



[1]

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 1415/2022**

Date of Decision: **15.09.2023**

IN THE MATTERS OF:

COURT ON ITS OWN MOTION

..... PETITIONER

Through: Mr.Rajeev K.Virman, Sr.Advocate
(Amicus Curiae) with Mr.Mrigank
Behl, Ms.Deveshi Madan and
Ms.Gunjan Soni, Advocates.

Versus

MR. AMAR SINGH BHALLA
K-II, 26, GALI NO. 7,
BHUMIHEEN INDIRA AVAS
COLONY, NAHARI BABA ROAD,
SANGAM VIHAR
NEW DELHI-110080

.....RESPONDENT

Through: Ms.Aditi Sarawat and Mr.Jawahar
Raja, ASC (Civil) GNCTD for R-1 to
4.
Mr.Jai Wadhwa and Mr.Ronak
Karanpuria, Advocates for Amar
Singh Bhalla.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

Proceedings dated 14.09.2023

1. This *suo motu* contempt petition has been registered in terms of order dated 20.12.2022 passed by this court. The contemnor appears in person

along with his counsel.

2. The facts of the case indicate that the petitioner in W.P.(C) 8633/2019 titled as *Bala v. State (Govt. of N.C.T.) Delhi & Ors.* filed a claim before the Labour Commissioner, Employees Compensation, Government of NCT of Delhi under the provisions of Employee's Compensation Act, 1923. According to claimant, she is the wife of the deceased namely, *Jitender @ Jeetu*, who was working as a driver with the contemnor and was drawing a salary of Rs.15,000/- per month. The claimant further states that her husband was not paid the wages from 01.05.2013 by the contemnor. According to the claimant, the deceased made various requests to his employer for payment of the wages. Since the deceased refused to continue to work under the employment of the contemnor, the contemnor got annoyed with the deceased and consequently, started assaulting him and pushed him off from his office. The deceased then returned to his home and narrated the entire incident to his wife, who is the present claimant. According to the claimant, on 01.01.2015, the deceased disappeared and later on, only his dead body was found hanging on a tree.

3. The claimant, therefore, inquired about the deceased from the contemnor with whom the deceased was discharging his duties. However, no satisfactory answer was given to her. Thereafter, the claimant being left with no other option, had approached the concerned authority for an appropriate compensation. The Commissioner, Employee's Compensation, Labour Department registered Case No. CEC/SD/P/21/2015/1615-1616 and after considering the entire material, passed the award dated 17.10.2017. Paragraph nos.8 to 10 of the aforesaid award reads as under:-

“8. The age of the deceased at the time of accident/death was 24 years as per claim petition. Therefore, the age of deceased for the purpose of calculation for the benefit of death compensation is taken as 24 years. The monthly wages for the purpose of calculation of benefits is taken Rs. 8,000/- per month as per the notification issued by the Ministry of Labour and Employment vide dated 31/05/2010. Therefore, the compensation payable to the applicant/petitioner is calculated as under:-

i)	Relevant factor for 24 years of age	:	218.47
ii)	50% of last drawn monthly salary @ Rs. 8000/- per month	:	Rs.4,000/-
iii)	Amount of compensation	:	218,47X400
iv)	Compensation amount	:	Rs.8,73,880/-
v)	Penalty@ 50% of compensation amount	:	Rs.4,36,940/-

9. The Claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from one month after the accident and Rs.5000/- towards funeral charges as provided under section 4(4) Employee's Compensation Act, 1923.

10. Therefore, Respondent Sh. Amar Singh Bhalla, owner of M/s Rahul Dampher & Tractor Service, .Brick Supplier, K 11-26, Gali No. 7, Bhumiheen Indira A.vas Colony, Nahari Baba Road, Near M.C.D. School, Sangam Vihar, New Delhi - 110080, is directed to deposit in this court an amount of Rs. 8,73,880/- (Rupees Eight Lakh. Seventy Three Thousand Eight Hundred Eighty Only) on account of compensation payable to the applicants/Petitioners along, with interest @ 12 % p.a. w.e.f. 31.01.2015 till its realization and further the penalty amount of Rs. 4,36,9410/- (Rupees Four Lakh Thirty Six Thousand Nine Hundred Forty Only), through Pay order in favour of "Commissioner Employee's Compensation - VIII" within a period of thirty (30) days from the pronouncement of this order for disbursement to the Applicant/ Claimant.”

