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

+ CONT.CAS(C) 451/2015 & CM APPL. 18312/2015

M/S BRANDS ACADEMY PVT LTD Petitioner

Through: Mr. Bijender Singh, advocate with
Ms. Vidushi, Advocate.

versus

RISHU MONGA & ORS Respondents

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Aman Bhalla and Ms. Wamika
Trehan, Advocates for respondents No.1
and 2

Mr. Dayan Krishnan, Senior Advocate
with Ms. Aakashi Lodha and Ms. Richa
Narain, Advocates for respondents No.3
to 6.

And

+ CONT.CAS(C) 522/2015 & CM APPL. 11818/2015

RISHU MONGA & ANR Petitioners

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Aman Bhalla and Ms. Wamika
Trehan, Advocates.

versus

SANJAY KUMAR & ORS Respondents

Through: Mr. Bijender Singh, advocate with
Ms. Vidushi, Advocate.

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Date of Decision : 11th December, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Cross contempt petitions have been filed alleging wilful disobedience of order dated 09th January, 2015 whereby the CS(OS) 7/2015 was disposed of in terms of an oral agreement recorded in Court.

2. While Mr. Bijender Singh, learned counsel alleges that Mr. Rishu Monga and his brother Mr. Amol Monga have breached their undertakings of not using the database of M/s. Brands Academy Pvt. Ltd. and of not involving themselves in the 10th January, 2015 event; Mr. Kirti Uppal, learned senior counsel for Mr. Rishu Monga states that accounts have not been de-frozen by Mr. Sanjay Kumar of M/s. Brands Academy Pvt. Ltd. in accordance with the aforesaid order.

3. On the last date of hearing, this Court had raised an issue about the maintainability of the present contempt petitions on the ground that as mutual obligations had to be performed by both the parties and each of the parties in the present proceedings was alleging breach on the part of the other party, which could constitute a valid defence for the contemnor not to discharge their undertaking, would it not be appropriate if the parties were directed to file execution proceedings against each other.

4. However, today, Mr. Bijender Singh, learned counsel for Mr. Sanjay Kumar and M/s. Brands Academy Pvt. Ltd. states that his contempt petition is maintainable as the cause of action for filing it is breach of an undertaking given by Mr. Rishu Monga and Mr. Amol Monga to a Court. He submits that just because an execution proceeding is also maintainable, this Court cannot dismiss the contempt petitions on the ground of alternate remedy

being available to him. He contends that as his database has been misused, his clients cannot get any relief in execution proceedings. In support of his submissions, he relies upon a judgment of the Supreme Court in ***Rama Narang vs. Ramesh Narang & Anr., (2006) 11 SCC 114*** wherein it has been held as under:-

“23. The question which was before the Court in Babu Ram Gupta case was limited to the issue whether the appellant had given any undertaking to the Court, either expressly or impliedly, which he had violated. In other words it was limited to the second category of cases mentioned under Section 2(b) of the Act. The Court was not called upon to decide whether there was any contumacious conduct as envisaged by the first category of cases under that section. The observations made in that regard, are strictly speaking, obiter. The Court was not called upon to consider nor did it construe the language of Section 2(b) of the Act. If we were to accept the observations of the Court as an enunciation of the law, it would run contrary to the express language of the statute. As we have earlier noted, the section itself provides that wilful violation of any order or decree, etc. would tantamount to contempt. A compromise decree is as much a decree as a decree passed on adjudication. It is not as has been wrongly held by the Calcutta High Court in Nisha Kanto Roy Chowdhury merely an agreement between the parties. In passing the decree by consent, the court adds its mandate to the consent. A consent decree is composed of both a command and a contract. The Bombay High Court's view in Bajranglal Gangadhar Khemka correctly represents the law that a consent decree is a contract with the imprimatur of the court. “Imprimatur” means “authorised” or “approved”. In other words by passing a decree in terms of a consent order the court authorises and approves the course of action consented to. Moreover, the provisions of Order 23 Rule 3 of the Code of Civil Procedure require the court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement.”

24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.”

