

CASE NO.:
Contempt Petition (civil) 289 of 2003

PETITIONER:
Maruti Udyog Limited

RESPONDENT:
Mahinder C. Mehta and Others

DATE OF JUDGMENT: 10/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
CONTEMPT PETITION (CIVIL) NO. 289 OF 2003
IN
SLP (Civil) No. 13305 of 2002

S.B. SINHA, J :

1. This contempt petition arises in a somewhat peculiar circumstance. Petitioner herein is manufacturer of cars. Alleged contemnors were Directors of a Company known as M/s. Mahalaxmi Motors Limited (Company). The Company obtained various advances from the customers on behalf of the petitioner. It, however, did not pay the amount to petitioner herein. Respondents admitted their liability of the petitioner to the extent of Rs. 7.63 crores in respect of supply of vehicles made by it, as would appear from the minutes of the meeting dated 5.04.1997 which is as under:

\0237. MML also provided a letter No. 021/MML/97 dated 5.4.1997 wherein they admitted that there was a shortfall of Rs. 7.63 Cr.\024

Respondents also by an affidavit filed before the Andhra Pradesh High Court admitted their liability stating:

\02315. In this instance also the Petitioner company had on its own given the particulars of the amounts due from it to the complainant company by its letter dated 5th April, 1997 wherein it accepted a liability of Rs. 763.22 lakhs and also gave the repayment schedule. Prior to that it gave a list of all the pending customers at Hyderabad and Vijayawada. In fact vehicles have been delivered to meet of these in the said list, and deliveries are still on to the remaining persons. The complainant company had been delivering these vehicles through other dealers as with the advent of this dispute with the Petitioner company it terminated its dealership.

16. It is respectfully submitted that after the Petitioner company gave the said undertaking to pay off the due about Rs. 763.22 lakhs, there has been a change in thinking in the concerned officials of the complainant company had they started making exaggerated claims over and above the amounts actually due to it from customer bookings. As far as the Petitioner company is concerned it also made funds available to honour its commitment to the complainant company and took a draft for the said amount in May 1997 itself

which is to the knowledge of the complainant company.\024

2. As the Company or its Directors did not pay even the said admitted amount to the petitioner, it filed a suit for recovery thereof. Indisputably, there existed an arbitration agreement in the contract entered into by and between the parties, Clause 57 whereof reads as under:

\023If the differences or disputes, except dispute pertaining to termination, shall arise between the parties hereto as to the construction or true intent and meaning of any of the terms and conditions herein contained or as to any payment to be made in pursuance hereof or as to any other matter arising out of or connected with or/ incidental to these presents or as to the rights, duties and obligation of either party, such difference or dispute whenever and so often as the same shall arise, shall be referred to the Indian Council of Arbitration, New Delhi under their rules for the time being in force and the award in pursuance thereof shall be binding on the parties.\024

3. Relying on or on the basis of the said arbitration agreement, the respondents herein filed an application purported to be under Section 8 of the Arbitration and Conciliation Act, 1996 (for short \023the Act\024). A learned Single Judge of the Delhi High Court rejected the said application. An appeal was preferred thereagainst before a Division Bench which was also dismissed. A Special Leave Petition was filed before this Court. Petitioner herein agreed for reference of the disputes and differences between the parties to arbitration inter alia on the condition that the respondents shall deposit the amount or furnish security and/ or comply with the directions of the learned Arbitrator in case such directions and/ or interim orders are passed by the learned Arbitrator in the following terms:

\0234. All the parties to this S.L.P. shall by way of affidavit give undertaking to this Hon\022ble Court to furnish the security and/ or comply with the directions of learned Arbitrator in case the learned Arbitrator directs any of the parties to furnish the security and/ or comply with any other interim order of the learned Arbitrator.\024

The proposed term of reference was also agreed to by the respondents.

4. On the basis of the said representations, this Court by an order dated 6.09.2002 referred the subject matter of the dispute to the arbitration of Justice A.M. Ahmadi, a former Chief Justice of this Court.