4. The award in question attained finality as the same has not been challenged by the contemnor. Since the awarded amount was not received by the claimant, she filed the writ petition being W.P.(C) 8633/2019 praying for the following reliefs:

"A- To direct the Respondents to investigate into the matter and find out as to what level the case has been hushed up and also punish the

concerned erring Officers who have buried the Petitioner's case for the last more than four years.

B- To direct the Respondent no. 3 to disburse the said award to the petitioner without any further delay and with interest thereon @24% p.a.

C- Pass any such other or further orders which in the circumstances of the case the Hon'ble Court deem just and proper in the favour of the Petitioner as against the Respondents.

D- Award exemplary costs and damages in favour of the Petitioner as against the Respondents No. 3 to 5."

5. In W.P.(C) 8633/2019, the petitioner, who is the widow of the deceased, is essentially claiming for the implementation of the award. After issuance of notice, since nobody appeared on behalf of the contemnor, therefore, this court on 13.09.2019, directed for issuance of non-bailable warrant (hereinafter as 'NBW') against the said contemnor. Later on, the contemnor appeared and therefore, this court suspended the order of the issuance of NBW.

6. On 27.09.2019, the matter was further considered and the contemnor was directed to file the affidavit of his assets as on the date of the incident i.e., 01.01.2015, on the date of award i.e., 17.10.2017 as well as on the date of passing of the order dated 27.09.2019.

7. The matter was further taken up for hearing on 18.10.2019 and the contemnor filed his affidavit of assets. The matter was thereafter, taken up for consideration on 06.03.2020 and the order dated 27.09.2019 was slightly modified to the extent mentioned in order dated 06.03.2020 and the contemnor was directed to report the compliance on 08.05.2020.

8. It appears that thereafter, no substantial hearing had taken place on account of the Covid-19 pandemic. When the matter was taken up for

hearing on 13.07.2022, since nobody appeared on behalf of the contemnor, the court notice was directed to be issued to the contemnor and his counsel. On 21.09.2022, this court recorded that the contemnor intentionally avoided his appearance and accordingly, notice was directed to be issued through the concerned SHO. On 12.10.2022, the contemnor appeared in person and he undertook that he would make the entire payment along with interest within two months. He was directed to file a duly attested affidavit to the effect of his undertaking within a period of one week. It is seen that there was no affidavit filed by the contemnor as recorded in order dated 12.10.2022.

9. On 01.12.2022, this court took note of the fact that the contemnor remained absent and despite contemnor's undertaking, no payment was made. Therefore, notice was again directed to be served through concerned SHO to the contemnor. The matter was thereafter, taken up for consideration on 20.12.2022 and the statement of the contemnor was recorded that he was not in a position to pay the amount, notwithstanding the undertaking given by him on 12.10.2022. The court, therefore, directed for issuance of contempt notice to the contemnor and reply was directed to be filed. The order dated 20.12.2022 reads as under:-

"1. Pursuant to the directions issued to the concerned SHO, the respondent no. 5 is present in Court. While not denying that he had undertaken before this Court on 12.10.2022 to pay the due amount to the petitioner on or before 31.10.2022, he now submits that he is not in a financial position to pay the amount.

2. Mr. Rajeev K. Virmani, learned Senior Advocate, Amicus Curiae appointed in the matter, while disputing this position, hands over a copy of a Pamphlet which prima facie shows that the son of respondent no. 5 had participated in the recent MCD elections in Delhi. The said pamphlet also contains a picture of the respondent no.5 , and is taken on record.

3. In these circumstances, this Court is inclined to accept the submission of the learned Amicus Curiae that the respondent no. 5 despite having the means to pay the amount due under the award, which has attained finality, is trying to deliberately mislead the Court and deprive the petitioner, a young widow with a minor daughter, who has been waiting for the amount for the last many years. It therefore, prima facie appears that the respondent no. 5 is wilfully refusing to abide by its undertaking given to this Court, as record in the order dated 12.10.2022.

4. Issue contempt notice to respondent no. 5. Notice is accepted by respondent no. 5, as also his counsel, who prays for and is granted one day's time to file reply. The Registry is directed to allocate a separate number to the Contempt Petition.

