

Urban Infrastructure Real Estate Fund vs Dharmesh S. Jain on 10 March, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
INHERENT APPELLATE JURISDICTION

CONTEMPT PETITION (C) NO. 940 OF 2021

IN

MISCELLANEOUS APPLICATION NO. 1668 OF 2021

IN

SPECIAL LEAVE PETITION (C) NO. 14724 OF 2021

Urban Infrastructure Real Estate Fund

...Petitioner(s)

Versus

Dharmesh S. Jain and Anr.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. The present contempt petition has been filed by the petitioner herein – Urban Infrastructure Real Estate Fund – the Award Creditor in whose favour there is an award passed by the learned Arbitrator to punish the respondents under the Contempt of Courts Act, 1971 for wilful disobedience of the order dated 17.09.2021 passed by this Court in Special Leave Petition (C) No. 14724 of 2021 and the subsequent order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021 in the very same Special Leave Petition (C) No. 14724 of 2021.

2. Before considering the submissions made by learned senior counsel appearing on behalf of the respective parties, the chronological dates and events leading up to the filing of this contempt

petition are required to be referred to and considered, which are as under:-

2.1 That by Arbitral Award dated 30.08.2018 passed in arbitral proceedings filed by the petitioner herein against the respondents -

alleged contemnors, the learned Arbitrator awarded specific performance of the Share Purchase Agreement and held that the petitioner is entitled to recover an amount of Rs. 78,33,37,500/- with interest at the rate of 18% p.a. with effect from 20.12.2014 till realization.

2.2 Challenging the award passed by the learned Arbitrator, the respondent herein preferred Commercial Arbitration Petition No. 55 of 2019 before the High Court under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act of 1996"). In the said arbitration petition, the respondents herein – original applicants took out a Notice of Motion No. 960 of 2019 praying for stay of the award.

2.3 The learned Single Judge of the High Court disposed of the said Notice of Motion in terms of the prayer clause "a" on the condition that the respondents herein deposit 50% of the awarded sum within twelve weeks. The learned Single Judge also observed that if such deposit is not made within the time prescribed, the interim stay granted shall stand vacated without further reference to the Court. Simultaneously, the petitioner was also directed to deposit 50% of its shareholding in the respondent No. 2 company within one week of deposit of amount. The learned Single Judge also made it clear that if the respondents – original applicants commit any default in making payments as directed, the respondent (applicant herein) is not required to deposit such shares. 2.4 It appears that even before the application under Section 34 of the Act of 1996 challenging the award was made, the Award Creditor had filed the execution petition before the High Court being Commercial Execution Application No. 2908 of 2018. After the order was passed by the learned Single Judge dated 08.08.2019, a Notice of Motion No. 960 of 2019 was filed. The learned Single Judge being the Executing Court passed the order dated 18.11.2019 in the Chamber Summons No. 357 of 2019 taken out by the Award Creditor. The learned Single Judge directed the respondent herein to file the disclosure affidavit declaring their assets vide order dated 18.11.2019. The order dated 18.11.2019 was, however, not complied with by the respondents and repeated extensions were sought.

2.5 That in the meantime, respondents herein instituted Commercial Appeal No. 521 of 2019 challenging the order dated 08.08.2019 by which, while staying the award passed by the learned Arbitrator, the High Court directed them to deposit 50% of the awarded amount. It is required to be noted that during the pendency of the Commercial Appeal No. 521 of 2019, the respondents herein i.e., the contemnors – appellants before the High Court prayed for a number of extensions to deposit the amount as directed by the learned Single Judge vide order dated 08.08.2019.

2.6 The aforesaid appeal came to be dismissed as not maintainable vide order dated 29.07.2021 and the interim application was also disposed of. Being aggrieved, the respondents herein preferred special leave petition before this Court challenging the order dated 08.08.2019 in Notice of Motion No. 960 of 2019 and in Commercial Arbitration Petition No. 55 of 2019. That by order dated 17.09.2021, this Court dismissed the said special leave petition on merits. However, a prayer was

made on behalf of the respondents herein – petitioners before this Court to grant further eight weeks’ time from 17.09.2021 to comply with the order dated 08.08.2019 by which they would deposit 50% of the amount as awarded by the Arbitrator. This Court granted further eight weeks’ time as prayed. As the order dated 17.09.2021 was passed ex- parte and without notice to the applicant herein – respondents in special leave petition, the applicant herein preferred Miscellaneous Application No. 1668 of 2021 to recall the order dated 17.09.2021 by which further eight weeks’ time was granted to the respondents – petitioners before this Court.