5. Mr. Bijender Singh, learned counsel also refers to the recent judgment of the Apex Court in ***The Board of Trustees of the Port of Mumbai vs. Nikhil N. Gupta & Anr., 2015 (9) Scale 334*** wherein it has been held that breach of solemn undertaking given in a Court is a serious matter which has to be sternly dealt with.

6. On the other hand, Mr. Kirti Uppal, learned senior counsel submits that in the present case the undertaking had been given by the parties to each other and not to the Court. He also contends that as the undertakings given by the parties were neither accepted by the Court nor the parties had been held bound by the same, the contempt petition filed by M/s Brands Academy Pvt. Ltd. is not maintainable. In support of his submission, he relies upon a judgment of this Court in ***Hindustan Motors Ltd. vs. Amritpal Singh Nayar & Anr., 100 (2002) DLT 278*** , wherein it has been held as under:-

“8. There exists a distinction between an undertaking given to a party to the lis and an undertaking given to a Court.

9. An undertaking given to a Court attracts the provisions of the Contempt of Courts Act, whereas an undertaking given to a

party to the lis by way of an agreement of settlement or otherwise would not attract the provisions of the said Act.

7. Mr. Uppal states that there was breach of the consensual order dated 09th January, 2015 by Mr. Sanjay Kumar and M/s. Brands Academy Pvt. Ltd. as they had terminated the services of the old employees of the company and had not released the dues of the vendors for the past events. He also contends that in breach of their undertakings, Mr. Sanjay Kumar and M/s. Brands Academy Pvt. Ltd. had neither shared the domain name with his clients nor de-frozen the bank accounts of the company in the manner agreed.

8. Mr. Uppal points out that subsequent to disposal of CS(OS) 7/2015, Mr. Amol Monga had filed civil suit being CS(OS) 2204/2015 and the same Bench on 07th September, 2015 which had disposed of CS(OS) 7/2015 restrained M/s. Brands Academy Pvt. Ltd. from putting any impediment in the event under the name and style of Brands Impact. He points out that even on 04th November, 2015, the same Bench which passed the earlier orders dated 09th January, 2015 and 07th September, 2015 extended the protection to Mr. Amol Monga till 26th February, 2016.

9. In the opinion of this Court, definition of civil contempt under Section 2(b) of the Contempt of Courts Act, 1971 includes breach of an undertaking given to a Court. The expression ‘undertaking’ has extensively been dealt with by the Supreme Court in second ***Rama Narang vs. Ramesh Narang & Anr., (2009) 16 SCC 126*** wherein it has been held as under:-

“35.Black's Law Dictionary, 5th Edn. defines “undertaking” in the following words:

“A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form.”

36. *Osborn's Concise Law Dictionary, 10th Edn. defines “undertaking” in the following words:*

“A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction.”

37. *In M. v. Home Office, All ER at p. 132g, the expression “undertaking” has been dealt with in the following manner:*

“[I]f a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood.”

38. *Hudson, In re, the English court observed as under: (All ER pp. 112 I-113 A)*

“An undertaking to the court confers no personal right or remedy on any other party. The only sanctions for breach are imprisonment for contempt, sequestration or a fine.”

39. *Similarly, in Shoreham-by-Sea Urban District Council v. Dolphin Canadian Proteins Ltd. the Court observed as under:*

“Failure to comply with an undertaking to abate a nuisance may be visited with a substantial fine.”

40. *The Division Bench of the Bombay High Court in Bajranglal Gangadhar Khemka v. Kapurchand Ltd. had an occasion to deal with similar facts. Chagla, C.J., speaking for the Court, observed as under: (AIR p. 337, para 4)*

“4. We are not prepared to accept a position which seems to us contrary to the long practice that has been established in this Court, and, apparently, also in England. There is no reason why even in a consent decree a party may not give an undertaking to the court. Although the court may be bound to record a compromise, still, when the court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the court; and it would be open to the court, before it did so, to accept an undertaking given by a party to the court. Therefore, there is nothing contrary to any provision of the law whereby an undertaking cannot be given by a party to the court in the consent decree, which undertaking can be enforced by proper committal proceedings.”