5. List on 21.12.2022.

6. The contemnor/respondent no. 5 will remain present in Court on 21.12.2022. The concerned SHO will ensure that respondent no. 5 is present in Court tomorrow as well.”

10. It is to be noted that till date, there is no reply filed by the contemnor despite matter being taken up on numerous occasions.

11. When this court took up the said contempt petition for consideration on 21.12.2022, it was found that the contemnor did not appear and accordingly, fresh NBW was directed to be issued. The order dated 21.12.2022 reads as under:-

“1. None appears for any of the respondents.

2. Issue Court Notice to Mr. Santosh Kumar Tripathi, learned Standing Counsel (Civil), GNCTD.

3. The respondent no. 5, who had appeared in the Court on 20.12.2022 after being served through the SHO of the area concerned, is again not present today.

4. Let respondent no. 5 be once again seiwed through the concerned SHO for 05.01.2023.”

12. On 05.01.2023, this court took note of the fact that the NBW was not executed and accordingly, further opportunity was granted to the SHO to execute the same. On 02.02.2023 again, the NBW remained unexecuted. Details of some of the properties of the contemnor were noted and accordingly directions for attachment and sale of those properties were issued in terms of Section 5 of the Revenue Recovery Act, 1890. The said order dated 02.02.2023 reads as under:-

"1. On the last date, taking into account that the respondent no.1/Mr. Amar Singh Bhalla appeared to be deliberately avoiding to appear before this Court, Non-Bailable Warrants (NBWs) were issued against him with a direction to the SHO, Sangam Vihar, Delhi to Khera Garg, Agra, U.P. The Collector, Agra will send a report in this regard to this Court within a period of eight weeks to execute the same.

2. Today, Mr. Jawahar Raja. learned Additional Standing Counsel for Govt. of NOT of Delhi submits that the NBW against Mr. Amar Singh Bhalla could not be executed as despite repeated visits to his residence by police personnel, he was not found as it was reported by his Wife and son that he is no longer residing with them. He however submits that the mobile earlier being used by him, was found to be in the possession of his wife.

3. Even though the information given by the respondent's wife and son that they are not in touch with him seems to be incorrect, Mr Virmani, learned Amicus Curiae, submits that since the respondent no. 1 IS not traceable, the respondent no. 3 be directed to issue a recovery certificate and forward the same to the Collector, Agra for being executed by attachment of his property at Agra, details whereof, have been furnished by the respondent no. 1 himself in his affidavit of assets filed before this Court.

4. Taking into account that the amount payable under the Award still remains unpaid as also the fact that the respondent no. 1 had himself given the details of his property at Agra, the respondent no. 3 is directed to issue within 10 days, a recovery certificate as per Section 5 of the Recovery Revenue Act, 1890 and forward the same to the Collector, Agra with a direction to the Collector, Agra to take steps to execute the same by attachment and sale of the respondent's 1/3rd share in property being agricultural land in Kh. nos. as Khatauni No.00283, Khasra Nos. 918/46,

918/1 min, 918/45 and 922/80 (total area= 2.1900 hectare) situated in village Sonikhera, Pargana & Tehsil -Khera Garg, Agra, U.P. The Collector, Agra will send a report in this regard to this Court within a period of eight weeks.

5. In the meanwhile, it will also be open for the petitioner to contact the respondent's Bank, i.e., Oriental Bank of Commerce, Batra Hospital, Sangam Vihar Branch to obtain information about the amount, if any, lying in his bank account bearing no. 06292041007894. In case the petitioner contacts the Branch Manager for information in this regard, necessary cooperation will be extended to her.

6. Fresh NBWs be also issued against the respondent no.1 and with a direction to the SHO, Sangam Vihar to execute the same before the next date.

7. List on 05.04.2023.

8. A copy of this order be forwarded to the Collector Agra and also be given to the petitioner under the signatures of the Court Master.”

13. It is also to be noted that the order of NBW remained unexecuted and accordingly, fresh NBW was issued. The matter was, thereafter, taken up for consideration on 05.04.2023. Again, it was noted that the NBW remained unexecuted. However, further time was granted for its execution. Order dated 05.04.2023 reads as under:-

“1. The record shows that despite directions having been issued to the Collector, Agra on 02.02.2023, no report has been filed by the Collector, Agra. Let a reminder be sent to the Collector, Agra with a direction to forthwith comply with the directions already issued by this Court on 02.02.2023.