2.7 It was the case on behalf of the applicants that the respondents have no intention to comply with the order and deposit 50% of the amount awarded by the learned Arbitrator and further eight weeks’ time is sought only to kill time as there is no intention to deposit the amount and/or comply with the order dated 08.08.2019 passed by the High Court.

2.8 That after hearing the learned counsel appearing on behalf of the respective parties including the counsel on behalf of the respondents, this Court passed an order dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 of which also non- compliance is alleged. By order dated 28.10.2021, this Court had directed the respondents herein – petitioners before this Court in Special Leave Petition (C) No. 14724 of 2021 to comply with and deposit the amount to be deposited as per the order passed by the High Court dated 08.08.2019 positively and within the time granted by this Court (eight weeks). This Court also further observed that non-compliance of the same shall be treated very seriously and non-deposit of the amount as directed by the High Court in the impugned order shall be treated as non-compliance of the order of this Court and also having serious consequences. 2.9 Despite the specific directions issued by this Court, the respondents neither complied with the order passed by the High Court dated 08.08.2019 nor complied with the order passed by this Court dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021. 2.10 That the applicant herein served a legal notice upon the respondents dated 16.11.2021 by which the respondents were called upon to comply with the order dated 08.08.2019 passed by the High Court as well as the orders passed by this Court dated 17.09.2021 and 28.10.2021. In the said legal notice, it was specifically mentioned that if the aforesaid orders are not complied with, the petitioners shall be constrained to proceed further to initiate appropriate proceedings for wilful disobedience of orders passed by the Court. One other legal notice was served upon the respondents informing that the time granted by this Court in Special Leave Petition (C) No. 14724 of 2021 to comply with the order dated 08.08.2019 had expired. Despite the above, neither the order passed by the High Court dated 08.08.2019 was complied with nor the orders passed by this Court dated 17.09.2021 and 28.10.2021 was obeyed. Instead, having realized that the non-compliance of the order dated 28.10.2021 may invite serious consequences, the respondents herein filed Miscellaneous Application No. 61 of 2022 on 17.01.2022 requesting to recall the order dated 28.10.2021 passed by this Court in Miscellaneous Application No. 1668 of 2021. 2.11 By a detailed order dated 25.01.2022, this Court had dismissed the said application by which the respondents herein had requested recall of the order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021.

2.12 At this stage, it is required to be noted that a number of submissions were made by the learned counsel appearing on behalf of the respondents – applicants before this Court in Miscellaneous

Application No. 61 of 2022 on the directions issued by this Court vide order dated 28.10.2021, which are again made by the learned counsel appearing on behalf of the respondents before this Court in the present proceedings and all the submissions were dealt with by this Court while deciding Miscellaneous Application No. 61 of 2022. 2.13 At this stage, it is required to be noted that prior to filing of the Miscellaneous Application No. 61 of 2022, the petitioners had already filed the present application alleging disobedience of the order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021, which was filed on 18.11.2021 in which this Court directed to issue notice upon the respondents vide order dated 10.12.2021 making it returnable on 10.01.2022 and having been served with the notice of this Court in the present contempt petitions, the respondents filed the aforesaid Miscellaneous Application No. 61 of 2022 and have prayed to recall the order dated 28.10.2021, which as observed hereinabove has already been dismissed by this Court vide order dated 25.01.2022.

3. Shri Shyam Divan, learned Senior Advocate appearing on behalf of the respondents – alleged contemnors has as such reiterated what was submitted earlier while deciding Miscellaneous Application No. 61 of 2022.

3.1 Shri Divan, learned Senior Advocate has submitted that as such there is no direction issued by this Court of which non-compliance is alleged. Elaborating the same he submitted that by order dated 17.09.2021, this Court while dismissing the special leave petition preferred by the respondents extended the time to comply with the order dated 08.08.2019 passed by the learned Single Judge. It is submitted that the said order dated 08.08.2019 was an interim order passed on Notice of Motion by which, while granting stay of the award passed by the learned Arbitrator, the respondents were directed to deposit 50% of the amount awarded. It is submitted that in the order dated 08.08.2019 itself, the learned Single Judge specifically observed that on non-compliance of the same, the interim stay granted would stand vacated. It is contended that by not depositing 50% of the awarded amount within the stipulated period of time and the extended period of time, there shall not be any stay of the award passed by the learned Arbitrator and therefore the said award shall be executable and the execution proceedings are required to be heard and proceeded further. It is therefore urged that non-compliance of the order dated 08.08.2019 does not warrant any proceedings under the Contempt of Courts Act, 1971, as the order dated 08.08.2019 cannot be said to be a mandatory order or a direction to deposit 50% of the amount awarded. It is also submitted that the order dated 17.09.2021 cannot be said to be any order or direction issued by this Court. 3.2 Shri Divan, learned Senior Advocate has taken us to Section 36 of the Act of 1996 in support of his submission that on non-deposit of the amount awarded by the Arbitral Tribunal, the award is executable. It is submitted that as such an execution application is already filed and pending.

