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

+ **CONT.CAS(C) 224/2021**

PARNITA KAPOOR & ORS. Petitioners

Through: Mr. Rajan Tyagi, Advocate.

versus

ARVIND MALIK Respondent

Through: Mr. Chandan Kumar Mandal,
Advocate with Respondent in person.

Reserved on: 07.02.2023

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Date of Decision: 16.03.2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present contempt petition has been filed by the Petitioners due to the Respondent's wilful non-compliance of the order dated 15.02.2021 passed by a Coordinate Bench of this Court in C.M (M) No. 484/2020 with respect to the directions to the Respondent to pay use and occupation charges for the property bearing No. 1395, Dr. Mukherji Nagar, Kingsway Camp, Delhi-110009 ('the subject property').

2. The Petitioners are the owners and the Respondent is the erstwhile occupier who was using the subject property for commercial purposes by letting it out as paying guest accommodation. The Coordinate Bench, by its order dated 15.02.2021 confirmed its earlier orders dated 01.10.2020 and 17.12.2020, and dismissed the Respondent's plea of financial inability.

3. This contempt petition was filed on 25.02.2021 as the Respondent failed to make payment of the use and occupation charges, while continuing to occupy the subject property. This Court in these proceedings gave multiple opportunities to the Respondent to comply with the order dated 15.02.2021; however, the Respondent failed to comply with the order and in fact aggravated the contempt as noted hereinafter. The possession of the subject property was handed over by the Respondent on 15.12.2021 during the pendency of these proceedings.

4. The Respondent in these proceedings on 25.03.2021 gave an undertaking to this Court that he will pay the outstanding use and occupation charges; however, the Respondent breached the said undertaking as well.

5. In view of the wilful non-compliance of the order dated 15.02.2021 and the wilful breach of the undertaking dated 25.03.2021, by the order dated 24.01.2022, this Court held the Respondent guilty of having committed contempt of court and fixed the matter for sentencing. Subsequently at the request of the Respondent, this Court on 13.07.2022 gave a final opportunity to the Respondent to purge his contempt and to make payments of outstanding dues to the Petitioners. However, the Respondent has admittedly failed to clear the outstanding due and payable to the Petitioners, which currently stands at more than Rs. 32 lakhs.

6. Thereafter, the matter has been listed for awarding the punishment of sentence to the Respondent in furtherance of the order dated 24.01.2022.

7. In compliance with the order dated 07.02.2023, the Petitioner has filed written synopsis dated 13.02.2023 and the Respondent has filed brief synopsis dated 10.02.2023 respectively.

8. This Court has heard the learned counsel for the parties and perused the paper book.

9. The Respondent has failed to show any contrition and even in his written submissions filed on 10.02.2023, has sought to justify the non-compliance of the orders passed in CM(M) 484/2020 by assailing the validity of the orders, which are subject matter of compliance and also apportioning blame on the previous counsel representing him in the proceedings. To begin with, it would be relevant to note that orders dated 01.10.2020, 17.12.2020 and 15.02.2021 have become final, and appeal has not been preferred by the Respondent.

10. In fact, the order dated 13.07.2022 passed in these proceedings records the statement of the Respondent wherein he admits that the amount due and payable to the Petitioner is Rs. 24,20,000/-. Therefore, submissions made in the written submission assailing the validity of the orders which are subject matter of compliance are in teeth of said admission as well as orders passed by this Court in these proceedings from time to time.

11. Briefly stated are the facts which have led to the filing of the present contempt petition and the wilful default of the Respondent are summarized herein:

11.1. The Respondent filed a Civil Suit No. 1337 of 2019 ('the civil suit') before the trial court seeking a permanent and mandatory injunction restraining the Petitioners herein from interfering in his enjoyment of the subject property and he claimed himself to be the tenant of the Petitioners at rent of Rs. 1,60,000 per month.

11.2. The Petitioners filed an application seeking direction to the Respondent to pay use and occupation charges for the subject property.