2. Mr. Jawahar Raja, who appears on behalf of the SHO, Sangam Vihar, Delhi submits that despite repeated efforts made by the police personnel, Mr. Amar Singh Bhalla is still not traceable. He assures the Court that steps are being taken to ascertain his whereabouts from his family members.

3. Issue fresh NBWs, against Mr. Amar Singh Bhalla with a direction to the SHO, Sangam Vihar, Delhi to execute the same for 03.05.2023. A status report be also filed by the Joint Commissioner, Employees Compensation, Labour Department, i.e the respondent no. 3 clearly stating the steps taken for issuance of the recovery certificate.

4. At this stage, Mr. Rajeev K. Virmani, learned Senior Advocate, Amicus Curiae appointed in the matter, submits that even though as per the police, the contemnor is not traceable, he and his family members are carrying out their transport business from the same residential address where Mr. Amar Singh Bhalla was residing. He, therefore, submits that if the Aadhaar card of Mr. Amar Singh Bhalla is suspended by UIDAI, it is quite possible that he may appear before this Court in terms of the earlier orders.

5. Mr. Abhishek Saket, who regularly appears on behalf of UIDAI is present in Court, is requested to enter appearance. He prays for and is granted time to obtain instructions in this regard.

6. List on 03.05.2023.”

14. On 03.05.2023, it was again noted that the warrant remained unexecuted. However, certain directions were issued with respect to the suspension of Aadhar Card of the contemnor and with respect to the property situated in Agra.

15. Since the warrant remained unexecuted, therefore, on 26.05.2023, this court directed that in case the warrant is not executed, the Commissioner, Delhi Police will have to examine the matter.

16. On 31.05.2023, the NBW was executed by the police and the contemnor was produced before this court.

17. The continuation of his custody till 01.06.2023 was directed and appropriate directions were given to the Delhi High Court Legal Services Committee to appoint a counsel on behalf of the contemnor.

18. When the matter was taken up for consideration on 01.06.2023, the contemnor again undertook that he would pay a sum of Rs.2 lakhs to the

petitioner within a period of one week. He also undertook that he would pay the remaining principle amount of Rs.6,73,880/- to the petitioner in monthly installments of Rs.50,000/- commencing from July, 2023. He also assured that the monthly instalments would be paid on or before the 5th of every month. He also produced *Mr.Hari Om*, *Mr.Sanjay* and *Mr.Hari Singh Pahadiya* as his sureties.

19. In view of the undertaking and taking into consideration the sureties being produced by the contemnor, this court directed for the release of the said contemnor subject to compliance of the directions and undertaking recorded in the said order. For the sake of clarity, order dated 01.06.2023 reads as under:-

“1. Mr.Jai Wadhwa, Advocate from the Delhi High Court Legal Services Committee enters appearance for Mr. Amar Singh Bhalla, who has been produced in Court.

2. Mr. Bhalla undertakes to pay a sum of Rs.2,00,000/- to the petitioner/Ms. Bala within one week. He further undertakes that the remaining principal sum of Rs.6,73,880/- will be paid by him in monthly instalments of Rs.50,000/- per month commencing from July, 2023 and assures the Court that this amount will be paid on or before 5th of every month. He further prays that after he pays the principal amount, this Court may, taking into account his financial position, appropriately reduce the rate of interest granted under the award. He, therefore, prays that he may be released from custody on the surety of Mr. Hariom, Mr.Sanjay and Mr.Hari Singh Pahadiya so as to enable him to make arrangements to make the payment to the petitioner.

3. Mr.Hariom, Mr.Sanjay and Mr.Hari Singh Pahadiya are present in Court and state that they will ensure that Mr.Bhalla appears in Court on the next date and on all dates as may be directed by this Court and also makes the payment in instalments as undertaken by him. They hand over copies of registration certificates of their respective vehicles being no. HR38AA4476, HR13P0820 and HR13R4573 respectively and submit that they are aware that their vehicles may be sold for liquidating the amount to

be paid to the petitioner. Copies of the three registration certificates of the aforesaid three vehicles are taken on record.