3.3 It is further submitted that when the petitioner filed Miscellaneous Application No. 1668 of 2021 seeking recall of the order dated 17.09.2021 passed by this Court, even the petitioner did not construe the condition of deposit to be a mandatory direction to deposit.

3.4 It is further submitted by Shri Divan, learned Senior Advocate appearing on behalf of the respondents that the order dated 17.09.2021 was not a mandatory order directing the respondents to deposit 50% of the amount and the order dated 17.09.2021 was an order extending the time in

favour of the respondents to deposit the amount as per the order passed by the learned Single Judge. Even the subsequent order dated 28.10.2021 passed on an application filed by the petitioner to recall the order dated 17.09.2021, cannot be said to be a mandatory order and/or direction, the non-compliance of which warrants any proceedings under the Contempt of Courts Act, 1971.

3.5 It is further urged by Shri Divan, learned Senior Advocate appearing on behalf of the respondents that on non-compliance of the order passed by the learned Single Judge dated 08.08.2019 by which on non-deposit of 50% of the amount, the interim stay granted stood vacated and therefore, the award is to be executed for which the execution proceedings are pending and the contempt of court proceeding is not the remedy available to the petitioner. It is submitted that as held by this Court in the case of R.N. Dey and Ors. Vs. Bhagyabati Pramanik and Ors., (2000) 4 SCC 400, the weapon of contempt cannot be used for purposes of executing a decree or implementing an order for which law provides appropriate procedure.

3.6 Shri Divan, learned Senior Advocate appearing on behalf of the respondents has contended that as such there is no wilful disobedience of any of the orders passed by this Court and/or even the High Court. In fact, the respondents have made honest endeavors to comply with the condition of deposit. However, despite the best efforts during the eight weeks' time granted by this Hon'ble Court, the respondents have been unable to comply with the condition of deposit in view of the grave and unsurmountable challenges / difficulties being faced by the respondents. 3.7 It is further submitted that the dispute is in the nature of a commercial dispute and negotiations are going on and final figures are to be settled. That the respondents have already given a demand draft of Rs. 5 crores to show their bonafides and are ready to submit a further sum of Rs. 5 crores with the Registry of the High Court. It is submitted that therefore, when there is no wilful disobedience, the present contempt proceedings be dismissed. Reliance is placed upon the decisions of this Court in the case of Mrityunjoy Das and Anr. Vs. Sayed Hasibur Rahaman and Ors., (2001) 3 SCC 739 (Paras 13 & 14); Ram Kishan Vs. Tarun Bajaj & Ors., (2014) 16 SCC 204 (Paras 11 to 15); Dinesh Kumar Gupta Vs. United India Insurance Company Limited & Ors., (2010) 12 SCC 770 (Para 17); Jolly George Varghese & Anr. Vs. The Bank of Cochin, (1980) 2 SCC 360 (Paras 1, 2, 4, 6, 10 & 11); and Dr. U.N. Bora, Ex. Chief Executive Officer & Ors. Vs. Assam Roller Flour Mills Association & Anr. (2022) 1 SCC 101 (Paras 8 & 9).

4. Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the petitioner has submitted that as on today, a total sum of Rs. 190 crores is due and payable by the respondents pursuant to the award passed by the learned Arbitrator, which was passed four years back.

4.1 It is submitted by Shri Bhushan, learned Senior Advocate that right from the filing of the execution proceedings by the petitioner, at every stage, the respondents have delayed the execution of the award on one ground or the other either, by filing Notice of Motion and obtaining interim stay of the award on condition of deposit of 50% of the awarded amount and thereafter getting extensions even during the pendency of the appeal and making the Court believe that they will deposit the amount as per the orders passed by the learned Single Judge dated 08.08.2019. It is submitted that during all these periods, the respondents have taken advantage of the extensions sought by them. It is submitted that therefore it would not be open for the respondents to now say

that on non-deposit of the 50% of the amount as ordered by the learned Single Judge in his order dated 08.08.2019, the award is executable. 4.2 It is submitted by Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the petitioner that even the respondents have not complied with the order passed by the High Court in the Chamber Summons taken out by the petitioner by which the respondents were directed to disclose their assets. It is submitted that despite a number of opportunities given by the High Court, the respondents have not complied with the direction issued by the High Court by which the respondents were directed to disclose their assets, which they declared after a period of almost two and a half years. It is, therefore, submitted that all throughout the conduct on the part of the respondents suggest that respondents are in the habit of not complying with the orders/directions issued by the Court(s).

