

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

% ***Reserved on: February 09, 2023***

Pronounced on: March 07, 2023

+ **CONT. APP. (C) 8/2023 & CM APPL. 5097/2023; 5098/2023 & 5099/2023**

ANKUR JAIN

..... Appellant

Through: Mr. Vivek Chib, Senior Advocate
with Mr. Vaibhav Seth, Mr. Vikhyat
Oberoi, Ms. Sonal Sarda, Ms.
Unnati, Ms. Jagriti, Mr. Taha Yadin
& Ms. Mansi, Advocates

Versus

SCINDIA POTTERIES AND SERVICES PRIVATE LIMITED

.....Respondent

Through: Mr. Manav Gupta, Mr. Sahil Garg,
Mr. Abhinav Jain, Ms. Samiksha
Jain & Ms. Devanshi Rangi,
Advocates

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal has been preferred by the appellant under the provisions of Section 19 of The Contempt of Courts Act, 1971 against the Judgments and orders dated 02.03.2020 and 31.01.2023 respectively,

whereby he has been held guilty of contempt in CONT. CAS.(C) 661/2019 and sentenced to 3 months' simple imprisonment with fine of Rs.2,000/-.

2. The factual background of this case, as noted in the impugned order dated 02.03.2020, is as under:-

"2. The learned senior counsel for the petitioner alleges CS(OS) No.1311/2001 titled "Scindia Potteries & Services Pvt. Ltd vs. Dr. J.K. Jain & Anr." was filed for mandatory injunction, permanent injunction, recovery of use, occupation, physical and vacant possession and recovery of mesne profits against respondent in June 2001.

3. The learned Trial Court on 17.07.2017 decreed the said suit in favour of petitioner for possession, mesne profits, injunctions restraining the respondent from carrying out illegal activities and for raising further construction and mandatory injunction directing the respondent to demolish the illegal constructions/structure etc.

4. The respondent preferred an appeal being RFA No.857/2017 before this Court titled Dr.J. K. Jain and another vs Scindia Potteries & Services Pvt Limited challenging the judgment and decree dated 17.07.2017 and on 11.10.2017 this Court passed the following order:-

"13. The senior counsel for the appellants states that the appellants will place a proposal before this Court of the amount

which the appellants can deposit and the unencumbered security which the appellants can furnish for the remaining decretal amount.

14. I may add that the appellants, during the pendency of this appeal shall remain liable for future mesne profits.”

5. *Thus, conditional stay was granted on the execution of the decree by this Court on 23.11.2017 and the respondent were to deposit 50% of the decretal amount with up-to-date interest with the Registry of the Court within eight weeks and subject to the further condition of the respondent's depositing the monthly user and occupation charges at the rate of Rs.7.5 lacs per month till the final disposal of the appeal. Such time period expired on 18.01.2018 and the respondent failed to deposit the money.*

6. *On 01.02.2018, when the petitioner filed the Execution Application No.80/2018 before learned Trial Court, the respondent filed CM No.4177/2018 under Section 151 CPC praying for pardon for non-compliance of the order dated 23.11.2017 and to grant one month time to deposit the said amount.*

7. *On 05.02.2018, this Court inter alia passed the following order:-*

“The learned counsel for the appellant states that by the 10th day of each Gregorian calendar month an amount of Rs.7.5 lacs shall be

deposited into respondent/ Decree Holder's bank account: Punjab National Bank Account No.0151002100010748 [IFSC Code PUNB0015100] in the name of Scindia Potteries & Services Pvt. Ltd., Punjab National Bank, Sarojini Nagar, New Delhi-23.

Any infraction in the payment of the said amount shall automatically result in payment of cost of Rs.15,000/- to the respondent, which amount(s) too shall be deposited into the aforesaid bank account within two weeks thereafter.

The arrears of Rs.7.5 lacs, payable from 17th July, 2017, shall be paid into the said bank account within five weeks from today."

8. Unfortunately, Mr.J.K. Jain expired on 05.03.2018 and the application bearing CM No.4177/2018 was disposed of on 18.07.2018 wherein this Court noted:-

"23. The counsel for the legal heirs of appellant / defendant no.1 states that the legal heirs could not deposit without coming on record.

24. The legal heirs of the appellant / defendant no.1 cannot on the one hand continue in possession and on the other hand wriggle out from the liabilities of the deceased appellant / defendant no.1.