4. Mr. Rajeev K Virmani, the learned senior counsel appointed as Amicus Curiae assures the Court that the petitioner will abide by the orders as may be passed by this Court in respect of the rate of interest.

5. The aforesaid undertakings given by Mr. Bhalla and the three sureties are accepted. Mr. Bhalla is directed to be released from custody with a direction to him to report to the SHO, Sangam Vihar at 10:30 AM on every Monday and also to remain present before this Court on the next date.

6. A copy of this order be forwarded to the Jail Superintendent, Tihar Jail, Delhi as also to the concerned RTO Offices for compliance.

7. List on 25.07.2023.

8. A copy is this order be given dasti under the signature of the Court Master.”

20. On 25.07.2023, when the matter was taken up in the first round, it was noted that nothing was paid to the petitioner. However, when the matter was kept in the pass-over, the contemnor arranged for a sum of Rs.20,000/- in cash and the said amount was paid to the petitioner. He also undertook that a sum of Rs.30,000/- would be deposited online in the petitioner's bank account. It is, thus, seen that even the undertaking recorded on 25.07.2023 was not obeyed and except a sum of Rs.20,000/- in cash and Rs.10,000/- via UPI, no further amount was paid to the petitioner by the contemnor.

21. *Vide* order dated 25.07.2023, the following observations were made:-

“1.0 As per order dated 01.06.2023, Mr. Amar Singh, the respondent had undertaken to pay a sum of Rs.2,00,000/- to the petitioner/Ms. Bala within one week. He further undertook to pay the remaining principal sum of Rs.6,73,880/- in monthly instalments of Rs.50,000/- per month commencing from July, 2023 and assured the Court that this amount will be paid on or before 5th of every month. However, no amount has been paid despite undertaking. Today, Ld. Counsel for the respondent submits that the respondent is making efforts to arrange further funds. This court remains

unimpressed by the submissions made without any plausible explanation taking into account, the backdrop of the facts of this case.

2.0 Pass-over is sought to make arrangement for payment of Rs.50,000/- today.

3.0 Passed-over for 02:30 p.m.

At 03:15 p.m.

4.0 Ld. counsel for the respondent submits that the respondent could arrange a sum of Rs.20,000/- which has been paid to the petitioner in cash, which she confirms.

5.0 It is undertaken by the respondent that balance amount of Rs.30,000/- shall deposited online in the petitioner's bank account, details of which he has.

*6.0 Ld. counsel for the respondent undertakes that the respondent shall **pay a sum of Rs.2 lacs by 25.08.2023** and the instalment of Rs. 50,000/- for the month of August, 23, shall be paid by 05.08.2023.*

6.0 List on 14.09.2023."

22. Today, when the matter is called out, the contemnor submits that he is not in a position to arrange for the amount as has been undertaken by him. This court is shocked and surprised by the statement that has been made by the contemnor. The contemnor, not only once but on numerous occasions, had undertaken that he would comply with the directions passed by this court and would make the entire payment as has been awarded to the petitioner. The contemnor is not disputing about his undertaking.

23. There is no reply filed by the contemnor, much less a satisfactory reply and no suitable answer has been given as to why the undertaking was given by him when he was not in a position to comply with the directions passed by this court. No efforts have been made to obey his undertaking, much less sincere efforts. He only says that he is the sole bread earning

member of his family. A natural corollary of the said statement follows that the contemnor must be doing some work to earn his livelihood. However, nothing is brought on record to satisfy this court about the reasons for non-compliance of his own undertaking.

24. This court is of the considered opinion that the contemnor has not only wilfully disobeyed the directions passed by this court but has also wilfully disobeyed his own undertaking.

25. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter as 'Act of 1971') defines civil contempt. The same reads as under:-

"2. Definitions.—In this Act, unless the context otherwise requires,—

.....

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"

26. Punishment for contempt of court is prescribed under Section 12 of the Act of 1971. The same reads as under:-

"12. Punishment for contempt of court.—

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purposes of sub-sections (4) and (5),—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

27. At this juncture, this court finds it appropriate to traverse through various judicial pronouncements pertaining to the jurisprudence of civil contempt.

28. The Hon'ble Supreme Court, very recently, in the case of *Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased) rep. by Lrs. and Others*¹, while relying upon a catena of judgments dealing with the aspect of necessary ingredients to establish contempt of court, has held as under:

“40. The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice.