41. *In Noorali Babul Thanewala v. K.M.M. Shetty, a tenant committed breach of undertaking given by him to the Supreme Court to deliver vacant possession of certain premises. The Supreme Court held the tenant guilty of contempt. Hon'ble V. Ramaswami, J., delivering the judgment observed: (SCC pp. 265-66, para 11)*

“11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that

undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.”

42. In Mohd. Aslam v. Union of India this Court dealt with the contempt proceedings raising the issues as to the amenability of the State and of its Ministers for failure of obedience to the judicial pronouncements. In this case, the Chief Minister of Uttar Pradesh had made a statement before the National Integration Council that the Government of Uttar Pradesh will hold itself fully responsible for the protection of the Ram Janma Bhumi-Babri Masjid structures. Upon this statement of the Chief Minister, this Court had passed an order. However, in the contempt proceedings it was alleged that the orders passed on the basis of the statements made have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. While dealing with the expression “undertaking”, this Court observed as under: (SCC p. 453, para 22)

“The Chief Minister having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence.”

43. In Rita Markandey v. Surjit Singh Arora this Court came to the conclusion that even if the parties have not filed an undertaking before the court, but if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false, even then the party would be

guilty of committing contempt of court. The Court observed as under: (SCC p. 20, para 12)

“12. Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false.”

44. In K.C.G. Verghese v. K.T. Rajendran this Court dealt with the “undertaking” in contempt proceedings arising out of eviction proceedings. This Court held that when at the time of giving the undertaking, the tenant did not indicate that he was in possession of a part of the premises and not the other portion nor was such a stand taken in any of the pleadings before the High Court or Rent Controller, the order of eviction passed against the tenant is equally binding upon the occupant of the other portion.

45. This Court again had occasion to deal with a case in Bank of Baroda v. Sadruddin Hasan Daya. In that case, the Court clearly observed as under: (SCC p. 361g)

“The wilful breach of an undertaking given to a court amounts to ‘civil contempt’ within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents having committed breach of the undertaking given to the Supreme Court in the consent terms they are clearly liable for having committed contempt of court.”

46. *The respondents placed reliance on Babu Ram Gupta v. Sudhir Bhasin. In this case admittedly no application, affidavit or any undertaking were given by the appellant. Therefore, this case is of no assistance to the respondents. In this case, the Court observed that: (SCC p. 53, para 10)*

“[E]ven the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the court that he would hand over possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking.”

The Court even in this case observed that: (SCC p. 53, para 10)

“In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemnor by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution.”

(emphasis in original)

47. *The critical analysis of the decided cases of this Court clearly leads to the conclusion that wilful breach of an undertaking given to the court amounts to contempt of court under Section 2(b) of the Act.*

48. *The orders of this Court dated 12-12-2001 and 8-1-2002 are based on undertaking given by the petitioner and the respondents to this Court. Apart from several other conditions it is explicitly incorporated in the undertaking given to this Court that the petitioner and the respondents shall jointly operate the bank accounts (if the amount of any transaction exceeded Rs 10 lakhs) in order to ensure that both the petitioner and the respondents have the joint control on the affairs of the*

Company. In the undertaking given by the petitioner and the respondents, it is clearly mentioned that if the amount of any transaction exceeds Rs 10 lakhs the same shall be undertaken through a cheque signed jointly by Rama Narang and Ramesh/Rajesh Narang.

10. Consequently, breach of undertaking given to a Court certainly gives rise to a cause of action to file a contempt petition.

11. However, in the present case, the undertakings given by both the parties are either reciprocal or concurrent in nature. If one of the parties did not comply with his undertaking, it would give a defence to the other party to avoid performing its undertaking/obligation.

12. Moreover, as subsequent to the order dated 09th January, 2015, a number of new proceedings have been filed against each other and injunction/restraint orders have been passed on the original side and by the Company Law Board, this Court is of the view that either of the parties would be well justified in taking the defence that there was a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order. [See: *Sahdeo alias Sahdeo Singh vs. State of Uttar Pradesh & Ors.*, (2010) 3 SCC 705].