25. The counsel for the legal heirs of appellant / defendant no.1 states that Mr. Ankur Jain, son of the deceased appellant / defendant no.1, is

personally present in the Court and undertakes to this Court to, within two weeks, deposit 25% of the decretal amount with up to date interest thereon and within four weeks, deposit another 25% of the decretal amount with up to date interest thereon.

26. Mr. Ankur Jain identified by the advocate has been cautioned of consequences of breach of undertaking given to the Court.

27. If the undertaking is not complied with, the respondent / plaintiff besides being entitled to execute the decree shall also be entitled to initiate proceedings against Mr. Ankur Jain for contempt of Court for breach of the undertaking given to the Court. "

9. Admittedly, Mr. Ankur Jain, respondent No.1 had filed an undertaking on behalf of late Dr. J.K. Jain and on behalf of respondent No.2 – Jain Studio Limited, as its authorised representative. In view of the undertaking given by the respondent on 18.07.2018, this Court extended time to deposit the amount and allowed the respondent to deposit 25% of the said amount with up to date interest within two weeks and balance amount within four weeks. The Court also cautioned the respondent No.1 present in the Court of the consequences of breach of the undertaking given by him. However, despite the undertaking given on 18.07.2018, the respondent yet again failed to deposit the said amount and instead moved the application CM No.30665/2018 along with affidavit(s) sworn by Ragini Jain, Ankur Jain and Madhurika Jain wherein it was prayed reasonable time be given to

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comply with the undertakings recorded on 18.07.2018.

10. *On 01.08.2018, this Court modified the order dated 18.07.2018 on the undertaking of Ankur Jain and allowed the respondent to deposit 25% of the decretal amount within three months and 25% of the decretal amount within four months thereafter and also directed no further extension shall be given and in case Ankur Jain is found to be in breach of the undertaking, the consequences would follow. The order dated 01.08.2018 notes:-*

“5. The counsel for the appellant no.1, again under instructions from Mr. Ankur Jain aforesaid, states that Mr. Ankur Jain undertakes to this Court to deposit 25% of the decretal amount within three months of today and the balance 25% of the decretal amount within four months of today.

6. The aforesaid undertaking of Mr. Ankur Jain is accepted and it is made clear to him that no further extension shall be granted and if he is found to be in breach of the undertaking, consequences shall follow.

7. The order dated 18th July, 2018, to the aforesaid extent, is modified in terms of the above.”

11. *The respondent yet again failed to deposit the amount as undertaken by them and instead preferred CM No.47168/2018 seeking further extension of time.”*

3. In the aforesaid background of the case, the learned Single Judge of this Court vide order dated 02.03.2020 held as under:-

“18. Thus, on each occasion it was only Mr. Ankur Jain and/his counsel who had given/reiterated the

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undertaking to this Court given by Mr.Ankur Jain and that his aged mother and his sister had only filed affidavits supporting to application CM APPL No.30665/2018, which application was, primarily, for extension of time to comply with order dated 18.07.2018. Hence, Mr.Ankur Jain is guilty of contempt.

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23. Thus, this Court may evolve its own procedure in punishing contempt. As the notice of this petition was issued and was duly replied by the appellants there was a sufficient compliance of natural justice since an opportunity to explain their conduct was given to each of the appellants. As observed above, since Mr.Ankur Jain is held guilty of contempt, hence is hereby served with a notice for his personal appearance before this Court for awarding punishment.”

4. While holding the appellant guilty of the offences alleged, the said Court vide judgment dated 09.01.2023 observed and held as under:-

“10. The suit was instituted on 01.06.2001 and it was decreed on 17.07.201

7. The appellate court vacated the stay on 14.12.2018 and the decree was executable. However, the Petitioner recovered the possession on 22.07.2022. The facts of this case are glaring inasmuch as the Petitioner who followed the due process of law to recover possession was confronted with an opponent who abused the process of law to defeat the claims of the Petitioner.

11. The Petitioner was subjected to multiple legal proceedings in different forums by Respondent no. 1 and his family after 14.12.2018,

which evidences that the Respondent no. 1 has scant regard for the undertakings given to the appellate court and the orders of the said court.

In a civil society which favours the rule of law, no person can be allowed to elect to not comply with the orders of the Court. In this regard, this Court would like to refer to the decision of the Supreme Court in Subrata Roy Sahara v. Union of India and Others, (2014) 8 SCC 470, wherein it was held as follows:

“185.2. Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders and also, the power to punish for contempt. (For details, refer to paras 15-21)
(Emphasis supplied)

12. Even though in the affidavit dated 01.12.2022 filed by the Respondent no.1 contemnor had tendered apology to this Court for the non-compliance of the undertakings given to this Court, this Court does not find any sincerity in the said apology on behalf of Respondent no.1 contemnor.

