REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.28592 of 2018

SUMAN CHADHA & ANR. .... PETITIONER(S)

Versus

CENTRAL BANK OF INDIA ... RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. Upon being found guilty of committing contempt of Court, the petitioners who are husband and wife respectively, were sentenced to simple imprisonment for three months along with a fine of Rs.2000/- each, by a learned Judge of the Delhi High Court. The said Order having been confirmed by the Division Bench of the High Court in an appeal under Section 19 of the Contempt of Courts Act, 1971 ('Act' for short), the petitioners have come up with the above Special Leave Petition.

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2. We have heard Mr. Santosh Kumar, learned counsel appearing for the petitioners and Mr. Anuj Jain, learned counsel appearing for the respondent-Bank.

3. The background facts which led to the petitioners being held guilty of contempt of Court, are lucidly recorded in the Order dated 18.07.2017 of the learned Judge. They are as follows:

(i) The petitioners were Directors of a company by name Parul Polymers Private Limited, which availed loan/credit facilities from the respondent Bank. The petitioners guaranteed the repayment of the loan and had also offered immovable properties as security.

(ii) On 24th July, 2014, the loan of the respondents was categorized as a Non Performing Asset due to defaults in repayment. On 18th August, 2014, a notice under Section 13(2) of SARFAESI Act was issued for recovery of Rs. 28,82,25,942.24 plus interest. It was followed by a possession notice under section 13(4) in respect of two properties.

(iii) Aggrieved by the same, the petitioners filed S.A. No. 367/2014 before the Debts Recovery Tribunal-III, New Delhi ('DRT-III' for short), under Section 17 of the SARFAESI Act. However, the DRT-III declined

to grant any interim relief against the physical possession of the aforesaid properties.

(iv) The petitioners filed an appeal but could not deposit Rs. 7 crores being 25% of the amount demanded in the notice under Section 13(2). Eventually the appeal was dismissed as withdrawn on 31.03.2015.

(v) However, on 01st April, 2015, the petitioners secured a conditional order of stay from DRT-III, New Delhi in S.A. No. 367/2014 whereby the petitioners were required to deposit a sum of Rs. 5 crores within thirty days. The order also stipulated that Rs. 2 crores would be deposited by 03rd April, 2015.

(vi) On 03rd April, 2015, the petitioners gave a letter to SHO, Police Station Katju Marg, Rohini, Delhi showing their intention to deposit the amount of Rs. 2 crores by way of four cheques. Therefore, the Receiver was unable to take possession of the properties.

(vii) Thereafter, the petitioners challenged the conditional order of stay passed by DRT-III on 01st April, 2015 before the High Court by way of W.P.(C)No.3406/2015 stating that the Bank and DRT-III were acting unfairly and unjustly in not accepting their cheques totalling to Rs. 2 crores.

(viii) When the writ petition came for admission and interim orders on 8th April, 2015, the petitioners admitted liability and offered, by way of a statement under oath, to deposit Rs. 7 crores, i.e. 25% of the notice amount in three instalments on or before 30th June, 2015. The Bank gave its assent and thereafter the Court ordered that the possession of the properties of the petitioners shall not be disturbed subject to the petitioners depositing Rs. 7 crores on or before 30th June, 2015, i.e. Rs. 2 crores on 30th April, 2015, Rs. 2.5 crores each on 31st May, 2015 & 30th June, 2015.

(ix) On 29th April, 2015, the petitioners gave a letter along with four cheques for Rs. 50 lakhs each dated 06th May, 2015 purportedly in compliance of the order dated 08th April, 2015.

(x) Accordingly, the possession proceedings for one property scheduled for 30th April, 2015 were deferred by the Bank. But on 08th May, 2015, all the four cheques bounced.

4. Therefore, the respondent-Bank filed a petition under Sections 10 and 12 of the Contempt of Courts Act, 1971 for punishing the petitioners for wilful and deliberate breach of their undertaking dated 08.04.2015. Though the petitioners resisted the contempt petition on the ground that breach of an undertaking, made with a view to secure

a conditional order of stay may not tantamount to contempt, especially when the consequences of breach of such undertaking are spelt out in the order of the Court itself, the learned Judge was not convinced. Therefore, by an Order dated 18.07.2017, the learned Judge of the High Court held the petitioners guilty of contempt and sentenced them simple imprisonment for three months with a fine of Rs.2000 each. The Division Bench upheld the said order and the petitioners are before us.

