

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

% **Judgment reserved on: 03.08.2009**
Judgment delivered on: 01.07.2010

+ **Cont Cas. (C) No.183/2009**

ANAND J. DATWANI Petitioner
Through: Mr. Abhinav Vashist, Advocate

versus

GEETI BHAGAT DATWANI Respondent
Through: Mr. A.K. Sengupta with Mr.
Suraj Prakash & Mr. Sonmitra
Chatterjee, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | : | No |
| 2. | To be referred to Reporter or not? | : | No |
| 3. | Whether the judgment should be reported in the Digest? | : | No |

J U D G M E N T

VIPIN SANGHI, J.

1. This contempt petition has been filed by the petitioner under sections 10, 11 and 12 of the Contempt of Courts Act, 1971 against the respondent/contemnor, alleging willful disobedience of the order dated 13.01.2009 passed by this Court in WP (Crl.) No. 1097 of 2008. The said writ petition had been filed by the respondent herein to challenge the order dated 11.08.2008 passed

by the learned ASJ in CA No. 7/2007 and C.A. No.10/2008. The order dated 11.08.2008 had been passed by the learned ASJ in four appeals preferred by the parties (two each by the petitioner and the respondent) from out of proceedings initiated by the respondent under the Protection of Women from Domestic Violence Act, 2005 (DV Act for Short) being Complaint Case No.111/2007. The order dated 11.08.2008, *inter alia*, stayed the eviction of the petitioner as directed by the learned M.M. vide order dated 03.11.2007, from the portion of property No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi assigned to him, till the final disposal of the aforesaid Complaint Case No.111/2007.

2. The petitioner and respondent were married in 1994. After they got married, they shifted their residence to Vasant Vihar. A daughter was born to the parties in 1996, and a son was born in 1999. Since 2001, both the parties along with their children were residing together at property no.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi. The respondent bought the said property bearing no.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi in the year 1989, i.e. much prior to the marriage between the parties in 1994.

3. The petitioner admits that the respondent is the sole ostensible owner of the said property, but at the same time also contends that he had spent almost 3.5 crores on developing the

farmhouse and other infrastructure on it. He further alleges that he had entered into a development agreement with the respondent as per which he was to be given 50% share of the said property. However, the aforesaid document has not been filed on record. He submits that the fact that he did invest money in the construction etc can be corroborated by the persons concerned with the development and construction of the house, which includes the Architects, Contractors, material suppliers, etc. He further states that for the construction purposes, money amounting to more than Rs.1 crore was received on behalf of the petitioner from his Uncle's company in Hong Kong (SKC Pacific Ltd.) directly into the account of the respondent. It is also submitted by the petitioner that the respondent prevailed upon him to let out the second dwelling unit, and give the rent proceeds to her old parents.

4. The petitioner alleges that the respondent pressurized him to sign a document on 29.04.04 so that she could acquire complete 100% shares in the Shivaji Marg property. The petitioner, however, has not filed a copy of the said document. It is further stated by the petitioner that he had planned to celebrate his marriage anniversary with his friends, family and children in Bali, for which advance bookings were also made. In the meanwhile, the respondent left for London on a business trip on 09.10.2007. The petitioner alleges that when he called her there to enquire when was she returning as they had to leave for Bali together, the

respondent told him that she was required to stay in London on account of her illness and that she would join him and the family directly at the airport on 11.10.2007. But when she did not turn up that day, the petitioner went ahead with his trip to Bali as planned. He submits that on 12.10.2007 he came to know in Bali that the respondent had filed a petition under section 12 of the D.V.Act on 10.10.2007 itself and some *ex parte* interim order had also been passed.

5. The respondent had filed the aforesaid petition seeking, inter alia, the relief that the petitioner herein should remove himself from premises No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi, where he was living jointly with the respondent wife. A further restraint was sought against the petitioner and his agents or relatives from entering into any portion of the said premises. She also sought interim relief to the effect that the respondent or any of his agents or relatives be restrained from entering into any portion of the premises bearing No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi.