However, the said application was dismissed by the trial court *vide* order dated 27.08.2020.

11.3. The Petitioners filed C.M (M) No. 484/2020 before this Court, challenging the order dated 27.08.2020 passed by the trial court.

11.4. The orders dated 01.10.2020, 17.12.2020 and 15.02.2021 was passed by the Coordinate Bench of this Court in C.M (M) No. 484/2020, directing the Respondent to make payments towards current use and occupation charges and arrears during the pendency of the civil suit. The Coordinate Bench directed payment of Rs. 1,60,000 per month as use and occupation charges on the admission of the Respondent herein that this was the monthly rent fixed between the parties.

12. *Firstly*, the directions contained in order dated 01.10.2020 and 17.12.2020 passed in C.M (M) No. 484/2020 are set out as follows:

12.1. As per order dated 01.10.2020, the Respondent was directed on his admission in the pleading to pay a sum of Rs. 1,60,000 per month, as use and occupation charges, on or before 10th of every month, w.e.f. 01.10.2020 to the Petitioners. It was further directed that the Respondent shall ensure that no third-party rights are created in subject property and *status quo* be maintained as to the title and possession of the subject property. The relevant portion of the order dated 01.10.2020 reads as under:

“9. Accordingly, as an interim order, it is directed that Respondent No.1 pay to the Landlords a sum of Rs. 1,60,000/- per month on or before the 10th of every month w.e.f 1st October, 2020. Ld. Counsel submits that the last paid rent was in November 2019. Thus, for the previous period i.e., since November, 2019 to 1st September, 2020, directions shall be issued after notice is served. Respondent No.1 shall also ensure that no third-party rights are created in the suit property and status quo is maintained as to the title and possession.”

(Emphasis supplied)

12.2. By order dated 17.12.2020, the Respondent was directed to pay the arrears of rent at the rate of Rs. 1,60,000 per month for 14 months, i.e., from October, 2019, to the Petitioners on or before 25.01.2021. The relevant portion of the said order reads as under:

“Insofar as the present case is concerned, a sum of Rs. 1,60,000/- has been admitted by Respondent no.1 to be monthly rent payable by him to the Petitioners. Admittedly, the said amount has not been paid since last October, i.e. for almost 14 months. Accordingly, the entire arrears of rent, at the rate of Rs. 1,60,000/- per month for 14 months, shall be paid by the Respondent No.1- Mr. Arvind Malik to the Petitioners, on or before 25th January, 2021.”

(Emphasis supplied)

13. The Respondent herein filed an application in C.M (M) No. 484/2020 seeking extension of time to comply with the aforesaid directions for payment of current use and occupation charges as well as arrears. The Court dismissed the said application. The relevant portion of the order dated 15.02.2021 reads as under:

“9. As far as the present petition is concerned, *admittedly; there is a default in complying with the order dated 17.12.2020 of this Court and I see no reason to grant any extension to the respondent no.1 for complying with the same. Accordingly, the application is dismissed.*

CM(M) 484/2020

This Court in its order dated 17.12.2020 had in fact, warned the respondent no.1 that having enrolled as an Advocate, he cannot be carrying out any other business. Such observation has to be carried out to its logical end. Therefore, let a reference be sent to the Bar Council of Delhi alongwith the statement of the respondent no.1 recorded on 17.12.2020 for taking necessary action as may be deemed appropriate.

This petition is disposed of confirming the orders dated 01.10.2020 and 17.12.2020 of this court. *The learned Trial Court shall consider the effect of the admitted default on part of the respondent no.1 while considering the suit/any application filed by the petitioners, on merit. The learned Trial Court shall also expedite the hearing of the suit.”*

(Emphasis supplied)

13.1. The Respondent, contemnor is an advocate enrolled under the Bar Council of Delhi, who in contravention of the Advocates Act, 1961 and the Bar Council of India Rules, 1961 thereunder has been carrying on the business of paying guest accommodation from the subject property. In these circumstances, the Coordinate Bench *vide* order dated 15.02.2021 referred the matter to the Bar Council of Delhi for necessary actions.