5. Before we proceed further we should record certain developments which have taken place after the order of single Judge dated 18.07.2017. They are as follows:-

(i) The learned Judge himself granted suspension of the sentence of imprisonment till 26.07.2017, to enable the petitioners to move an intra-court appeal;

(ii) The petitioners moved an intra-court appeal, which came up before the Division Bench on 25.07.2017. The Division Bench wanted the petitioners to comply at least with a part of their undertaking before the sentence could be suspended. But the petitioners could not. Therefore, the Division Bench did not grant suspension of sentence on 25.07.2017;

(iii) The petitioners filed a Special Leave Petition along with an

application for exemption from surrendering. But the said application was dismissed by an order in Chamber dated 31.07.2017;

(iv) On 03.08.2017, the Division Bench of the High Court dismissed the miscellaneous application seeking suspension of sentence;

(v) Challenging the said order dated 03.08.2017, the petitioners moved a Special Leave Petition along with an application seeking exemption from surrendering. This application was dismissed vide order in Chamber dated 18.08.2017.

(vi) On a subsequent application seeking extension of time, this Court granted three weeks' time vide order dated 11.09.2017;

(vii) Eventually, the petitioners surrendered and were taken into custody on 06.11.2017. After being in custody for 11 days, the petitioners were released on interim bail by Order dated 16.11.2017;

(viii) The contempt appeal was thereafter dismissed by the Division Bench of the High Court by an Order dated 27.09.2018, with a direction to the petitioners to surrender within 10 days. However on 01.11.2018, this Court ordered notice in the present SLP and also granted stay of the impugned order.

6. The reason why we have noted certain events post the order of the

learned single Judge is to bring on record the fact that the petitioners have already served simple imprisonment for a period of 11 days, out of the penalty of simple imprisonment for three months. They have also paid the fine.

7. The main grounds of attack of the petitioners to the impugned order, as articulated by Mr. Santosh Kumar, learned counsel for the petitioners, are: ***(i)*** that the failure of a party to comply with an undertaking, on the basis of which a conditional order of stay was granted, cannot be treated as a wilful disobedience warranting the invocation of the contempt jurisdiction; ***(ii)*** that the failure of the petitioners to honour the undertaking cannot be taken to substantially interfere with the due course of justice and, hence, the case would fall under Section 13(a) of the Act; ***(iii)*** that when an order indicates the consequences of the failure of a party to comply with a condition or honour the undertaking, the invocation of the contempt jurisdiction may not be appropriate; and ***(iv)*** that in any case if the defaulting party has relied upon an interpretation of the order that the consequences of failure are already inbuilt in the order, such an understanding of the order is to be treated as reasonable and rational and he cannot be held guilty of contempt.

8. In support of his first contention, the learned counsel for the petitioners, relies upon the decisions of a few High Courts. They are: (a) ***Narain Singh*** vs. ***Lala Rajendra Lal & Ors.***[1]; (b) ***Indian Overseas Bank*** vs. ***Lalit Kumar Aggarwal & Anr.***[2]; (c) ***K. Saravankumar*** vs. ***Sheela & Ors.***[3]; and (d) ***National Agricultural Cor. Marketing*** vs. ***Reliance Polycrete Ltd.***[4].

9. In support of his third contention, the learned counsel relies upon the decision of this Court in ***Dinesh Kumar Gupta*** vs. ***United India Insurance Company Limited***[5]. In addition, the learned counsel also submitted that in the light of the decision of this Court in ***Niaz Mohammad*** vs. ***State of Haryana***[6], the disobedience should be wilful and intentional, to tantamount to contempt.