13. The averments as set out in the said affidavit dated 01.12.2022 has already been considered and rejected by this Court while passing order dated 05.02.2020. Therefore, it is not be open for the Respondent no.1 contemnor to reargue the said submissions. In HSBC PI Holdings (Mauritius)

Limited v. Pradeep Shantipershad Jain and Others, 2022 SCC OnLine SC 827, the Supreme Court has held as under:

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

(Emphasis supplied)

Order on Sentence

14. This Court is aware that the power to punish for contempt must be exercised with utmost caution. In so far as the order on sentence is concerned, as Respondent no.1 contemnor has already been held

guilty for contempt and considering his conduct, as aforesaid, this Court sentences Respondent no.1 contemnor, Mr. Ankur Jain to undergo three (3) months simple imprisonment along with a fine of Rs. 2,000/- and in default of payment of fine, he shall further undergo 15 days simple imprisonment.

5. During the course of hearing, learned Senior Counsel for appellant submitted that the impugned orders suffer from non-application of mind and is in clear violation of settled law and accordingly, they deserve to be set aside. It was submitted that the Hon'ble Court failed to appreciate the circumstances which necessitated seeking of extension of time to comply with the undertaking furnished before the Court on 18.07.2018 and 01.08.2018. Learned counsel next submitted that while passing the order dated 02.03.2020, the Court did not take note of the fact that continuous payments were being made on behalf of the appellant and his family to the respondent herein. Even continuous payment of Rs.7.5 lacs per month was made to the respondent, which was accepted without any protest. Learned counsel submitted that the appellant being legal heir of late Dr. J K Jain was attempting to liquidate his assets and on that basis, he had furnished the undertakings before the Court of learned Single Judge and the Court did not take note of the fact that security shares to the tune of Rupees Sixteen Crores (Rs.16 crores) were already given to respondent on 31.08.2018.

6. Learned Senior Counsel further submitted that impugned Order dated 31.01.2023 suffers from glaring mistakes as it incorrectly states that the NCLT Order dated 18.07.2022 had directed the RP of NSTPL to hand

over possession of the suit property, whereas the fact is that it was the RP of Jain Studios that had been directed to hand over possession. It also records that the appellant herein had appeared before the NCLT to oppose the said handover, whereas, appellant has never participated in the said proceedings. Also, the impugned order dated 31.01.2023 makes no reference to the Letter dated 14.02.2019 issued by the IRP in the NSTPL insolvency proceedings, pursuant to which the appellant herein had written letter dated 15.02.2019 and thereby the impugned Order dated 31.01.2023 suffers from clear illegality in cherry-picking selected facts. It was also submitted by learned counsel for appellant that the appellant was brought on record as the legal heir of late Dr. JK Jain on 18.07.2018 and his request for extension of time was rejected vide order dated 14.12.2018 and the entire delay has erroneously been put on appellant for possession of the suit property.

7. Learned Senior Counsel for appellant also submitted that the respondent has misled the Court by referring to FIR No. 127/2010, dated 09.07.2010, registered at police station Sarojini Nagar, New Delhi, as the said FIR has no relation to the present case.

8. Reliance was placed upon decision in *Niaz Mohd. Vs. State of Haryana* (1994) 6 SCC 332; *Rama Narang Vs. Ramesh Narang* 2021 SCC OnLine SC 29 and *Kanwar Singh Saini Vs. High Court of Delhi* (2012) 4 SCC 307 to submit that in contempt proceedings, the Court has to record a finding of breach / disobedience of an undertaking, and thereafter a specific finding that the disobedience was willful. However, it is submitted that in the instant case, the order convicting the appellant

does not state that disobedience was wilful or deliberate.

9. Reliance was also placed upon decision in *Collector of Central Excise Vs. GTC Industries Ltd.* 2004 SCC OnLine Del 553; *Ram Kishan Vs. Tarun Bajaj* (2014) 16 SCC 204 and *S.K. Saha Vs. Gokul Chandra Dhara* 1987 SCC OnLine Cal 73 to submit that no contempt can be said to have been committed if deposit was not made due to circumstances beyond control.