4.3 It is also submitted by Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the petitioner that despite the dismissal of the Miscellaneous Application No. 61 of 2022, the respondents have the audacity to now say that the order dated 28.10.2021 cannot be said to be a mandatory direction. He has taken us to the averments in the Miscellaneous Application No. 61 of 2022 in which the very respondents have stated that the order dated 28.10.2021 is a mandatory order/direction. It is submitted that by taking such a stand, the respondents have aggravated their contumacious conduct.

4.4 Now, so far as the submission on behalf of the respondents that, the order passed by the learned Single Judge dated 08.08.2019 and the subsequent order passed by this Hon'ble Court dated 17.09.2021 cannot be said to be a direction and if there is non-compliance of the same, the consequences under Section 36 of the Act of 1996 shall follow and the award thereafter will have to be executed, it is vehemently submitted by Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the petitioner that the non-compliance alleged is not only of the order dated 08.08.2019 passed by the learned Single Judge of the High Court and the order dated 17.09.2021 passed by this Hon'ble Court but the non-compliance alleged is of the order dated 28.10.2021 also by which the specific mandatory direction has been issued by this Court directing the respondents to deposit the amount as ordered by the learned Single Judge. It is submitted that in the said order itself, it has been specifically mentioned that non-compliance of the directions would be having serious consequences. It is submitted that despite the above, the respondents have not deposited the amount as ordered by the learned Single Judge vide order dated 08.08.2019.

4.5 Now, so far as the submission on behalf of the respondents that there is no wilful disobedience and that despite their best efforts, they are not in a position to deposit the amount as ordered due to financial crunch and other adverse circumstances, it is vehemently submitted by Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the petitioner that the aforesaid stand now taken is nothing but an afterthought and as such even when the Miscellaneous Application No. 61 of 2022 was filed, it was not the case on behalf of the respondents that due to financial constraint and/or adverse circumstances, they are not in a position to deposit the amount. It is submitted that even the respondents can sell the development rights worth Rs. 100 crores and they have the financial capacity but have willfully disobeyed the orders of this Court.

4.6 Making the above submissions and relying upon the decisions of this Court in the case of Rama Narang Vs. Ramesh Narang & Anr., (2006) 11 SCC 114 (Paras 24, 25, 30 & 32); Bank of Baroda Vs. Sadruddin Hasan Daya & Anr. (2004) 1 SCC 360 (Paras 12 &

14); and Rita Markandey Vs. Surjit Singh Arora, (1996) 6 SCC 14 (Para 12), it is prayed to suitably punish respondent No. 1 for wilful disobedience of the direction issued by this Court vide order dated 28.10.2021.

5. Heard learned senior counsel for the respective parties at length.

6. In the present petition, it is prayed to punish the respondents under the provisions of the Contempt of Courts Act for wilful disobedience of the order dated 17.09.2021 passed by this Court in Special Leave Petition (C) No. 14724 of 2021 and also the order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021. For immediate reference the said orders are extracted as under:

Order dated 17.09.2021 “Delay condoned.

Having heard Shri Shyam Divan, learned senior counsel appearing for the petitioners and considering the fact that the impugned order passed by the High Court is in a notice of motion application and an interim order, we see no reason to interfere with the impugned order.

The Special Leave petition is dismissed.

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

However, as prayed, we grant further eight weeks time from today to the applicants to comply with the impugned order passed by the High Court.” Order dated 28.10.2021 “Having heard Shri Jayant Bhushan, learned senior counsel appearing on behalf of the respondent no. 1 herein/Applicants -Urban Infrastructure Real Estate Fund and Shri Kunal Vajani, learned counsel appearing on behalf of the original petitioners before this Court, we dispose of the present application with an observation that the petitioners before this Court in SLP (C) No. 14724/2021 shall have to comply with and deposit the amount to be deposited as per the impugned order passed by the High Court positively and within the time granted by this Court and non- compliance of the same shall be treated very seriously and non-deposit of the amount as directed by the High Court in the impugned order shall be treated as non-compliance of our order also having a serious consequences.

With this, the present application stands disposed of.”

7. It is the case on behalf of the respondents – alleged contemnors that by the order passed by this Hon’ble Court dated 17.09.2021 in Special Leave Petition (C) No. 14724 of 2021, this Court while

dismissing the said special leave petition has granted further eight weeks' time to the original applicants to comply with the order passed by the High Court dated 08.08.2019 by which the High Court passed a conditional stay order in favour of the original applicants – respondents herein and to deposit 50% of the awarded amount, failing which the stay to stand vacated. It is the case on behalf of the respondents that on non-compliance of the order dated 08.08.2019, the necessary consequences under Section 36 of the Act of 1996 shall follow and the proceedings to execute the award has to be proceeded further. It is submitted therefore that as the order dated 08.08.2019 cannot be said to be a direction and in view of the remedy available to the applicants to proceed further with the execution proceedings, no proceedings under the Contempt of Courts Act for disobedience of the order dated 08.08.2019 and/or the order passed by this Court dated 17.09.2021 in Special Leave Petition (C) No. 14724 of 2021 shall be maintainable. In the facts and circumstances of the case and considering the conduct on the part of the respondents, this submission cannot be accepted.