10. In response to the aforesaid, Shri Anuj Jain, learned counsel for the respondent submitted that the petitioners had several opportunities to honour their commitments, but they repeatedly adopted dilatory tactics. The learned counsel took us through various orders passed by the High Court and the orders passed in various

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1 1976 SCC Online All 425
2 2000 SCC Online Del 710
3 2008 (3) CTC 669
4 (2009) 163 DLT 441
5 (2010) 12 SCC 770
6 (1994) 6 SCC 332

proceedings before other forums including the DRT and the Chief Metropolitan Magistrate and sought to impress upon us that the conduct of the petitioners throughout, has been one of deceit and that such persons do not deserve any leniency. Inviting our attention to the decisions in (i) ***Bank of Baroda*** vs. ***Sadruddin Hasan Daya & Anr***[7].; (ii) ***Rama Narang*** vs. ***Ramesh Narang & Another***[8] and (iii) ***Rama Narang(5)*** vs. ***Ramesh Narang and Another***[9], the learned counsel contended that the availability of other modes of enforcement need not deter the Court from invoking its contempt jurisdiction and that the deliberate failure to comply with a solemn undertaking given to a Court has always been frowned upon by Courts.

11. We have carefully considered the rival submissions.

12. Before we analyze the rival contentions, it will be useful first to see the actual undertaking given by the petitioners on 08.04.2015, which led to the contempt proceedings. The undertaking given by the first petitioner on 08.04.2015 reads as follows:-

> *"Statement of Mr. Suman Chadha S/o Jangi Lal Chadha R/o H-3/50 Sector-18, Rohini, Delhi*
>
> *I am the petitioner and the director of the third petitioner in this case. I am duly authorised to make a statement on its behalf. I have also filed an affidavit in support of the petition*

7 (2004) 1 SCC 360
8 (2006) 11 SCC 114
9 (2009) 16 SCC 126

and have taken advice from my lawyer who is present with me in Court.

I hereby state and confirm that the sum of Rs.28,82,25,942.24 (Twenty Eight Crores Two Lakh Twenty Five thousand Nine Hundred Forty Two and Paise Twenty Four only) as on 18.8.2014 is due and payable to the respondent i.e. the Central Bank of India as per notice u/s 13(2) of SARFAESI Act. I request that in view of the demand I may be granted relief of some deferment with regard to the repayment of the loan liability. I hereby agree on behalf of self and other petitioners to deposit a total amount of Rs.7 (seven) crores with respondent –Bank on or before 30.6.2015. An amount of Rs. 2(two) crores of the said amount shall be paid on or before 30.04.2015; the balance would be paid in equal instalments i.e. Rs.2.5 (Two and a half) crores on or before 31.5.2015 and 30.06.2015.

I also agree and affirm that in the event of default, the Bank is free to initiate any such proceedings and avail of legal remedies as are available."

13. The above undertaking given by the first petitioner was also accompanied by an affidavit sworn to by the second petitioner. In the said affidavit, it was stated by the second petitioner that her husband has made a statement before the Court which she had understood from him and that she and her husband undertake to abide by the same.

14. On the basis of the undertaking filed as aforesaid on 08.04.2015, the High Court passed an order in W.P (C) No.3406 of 2015 on the same day, namely, 08.04.2015. Paragraphs 6 to 8 of the said order of the High Court dated 08.04.2015 read as follows:-

"6. In view of the submission of the parties, it is ordered that the possession of the petitioners over the property in

question shall not be disturbed subject to their compliance with the following conditions:

(1) Deposit by the petitioners on or before 30.04.2015 – the sum of Rs. 2 crores with the respondent Bank and thereafter deposit of Rs.2.5 crores each on or before 31.05.2015 and 30.06.2015.

(2) The second petitioner shall file an affidavit/ undertaking, to comply with the above said arrangement.

(3) In the event of default, the respondent Bank shall be at liberty to take recourse to law including the enforcement of further action in follow up order of appointment of the receiver by the Chief Metropolitan Magistrate (CMM). The order to such effect passed by CMM shall be kept in abeyance to ensure compliance in the meanwhile till 30.6.2015.

7. Petitioners' counsel requests that after compliance of the above order, any application for relief to the Bank including the restructuring of the account may be considered reasonably. The Bank shall consider such application if made on its merits independently having regard to its applicable policy. This will not in any way preclude the rights of the Bank for recovering the amounts due.

8. Subject to the petitioner filing the necessary affidavit/undertaking copy of which shall be provided to the counsel for the respondent within a week from today, the writ petition is disposed of."