10. Next reliance was placed upon decision in *Sahdeo Vs. State of U.P.*, (2010) 3 SCC 705 to submit that the burden and standard of proof in contempt proceedings is that required in criminal proceedings, i.e. beyond reasonable doubt, which has not been met in the instant case.

11. Lastly, it was submitted that there was no wilful breach of the undertakings given before the Court and harsh punishment has been imposed upon the appellant and, therefore, the order dated 02.03.2020 and Judgment dated 31.01.2023 passed by the learned Single Judge in Cont Cas. (C) No. 661 of 2019, titled "*Scindia Potteries & Services Pvt. Ltd. v. Ankur Jain & Ors.*" deserve to be set aside.

12. To the contrary, learned counsel appearing on behalf of respondent/decree holder submitted that the appellant / contemnor has wilfully and deliberately breached the undertakings given by him before the Court. It was pointed out that the respondent- Scindia Potteries and Services Pvt. Limited had obtained a judgment and decree dated 17.07.2017 for possession and *mesne profits* and injunction in respect of property located at Scindia Potteries Compound, Sarojini Nagar, New Delhi. In appeal, this Court vide order dated 11.10.2017 directed that Dr.J.K. Jain and M/S Jain

Studios Limited shall remain liable for future *mesne* profits during pendency of the appeal. However, since appellant failed to deposit any amount, the respondent/ decree holder filed execution proceedings [Ex.P.80/2018], wherein warrants of attachment of suit property were issued. However, thereafter vide order dated 23.11.2017, this Court had stayed the execution proceedings subject to respondent therein i.e. Dr. J.K. Jain and M/S Jain Studios Limited depositing 50% of the decretal amount with up-to-date interest and deposit monthly use and occupation charges @Rs.7.5 lacs per month.

13. After demise of Dr.J.K.Jain on 18.07.2018, his son i.e. appellant herein, undertook before the Court that he shall deposit 25% of the decretal amount with up-to-date interest within two weeks and further 25% of the decretal amount with interest within four weeks. However, on an application made by the appellant, the order dated 18.07.2018 was modified on 01.08.2018 and while extending time to deposit, direction was issued to deposit the amounts as noted above within three months and 25% of the decretal amount within four months. Once again, another application for extension of further time was filed by the appellant, however, the said application was dismissed on 14.12.2018.

14. Learned counsel for respondent contended that despite repeated opportunities and undertakings given by the appellant, he has not paid the amounts undertaken. Therefore, the respondent herein filed execution petition before the District Courts, wherein vide order dated 01.02.2019, warrants of possession qua the suit property were issued. However, the said execution proceedings were stayed on an application made on behalf

of the Interim Resolution Professional appointed by the NCLT in CP No. 1344/2018, titled as *Dena Bank Vs. Noida Software Technology Park Ltd.*, though vide resolution dated 30.01.2019 passed by M/S Noida Software Technology Park Ltd., of whom appellant herein is the Managing Director, it was resolved that the company would not oppose the appointment of Interim Resolution Professional and appellant himself had vide letter dated 15.02.2019 informed the Resolution Professional regarding pendency of execution proceedings and regarding order dated 01.02.2019. Thereafter, insolvency proceedings were initiated against Jain Studio Limited and a moratorium was ordered vide order dated 26.02.2020 by the National Company Law Tribunal (NCLT) and the executing court vide order dated 20.03.2021 stayed the execution proceedings.

15. An application [IA No. 2437/2021 in C.P. No. (1B) 244(PB)/2019] was thereafter filed by the respondent herein before the learned NCLT and seeking possession of the suit property and vide order dated 18.07.2022, the said application was allowed observing that it did not form part of the assets of the Corporate Debtor.

16. However, to further stall the execution proceedings for possession of the subject property, an objection application was filed by Dr.Jain Clinic Private Limited, who was not a party in the suit proceedings, claiming that it was not bound by the decree and was in possession of the suit property and that the objector had not derived the possession from Jain Studio Limited or Dr.J K Jain. The said objections were filed by one Mr.K.R.Jain, Director and Authorized Representative of the Dr. Jain

Clinic Private Limited on the basis of resolution dated 19.10.2019 passed by the objector, which was signed by mother of the appellant, who happen to be legal heir of late Sh. J.K. Jain. Thereafter, an application has been filed by appellant's mother in execution court on the ground that moratorium was in progress and also the appellant moved an application seeking exemption from filing affidavit of assets under order XXI R 41 CPC with the plea of only being responsible to the extent of assets inherited by him from his father.