8. It is to be noted that there is an award dated 30.08.2018 in favour of the applicant and the learned Arbitrator had awarded specific performance of the Share Purchase Agreement and held that the applicant is entitled to recover an amount of Rs. 78,33,37,500/- with interest at the rate of 18% p.a. with effect from 20.12.2014 till realization and had also awarded Rs. 50 lakhs against the respondent company. Thereafter the Award Creditor had filed the Execution Petition on 10.12.2018 and since then, the respondents have successfully avoided the execution of the award till date by initiating proceedings one after another and by getting extensions of the interim order passed by the High Court dated 08.08.2019 passed on Notice of Motion No. 960 of 2019 and in Commercial Arbitration Petition No. 55 of 2019. After the order dated 08.08.2019, the respondents sought a number of extensions which the High Court granted on the belief that the respondents will deposit the amount as ordered vide order dated 08.08.2019. Thus, the respondents took the benefit of the extensions granted by the Court and the respondents were granted the extension of time to make the deposit as per the order dated 08.08.2019, which were granted on their requests.

Having taken the benefit of the extensions for a period of approximately two years and more, thereafter, it is not open for the respondents to contend that since they have not deposited the amount as per the order dated 08.08.2019, necessary consequences under Section 36 of the Act of 1996 shall follow and the execution proceedings have to be proceeded further. As observed hereinabove, the execution proceedings have been delayed in view of the interim order dated 08.08.2019 and the subsequent extensions granted by the High Court, which were at the behest of the respondents. The respondents herein have had the benefit of extensions of time being granted for depositing the amount as per order dated 08.08.2019 and consequently have successfully obstructed the execution proceedings for over two years. Having done so, respondents cannot now be permitted to contend that there was no mandatory direction to comply with the order dated 08.08.2019 passed by the High Court. Such a conduct on the part of the respondents is nothing but an abuse of process of law and the Court, which is deprecated. At this stage, it is required to be noted that even the order passed by the High Court passed in Chamber Summons directing the respondents to disclose their assets was even not complied with for a period of approximately two years. This demonstrates the intention and the conduct on the part of the respondents to disregard and disrespect the orders passed by the High Court.

9. Even otherwise, it is required to be noted that it is alleged that there is a wilful disobedience and/or non-compliance of the order passed by this Court dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021, which is reproduced hereinabove.

10. After the present contempt proceedings were initiated and the respondents were served with notice in the present proceedings the respondents thereafter filed Miscellaneous Application No. 61 of 2022 to recall the order dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021. The very submissions, which are now made were made at the time of hearing of the Miscellaneous Application No. 61 of 2022 and by a detailed order dated 25.01.2022, this Court dismissed the said application. The order passed in Miscellaneous Application No. 61 of 2022 is reproduced hereinbelow:-

“1. The present miscellaneous application has been preferred by the applicants – original petitioners with a prayer to recall order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021.

2. Shri Shyam Divan, learned Senior Advocate has appeared on behalf of the applicants and Shri Jayant Bhushan, learned Senior Advocate has appeared on behalf of the contesting respondent.

2.1 Shri Shyam Divan, learned Senior Advocate appearing on behalf of the applicants has made the following submissions in support of his prayer to recall order dated 28.10.2021 passed in M.A. No. 1668/2021:

i) that Miscellaneous Application No. 1668/2021 itself was not maintainable as the same was filed in a disposed of matter;

ii) that no notice was issued to the applicants, i.e., the original petitioners in Miscellaneous Application No. 1668/2021 and that no reply was filed on behalf of the applicants; and

iii) in a special leave petition filed by the applicants, such a direction could not have been issued by this Court as passed vide order dated 28.10.2021. It is submitted, assuming that the applicants had not complied with the order passed by the High Court dated 08.08.2019, which was impugned before this Court, and the amount was not deposited even within the extended period of time, as extended by this Court, in that case, the only consequence would be that there was no stay of the arbitral award and that the execution proceedings are to be proceeded further. Therefore, the direction issued in order dated 28.10.2021 directing the applicants – original petitioners to deposit the amount to be deposited as per the order of the High Court positively and within the time granted by this Court and non-compliance of the same shall be treated very seriously and non-

deposit of the amount as directed by the High Court in the impugned order shall be treated as noncompliance of our order also having a serious consequences, was not at all warranted and/or such an order could not have been passed.