15. It is seen from the portion of the order of the High Court dated 08.04.2015 that it was not an order passed on the basis of an affidavit/undertaking. It was on the basis of an offer made by the petitioners, the first of whom was actually present in Court. The offer so made was accepted by the Bank and hence the order was actually based upon the consent of parties. This is made clear by what is recorded by the Court in Paragraph 5 of its order dated 08.04.2015. Paragraph 5 reads as follows:-

> *"5. During the course of hearing counsel for the petitioner Dr. Sharma stated that the petitioners are admitting the liability provided some time is granted in order to settle the matter finally. It was suggested by the counsel that the petitioners may be afforded opportunity of depositing Rs. 7 (seven) crores i.e. 25% of the notice amount in three instalments on or before 30.06.2015. The first petitioner is present in Court. He is a director of the third petitioner and authorised to depose on its behalf. His statement to above effect has been recorded under oath separately and has been kept on record. The second petitioner is directed to file an affidavit/undertaking within one week confirming the statement of the first petitioner. The counsel for the respondent submitted his assent to the disposal of the writ petition on terms offered."*

16. It is true that this Court has held in a series of decisions that the wilful breach of the undertaking given to the Court amounts to contempt of Court under Section 2(b) of the Act. But the Court has always seen ***(i)*** the nature of the undertaking made; ***(ii)*** the benefit if any, reaped by the party giving the undertaking; and ***(iii)*** whether the filing of the undertaking was with a view to play fraud upon the court or to hoodwink the opposite party. The distinction between an order passed on consent terms and an order passed solely on the basis of an undertaking given to court and the distinction between a person playing fraud on the court thereby obstructing the course of justice and a person playing fraud on one of the parties, was brought out by this Court in ***Babu Ram Gupta*** vs. ***Sudhir Bhasin***[10], in the following

10 (1980) 3 SCC 47

words:-

> *"...Indeed, 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."*

17. But the decision in ***Babu Ram Gupta*** (supra) was clarified and held in part to be obiter by a three member Bench of this Court in ***Rama Narang*** vs. ***Ramesh Narang and Another***[11]. In ***Rama Narang*** (supra), this Court pointed out the distinction between two categories of cases covered by Section 2(b) of the Act namely ***(i)*** wilful disobedience to a process of court; and ***(ii)*** wilful breach of an undertaking given to a court.

18. In fact, in ***Rama Narang*** (supra), this Court went to the extent of holding that it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between

11 (2006) 11 SCC 114

the wilful violation of the terms of a consent decree and wilful violation of a decree passed on adjudication. We have our own doubts whether the first category of cases covered by Section 2(b) can be stretched so far. Anyway, that question does not arise in this case and hence we leave it at that.

19. But what has happened in this case is that the subsequent conduct of the petitioners after the order dated 08.04.2015, seems to have tilted the balance against the petitioners. Purportedly in compliance of the undertaking given to Court on 08.04.2015 and the order passed thereon, the petitioners issued four cheques for Rs.50 lakhs each. These cheques were handed over to the Bank on 29.04.2015 along with a covering letter. But all the four cheques were post-dated, bearing the date 06.05.2015, though the undertaking given to the Court was to deposit the amount on or before 30.04.2015.

20. On 08.05.2015, all the four cheques bounced. The conduct of the petitioners first in issuing post-dated cheques and then in allowing them to be dishonoured, showed the petitioners in poor light. The petitioners could have at least mend their ways thereafter. However they did not.

21. On 14.07.2015, the learned Single Judge seems to have ordered

the issue of notice in the Contempt Petition. The notice was made returnable by 05.11.2015 and the petitioners were directed to be present personally in Court. But what happened on 05.11.2015, as brought on record by the learned Judge reads as follows:-

> *"When the matter was taken up at first call, this Court was informed that none of the respondents were in Station and even summons had been received by their daughter.*
>
> *However, a perusal of the file reveals that notices/summons had been received by respondent No. 1 personally and by respondent No. 2's husband by dasti as well as by speed post.*
>
> *Though this Court was inclined to issue warrants against the respondents No. 1 and 2, yet as learned counsel for respondents states that he would ensure that not only the respondents are personally present in Court on the next date of hearing, but the matter is amicably resolved, matter is adjourned to 16th November, 2015."*

22. On the next date of hearing, the petitioners raised a defence that they had issued post-dated cheques in the hope of receiving amounts due to them from their debtors and that their debtors failed to make payment. The petitioners also named three debtors from whom they were expected to receive money.