41. Any interference with the course of justice is an affront to the majesty of law and the conduct of interference is punishable as contempt of court. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd., (1988) 4 SCC 592).

*42. If a party, who is fully in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. **To establish contempt of court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a breach of the undertaking.***

*43. The following conditions must be satisfied before a person can be held to have committed civil contempt : **(i) there must be a judgment, decree, direction, order, writ or other process of a court; (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court; and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court must be wilful.** [Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai, (2008) 14 SCC 561]*

*48. To hold a person guilty of civil contempt, “wilful disobedience” is an indispensable requirement. **Whether the conduct of contemnor is deliberate and wilful can be considered by assessing the material on record and attendant circumstances.**”*

[Emphasis supplied]

29. It is palpably observed that for establishing contempt, there must be a

¹2023 SCC OnLine SC 1139

disobedience to the judgment, decree, order or other process of a court. In the case of *Ram Kishan v. Tarun Bajaj*², while elucidating upon the meaning of the expression ‘wilful disobedience’ for the purpose of establishing guilt for contempt of court, the Hon’ble Supreme Court has observed as under:—

“12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful act does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

[Emphasis supplied]

30. With respect to the undertaking given by a person in a pending proceeding based upon which the court decides upon a particular course of action, the Hon’ble Supreme Court in the case of *Balwantbhai Somabhai (supra)* has held as under:

*73. An undertaking or an assurance given by a lawyer based upon which the court decides upon a particular course of action would definitely fall within the confines of “undertaking” as stipulated under Section 2(b) of the Act, 1971 and the breach of which would constitute “civil contempt”. As held in *M. v. Home (supra)* relied upon by this Court in *Rama Narang (supra)* that if a party or solicitor or counsel on his behalf, so as to convey to the court a firm conviction that an undertaking is being given, that party will be bound*

² (2014) 16 SCC 204

*and it will be no answer that he did not think that he was giving it or that he was misunderstood. **The breach of an undertaking given to a court by a person in a pending proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.***

[Emphasis supplied]

31. It is pertinent to highlight the discussion in the case of ***Suman Chadha v. Central Bank of India***³, regarding the context in which an undertaking given by a party should be perused. The relevant paragraphs of the said decision read as under:

“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.”

32. In ***Rita Markandey v. Surjit Singh Arora***⁴, the Hon’ble Supreme Court took a categorical stand that even if parties have not filed an undertaking before the court but if the court was induced to sanction a particular course of action or inaction on the representation made by a party and the court ultimately finds that the party never intended to act on the said representation or such representation was false, the party would be guilty of committing contempt. Paragraph no. 12 of the said decision reads as under:

³AIR 2021 SC 3709

⁴(1996) 6 SCC 14

*“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. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated 5-10-1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. ...**”*

[Emphasis supplied]

33. A bare perusal of the facts of the present case would indicate that the contemnor has flagrantly flouted his own undertakings on numerous occasions. It is seen that the contemnor, on 12.10.2022, gave an undertaking to the court that he would submit the entire amount alongwith the interest within two months. However, the same was never done.

34. Subsequently, on 01.06.2023, for the second time, the contemnor undertook that he would pay a sum of Rs. 2,00,000 to the petitioner in a week and the remaining amount would be paid in instalments. This court, relying on the undertaking given by the contemnor, directed for the release of the said contemnor *vide* order dated 01.06.2023. However, to the utter surprise of this court, the contemnor blatantly disobeyed his own assurance given to the court in the form of an undertaking.

35. It can also be seen that the contemnor, during the course of hearing on 25.07.2023, once again undertook to pay a sum of Rs. 20,000 in cash and Rs. 30,000 *via* UPI. However, even the said fraction of the total sum has not

been paid in full, till date.

36. It is, thus, observed that the contemnor wilfully disobeyed his own undertakings, giving several false assurances on various occasions to the court. It is also to be noted that because of the contemnor's undertaking only, this court had taken a particular view to release the contemnor from the jail. Had the same not been done, the court would have proceeded with the matter at that stage itself.

37. This court is of the opinion that one cannot be allowed to trounce the majesty of law and pollute the streams of justice by brazenly engaging in contumacious conduct with an aim of hoodwinking the judicial system. The edifice of a vibrant constitutional democracy rests on the pillars of rule of law, which needs to be preserved with full vigour to maintain the sanctity of judicial proceedings.