3. We have heard Shri Shyam Divan, learned Senior Advocate appearing on behalf of the applicants at length.

At the outset, it is required to be noted that when this Court passed order dated 28.10.2021, Shri Kunal Vajani, learned advocate appeared on behalf of the applicants – original petitioners and this Court passed order dated 28.10.2021 after hearing the learned counsel appeared on behalf of the applicants – original petitioners. A copy of M.A. No. 1668/2021 was served upon the counsel and thereafter he appeared and after hearing Shri Kunal Vajani, learned advocate who appeared on behalf of the applicants, this Court passed order dated 28.10.2021. At that time, neither any request was made to adjourn the matter so as to enable the applicants to file reply nor any objection was raised with respect to non-maintainability of M.A. No. 1668/2021. Therefore, now it is not open for the applicants to make a grievance with respect to non- maintainability of M.A. No. 1668/2021 and/or that no notice was issued.

4. Even otherwise, it is required to be noted that the present application is nothing but an afterthought and only with a view to get out the contempt proceedings initiated by the respondent by way of Contempt Petition No. 940/2021. It is to be noted that order dated 28.10.2021 was passed in the presence of the learned counsel appearing on behalf of the applicants. Learned counsel who appeared on behalf of the applicants was heard. The present application to recall order dated 28.10.2021 has been preferred after a period of almost two and a half months, i.e., on 17.01.2022 and that too after this Court issued notice in the contempt proceedings and after the notice of contempt petition was served upon the applicants. Therefore, the present application is, as such, nothing but an afterthought and only with a view to get out the contempt proceedings, which have been initiated and filed as far back as on 18.11.2021 and notice was issued on 10.12.2021.

5. Even otherwise on merits also, order dated 28.10.2021 passed in M.A. No. 1668/2021 is not required to be recalled. It is to be noted that the special leave petition was arising out of the order passed by the High Court of Judicature at Bombay dated 08.08.2019 in Notice of Motion No.960/2019 in Commercial Arbitration Petition No. 55/2019. Notice of motion was made absolute in terms of the prayer clause (a) on the condition that the applicants herein shall deposit 50% of the awarded sum within twelve weeks from 08.08.2019. Time granted by the High Court was extended from time to time at the instance of the applicants herein but the applicants did not deposit the amount and prolonged the matter and even the execution of the award. That thereafter after getting extensions the applicants did not deposit the amount, belatedly, the applicants preferred the present special leave petition before this Court on 20.08.2021 with delay. Still, this Court condoned the delay ex-parte and granted further eight weeks' time from 17.09.2021 to comply with the order passed by the High Court dated 08.08.2019, as prayed by the learned counsel appeared on behalf of the applicants.

6. As order dated 17.09.2021 was passed ex-parte and without notice to the respondent, respondent preferred M.A. No. 1668/2021 to recall order dated 17.09.2021 contending, inter alia, that all attempts are made on behalf of the applicants to delay the execution and even further eight weeks' time was sought only to kill the time and there is no intention to deposit the amount and/or comply with order dated 08.08.2019 passed by the High Court. Therefore, having heard learned counsel for the respective parties and considering the apprehensions on behalf of the respondent that extension of time is sought only to kill the time and delay the matter further and there is no intention to comply with order dated 08.08.2019 and that the applicants though sufficient indulgence have been shown by way of extension of time by the High Court, the amount has not been deposited and therefore in the peculiar facts and circumstances of the case, we passed the order dated 28.10.2021. Therefore, when order dated 28.10.2021 was passed in the peculiar facts and circumstances of the case, the same is not required to be recalled, which was passed after hearing the learned counsel appearing on behalf of the applicants also.

7. At this stage, it is required to be noted that even after order dated 17.09.2021, by which a further eight weeks' time was granted, the original petitioners – applicants herein have not complied with the order passed by the High Court for which they sought extension. This shows the conduct on the part of the applicants. Even thereafter, there is no application for extension of time.

Having taken the advantage/benefit of order dated 17.09.2021 of extension of time to comply with the order passed by the High Court, thereafter it would not be open for the applicants to contend that on noncompliance the necessary consequence under the Arbitration Act may follow and the execution proceedings may have to be proceeded further. Be that as it may, when order dated 28.10.2021 has been passed after hearing the learned counsel for both the parties and as observed hereinabove on considering the apprehensions on the part of the respondent that the applicants have no intention to comply with the order passed by the High Court and they just want to delay the proceedings, order dated 28.10.2021 has been passed. Therefore, no case is made out to recall order dated 28.10.2021 passed in M.A. No. 1668/2021.

