimal Rangwalla Pvt.Ltd. to the Thane land and to sign the necessary resolution in that regard, to execute an irrevocable power of attorney in identical terms as earlier executed in favour of Sareeka Estates and also he had undertaken to execute, if called for, in favour of the petitioner or his nominee a Deed of Release or conveyance of his undivided 50% share rights, title and interest in the Thane Land, simultaneously with fulfillment of undertakings given by the petitioner about withdrawal of the suit and payment of money.

5. The above consent terms were filed before the City Civil Court on 7.6.2008 and on the same day, the decree was passed . From the contentions in the present petition, it appears that on 9.9.2010, the petitioner addressed a letter to the respondent and called upon him to confirm the drafts of the irrevocable power of attorney and the Deed of Surrender to be executed by the respondent, his wife and daughter. By this letter, the petitioner also expressed his readiness and willingness to make payment of the agreed amount. On 17.9.2010, the petitioner addressed another letter to the respondent reminding him about the earlier letter dated 9.9.2010. It appears that on 16.9.2010, the respondent had responded to

the petitioner by a letter informing that he had appointed M/s. Federal & Rashmikant, Advocates & Solicitors to advise him in the matter and that he had also forwarded the said drafts to the Advocates with a request to respond to the petitioner's letter and drafts. On 21.9.2010, M/s. Federal & Rashmikant, Advocates & Solicitors addressed a letter to the petitioner informing that they had received communication from the respondent along with drafts and they were perusing the same and after taking instructions would revert back to him. This letter was received by the petitioner on 23.9.2010. On 25.9.2010, the petitioner addressed a letter informing the respondent that he was ready and willing to perform his part of the consent terms and asked him to sign and execute the said documents on or before 29.9.2010, failing which he would initiate appropriate proceedings. As there was no compliance as per the said letter, on 4.10.2010 the petitioner filed this Contempt Petition.

6. From the reply filed by the respondent, it is revealed and it is not disputed that the petitioner had filed Execution Application Nos.505/10 and 506/10 before the City Civil Court on 24.9.2010 for execution of the consent decree dated 7.6.2008. Show cause notices were issued. The respondent appeared and he was heard. As noted earlier, as per the consent terms, the respondent was to execute certain documents, including the power of attorney and surrender deed simultaneously with the withdrawal of the suit No.1003/04 pending in the High Court and payment of Rs.50 lakh. Admittedly, before filing this Contempt Petition, the suit was not withdrawn nor he had made payment. Petitioner was keeping silent for more two years after the consent decree was passed for which there is no explanation and abruptly on 9.9.10, he addressed a letter to the respondent for the first time asking him to execute the documents as per the consent terms. As noted above, the respondent had forwarded the said letter to the Advocates & Solicitors, who informed the petitioner that after taking instructions in the matter, they would revert back to him. In spite of that on 25.9.2010, the petitioner put a condition that the respondent should execute an irrevocable power of attorney and surrender deed before 29.9.2010 i.e. within four days, failing which he would be taking action against him and immediately he filed the Contempt Petition. Record reveals that the petitioner had withdrawn the Suit No.1003/2004 from the High Court on 21.3.2011 i.e. about six months after filing of Contempt Petition. It also appears

that during pendency of the execution proceedings before the City Civil Court, the petitioner had taken a Pay Order of Rs.55 lakh, including the amount of legal expenses in favour of the respondent. However, as the execution proceedings was still pending, he had taken back that Pay Order and surrendered. Thereafter, he obtained Pay order or Demand Draft of Rs.55 lakh on 8.6.2011. From this, it is clear that the petitioner had not fulfilled any of his own undertakings before filing the Contempt Petition. As the undertakings by the parties were clearly to be fulfilled simultaneously, the parties could discuss and settle the date or time, when all the acts could be done. In any case, the respondent, who was to surrender certain rights in the property, was not expected to execute the irrevocable power of attorney and the surrender deed in favour of the petitioner unless the petitioner had withdrawn the suit pending before the High Court and made the payment of Rs.50 lakh plus expenses. As the suit was withdrawn six months after filing the Contempt Petition and demand draft was obtained 9 months after that and the said payment is yet to be received by the defendant, it cannot be said that the respondent had failed intentionally or deliberately to fulfill his commitments and undertakings given to the Court in the said consent terms.

7. In *Sahdeo Alias Sahdeo Singh vs. State of Uttar Pradesh & Ors.* (2010) 3 SCC 705, the Supreme Court held that non-compliance of the Court's order by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, would not amount to willful disobedience which may call the Court to take action for contempt of Court. If a party is under a bonafide belief or even mistaken belief that he is not required to perform certain acts till fulfillment of certain conditions, and if he pleads that those conditions are not fulfilled and therefore he is not called upon to comply his own undertakings, it cannot be said that he has deliberately or intentionally disobeyed the order of the Court or that he had any intention to commit contempt of Court.

8. The proceedings for contempt of Court can be initiated only if there is allegation that the contemnor has committed certain acts, which are contumacious or willfully or deliberately he has disobeyed certain orders or had deliberately committed violation of certain undertakings to the Court. Therefore, the contumacious act must have committed or breach of undertaking must have been committed before

the contempt proceedings can be initiated. Contempt proceedings cannot be initiated against the person merely on apprehension that the contemnor may not fulfill his obligations or may commit breach of the undertaking. In the present case, as noted above, the petitioner himself had failed to fulfill his own undertakings as per the consent terms before filing the contempt petition and therefore, the respondent could not be called upon to fulfill his undertakings in the said consent terms. As such, it must be held that when the Contempt Petition was filed, the respondent had not committed any breach of the undertakings given to the Court. The petitioner filed the contempt petition without any valid reason and without fulfilling his own obligations as per the consent terms which were to be fulfilled simultaneously with the fulfillment of undertakings by the respondent. Therefore, I find that no case is made out for taking action against the respondent for contempt of Court.

9. In the result, the Contempt Petition stands dismissed.

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