13. Though this Court in contempt proceedings could have asked the parties to go through elaborate trial, but as different proceedings are pending between the parties, this Court is of the view that it would be appropriate if they are relegated to execution proceedings.

14. This Court is also of the opinion that in the present case execution proceedings are an alternate efficacious remedy as even Mr. Sanjay Kumar and M/s. Brands Academy Pvt. Ltd. can seek the relief of compensation/ damages on account of alleged misuse of data base.

15. In fact, a Coordinate Bench of this Court in ***Jamna Datwani vs. Kishin Datwani & Ors., Cont.Cas.(C) 652/2014*** has held as under:-

“5. It was pointed out to the learned counsel for the petitioner that the respondent is stated to have paid a sum of Rs.3,60,000/- out of a sum of Rs.5 lacs and for realization of the balance amount, the petitioner is free to go to the civil court by invoking the provisions of Order 39 Rule 2A CPC or to seek execution of the order passed by the court for recovery of money. However, the learned counsel, instead of accepting the said course had contended that this is a case of gross contempt on the part of the respondent inasmuch as the directions of the court have not been complied. For this purpose, the learned counsel for the petitioner has relied on Lopaben Patel vs. Hitendra Rambhai Patel; 2000 Cri. LJ 2709, Shankerpuri Chanpuri Goswami vs. Abdulhakim Asmadmahamad; (1985) ILLJ 281 Guj., Mira Bose vs. Santosh Kumar Bose; AIR 1973 Calcutta 483 (V 60 C 111), Jyotirmoyee Debi vs. Assistant Settlement Officer and Others; AIR 1973 Calcutta 486 (V 60 C 112) and Sarladevi Bharatkumar Rungta vs. Bharatkumar Shivprasad Rungta & Anr.; 1988 Cri. L.J. 558.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the judgments cited. The questions which arise for consideration, in the instant case, are firstly, whether a case for initiation of contempt proceedings against respondent No.1 is made out and secondly, even if it is prima facie made out, whether the petitioner has an alternate efficacious remedy available to her in getting the order implemented, then she must, in the first instance, resort to the same. Moreover, the grievance of the petitioner is essentially for recovery of monies

which can be resorted to by filing an execution under Order 21 CPC in the court where the suit is pending adjudication. Reliance in this regard can be placed on the judgment of the Apex Court in Kanwar Singh Saini vs. High Court of Delhi; (2012) 4 SCC 307.

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8. The provisions of Order 39 Rule 2A CPC not only deal with a situation where an injunction order has been passed by the civil court but it also deals and contemplates to deal with a situation where an order passed by the court, of which there is alleged to be willful disobedience, can be dealt with.

9. The only difference between the provisions under Order 39 Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the quantum of incarceration which a person can be sentenced to. Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39 Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions. Therefore, one of the remedies which is already available to the petitioner is under Order 39 Rule 2A CPC. She can also seek execution of the order for recovery of monies from respondent No.1 by getting his share in the property in Friends Colony attached or getting his other properties attached and getting recovery effected. Therefore, there is ample mechanism prescribed under the CPC for the purpose of implementation of an order.

10. The contempt power under the Contempt of Courts Act is not only discretionary but is also to be used sparingly. A trend which has been noticed by this court is that parties invariably try to invoke the provisions of the Contempt of Courts Act in order to get orders implemented while there is machinery provided under the CPC for the purpose of getting orders, decrees or directions executed.”

16. This Court may also mention that in Cont.Cas(C) 451/2015 filed by Ms. Brands Academy Pvt. Ltd. and Mr. Sanjay Kumar, the Managing Director and Chief Executive Officer as well as Regional Head and other senior officials of ICICI Bank have been impleaded as respondents, even though they had not given any undertaking or commitment before any Court in any proceeding. This Court has no doubt that by impleading the senior management of ICICI Bank Ltd., M/s. Brands Academy Pvt. Ltd. has endeavoured to coerce the senior management to follow its instruction with regard to operation of bank account.

17. Consequently, both the contempt petitions are dismissed. However, if either of the petitioners have any grievance with regard to non-compliance of order dated 09th January, 2015, they are at liberty to file execution proceedings.

MANMOHAN, J

DECEMBER 11, 2015

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