14. Owing to the non-compliance of the aforesaid orders passed in C.M (M) No. 484/2020, the Petitioners filed the present contempt petition.

14.1. In the proceedings in this petition, the Respondent acknowledged the default and undertook *vide* order dated 25.03.2021 that (i) the entire outstanding amount will be paid in three (03) instalments within a period of two months; (ii) he assured this Court that the first instalment of Rs. 7 lakhs will be paid within two weeks and the second instalment of Rs. 7 lakhs in two weeks thereafter and the third instalment of the remaining monies shall be paid before the expiry of the said months; and (iii) the Respondent also assured to vacate the subject property on or before 25.05.2021. The relevant portion of the order dated 25.03.2021 reads as under:

“1. The case was passed-over for the learned counsel for the respondents to obtain instructions. Having done so, he states that the entire amount shall be paid in three instalment within a period of two months. The first instalment of Rs. 7 lakhs shall be paid within two weeks thereafter; and the third instalment of the remaining monies shall be paid before the expiry of the said two months. The learned counsel for the respondents further states that the respondents undertake to vacate the premises on or before 25.05.2021. Let an undertaking to the above effect be filed by the respondents within a period of two weeks.”

(Emphasis supplied)

14.2. Subsequently, by the order dated 28.05.2021, this Court recorded that the aforesaid undertaking given to the Court by the Respondent stands

breached and thereby, show cause notice was issued as to why contempt proceedings be not initiated against the Respondent.

14.3. By order dated 15.12.2021 this Court recorded that keys of the subject property has been handed over by the Respondent to the Petitioners during the course of the hearing.

14.4. Thereafter *vide* order dated 21.12.2021, this Court recorded the submission of the Petitioners that the Respondent has removed 19 (split) Air Conditioners ('ACs') from the subject property and thus, there has been a breach of the order maintaining *status quo* insofar as movable assets have been removed and the possession value of the property has been lessened by way of removal of fixtures/ACs.

14.5. By the order dated 24.01.2022, this Court recorded that the Respondent had failed to pay the use and occupation charges of Rs. 34 lakhs in violation of the undertaking dated 25.03.2021 and therefore held the Respondent guilty of contempt of court. The relevant portion of the order dated 24.01.2022 reads as under:

*"Today, the learned counsel for the respondent submits that on 20.01.2022 the respondent transferred Rs. 58,000/- into the petitioner's bank account, **but because of COVID-related constraints, the respondent does not have the monies to pay to the petitioners. The court notes that this argument is not available to the respondent after the undertaking given by him on 25.03.2021. The respondent has not paid the monies as directed. He owes over Rs. 34 lacs for the past many months. He has also not returned the 19 air conditioners.** The conduct of the respondent, as noted hereinabove, leave much to be desired, especially from a person who is registered Advocate.*

*7. **In view of the above, the court finds that the respondent is guilty of having committed contempt of the court.***

8. List for orders on sentencing on 02.03.2022."

(Emphasis supplied)

14.6. The Respondent is stated to have made payments of paltry sum of Rs. 12,000/- against the outstanding Rs. 34 lakhs and returned 11 Air-Conditioners (out of 19), as recorded in the order dated 02.03.2022. The Respondent offered to pay the Petitioners a sum of Rs. 2 lakhs on this date (which was paid thereafter).

14.7. By the order dated 13.07.2022, the Petitioners submitted that a sum of Rs. 32 lakhs remain to be paid by the Respondent. The Respondent however contended that only a sum of Rs. 24,20,000 is due and payable. He sought an opportunity to make the said payments. Accordingly, the Respondent was given one last and final opportunity to purge the contempt and to make payments to the Petitioners.