8. In view of the above and for the reasons stated above, the present application stands dismissed.”

11. Therefore, once Miscellaneous Application No. 61 of 2022 to recall the order dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 is dismissed, the respondents had to comply with the order dated 28.10.2021 passed in Miscellaneous Application No. 1668 of 2021. Even otherwise, the respondents were required to comply with order dated 28.10.2021.

12. Despite there being a specific direction issued by this Court in the order dated 28.10.2021 directing the respondents to comply with and deposit the amount to be deposited as per the order passed by the High Court dated 08.08.2019 positively and within the time granted by this Court by order dated 17.09.2021 in Special Leave Petition (C) No. 14724 of 2021, the respondents have the audacity to submit before this Court that no direction has been issued by this Court in the order dated 28.10.2021. At this stage, it is required to be noted that even in the Miscellaneous Application No. 61 of 2022, it was the specific case on behalf of the respondents herein that by virtue of the order dated 28.10.2021, the condition of deposit has been converted into a mandatory direction of

this Court. Therefore, it was the specific case on behalf of the respondents that the order dated 28.10.2021 is a mandatory direction and therefore it was prayed to recall the order dated 28.10.2021. Then, how thereafter the respondents can be permitted to say that the order dated 28.10.2021 is not a mandatory direction? By taking such a stand as such the respondents have aggravated the contempt and their contumacious conduct.

13. In the order dated 28.10.2021, there is a specific direction issued by this Court directing the respondents herein – original petitioners in special leave petition to comply with and deposit the amount to be deposited as per the order passed by the High Court positively and within the time granted by this Court (eight weeks) as mentioned in the order dated 17.09.2021. Moreover, it was specifically observed by this Court that non-compliance of the said order shall be treated very seriously and non-deposit of the amount as directed by the High Court shall be treated as non-compliance of the order of this Court and also having a serious consequence. Despite the above, even the order dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 has not been complied with by the respondents. On the contrary, despite the specific direction issued in the order dated 28.10.2021 and the dismissal of Miscellaneous Application No. 61 of 2022 vide order dated 25.01.2022, the respondents have continued to their abrasive attitude of non-compliance and disobedience and by making the same submissions, which were made earlier which as such were rejected by a detailed order. Despite the direction/order passed by this Court in the order dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021, there is a disobedience/non-compliance of the same and in that view of the matter, the decisions relied upon by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the respondents on the alternative remedy available in the form of execution etc. are not of any assistance nor applicable having regard to the facts of the case on hand. 13.1 In order to buttress his contention that non-compliance with the condition of deposit would only render the Arbitrator's Award enforceable and contempt proceedings ought not to have been initiated for non-compliance with such condition which was not mandatory in nature, learned senior counsel appearing on behalf of the respondent-contemnor cited the following case law:

i) Sudhir Vasudeva vs. M. George Ravishekar – [(2014) 3 SCC 373] wherein, this Court observed that a Court exercising jurisdiction under the Contempt of Courts Act, 1971 must not travel beyond the four corners of the order in relation to which contempt has been alleged. That the Court hearing a contempt petition ought to restrict the scope of its inquiry to such directions which are explicit in the judgment or order of which contempt has been alleged.

We are of the view that this judgment would not, in any way, come to the aid of the respondent-contemnors because, in whatever manner the orders of which contempt is alleged, are viewed, the orders state in unequivocal terms that the contemnor is required to deposit the amount, within such period as specified in the respective orders. The scope of contempt, however narrow, would enable this Court to invoke jurisdiction under the Act to redress a situation such as the instant one, wherein the orders of which contempt has alleged, expressly and clearly record that the contemnor was required to deposit the amounts specified therein. This direction under the orders, could not be interpreted in any other manner.

ii) R.N. Dey & Ors. vs. Bhagyabati Pramanik & Ors. – [(2000) 4 SCC 400] wherein this Court held that the weapon of initiating contempt proceedings could not be used for execution of a decree or implementation of an order. That is, a Court should not invoke contempt jurisdiction, where alternate remedies are available to secure the terms of an order.

We are mindful of the fact that contempt proceedings should not be of the nature of ‘execution proceedings in disguise.’ However, we hold that the case law cited supra would not come to the aid of the contemnor herein as the facts of the said case were significantly different from the case at hand. In the said case, no stay was operating on the decree of which contempt was alleged. Therefore, the decree-holder therein could very well initiate execution proceedings. However, in the instant case, the High Court, by order dated 08th August, 2019 stayed the Award subject to the deposit of an amount. The time period of such deposit has been extended by this Court on two occasions while continuing the order of stay by implication. Having taken the advantage of the extended time period, the respondent-contemnor cannot, at this juncture, take the plea that non-compliance with the condition of deposit would only render the Arbitrator’s Award enforceable and that such failure to comply would have no consequences under the Contempt of Courts Act, 1971.

