

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

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Date of order : 7.3.2007

+ CONT.CAS(C) 367/2005

GURUCHARAN BHATIA Petitioner
Through Mr. K.R. Chawla, Advocate

versus

PREM KUMAR BHATIA & ANR. Respondents
Through Mr. V.K. Shali, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER

S.Muralidhar, J. (open court)

1. In respect of property at No. 7/30, Roop Nagar, Delhi, the Petitioner filed Civil Suit No.46/1994 against the Respondents, for possession, mandatory injunction and damages. By a judgment and decree dated 17.1.2004, the learned Additional District Judge, Delhi decreed the suit and directed the Respondents to pay a sum of Rs. 26 lakhs as damages, and in addition, directed the contemnors/respondents to pay a sum of Rs.20,000/- per month as damages for overstay till the handing over of the possession of the property to the Petitioner.

2. Aggrieved by the judgment and decree dated 17.1.2004, the Respondents appealed to this Court by filing RFA No. 203/2004. A settlement was arrived at between the parties during the pendency of the appeal and a memorandum of understanding was drawn up in terms of which the appeal stood disposed of on 15.10.2004. This

Court took note of the fact that the joint application filed by the parties was supported by their respective affidavits. It was recorded that the parties “shall be bound by the understanding recorded in the application as also by the undertakings given and they shall abide by the same”. As per the memorandum of understanding, the Respondents herein were required to hand over vacant and peaceful possession of the ground floor of the premises No.7/30, Roop Nagar under their occupation on or before before 31.3.2005. As regards the damages for months of 1.10.2004 till 31.10.2005, the Respondents in the appeal (petitioners herein) “as a matter of goodwill and gesture” agreed not to press for the payment of the same. It was further agreed that the Respondents herein would withdraw their intervention application filed in a suit to which the Petitioner herein and Shri Ramesh Chand Bhatia were parties.

3. When the premises in question were not vacated by 31.3.2005, the Petitioners filed the present contempt petition on 3.5.2005. Notice was directed to issue on 5.5.2005.

4. At the hearing on 2.2.2007, this Court was informed by the Respondents that they had handed over the keys of the property to the Court of Smt. Neena Krishna Bansal, the learned ADJ in an execution case. The Court then directed the Respondents to explain why the possession was not handed over to the Petitioner.

5. The Respondents have on 2.3.2007 filed an affidavit pointing out that the Petitioner had filed an execution petition being Execution Case No. 271/06 in the Court of the learned ADJ. In the said proceedings, Shri Ramesh Chand Bhatia, the brother of the

Petitioner, claiming to be the co-owner of the property in question, filed an application for a direction that the judgment debtors (the respondents herein) should be directed to deposit the keys with the Court and not hand over the possession to the Petitioner herein.

6. The Respondents have with their affidavit enclosed the records of the proceedings before the executing court, and in particular the proceedings dated 15.1.2007, 24.1.2007, 31.1.2007 which read as under:

“Ex. 1226/06

15.1.07

Present : Ld counsel for DH.
JD No. 2 in person.

Reply filed to the objections of JD. Copy given. Certified copies of the order of Hon'ble High Court and Supreme Court also filed. Ld. counsel Sh. Kamlesh Kumar also present for co-owner Sh. Ramesh Bhatia who is claiming that the keys of the property be handed over to him. It is submitted that he has already moved appropriate application in the court of Ld ADJ.

To come up for arguments on the objections on 24.1.07.

Sd/-
ADJ/15.1.07”

“Ex. No.1226/2006

24.01.07

Present : DH along with Ld. Counsel.
JD no.2 in person.

JD no.2 has produced the keys of the premises to be handed over in the Court. It is claimed that there is dispute between DH and co-owner. However, Ld. Counsel for DH has submitted that similar objections had been taken in the objection/appeal by the JD but the same have already been dismissed by the Hon. High Court.

The JD is willing to deposit the keys in the Court to be handed over to DH for delivery of

possession. It is agreed between the parties that the JD shall first get the premises inspected and thereafter will hand over the keys in the Court. To come up for further proceedings on 31.1.2007.

Sd/-
ADJ/24.1.07”

“Ex. No. 1226/2006

31.01.07

Present : DH along with Ld. Counsel.

Sh.Prem Bhatia and Sh.Vishav Kumar
Bhatia

Jds in person along with Ld. Counsel.
Ld. Counsel on behalf of objector Sh.
Ramesh
Chand Bhatia.

Sh. Ramesh Chand Bhatia, Objector has filed his objections against the handing over of the keys to the decree holder.

The judgment debtor has moved an application under Section 151 CPC for handing over the possession of the suit property. It is submitted in the application that the JDs have vacated the suit premises and the keys of the premises are being handed over in the Court, today itself. Let the statements of the parties be recorded.

Sd/-
ADJ/31.01.2007”

“Statement of Decree holder Dr. Gurcharan Lal Bhatia, S/o Late Sh. Mulakh Raj Bhatia, R/o 7/30, Roop Nagar, Delhi. On S.A.

I have already inspected the suit premises and have no objection to the handing over of the keys by the JD in the Court till the disposal of the objections by Sh. Ramesh Chand Bhatia.

RO & AC
Sd/-
ADJ/Delhi
31.1.2007.”

“31.1.2007.

Present : As above.

The keys of the premises have been handed over to the Court which be kept in sealed envelope till the disposal of objections of Sh. Ramesh Chand Bhatia. Statement of decree holder and judgment

debtors recorded. To come up for reply and arguments on the objections of Sh. Ramesh Chand Bhatia on 23.2.2007. The objections of JDs are dismissed as, withdrawn in view of their statements.

Sd/-
ADJ/Delhi
31.1.2007.