15. This matter was taken up for hearing on 07.02.2023.

16. The learned counsel for the Petitioner states that an amount of Rs. 32 lakhs continue to remain outstanding.

17. In reply, learned counsel for the Respondent does not dispute the aforesaid statement of the Petitioner. He states that, however, this Court should take a lenient view and not impose any punishment on the Respondent due to his young age.

17.1. The Respondent has purportedly tendered an unconditional apology for the non-compliance of the orders *vide* affidavit dated 26.06.2021. However, a perusal of the said affidavit shows that the Respondent is impugning the validity of the order dated 01.10.2020, 17.12.2020 and 15.02.2021 passed in C.M (M) 484/2020 by alleging that the said orders were not to his knowledge and the lawyer representing him had not communicated the said orders. To the same effect are the contents of the written submissions dated 10.02.2023 wherein the Respondent is seeking to

assail the validity of the aforesaid orders. The submissions assailing the validity of the orders is in teeth of the undertaking given to this Court on 25.03.2021 and the order dated 13.07.2022.

18. This Court is therefore of the opinion that the Respondent herein has not tendered an unconditional apology and infact, the apology is merely a lip-service and a stratagem to avoid the consequences of the wilful default and non-compliance committed by the Respondent.

19. The Respondent has alternatively also offered the plea of financial hardship to justify the non-payment of use and occupation charges, which plea has already been rejected by the predecessor bench *vide* orders dated 17.12.2020 and 15.02.2021 in CM(M) 484/2020 and 24.01.2022 in this petition. With respect to the contention of financial hardship as raised by the Respondent, it is instructive to refer to the judgment of Supreme Court in ***HSBC PI Holdings (Mauritius) Limited v. Pradeep Shantipershad Jain and Others, 2022 SCC OnLine SC 827***, whereby it was held as follows:

“66. Now so far as the submissions on behalf of the respondents that there is no wilful disobedience as they have no sufficient funds to deposit the shortfall amount and despite their best efforts, they are unable to get the requisite funds to comply with the order passed by this Court is concerned, at the outset it is required to be noted that all these submissions were made earlier in I.A. No. 68388/2021 seeking exemption from deposit of shortfall pursuant to order dated 06.05.2021 and the same have not been accepted by this Court and vide order dated 02.07.2021 their application for exemption has been dismissed. Thereafter, it shall not be open for the respondents to repeat and make the same submissions again and again. The respondents cannot be permitted to make the same submissions which have not been accepted and/or rejected by this Court earlier. Repetitive submissions which have not been accepted earlier by court that itself is a wilful disobedience and tantamount to contempt and it shows the conduct on the part of the contemnors.

67. Sufficient opportunities have been given to the respondents to deposit the shortfall amount so as to maintain a sum of USD 60 million in their Corporation Bank account. The first order passed by the learned Single

*Judge in their application under Section 9 of the Act, 1996 is passed in the year 2014 and even the same has been restored by this Court vide judgment and order dated 19.08.2020 and thereafter, further directions have been issued specifically directing the respondents to deposit the shortfall vide order dated 06.05.2021 and **thereafter their application for exemption from depositing the shortfall amount has been dismissed by this Court. Despite the above, the respondents have failed to deposit the shortfall amount and therefore, they have rendered themselves liable for suitable punishment under the provisions of the Contempt of Courts Act for wilful disobedience of not only the judgment and order passed by this Court dated 19.08.2020 in Civil Appeal No. 5158/2016 but also for wilful disobedience and non-compliance of order passed by this Court dated 06.05.2021 in the present application. The defence on behalf of the respondents lack bona fides. To maintain the rule of law and majesty of justice and so as to see that the faith and confidence of the people in judiciary is maintained, this is a fit case to entertain the present contempt proceedings and to punish the respondents under the provisions of the Contempt of Courts Act.***

(Emphasis supplied)

20. The record evidences that multiple opportunities have been granted to the Respondent since 01.10.2020 to clear the payments due and payable to the Petitioner. The Respondents plea of financial hardship is also not admissible for the reason that he vacated the subject property belatedly on 15.12.2021 despite being aware that the Court has fixed use and occupation charges of Rs. 1,60,000 vide order dated 01.10.2020. A law-abiding citizen would have vacated the premises immediately after 01.10.2020, if he did not have the wherewithal to pay the use and occupation charges. However, it is a matter of record that the Respondent continued to use and occupy the subject property until 15.12.2021; and as has come on record he was using it as a paying guest accommodation for income.