5. The question as to whether the respondents should furnish bank guarantee or not came up for consideration before the learned Arbitrator and by an order dated 25.03.2003 a direction was issued upon the respondents to furnish bank guarantee for the sum of Rs. 763.22 lakhs within a period of four weeks from the said date directing:

\023Since the documents relied upon by the claimant company in support of its claim for Rs. 763.22 lakhs are in dispute, I am not inclined to make an interim award under section 17 of the Act read with Order 12 Rule 6, CPC. However, I am prima facie satisfied that the claimant company has made out a prima facie case for an interim order directing the respondents to furnish a bank guarantee in the sum of Rs. 763.22 lakhs within a

period of four weeks from today. Needless to state that under the Supreme Court order dated 6.9.2002 (paragraph 3) the interim order has to be complied with within four weeks from the date of the order.\024

6. An interlocutory application was filed by the respondents before this Court being IA No. 2 of 2003. But, the same was withdrawn on 6.05.2003. An application was thereafter filed by them before the learned Arbitrator for modification of the said order dated 25.03.2003 by offering to furnish property security purported to have been situate at Secunderabad in the State of Andhra Pradesh instead of bank guarantee. Curiously enough, it was not disclosed that the said property was encumbered in more than one way and, as would appear from the discussions made hereinafter, the property was being claimed by the State of Andhra Pradesh as having vested in it. However, on or about 28.06.2003, it was disclosed that the property was encumbered. The learned Arbitrator rejected the application for modification by an order dated 2.08.2003 but extended time for furnishing bank guarantee upto 27.08.2003. In the meantime, the petitioner filed a contempt petition before this Court on 26.07.2003.

7. It appears from the records that the respondents herein had given an undertaking not to alienate their assets or encumber or create third party interest in the property at Secunderabad. It is also not in dispute that despite pendency of the aforementioned contempt petition, the property belonging to company at Bangalore was disposed of. It was disclosed before the learned Arbitrator by the respondents in their reply to application under Section 17 of the Act filed by the petitioner and the same was reiterated in the affidavit affirmed by Respondent No. 1 herein on 7.07.2004.

8. On or about 23.07.2004, this Court directed the alleged contemnors to file affidavit disclosing details of their present assets as also that of the Company; pursuant where to, an affidavit was filed by Respondent No. 1 stating:

- (i) The property of M/s. Mahalaxmi Motors Ltd. at Secunderabad was encumbered.
- (ii) He had a flat at D-1, Maya Apartment admeasuring 800 sq. ft. at Ashoka Road, Bangalore which was sold on 3.02.2004 for Rs. 8,00,700/-.
- (iii) He was the manager of Hyderabad Auto Services and drawing a salary of Rs. 15,000/- p.m.

Petitioner in its reply denied and disputed the said statement and contended that by reason of sale of property at Bangalore, a further contempt has been committed. It was urged that the affidavit of Respondent No. 1 not only amounted to suppression of facts but also perjury.

An award was made on 10.04.2005 as against the Company for a sum of Rs. 7.63 crores with interest at the rate of 8% in favour of the petitioner along with costs and expenses.

9. Before this Court, however, a proposal for settlement was made by Respondent No. 1 in terms of an affidavit; paragraph 13 whereof reads thus:

\02313. I say that I pray this Hon\022ble Court to kindly consider my pecuniary circumstances and helpless position to mobilize monies to an extent of 763.22 lakhs and I pray which inability of mere may not be termed as contempt of this Hon\022ble Court. I once again reiterate and pray this Hon\022ble Court to kindly consider my adverse financial circumstances and kindly accept the landed property as security which the Petitioner has accepted and consequently the orders passed by

the Arbitrator was complied with and thus there is no cause of action to proceed with the present contempt case. Even otherwise I have also established a prima facie case over the title of the said land before the High Court of Andhra Pradesh before the Sole Arbitrator and before this Hon\022ble Court. I am even now ready and willing to relinquish all my rights over the landed property in favour of the Petitioner. I further agree that I will execute the General Power of Attorney in favour of the petitioner for the purpose of getting clearance from the Government of Andhra Pradesh and regularization of the land in question in favour of the Mahalaxmi Motors\005I will fully cooperate with the Petitioner to get the land transferred in its name or for its disposal and the Respondent unhesitatingly sign on every paper which the petitioner brings before him in the matter of the said landed property\005\024

10. Relying on or on the basis of the said representation made by the respondents, a Division Bench formed an impression that it is possible to settle the dues of the petitioner as also other creditors. By an order dated 9.02.2007, therefore, it was directed:

\023(1) The parties hereto should find out ways and means to sell the property belonging to the first respondent company herein, situate at Secunderabad, jointly by the petitioner as also the Indian Overseas Bank, Hyderabad. For the said purpose, the Chief Manager of the Indian Overseas Bank, the Collector of the Hyderabad District as also the Managing Director of respondent No. 1 Mahendra C. Mehta, who is present in Court today, shall meet in the office of the Collector, Hyderabad on 26th February, 2007 at 11.00 a.m.