17. Lastly, learned counsel for respondent submitted that the appellant has wilfully breached the undertaking given to the Court and created multiple hindrances thus, this appeal deserve to be dismissed. Reliance was placed upon decision in ***Zeeny Jhelumi Vs. Inderpreet Singh Jhelumi*** 2020 SCC OnLine Del 2117 and ***Perry Kansagra, Sue Motu Contempt Petition*** 2022 SCC OnLine SC 1516.

18. The submissions advanced by learned counsel for the parties were extensively heard and the impugned Judgments and order dated 02.03.2020 and 31.01.2023 respectively; and other material placed on record has been carefully perused. We find that the root cause of this appeal is the litigation between the parties pertaining to built up property located in Scindia Potteries Compound Sarojini Nagar, New Delhi for which a suit being CS(OS) 58159/2016, titled as ***Scindia Potteries and Services Limited Vs. Dr.J.K. Jain*** was filed by the respondent herein- Scindia Potteries And Services Private Limited, against Dr.J.K. Jain & Jain Studios Limited for relief of permanent injunction.

19. As per averments noted in the aforesaid suit, appellant-Ankur Jain

is son of deceased Dr.J.K. Jain, who was the Partner Director in Jain Studios Limited as well as respondent- Scindia Potteries And Services Private Limited. The subject property located in Scindia Potteries Compound Sarojini Nagar, New Delhi, measuring 5059.87 sq. Meter, was being held by respondent- Scindia Potteries And Services Private Limited, under a perpetual lease deed from Land and Development Office, Government of India and is known as Manager's Bungalow as per NDMC record. At the request of Dr.J.K. Jain, he was permitted to use the said property as residential property, however, without any documentation or money consideration on the undertaking of Dr.J.K.Jain that he would vacate the premises whenever called for. However, when on the asking of Scindia Potteries And Services Private Limited, Dr. J.K.Jain refused to handover peaceful possession of the subject property, consequentially; a legal notice was sent which culminated into the legal proceedings between the parties.

20. On the other hand, Dr.J.K.Jain, pleaded in the said suit that they were occupying the subject property under irrevocable license and the property was being used for commercial purposes and that plaintiff had used forged documents to seek his eviction and that he had been a Director in Scindia Potteries And Services Private Limited since 1980, who had unauthorizedly removed him from the Directorship of the company. After completion of pleadings and exhibition of documents, the following issues were framed by the learned trial court:-

“ISSUES-

1. Whether Shri Ramesh Chand Sharma is competent to institute, sign and verify the suit? OPP.

2. *Whether a permissive licence was granted by the plaintiff to defendant no.1 for using the Manager's bungalow at Scindia Villa, Scindia Potteries Compound, Sarojini Nagar, New, Delhi (hereinafter, 'the suit properties')? OPP. . .*

3. *Whether an Irrevocable licence was granted by the plaintiff to defendant no.1 of the suit premises, as pleaded by the defendants in para 6 of the written statement? OPD.*

4. *Whether defendant no.1 was given the permission by the plaintiff to run the business and other commercial activity from the suit premises. OPD.*

5. *Whether the alleged and unauthorised and illegal construction raised by defendant no.1 is liable to be demolished? OPP.*

6 *Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from raising any construction in the suit property? OPP.*

7 *Whether the plaintiff is entitled to an. injunction restraining the defendants from carrying out any commercial activity from the premises. OPP.*

8. *Whether the plaintiff is entitled for a decree of possession of the suit premises? OPP.*

9. *Whether the plaintiff is entitled to mesne profits, for occupation of the suit property, by the defendants and, if so, from what date and at what rate? OPP.*

10. *Whether proceedings of the meeting of Board of Directors purported to have been held on*

04.10.1999 and the Annual General Meeting held on 04.11.1999 are fabricated and have no legal effect? OPD.

11. Whether the plaintiff is acquiescing in the continued use and occupation of the property by the defendants, since 1984 has foregone the right to seek relief prayed for? OPD.

12. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD”

21. After framing of issues, the evidence of the witnesses was recorded. In support of its case, Dr.J.K.Jain got examined thirty three witnesses and respondent herein- Scindia Potteries and Services Private Limited, examined five witnesses. The learned trial court after recording the testimony of witnesses and hearing both the sides, passed a detailed judgment while holding as under:-

“149. In view of the above, the suit of the plaintiff is decreed. Let a Decree of Possession as well as Mandatory injunction be passed in favor of the plaintiff, and against the defendants that they and their subjects shall hand over peaceful and vacant possession of suit property i.e. Manager's Bunglow at Scindia Villa, Scindia Potteries Compound, Sarojini Nagar, New Delhi to the plaintiff. Let a decree of awarded mesne profit Rs.5 lacs per month along with 9% interest pendente lite and Rs.7.5 lacs per month post the Decree till actual vacation of the property along with interest@9% per annum against the defendants to be paid to plaintiff.

150. Let a decree of permanent injunction be

passed in favour of the plaintiff and against the defendants restraining them from carrying out any commercial activities in the suit premises.

151. Also let a decree of permanent injunction be passed in favor of the plaintiff and against the defendants-restraining them from raising any construction in the suit property.

152. Let a decree of mandatory injunction be passed in favour of the plaintiff and against the defendants directing the-defendants-to demolish all the illegal constructions/structures erected by them apart from those provided in the site plans.”

22. Against the aforesaid Judgment and Decree passed in favour of respondent herein, the appellant herein filed an appeal [RFA 857/2017] and this Court on 23.11.2017 granted a conditional stay in favour of appellant herein subject to deposit of 50% of the decretal amount with up to date interest with the Registry of this Court within 08 weeks (till 18.01.2018) and to pay occupation charges at the rate of Rs.7.5 lacs per month till the final disposal of the appeal. However, since appellants failed to deposit the said amount, the petitioner preferred execution petition before the learned trial court. In the meanwhile, an application [CM APPL. 36588/2017] seeking extension of time in making the payments was filed in the appeal by the appellant and this Court vide order dated 05.02.2018 directed the appellant to file an affidavit to the effect that the properties offered as security towards the decretal amount are without any encumbrance or lien; to deposit *mesne* profit in the Court; shall deposit original papers of properties over which ‘he has

unencumbered rights', encashable securities and cash in terms of the previous order; shall specify the amount of cash which shall be readily deposited in the Court and in case of default, appellant shall bear cost of Rs.15,000/-. However, Dr. J.K Jain expired on 05.03.2018 and his son, appellant- Ankur Jain, being his legal heir appeared before the Appellate Court and undertook to comply with the directions of deposit of 50% of decretal amount and the *mesne* profits. In view of his undertaking, the Appellate Court extended time, however with the condition that in the event of his failure to comply with the undertaking, the respondent herein shall be entitled to seek execution thereof.

23. Even thereafter, another application [CM APPL. 30665/2018] seeking further extension of time to comply with his undertaking was filed by the appellant, which was allowed by the Appellate Court vide order dated 01.08.2018 with the direction that if again appellant is found in breach of his undertaking, the consequences shall follow. The appellant this time also failed to comply with his undertaking and yet again filed an application [CM APPL. 47168/2018], however this time, the Appellate Court vide order dated 14.12.2018 declined to grant any further relief to the appellant and thereby, the decree passed by virtue of judgment dated 17.07.2017 turned executable w.e.f. 14.12.2018.

24. The respondent/decreed holder preferred contempt proceedings being CONT.CAS (C) No.661/2019 against the appellant, wherein vide order dated 02.03.2020, the learned Single Bench of this Court held that appellant had time and again breached the undertakings given to the Court and was held guilty of the offence under Section 2(b) of the Contempt of

Courts Act, 1987 and vide order dated 31.01.2023 he was awarded sentence in the manner noted in the preceding paragraph. The orders dated 02.03.2020 and 31.01.2023 have been assailed before this Court.

25. The learned Single Judge while passing the impugned order 02.03.2020 has categorically noted the fact that consequent upon failure of appellant – Ankur Jain, who after demise of his father Dr.J.K. Jain, in the capacity of his legal heir and legal representative, had twice furnished undertakings on 18.07.2018 and 01.08.2018 before the Court to fulfill the conditional stay order dated 23.11.2017. Not only this, on an application made by the appellant, the condition to deposit 50% decretal amount within the stipulated time frame, was modified vide order dated 18.07.2018 and he was permitted to deposit 25% of the decretal amount within three months and further 25% within four months thereafter. Despite further accommodation, appellant failed to deposit the decretal amount in the manner directed vide order dated 18.07.2018 and therefore, his yet another request for extension of time was rejected vide order dated 14.12.2018.