21. The submissions in the affidavit dated 26.06.2021 filed by the Respondent in these proceedings and the brief synopsis dated 10.02.2023 further fortify the views of this Court that the Respondent has no regard for

the orders passed by this Court in C.M (M) 484/2020 and the undertaking in these proceedings.

Sentence

22. In so far as the order on sentence is concerned, as Respondent has already been held guilty for contempt and this Court is not satisfied with the unconditional apology tendered by the Respondent and the same is hereby rejected.

23. The fact that the Respondent is a law graduate enrolled with the State Bar Council and presumably well versed with law, despite being aware about the binding nature of the orders of the Court has shown scant regard for the legal process. Infact, it appears to this Court that the Respondent using his knowledge of law intended to abuse the procedural safeguards by causing prejudice to the Petitioner in denying him the possession of the subject property as well as the use and occupation charges. This is substantiated by the fact that the Respondent, instituted the civil suit as a plaintiff seeking a relief of permanent injunction against the owners from interfering in his peaceful possession. The Respondent herein therefore took resort to legal process to injunct the landlord from interfering in his enjoyment of the subject property and sought to use the process to deny payment of admitted rent of Rs. 1,60,000 per month to the landlord. This Court after holding the Respondent guilty of contempt on 24.01.2022 gave him more than a year to purge the contempt.

24. This Court is of the opinion that if the Respondent is not met with the consequences of the wilful default and breach on the orders and undertakings given to this Court, it will embolden him to similarly abuse the process of law in future and victimize fellow citizens on the belief that the

sanctity of orders passed by the Court need not be protected and honored. This is a fit case where any leniency shown by the Court will be misunderstood as weakness.

25. Considering the conduct of the Respondent who has abused the legal process and shown disregard for the orders of the Court, this Court sentences Respondent, contemnor, Mr. Arvind Malik to undergo six (06) months simple imprisonment along with a fine of Rs. 2,000/- and in default of payment of fine, he shall further undergo fifteen (15) days simple imprisonment.

26. I hereby direct the Registrar General of this Court to take necessary steps to have the convicted contemnor taken into custody and cause him to send to Central Jail, Tihar under appropriate warrant of commitment for undergoing the sentence awarded as above.

27. The order dated 15.02.2021 passed by the Court in CM(M) 484/2020 has been sent to the Bar Council of Delhi along with the statement of Respondent recorded on 17.12.2020 for taking necessary action as may be deemed appropriate. Similarly, a copy of this order be also sent to the Chairman and Secretary of Bar Council of Delhi. The Bar Council of Delhi is directed to send a report on the actions initiated against the Respondent in furtherance to the order dated 15.02.2021 within a period of four weeks.

28. A copy of this judgment shall also be furnished to the convicted contemnor free of cost. He shall be informed by the Superintendent, Central Jail that he has the right to prefer an appeal against the conviction and order on sentence passed by this Court.

29. It is further directed that if in future, the Respondent herein similarly fails to comply with orders of the Court in any legal proceedings where he is

a party, the record of the present contempt petition shall be read in evidence and the subsequent conduct will be considered as an aggravated contempt of the Court within the meaning of Section 2(c) of the Contempt of Courts Act, 1971. It is directed that the Respondent herein will be under an obligation to disclose this order to the Court in which any subsequent contempt proceedings is filed against him.

30. With these observations, the present contempt petition and all pending applications, if any, are allowed.

MARCH 16, 2023

pkv/kv

MANMEET PRITAM SINGH ARORA, J

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