

Aakanksha Anand vs Vineet Anand on 6 February, 2023

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

\$~9

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CONT.CAS(C) 461/2022
AAKANKSHA ANAND

Through: Mr. Swastik Singh, Mr.
Maini, Mr. Rewant
Advocates.

versus

VINEET ANAND

Through: Mr. Sermon Rawat, Mr.
Rathee, Mr. Harshit J
Vansh, Advocates.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 06.02.2023

1. The aforesaid application has been filed on behalf of the Respondent through Special Power of Attorney seeking a direction to allow the applicant to file an unattested copy of the affidavit of compliance ('affidavit') as directed in order dated 16.01.2023.
2. The Respondent is directed to file the attested compliance affidavit within two weeks.
3. With the aforesaid direction, the application stands allowed. CONT.CAS(C) 461/2022
4. The Respondent has filed an unattested affidavit in compliance with the order dated 16.01.2023. At paragraph 4 of the said affidavit, the Respondent has enlisted the details of sum of Rs. 1,02,000/- which were remitted by the Respondent to the Petitioner from July, 2022 to January, 2023, in a bank account held in a branch of ICICI bank.
5. Learned counsel for the Petitioner states on instructions that no such payments have been credited in the account held by the Petitioner with ICICI bank.
6. The Respondent is directed to approach the concerned ICICI bank and to take all necessary steps for processing the aforesaid payments to the account of the Petitioner before the next date, failing which this Court cannot take any note of the said payments relied upon in the affidavit.
7. The concerned Branch Manager of ICICI bank is directed to render all assistance to the Respondent or his authorized representative to ensure that the remittances are credited in the

account of the Petitioner. Undertaking dated 13.07.2022

8. On 13.07.2022, Respondent undertook to this Court that he shall pay a sum of Rs. 5 lakhs to the Petitioner, within a period of four weeks from the date of the order.

9. The said order further recorded that, if the Respondent fails to pay the said amount, he shall remain personally present in the Court on the next date i.e. 04.11.2022.

10. It is evident from the unattested affidavit that a sum of Rs. 16,000 was paid in the following 4 weeks and a total sum of Rs. 58,000 until 04.11.2022 i.e., the next date of hearing. Since the Respondent had failed to make the payment of Rs. 5,00,000 he was required to remain present before the Court on 04.11.2022.

11. However, in flagrant violation of the directions passed by this Court on 13.07.2022, the Respondent was not present on hearings listed on 04.11.2022 or 16.01.2023. The Respondent had not filed any application seeking exemption from appearance either for the said dates of hearing.

12. To justify the inability of the Respondent to comply with the undertaking given on 13.07.2022, learned counsel for the Respondent draws the attention of this Court to Annexure A-6 of the unattested affidavit, i.e., email dated 26.01.2023 issued by the employer of the Respondent offering him an advance equivalent to AED 6600/- as against his request of AED 21,000/-. The Respondent has sought to raise a plea of lack of funds to comply with the orders of the Court. The plea of lack of funds cannot be raised as a defence for not complying with the undertaking dated 13.07.2022. In this regard, it would be 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, which reads as under:

"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)

13. The record evidences that the Respondent has not complied with the order dated 29.11.2018 passed by MM-02 (Mahila Court), NW Rohini Courts, Delhi in 11302/2017. In addition, the Respondent is also in wilful violation of the undertaking given to this Court as recorded vide order 13.07.2022.

14. The reliance placed on the emails is of no assistance to the Respondent. The said email trail of 25.01.2023 appears to be a charade for today's hearing. Admittedly, no steps have been taken by the Respondent to avail the said advance of AED 6,600/- and remit the same to the Petitioner. The reliance was placed on the said email only for the limited purpose of showing that an attempt was made to take a loan of AED 21,000/-, which was declined by his employer.

15. At the pass over stage, the learned counsel for the Respondent states that a sum equivalent to AED 6600/- (1,48,000 INR approximately) shall be released to the Petitioner within a period of 10 days from today.

16. The proceedings of 13.07.2022, 16.01.2023 and today i.e., 06.03.2023, evidence that the Respondent has no intention to make payments to the Petitioner in compliance with the order dated 29.11.2018 and the undertaking dated 13.07.2022. It appears to this Court that there is no intention of the Respondent to make any payment.

17. This Court has been informed that in the execution proceedings instituted before the Trial Court, non bailable warrants have been issued against the Respondent, since there has been no representation on his behalf in the said proceedings.

18. This Court has also been apprised by Petitioner that the Respondent has impugned the order dated 29.11.2018 before a Coordinate Bench of this Court in Crl. Rev. P. 1263/2019, wherein judgment has been reserved. It appears to this court that the non-payments today are deliberate and only a stratagem to await the orders in the said revision petition.

19. Learned counsel for the Petitioner states that it is admitted on record that the father of the Respondent is an affluent man and the penury of the Respondent is a ruse to obstruct the compliance of orders of this Court. He states that Respondent's father has business interests in Dubai and the plea that the Respondent is a Messenger in a company with Dubai is not genuine but a farce.

20. The entire effort has been to stall the hearing today.

21. This Court is therefore of the prima facie opinion that the Respondent is in wilful breach of the undertaking given to this Court on 13.07.2022 and deliberate non-compliance of the order dated 29.11.2018. Personal appearance of the Respondent

22. The Respondent has now moved an application being CM APPL 5599/2023 seeking exemption from appearance. It is stated in paragraphs 2 and 3 of the application that the Respondent is currently in Dubai and working as a 'Messenger' with Transparent General Security Guard Services LLC ('company') and he cannot attend the Court proceedings before March, 2023 as his employer has declined to grant any leave prior to March 2023.

23. The Respondent is directed to be personally present in Court on the next date of hearing in April 2023 to accept the charges of contempt. The Respondent is directed to take all necessary steps to take permission from his employer to appear in Court on April, 2023.

24. It is made clear that if the Respondent is not present in April 2023, this Court will issue appropriate directions to Government of India and the Enforcement agencies to secure his presence.

25. Learned counsel for the Respondent seeks a date in February to seek an appropriate date in April 2023 for appearance of the Respondent.

26. Copy of this order be given dasti to the parties.

27. At the request of the Respondent, list on 20.02.2023.

MANMEET PRITAM SINGH ARORA, J FEBRUARY 6, 2023/hp/kv