13.2 Further, it is trite law that the jurisdiction of a Court under the Act, would not cease, merely because the order or decree of which contempt is alleged, is executable under law, even without having recourse to contempt proceedings.

13.3 Contempt jurisdiction could be invoked in every case where the conduct of a contemnor is such as would interfere with the due course of justice; vide Rama Narang vs. Ramesh Narang – [(2006) 11 SCC 114. Contempt is a matter which is between the Court passing the order of which contempt is alleged and the contemnor; questions as to executability of such order is a question which concerns the parties inter-se. The power of the Court to invoke contempt jurisdiction, is not, in any way, altered by the rights of the parties inter-se vide Bank of Baroda vs. Sadruddin Hasan Daya – [(2004) 1 SCC 360].

14. Now, so far as the case on behalf of the respondents that there is no wilful disobedience and because of the financial constraint, the respondents are not in a position to deposit the amount as ordered by the High Court vide order dated 08.08.2019 and the order passed by this Court is concerned, the same is nothing but an afterthought. At no point of time earlier, such a plea was taken. In the facts and circumstances of the case, such a stand now lacks bonafides. All efforts are being made by the respondents to get out of the order passed by the High Court dated 08.08.2019 and the order passed by this Court dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021. If the bonafides of the respondents were clear and they genuinely wanted to abide by the order passed by the High court and this Court, but could not deposit because of the financial difficulties, in that case, they ought to have straightaway pleaded their financial difficulties and ought not to have taken the stand, which was taken in Miscellaneous Application No. 61 of 2022 and even which are once again taken now.

As observed hereinabove, even the respondents disclosed their assets after a period of approximately two years from the date of the passing of the order passed by the High Court in Chamber Summons. Therefore, we are of the opinion that the stand taken by the respondents now that they are not in a position to deposit the amount and/or comply with the order passed by the High Court and this Court because of the financial difficulties and therefore there is no wilful disobedience by the respondents in not complying with the order passed by the High Court dated 08.08.2019 and the order passed by this Court dated 28.10.2021 in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021 lacks bonafides and the same is not at all acceptable by us.

15. When a party which is required to comply with the terms or directions in an order has not done so within such time as stipulated in the order, two options are available to the party which was required to comply with such order: (a) give an explanation to the Court as to the circumstances due to which the party could not comply with the order of the Court; (b) seek for further time to comply with the order of the Court. If a delay has occurred in complying with the terms of an order and the party which was to comply with the order has not resorted to either of the two aforesaid options, then, the party responsible for delay in compliance, may be held to have committed contempt; vide *State of Bihar vs. Subhash Singh* - [(1997) 4 SCC 430] 15.1 Further, the decision of this Court in *Maruti Udyog vs. Mahinder C. Mehta* – AIR 2008 SC 309 suggests that irrespective of whether or not a decree is executable, the question to be considered by this Court in determining whether a case for contempt has been made out was, whether, the conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of Court.

16. Applying the legal propositions discussed supra, to the facts of the case at hand, we are of the view that the conduct of the respondent-contemnors is such as would justify invocation of contempt jurisdiction of this Court. Not only have the contemnors unreasonably delayed and defaulted in compliance of the orders of this Court without explaining the cause for such default, or seeking extension of time for compliance; but they have also sought to avoid compliance of the order, even after taking benefit of the extended time period granted for compliance of the same. The contemnors cannot, at this juncture, claim that the requirement of deposit was not mandatory, but directory and therefore non-compliance thereof would not constitute contempt.

17. In view of the above and for the reasons stated above, we are of the firm view that the respondents have willfully disobeyed the order passed by the High Court dated 08.08.2019 in Notice of Motion No. 960 of 2019 in Commercial Arbitration Petition No. 55 of 2019 and have willfully disobeyed the order dated 28.10.2021 passed by this Court in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021 and thereby the respondents are guilty of civil contempt and have rendered themselves liable for suitable punishment under the provisions of Contempt of Courts Act. The respondents, more particularly, respondent No.1, is hereby held guilty for the contempt of this Court for wilful disobedience of the order passed by the High Court dated 08.08.2019 in Notice of Motion No. 960 of 2019 in Commercial Arbitration Petition No. 55 of 2019 and specifically for disobedience of the order dated 28.10.2021 passed by this Court in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021 and are held liable to be punished suitably under the provisions of the Contempt of Courts Act. Now, the

respondents shall be heard on sentence.

..... J.

[M.R. SHAH]

NEW DELHI;
MARCH 10, 2022.

. J.

[B.V. NAGARATHNA]