38. Therefore, an unbridled interference with the administration of justice and wilful disregard for the judicial proceedings has to be checked on the anvil of contempt jurisprudence, lest it undermines the dignity of the judiciary in the eyes of the common man.

39. Having considered the entire sequence of facts and repeated undertakings being wilfully breached by the contemnor, this court finds that this is a fit case where the contemnor should be held guilty for commission of the contempt under the provisions of the Act of 1971. Accordingly, the contemnor is found guilty of committing the contempt of this court for wilfully disobeying his undertakings.

40. This court would now consider this matter for passing an appropriate order on the question of sentence. The case is adjourned till 15.09.2023. However, for the reasons recorded in the order, the contemnor is sent to

judicial custody to be produced on 15.09.2023.

Proceedings dated 15.09.2023

41. The contemnor is produced before the court.

42. Learned counsel appearing on behalf of the contemnor submits that the contemnor is a first time offender and he had never intended to disobey the undertaking given before this court. It is only on account of the circumstances that he was not able to abide by the undertaking. He also submits that the contemnor has no means to pay the amount to the petitioner as he is the sole bread earner in his family; and therefore, a lenient view should be taken while awarding the punishment to the contemnor.

43. Learned *Amicus Curiae* submits that in the instant case, it is not only once but at least for three occasions, the contemnor has violated the undertaking given before this court.

44. According to the learned *Amicus Curiae*, the contemnor actively participated in the MCD election of the year 2022. He also submits that his active participation can be seen from various advertisement material, including posters, some of them have been referred during the course of hearing. He also submits that the contemnor was operating a transport business in the name of M/s Rahul Dampher & Tractor Services. He further submits that the contemnor owns immovable properties at Agra. The details of those properties have already been taken note of in earlier proceedings.

45. Learned *Amicus Curiae* further submits that during the pendency of the contempt proceedings, the contemnor did not even make an endeavour to show his *bonafides* while making any payment of substantial amount to the petitioner. He further submits that on various dates, this court has already

taken a lenient view giving consideration to the fact that the petitioner in the instant case is only interested in getting her money; and accordingly, sufficient time was given to the contemnor to make the payment of the dues which were undertaken by the contemnor before this court.

46. I have considered the submissions made by learned counsel appearing on behalf of the parties and I have also given a thoughtful consideration to various aspects involved in the instant case.

47. Even at this stage, had the contemnor offered any reasonable amount to the petitioner, this court would have been inclined to defer the factum of awarding punishment. Unfortunately, the contemnor has not even made miniscule of efforts to abide by his own undertakings and pay any reasonable sum to purge the contempt. Therefore, this court is duty bound to ensure that necessary consequences follow. The Hon'ble Supreme Court, in the case of *Kapildeo Prasad Sah v. State of Bihar*⁵, has held that the power to punish for contempt is necessary for the maintenance of effective legal system and the same is exercised to prevent perversion of the course of justice.

48. Under the facts of the instant case, for the purpose of awarding punishment, the sequence of events will have to be properly appreciated. This court has already noted the same not only once, but on numerous occasions, that the opportunity was extended to the contemnor to obey the undertaking given before this court.

49. It appears that the contemnor has not made even a slightest of endeavour to obey the undertaking given to the court. He has brazenly violated the directions and the undertakings. It also appears that he does not have any respect for the court of law.

⁵ (1999) 7 SCC 569

50. This court has taken note of the fact that the mere imposition of the fine would neither serve the purpose of maintaining the dignity of this court nor would be appropriate in the facts and circumstances of the present matter. Even in these contempt proceedings, this court had to issue NBW several times to ensure the presence of the contemnor as he was evading appearance. Therefore, this court is constrained to impose the maximum sentence as the contemnor has repeatedly breached his own undertakings.

51. Considering the facts of the instant case and the rule of law laid down in the foregoing decisions, it is deemed appropriate to punish the contemnor with simple imprisonment for a term of six months, commencing from 14.09.2023.

52. Let the contemnor be sent to the concerned prison to undergo his remaining sentence as imposed by this order.

53. For further consideration, list this case on 05.02.2024 along with W.P.(C) 8633/2019.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 15, 2023*MJ/nc/rs/shs*