23. Doubting the genuineness of the claim made by the petitioners, the learned Judge before whom the Contempt Petition came up, passed an order on 07.12.2015 directing an investigation by Serious Fraud

Investigation Office ('SFIO' for short). To the misfortune of the petitioners, SFIO submitted a report that the alleged debtors of the petitioners are only shell entities of Parul Polymers Private Ltd., of which the petitioners were Directors.

24. All the above events that happened after 08.04.2015, convinced the High Court to come to the conclusion that the petitioners had actually played a fraud upon the Court. This is why the learned Single Judge as well as the Division Bench of the High Court held the petitioners guilty of contempt of court.

25. It is true that an undertaking given by a party should be seen in the context in which it was made and ***(i)*** the benefits that accrued to the undertaking party; and ***(ii)*** the detriment/injury suffered by the counter party. It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.

26. But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court.

27. In this case, the series of acts committed by the petitioners ***(i)*** in issuing post-dated cheques, which were dated beyond the date within which they had agreed to make payment; ***(ii)*** in allowing those cheques to be dishonoured; ***(iii)*** in not appearing before the Court on the first date of hearing with an excuse that was found to be false; ***(iv)*** in coming up with an explanation about their own debtors committing default; and ***(v)*** in getting exposed through the report of the SFIO, convinced the High Court to believe that the undertaking given by the petitioners on 08.04.2015 was not based upon good faith but intended to hoodwink the Court. Therefore, we are unable to find fault with the High Court holding the petitioners guilty of contempt.

28. The 1st contention of Mr. Santosh Kumar, learned counsel for the petitioners that the failure to honour a commitment made while securing a conditional order of stay, cannot be treated as wilful disobedience, could have been accepted by us, but for the fact that the petitioners issued post-dated cheques purportedly in compliance of the

undertaking, but allowed them to be dishonoured. The story cooked up for the dishonor of the cheques having been found to be false, it is not open to the petitioners to raise the contention that there was no wilful disobedience.

29. The 2nd contention based upon the language of Section 13(a) of the Act also does not appeal to us, in the light of what had happened after 08.04.2015. The fact that the order dated 08.04.2015 also indicated certain other consequences to follow, may not take away the contempt jurisdiction of the Court. In appropriate cases where a party had acted bonafide while giving an undertaking, but could not honour the undertaking on account of reasons that are reasonable and genuine, the Court could certainly withhold its stick from being wielded. But in this case there are findings of fact to the effect that the petitioners did not act bonafide. Therefore, the 3rd contention is also unsustainable.

30. The last contention that if the order dated 08.04.2015 is capable of being interpreted and understood in more than one way as to the consequences flowing out of the same, the party understanding and interpreting the said order in one particular manner must be allowed the benefit, is perfectly correct, as a pure and simple proposition of

law. But in this case, the same cannot be permitted to be used, to cover up whatever the petitioners have done. On the contention of the learned counsel for the petitioners that the disobedience, if any, was not wilful and intentional, less said the better.

31. In the light of the above, we are clearly of the view that the finding of the High Court that the petitioners are guilty of contempt, does not call for our interference under Article 136.

32. However, Mr. Santosh Kumar, learned counsel for the petitioners, pleaded that the Court may show sympathy on the petitioners, in view of the fact that the immovable properties which the petitioners attempted to save, by approaching the DRT and the High Court, have already been sold. All the attempts made by the petitioners from 2015 onwards, to save the mortgaged properties have been in vain.

33. There is no dispute on facts that the mortgaged properties have now been sold and with extraordinary efforts, the Bank has also taken possession. The petitioners have also spent 11 days in custody out of the total period of imprisonment of three months imposed by the High Court. In such circumstances, we think that it is sufficient punishment for the petitioners.

34. Therefore, the SLP is disposed of upholding the finding of the

learned Single Judge and the Division Bench of the High Court that the petitioners are guilty of contempt of court, but reducing the period of sentence from three months to the period of imprisonment already suffered/undergone by the petitioners. There will be no order as to costs.

32. Pending application(s) if any, shall also stand disposed of.

.....J.
(Indira Banerjee)

.....J
(V. Ramasubramanian)

August 9, 2021
New Delhi.