7. It is seen from the above proceedings that on 31.1.2007 the executing court recorded the statement of petitioner here to the effect that he had "no objection to the handing over of the keys by the judgment debtors (respondents) in the Court till the disposal of the objections by Shri Ramesh Chand Bhatia." Despite the aforesaid proceedings having taken place before the executing court on 31.1.2007, this fact was not brought to the notice of this Court on 2.2.2007 by the counsel for the Petitioner.

8. The Court fails to appreciate how the Petitioner could, after filing the present contempt petition, filed a separate execution application before the Trial Court and not bring that fact to the notice of this Court. More importantly, the Petitioner never disclosed to this Court the various proceedings that were taking place in the said execution proceedings. Those facts were brought on record only when the Respondents herein filed a reply affidavit pursuant to this Court's order dated 2.2.2007.

9. Mr. Chawla, the learned counsel for the Petitioner submits that merely because the order or decree is executable, that would not take away this Court's jurisdiction under the Contempt of Courts Act, 1971 ('Act') as long as the Court were satisfied that there was a violation of the order of this Court. He places reliance on the judgment of the Hon'ble Supreme Court in ***Rama Narang v. Ramesh***

Narang 2006 IV AD (SC) 248. He also relies on the decisions in **Pearey Lal & Sons Pvt. Ltd. v. Dabur India Ltd.** 2005 (81) DRJ 20 and **Sarladevi v. Bharatkumar** 1988 CRL. L.J. 558. Mr. Chawla points out that apart from the question of handing over possession, the Petitioner has not paid any damages since 1.4.2005 till the date of deposit of keys in the Trial Court. He also states that Respondents have not withdrawn the intervention application filed by them in the proceedings to which the Petitioner and Shri Ramesh Chand Bhatia are parties.

10. In reply, Mr. Shali, the learned counsel for the Respondents points out that the Petitioner has suppressed the fact of filing of the execution proceedings, and that having opted for execution proceedings, the Petitioner cannot pursue simultaneously the contempt proceedings as well. He relies on the judgment of the Hon'ble Supreme Court in **Babu Ram Gupta v. Sudhir Bhasin** AIR 1979 SC 1528, and the decisions in **Northern Aromatics Ltd. v. Shahzeb Khan** 2006 (90) DRJ 23, **Hindustan Motors Ltd. v. Amritpal Singh Nayar** 100(2002) DLT 278, **D.S. Marketing Pvt. Ltd. v. Syrus Marketing** 128(2006) DLT 60, **Alora Trading Co. Ltd. v. Sanjay Ghai** 98(2002) DLT 139 to contend that the inference of wilful default in complying with an undertaking should not be lightly inferred, and that the contempt power must be sparingly exercised. He submits that contempt petition is not a substitute for execution proceedings. Mr. Shali further refers to the fact that the terms of compromise did not contemplate payment of damages beyond 31.3.2005. As regards the withdrawal of the intervention application, he refers to an application dated 23.3.2005 filed by the Respondents seeking to withdraw their intervention application.

While he does not deny that no orders have been passed thereon, he submits that as far as the Respondents are concerned, they have complied with their obligationunder the memorandum of understanding.

11. While the law as laid down by the Hon'ble Supreme Court in ***Rama Narang v. Ramesh Narang*** is fairly well settled, the same decision reiterates that the exercise of the power of contempt is a matter of court's discretion having regard to the facts and circumstances of a case. The Hon'ble Supreme Court in ***Rama Narang*** (supra) referred to the earlier decision in ***Babu Ram Gupta*** (supra) where the Court had drawn, in the context of Section 2 (b) of the Act, a distinction between a compromise arrived at between the parties or a consent order passed by the Court at the instance of the parties, and a clear and categorical undertaking given by any of the parties.

12. The decisions cited by counsel for the petitioner turn on their own facts, and cannot straightway be applied to the instant case. Here, after filing the present contempt petition, the Petitioner has opted to file execution proceedings, and has not disclosed that fact to this Court. He has participated in the execution proceedings and further agreed to abide by the orders passed in those execution proceedings. The statement made by the Petitioner before the executing court on 31.1.2007 agreeing that the keys will remain deposited with the executing court till the disposal by it of the objections filed by Shri Ramesh Chand Bhatia, cannot be brushed aside lightly since that is also a statement made by the Petitioner before a court. It is, therefore, not open to the Petitioner to insist

that this Court should punish the Respondents for contempt of court for not giving possession of the premises in question to the Petitioner in terms of the memorandum of understanding which led to the order dated 15.10.2004 passed by this Court in RFA No. 203/2004. As has been held in the decisions relied upon by the learned counsel for the respondents, the power to punish for contempt, cannot be exercised lightly and must be sparingly used in the facts and circumstances of a particular case. The Respondents have not been avoiding the execution proceedings, and they have in fact participated in those proceedings and agreed to part with possession by depositing the keys in the court. In these circumstances, it cannot be said that the Respondents have wilfully disobeyed the orders of this Court.

13. As regards the condition concerning withdrawal of intervention application, the Respondents are right in contending that by filing the application on 23.3.2005 in the Court of the learned ADJ where the suit between Shri Ramesh Chand Bhatia and the Petitioner is pending, they have discharged that obligation. As regards the payment of damages beyond 31.3.2005, there is no clause in the memorandum of understanding that requires the payment of such damages. It is, however, always open to the Petitioner to seek to recover such damages, if so permissible, in accordance with law.

14. For all of the above reasons, this Court is of the considered view that no case for interference by way of contempt proceedings is made out by the Petitioner. Accordingly the contempt petition is dismissed with no orders as to costs. It is made clear that this order will not come in the way of the Petitioner proceeding with the execution proceedings pending before the Trial Court.

March 7, 2007
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S. Muralidhar, J.