(2) As it is stated that a writ petition bearing No. 15920/2004 is pending before the High Court of Andhra Pradesh in regard to the said property, we request the Chief Justice of the High court to consider the desirability of placing the said writ petition before an appropriate Bench for its very early disposal.\024

11. In furtherance of the said order, the Collector of the Hyderabad District held a meeting. In the said meeting, it transpired that the property in question, which is in dispute, belonged to the State of Andhra Pradesh and it claiming right, title and interest therein had initiated a proceeding against the respondents in respect thereof under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. The said proceeding was decided in favour of the State of Andhra Pradesh.

12. Respondents filed a writ petition before the High Court thereagainst being Writ Petition No. 15920 of 2004. The said writ petition having been dismissed, the appeal of the respondents and the Company preferred thereagainst was taken up for hearing along with this matter and by reason of a judgment and order of this date, we are disposing of the same also.

13. The Collector filed a status report inter alia noticing:

\02310. It may be informed to this Hon\022ble Court that on detailed enquiry by the revenue officials it is learnt that one Sri R. Praveen Kumar, S/O R. Vijay Kumar, claiming to be GPA holder (Un-registered) of M/s Mahalakshmi Motors Ltd. is reportedly

running Mahalaxmi Motors workshop on the suit schedule land but on ground a company under the name and style of M/s Hyundai Lakshmi is being run, involving business of buying, selling and servicing of vehicles. Further, there are two prominent display boards at the entrance showing as \023Hyundai Lakshmi\024. The copy of the GPA furnished by Sri Praveen Kumar, is not registered and has no legal authenticity. This office has reason to believe that a third party is in illegal possession of the land and the relationship between M/s Mahalaxmi Motors and present occupant is not known. In this regard, necessary action is being initiated separately\005\024

It was, therefore, opined:

\02311. The very fact that M/s Mahalaxmi Motors have applied for regularization proves that they are in illegal occupation of Government land. Thus, they do not have any locus standi over the suit scheduled property. Further the intention of selling of the land as proposed by the Indian Overseas Bank and Maruti Udyog Ltd. cannot be considered at this juncture as the suit property does not belong to Mahendra C. Mehta and others and the suit scheduled land is required for public purpose.\024

14. Mr. T.K. Ganju, learned senior counsel appearing on behalf of the petitioner would submit that by brazenly flouting the order of this Court dated 6.09.2002, the respondents have committed gross contempt of this Court. It was submitted that the alleged contemnors were bound to comply with the orders passed by the learned Arbitrator in terms of this Court\022s order dated 6.09.2002. as they had not furnished bank guarantee pursuant thereto or in furtherance thereof and in fact the alleged contemnors have committed a contempt of this Court.

It was furthermore contended that that the contempt stands aggravated as even during pendency of this proceeding as also the arbitration proceeding before the learned Arbitrator, they have sold their flat situate at Bangalore.

15. Mr. Shyam Divan, learned senior counsel appearing on behalf of the alleged contemnors, on the other hand, has drawn our attention to the additional affidavits filed by the contemnors herein tendering unconditional apology. We would refer to only one of them filed by Respondent No. 1. It was averred therein:

\0231. I unconditionally apologize to this Hon\022ble Court with respect to the contempt which is the subject matter of the Contempt Petition. I have highest respect for the judiciary and for the judges of this Hon\022ble Court as well as the Ld. Arbitrator.

2. I was unable to arrange for Bank Guarantee of Rs. 763.22 lakhs since the company was not in a position to mobilize resources. Moreover, I did not have personal resources to raise funds and to ensure that the Bank Guarantee is provided.

3. I request this Hon\022ble Court to accept the unconditional apology tendered by me.\024

A further reply has also been filed by the respondents stating:

\0236. That the District Collector has needlessly

and unwarrantly traced earlier rejection of the regularization proposals by the government by cryptic and non-speaking order and consequent filing of writ petition No. 15 of 2000 by the respondent when the matter was remitted back to government to pass appropriate orders taking into account the recommendations of the District Collector and the Commissioner of Land Revenue dated 22.10.1997 and 30.9.1997 which facts are already in the record of this Honourable Court. While so doing, the District Collector, Hyderabad made a false report that a report was submitted to the government that the lands are required for public purpose like establishment of hospitals, schools, play grounds, etc., referring to his report dated 17.6.2003 and his report is not based on the recommendations based by him and the Commissioner Land Revenue referred to above which is definitely an after thought and to prejudice the mind of this Honourable Court. Further it is not a relevant issue at this juncture which he never pleaded before any of the courts below.