26. Before this Court, the appellant has placed reliance upon decisions in *Collector of Central Excise Vs. GTC Industries Ltd. (Supra)*; *Ram Kishan Vs. Tarun Bajaj (Supra)* and *S.K. Saha Vs. Gokul Chandra Dhara (Supra)* to submit that the learned Single Bench has failed to appreciate the circumstances which necessitated seeking of extension of time to comply with the undertaking furnished before the Court on 18.07.2018. In our considered opinion, it was in the appeal preferred by the appellant against the impugned judgment and decree that the

conditional stay of execution proceedings was granted. This Court while hearing the appeal [RFA 857/2017], has been considerate in view of circumstances pleaded by the appellant and therefore, granted stay order in favour of appellant subject to deposit of 50% decretal amount only and not the entire decretal amount. Even thereafter, the said stay order was modified to the benefit of the appellant. Therefore, appellant cannot be permitted to take benefit of afore-noted decisions to submit that the Court has not taken note of his circumstances while rejecting his application.

27. Now as to whether the default in non-compliance of undertaking was wilful or deliberate, we find that the copy of letter dated 15.02.2019 placed on record shows that in Corporate Insolvency Resolution Process initiated against Nodia Software Technology Park Pvt. Ltd., whereof appellant- Ankur Jain is the Managing Director, the appellant informed the Resolution Professional regarding pendency of execution proceedings in respect of property located at Scindia Potteries Compound, Sarojini Nagar, New Delhi; specifically pleading that it is the registered office of Nodia Software Technology Park Pvt. Ltd. and the learned Executing Court had issued warrants of possession vide order dated 01.02.2019.

28. Even in the execution proceedings [Ex.No. 80/18], an application was filed on behalf of Interim Resolution Professional, bringing to the notice of the Executing Court that by virtue of order dated 26.02.2020 in C.P. No. (IB)-244(PB)/2019 titled as '*Stressed Assets Stabilization Funds (SAFS) Vs. M/s Jain Studio Limited*', before the NCLT, moratorium is in operation and so, execution proceedings against the appellant are prohibited. This resulted into stay of the warrants of possession issued on

01.02.2019 against the appellant. The respondent/decreed holder thereafter initiated contempt proceedings [CONT. CAS.(C) 661/2019] against the appellant, wherein vide judgment dated 02.03.2020, appellant was held guilty of deliberate failure to comply with the undertakings given. Since the peaceful possession of the subject property was not yet hand over, the respondent/decreed holder was constrained to file an application [IA 2437/2021] before the learned NCLT, who vide order dated 18.07.2022 while disposing of the said application, observed and held as under:-

“IA-2437/2021
SUBMISSIONS OF M/S. SCINDIA
POTTERIES AND SERVICES PRIVATE
LIMITED

13. *This application is filed under Section 60 (5) of IBC by M/s. Scindia Potteries and Services Private Limited (SPSPL) stating that it is the owner of the Property and had granted a revocable permission to one Dr. J.K Jain, thereby revoking the permission granted in the year 1983; however, on failing to vacate, an eviction suit was filed by SPSPL, which was decreed in its favour and against Dr. J.K Jain and all other companies existing on behest of Dr. J.K Jain at the said property. Further, a money decree dated 17.07.2017, for an award of mesne profits was passed in favour of SPSPL by Ld. Patiala House Court.*

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CONCLUSION

22. We have heard the parties and carefully perused the documents. The issue w.r.t. the handing over the possession of the Property has to be dealt with first. In this regard the definitions provided in the resolution plan submitted by the SRA are to be referred, which read as under:

(i) Assets- "All assets (tangible and intangible), properties, goods, rights, benefits and privileges of the Company/ corporate Debtor".

(ii) Secured Immovable Assets- "all of the immovable properties (including leasehold rights in case of leasehold land) and assets of the Corporate Debtor, present and future".

(iii) Secured Movable Asset- "all of the movable properties and assets of the corporate Debtor, present and future".