6. The petitioner avers that respondent's father and some men forcible took possession of the aforesaid house on the night of 12.10.2007. On 15.10.2007 the respondent herein moved another application before the learned M.M. The petitioner appeared through his employee Sh. Ratan Datwani. On the application of the

respondent, the learned M.M. restrained Sh. Ratan Datwani from entering the house No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi, till the next date of hearing. The learned M.M. further directed that when the petitioner returns India from Bali he shall have right to enter his matrimonial house. However, he shall not, in any manner, communicate with the petitioner without the petitioner so desiring herself and move himself to a particular portion as assigned to him by the respondent.

7. The petitioner submits that the respondent assigned a room in the outhouse next to the servants quarters, which was wholly inappropriate for use by him and removed all the belongings of the petitioner from his bedroom and shifted the same in the said "storeroom/staff room, which was not part of the" main building. The petitioner alleges that when he reached his home on his return from Bali at around 10:00 p.m on 21.10.2007, the security guards at the gate did not allow him to enter inside the premises stating that they were instructed to do so by the respondent herself. The petitioner alleges that at around 2.00 a.m in the night, he was thrown out of his house.

8. Aggrieved by such alleged conduct of the respondent, petitioner filed an application on 23.10.2007 before the MM for directions, alleging misuse of the order dated 15.10.2007. Meanwhile, the respondent also filed an application under section

31 of the D.V. Act alleging breach of the *ex parte* interim order, aforesaid, by the petitioner. On 29.10.2007, arguments were heard and the matter was reserved for orders on 02.11.2007. Subsequently, respondent's application under section 12 of the D.V. Act was allowed vide judgment of the court dated 03.11.2007.

9. The petitioner, aggrieved by the order dated 03.11.2007, filed an appeal under section 29 of the D.V. Act bearing C.A. No.7/07 wherein the court ordered the petitioner to remove his belongings from the disputed property within the next 7 days. He also filed another appeal No.11/2007 alleging that there was no offence committed by him, and instead it was the respondent who was guilty of violating the order dated 15.10.2007. The Ld. ASJ vide order dated 07.11.2007 in C.A. No.7/07 stayed the operation of the order dated 03.11.2007 to the extent that the petitioner herein was directed to remove his belongings from property No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi. In C.A. No.11/07, vide order dated 14.01.2008 the learned ASJ stayed the proceedings of the trial court under section 31 of the D.V. Act initiated by the respondent.

10. The respondent also filed two appeals, firstly CA No.19/2007 against the judgment/order dated 03.11.2007 since no relief was granted under section 18 of the D.V. Act for her protection from domestic violence against the petitioner and

secondly, CA No.10/2008 against the order dated 18.01.2008 whereby her application for compensation in CC No. 111/2007 was dismissed.

11. The above-mentioned 4 appeals were disposed of by the learned ASJ vide a common order dated 11.08.2008. The learned ASJ set aside the order dated 03.11.2007. The learned ASJ by way of an interim arrangement directed that the order dated 15.10.2007 passed by the trial Court in Complaint Case No.111/2007 shall continue to operate as read with the order dated 07.11.2007 in C.A. No.7/07. Consequently, it was directed that till the disposal of the Complaint Case No.111/2007, the belongings of the petitioner and the petitioner may continue to remain in the room that had been assigned to him by the respondent wife in property No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi. The petitioner was, however, restrained from entering into any portion of property No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi, apart from the room in which his belongings had been shifted by the respondent. The prayer made by the petitioner to seek directions for restoration of *status quo ante* as on 09.11.2007 was declined.

12. Respondent being dissatisfied with the said order filed a Criminal Writ Petition No.1097/2008. This Court on 13.01.2009 directed that the parties shall abide by the order dated 15.10.2007.

The petitioner was permitted to derive the benefit of the order dated 11.08.2008.

13. Pursuant to the said order allowing his ingress in the disputed property into the portion allocated for him, the petitioner tried to enter the property on 28.01.2009, but the guards at the gate did not permit him to enter on instructions of the respondent. The petitioner allegedly wrote a complaint letter to the SHO Vasant Kunj Police Station narrating the whole incident in detail. A copy of the said complaint has been annexed to the present contempt petition. It is this act of the respondent in forbidding the petitioner from entering the house as directed in the order dated 13.01.2009, that the petitioner alleges to be contumacious as per section 2(b) of the Contempt of the Court Act, 1951.