7. The Respondent submits that the Collector, Hyderabad deliberately, wantonly and maliciously sent a misleading report to this Hon\022ble Court. When the District Collector himself recommended for the regularization of the lands in question in favour of the Respondent collecting market rate at Rs. 1240/- per sq. yard in his letter No. 14-87-89/1993 dated 22.10.1994, the District Collector suppressed this letter and quoted a different one. In fact the Hon\022ble High Court directed the Government to take into consideration the same letter dated 22.10.1994 in its order dated 30.7.2001 in W.P. No. 15/2000. the District Collector, Hyderabad deliberately suppressed the said letter and gave a false and misleading report to this Hon\022ble Court and this is highly reprehensible.\024

In regard to possession of the property by M/s. Lakshmi Hyundai, it was stated:

\02311. The Respondent submits that it is not true to say that the land in question is under illegal occupation of third party Sri R. Praveen Kumar S/o Vijaya Kumar Rao as reported by the District Collector, Hyderabad. The fact remained is that the Managing Direcotr of M/s Mahalaxmi Motors Ltd., and Lakshmi Hyundai had association with each other. M/s. Lakshmi Hyundai has its own showroom and workshop at Humayathnagar, Hyderabad. That company has some customers in the Secunderabad area and for the convenience of its customers the Managing Director of M/s. Hyundai Lakshmi sought the oral permission of the Managing Director of M/s. Mahalaxmi Motors to carry on servicing of the cars of its customers in the workshop of Mahalaxmi Motors Ltd. Except this there is no jural relationship between M/s. Mahalaxmi Motors Ltd., and Hyundai Lakshmi Motors. The latter has no right, claim, title or interest over the workshop of M/s. Mahalaxmi Motors Ltd., and no financial transaction took

place between these two companies. M/s. Mahalaxmi Motors Ltd. ever executed any GPA either registered or unregistered in favour of anybody muchless in favour of R. Praveen Kumar S/o Vijaya Kumar Rao.\024

16. Our attention was drawn to an affidavit affirmed by the alleged Contemnors No. 3 wherein he stated that he was only an employee of the Company and he was made Director of the Company only because of his experience in the sale and service of automobiles. He has allegedly tendered his resignation as Director in 1997 and the Company has accepted the same.

17. Our attention was further drawn to a counter affidavit dated 6.04.2004 filed by Respondent No. 2 wherein it was stated that he was not a signatory to the original dealership agreement and was not involved in any of the day to day affairs of Mahalaxmi Motors Ltd.

18. Our attention was also drawn to a counter affidavit dated 16.2.2004, and further affidavits dated 1.08.2004, 5.08.2005 and 4.10.2005 wherein, as noticed hereinbefore, Respondent No. 1 had tendered unconditional apology for his inability to raise the resources and furnish a bank guarantee to the tune of Rs. 763.22 lakhs. Respondent No. 2 had also stated that he was forced to sell his personal flat at Bangalore to meet his debts and obligations and he was ready and willing to relinquish all rights with the respect to the land in Secunderabad.

19. It was furthermore submitted that as the learned Arbitrator has passed an award only against the Company, the interlocutory order passed by this Court having merged with the final award, no contempt of this Court has been committed.

20. The fact of the matter, as noticed hereinbefore, clearly goes to show that the alleged contemnors not only prevaricated their stand at different stages in different proceedings, they intended to prolong the litigation one way or the other. They had accepted their liability at least to the extent of 7.63 crores. They must have invested the said amount. The parties hereto accepted that the disputes and differences pending between them should be referred to an arbitrator. It was agreed to by the petitioner only on the representation made by the alleged contemnors that they would furnish a bank guarantee provided an order is passed in that behalf by the learned Arbitrator.

21. The fact that the learned Arbitrator issued such a direction is not in dispute. The learned Arbitrator even otherwise had the jurisdiction to pass interim order in terms of Section 9 of the Act. Correctness or otherwise of the said order has not been questioned. Despite undertaking given before this Court, in the aforesaid matter, the alleged contemnors did not furnish any bank guarantee. Admittedly, their application for modification was also dismissed. Not only, they went back from the undertaking given before this Court, they also sold away the only property which was in their possession. The property situate at Secunderabad admittedly had been claimed by the State of Andhra Pradesh. The alleged contemnors even did not disclose that the said property was an encumbered one. The same was disclosed only at a later stage.