Perusal of the above stated definitions, makes it is clear, that the scope of the Resolution Plan is limited to 'only the assets of the Corporate Debtor' and not 'assets of any third party', thus, the SRA is not making any claim over the Property. Further, it is not in dispute that the Corporate Debtor is not the owner of the Property, and therefore, it was not included by the Resolution Professional as an 'asset' in the information Memorandum and is not part of the Resolution Plan as well. In this regard reference can be made to the Regulation 37 (a) of CIRP Regulations which reads as under:

In view of the above stated provision, the Resolution Plan can include only the assets of the Corporate Debtor and transfer only those assets. Therefore, the Resolution Professional has taken proper action by not including the Property in issue in the Information Memorandum in terms of the provisions of IBC, therefore, the Resolution

Professional is directed to handover the possession of the Property to SPSPL, forthwith from the date of this Order, free of all restraint as it is not part of the 'assets of the Corporate Debtor' and the moratorium ceases to exist with effect from the date of this Order.

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30. *It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.*

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33. *The IA-2437/2021 in CP (IB)-244(PB)/2019, is allowed to the above stated extent."*

29. Subsequent upon this order, the possession of the suit property could actually be made to respondent/ decree holder on 22.07.2022 in terms of judgment and decree dated 17.07.2017. The afore-noted facts of this case clearly establish that there is wilful breach committed on the part of appellant in not complying with the undertakings furnished before this Court. In our opinion. The learned Single Bench while passing impugned order dated 02.03.2020 extensively noted the conduct of appellant and also while passing the order on sentence dated 31.01.2023, rightly observed that the appellant mistook the compassion shown by the Court as lack of conviction to punish him for his deliberate and wilful breach and

disobedience. The conduct of appellant speaks volume of his intention not to fulfil the decree awarded in favour of the respondent. The provisions of Contempt of Courts act envisages power upon the Court that if a person is found guilty of a civil contempt and the fine imposed does not meet the ends of justice, the sentence of imprisonment can be imposed.

30. Pertinently, when this appeal came up for hearing before this Court, the appellant undertook that he will surrender before the authorities concerned within the time granted by the learned Single Bench. When arguments in this appeal were heard and reserved for judgment on 09.01.2023, we were informed that the appellant had already surrendered on 04.02.2023.

31. On the aspect of conduct and punishment of contemnor, the pertinent observations of the Hon'ble Supreme Court in **Perry Kansagra (Supra)** are as under:-

"13. The contemnor had given an unequivocal undertaking to the High Court that he would submit to the jurisdiction of the Indian Courts. In response to a submission raised in Miscellaneous Application No. 2140 of 2020, he specifically stated that he had subjected himself to the jurisdiction of this Court. In its Order dated 08.12.2020, this Court made it clear that the undertaking given by him to the High Court would continue to be operative in addition to the undertaking given to this Court. The contemnor blatantly breached the undertaking. This is a deliberate disobedience of Courts order.

14. The contemnor gave a solemn undertaking to this Court that he would comply with the judgment

dated 28.10.2020 and the order dated 08.12.2020. However, he breached this undertaking also. It had become evident that the contemnor has, in his well-calculated and deliberate scheme of things, given assurances and undertakings to mislead the Courts in India, including this Court, when he had no intention to comply or abide by any of his assurances. The following acts would demonstrate that they are not only willful disobedience of the judgment of this Court but are calculated to obstruct the administration of Justice and interfere with the due course of judicial proceedings. They had the clear effect of lowering the authority of the Court.

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24. *It is now well settled that the power of the Supreme Court to punish for contempt is not confined to the procedure under the Contempt of Courts Act. In Pallav Sheth v. Custodian (2001) 7 SCC 549, this Court held that:—*

“30. There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the

contempt jurisdiction under Article 129 or Article 215 of the Constitution.”

32. Also, the Supreme Court in ***Ashok Paper Kamgar Union Vs. Dharam Godha*** (2003) 11 SCC 1 has observed as under:-

“17. Section 2(b) of the Contempt of Courts Act defines “civil contempt” and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. “Wilful” means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.”

33. The facts of the present case clearly demonstrate that the appellant/contemnor had no intention to honour the directions passed by this Court. Had he the intention, he would have atleast deposited 25% of the decretal amount in this Court as per modified order or have continued to pay amount of Rs.7.5 Lacs per month towards *mesne* profits. Despite repeated extension of time given and concessions granted to the appellant, he

intentionally and deliberately failed to abide by his undertakings tendered before this Court. While evading to comply with the order dated 23.11.2017 passed in his appeal, perhaps the appellant was under the mistaken belief that he can stall the execution proceedings indefinitely. By filing various applications in different proceedings and seeking extension of time again and again, appellant has in fact delayed hearing in his appeal.

34. In the light of aforesaid observations, finding no merit in this appeal, it is dismissed accordingly. Pending applications are disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 07, 2023

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