14. Now moving on to the defence of the respondent, it is the case of the respondent that the petitioner, ever since their marriage, has been a violent, greedy and aggressive man. After the marriage in 1994, only few months later he had physically abused her but they had later reconciled. They went on to live like this till 2007, after which the respondent filed a complaint case against her husband bearing no. 111/2007 under section 12 of the D.V. Act on 10.10.2007 claiming, inter alia, maintenance and right of residence and interim orders as set out above. In those proceedings before the MM, an interim order dated 15.10.2007 was

passed, whereby, it was directed that the petitioner be allowed to enter his matrimonial house on his return to India, but he had to restrict himself to a particular portion as assigned to him and also not to communicate with the respondent unless so desired by her.

15. The respondent further submits that she did assign a decent room to the petitioner in compliance to the court's direction but he refused to accept the same and left the premises on his own accord on the night of 21.10.2007. In this regard, the respondent places reliance on the averment of the petitioner made in his application dated 23.10.2007 before the learned M.M. in C.C. No.111/2007. It was averred paragraphs 19 & 24 of the said application that the room assigned by the respondent wife for occupation by the petitioner was uncomfortable and it was not possible for him to use the said room as his living quarters and consequently, he *"was left with no choice but to stay outside in Hotel Radisson at very high charges after having been literally thrown out of the house at about 02:00 a.m. on the night of 22.10.2007"*.

16. The case of the respondent is that the entire premises had been leased out to Lockheed Martin India Pvt. Limited on 01.08.2008 in pursuance of a lease executed between the respondent and the said company in June 2008. According to the respondent there was no restraint against her from letting out the premises and as she was in need of rental income to sustain herself

and her two children, she let out the entire premises including the room allocated for the petitioner herein since the petitioner, even according to his own statement, refused to accept and occupy the said room.

17. Learned counsel for the respondent submits that the petitioner had filed CS(OS) No.7558/2008 before this Court to seek an injunction against her from dealing with property bearing No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi. However, the injunction sought by the petitioner against the respondent from dealing with the said property was never granted to him. In this regard, the orders passed in the said suit on 29.04.2008, 01.05.2008 and 21.05.2008 have been placed on record by the respondent.

18. The respondent has also placed reliance on a disclaimer and undertaking dated 29.04.2004 executed by the petitioner wherein he had affirmed and declared that the respondent was the sole and exclusive owner of premises No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi. He had also stated in the said disclaimer and undertaking that the respondent had obtained the requisite sanction for raising construction in the said property in July, 1990 and with her parents started construction of the house, which was completed in July, 1993. The marriage between the petitioner and the respondent was solemnized in October, 1994. The petitioner in the said undertaking stated: -

“2. That I solemnly affirm and declare that I have no right over property belonging to my wife. She has all the rights of ownership to use, let, sell, mortgage and so on her properties and assets in any way she deems fit and I will not stand as a impediment in any manner in implementing her plans, which may involve my shifting out of the said property when asked, without any delay or demur.

3. I declare that any expenditure that I have incurred during renovations or may incur directly or indirectly on the aforesaid property, does not give me any right of residence or tenancy or claim the property or part thereof to demand back such expenditure nor claim any income accruing from the said property or rentals therefrom.

4. That I hereby undertake that in the event of me or my wife filing legal proceedings for judicial separation or divorce I will shift out of the premises forthwith and make no claims thereon. In the event of my wife's demise, I would neither claim nor occupy the said premises beyond a period of 3 months.

That the aforesaid undertaking and the disclaimer has been given or executed by me out of my own free will without any coercion or pressure exerted upon me.”

19. Learned counsel for the respondent has submitted that admittedly the property bearing No.32, Shivaji Marg, Westend Greens-II, Rangpuri, New Delhi, stands in the ownership of the respondent, the petitioner, prima facie, has not been able to establish any semblance of title to the said property. He further submits that though, according to the petitioner, the said disclaimer and undertaking is null and void, till so long as the same

is not so declared by a competent Court to be null and void, the petitioner is bound by the same.