22. If they were not in a position to furnish any bank guarantee or otherwise, they could have taken such an unequivocal stand before the courts. They not only suppressed material facts, but also made a wrong representation that in the event the property at Secunderabad is sold, the price whereof is about 11 crores and, thus, from the sale proceeds the dues of the debtors would be satisfied. Such a claim was evidently made, as would now appear, that an application for regularization was pending before the State. The alleged contemnors did not have any subsisting right, title and interest in or over the said property. They could not have made a proposal before this Court for sale of the property only on the basis of a title which

they could only derive on happening of a contingency, viz., regularization thereof by the State. A proposal for sale of the property could be made only if the respondents had any subsisting title thereto and not otherwise.

23. We, therefore, are of the opinion that the alleged contemnors have misled this Court and have committed gross contempt of this Court.

24. In Bank of Baroda v. Sadruddin Hasan Daya and Another [(2004) 1 SCC 360], even in relation to a consent order, this Court held:

\02310. A legal plea taken by a party that a decree passed by a court (including Supreme Court) is without jurisdiction and therefore a nullity, will not normally amount to a contemptuous statement. However, the written submission made by the respondents before the Debts Recovery Tribunal, wherein they said that the Supreme Court had no jurisdiction to pass the decree dated 28-7-1999 and the decree had no validity and is a nullity, has to be seen in the factual background of the case. It may be noted that the decree had been passed on the basis of consent terms. It is not the case of the respondents that any fraud was played upon them by any party when they entered into a settlement and signed the minutes of the decree. It appears that the respondents from the very inception had no intention of paying the amount, but they agreed for a settlement and consent terms only for the purpose of gaining time whereunder instalments were fixed. They adopted the same procedure in the suit instituted by Oman International Bank, SAOD, wherein they offered the same property to remain under attachment till the decree was satisfied. Placing the same property under attachment is bound to create problems for the decree-holders of either of the suits as no one wants to buy such property in court auction which may land him in further litigation. The respondents intentionally and deliberately adopted such a course of action so that further hurdles may come in the way of execution of the decree and therefore it is clearly a case of wilful breach of an undertaking given to the Court.\024

25. This Court in Babu Ram Gupta v. Sudhir Bhasin [(1980) 3 SCC 47] held:

\02310\005Indeed, if we were to hold that non-compliance of a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner 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. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua

the party not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the Court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking impliedly or expressly incorporated in the order impugned. Thus there being no undertaking at all the question of breach of such undertaking does not arise.\024

26. Mr. Divan, however, relied upon a decision of this Court in R.N. Dey and Others v. Bhagyabati Pramanik and Others [(2000) 4 SCC 400] wherein it has been held:

\0237 . We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court\022s dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court\005\024

This Court in R.N. Dey (supra) has categorically held that the contempt is a matter between the court and the contemnor. Unlike R.N. Dey (supra), here in the respondents are not disputing their liability to pay the awarded amount. Therein no undertaking had been given.

27. In Rama Narang v. Ramesh Narang and Another [(2006) 11 SCC 114] whereupon reliance has been placed by Mr. Divan, the question revolved round the alleged violation of certain clauses of the consent terms. In that case the consent order did not contain an undertaking. It, on that premise, opined:

\02424. 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\022s 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.\024

This Court in Rama Narang (supra), thus, clearly laid down the proposition of law that when an undertaking has been recorded in accordance with law, a contempt proceeding would be maintainable.

28. We, therefore, keeping in view the peculiar facts and circumstances of this case and the conduct of the alleged contemnors, are of the opinion that they have committed contempt of this Court. We are clearly of the opinion that it is eminently a fit case where jurisdiction of this Court under Article

129 of the Constitution of India as also the provisions of the Contempt of Courts Act, 1970 should be invoked.

29. However, the fact that the alleged contemnor No. 3 has resigned, being not in dispute, no action is being taken against him. So far as, the alleged contemnor No. 1 is concerned, we are of the opinion that he being the Managing Director of the Company, is liable to be punished. He is sentenced to undergo six months imprisonment. The alleged contemnor No. 2 is also held guilty but as he was not the Managing Director, we are of the view that sentencing him three months imprisonment shall meet the ends of justice.

30. The contempt petition is allowed with the aforementioned directions.