20. Learned counsel for the respondent submits that the judgment had been reserved by the learned ASJ in the four appeals preferred before her on 11.03.2008. As aforesaid, the letting of the entire premises had taken place on 01.08.2008 i.e. after the reservation of the judgment by the learned ASJ. The judgment came to be pronounced only on 11.08.2008. Consequently, the learned ASJ could not be informed of the factum of the letting out of the entire property to M/s Lockheed Martin India Pvt. Limited w.e.f. 01.08.2008. The respondent submits that when she preferred the aforesaid writ petition before this Court to challenge the order dated 11.08.2008, a specific disclosure was made by her about the entire premises being let out on 01.08.2008.

21. In his rejoinder, learned counsel for the petitioner has submitted that during the pendency of the present petition, which is pending since 21.02.2009, the respondent had changed the tenancy and a new tenant had been inducted into the premises on 01.07.2009. Even at that stage, the respondent did not make any endeavour to comply with the order passed by the learned ASJ on 11.08.2008 and as reaffirmed by this Court in its order dated 13.01.2009. He submits that this clearly shows the willful and deliberate intent of the respondent to defy the orders of this Court.

22. Before proceeding with the matter further, certain basic statutory features need to be noticed at this juncture. The Contempt of Courts Act, 1971 has been enacted for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is undoubtedly a powerful weapon in the hands of the law Courts, but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Statute. These observations are found in ***Chhotu Ram v. Urvashi Gulati and Anr.*** 2001 CriLJ 4204.

23. The petitioner has to make out a clear-cut case to establish the contempt committed by the alleged contemnor, otherwise the Court would give the benefit of doubt to the accused. The contempt proceedings being one of criminal nature, the burden of proof is a very strict one and has to be discharged to the complete satisfaction of the court. Moreover, it may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "**civil contempt**" within the meaning of Section 2(b) of the Contempt of Court Act of 1971 the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation the act or acts

cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise. The Supreme Court voiced this point in ***Bijay Kumar Mahanty Vs. Jadu @ Ram Chandra Sahoo*** AIR 2003 SC 657 opined as follows:-

"I have no difficulty in accepting the contention that the case against the appellant is required to be proved beyond reasonable doubt. The contempt proceedings under the Act are quasi criminal. The standard of proof required is that of criminal proceedings. Therefore, the charge has to be established beyond reasonable doubt (see ***Mrityunjoy Das and Anr. v. Sayed Hasibur Rahaman and Ors. (2001)2SCR471***)."

24. In the afore-mentioned case, Banerjee J. also quoted with approval the following words of Lord Denning in ***Re Bramblevale*** 1969 (3) All ER 1062 which concur with the above observation and reads as below: -

"A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.... Where there are two equally consistent possibilities open to the Court, it is not right to hold the offence is proved beyond reasonable doubt."

25. Powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

26. The mere inability or disability to comply with the direction of the Court would not be sufficient to justify initiation of action against a party under the Contempt of Court Act. It would also have to be established that failure to comply with the Court's direction is willful and deliberate. If the respondent/contemnor pleads inability or disability to comply with the Court's direction, it would need to be examined whether the same is genuine or it is self imposed or make believe.

27. Having considered the matter, in my view, the defence furnished by the respondent, as already set out above, cannot be said to be false or concocted. It is the petitioner's own averment that the room assigned by the respondent for his occupation was not to his liking and did not meet his requirements. It is not his case that he ever occupied the said room. It is his own case that he did not stay in the said room even for a day and, instead, proceeded to occupy a room in Radisson Hotel. The respondent,

therefore, cannot be faulted for proceeding on the basis that the petitioner had opted not to occupy the room assigned for his use and occupation. She was in control and occupation of the entire premises and there was no restraint against her from letting out the said premises. Her conduct in letting out the premises to M/s Lockheed Martin India Pvt. Limited, including the room assigned for the occupation of the petitioner, cannot be said to be contumacious. When the said step was taken the matter had been heard at the appellate stage by the learned ASJ and judgment reserved. Only after the said letting had taken place on 01.08.2008 the judgment came to be pronounced in the appeal on 11.08.2008. The factum of the respondent having again let out the entire premises on 01.07.2009, in my view, is neither here nor there. This is so because the petitioner himself having opted not to occupy the room assigned for his occupation, in my view, a reasonable and probable view, on the basis of which the respondent proceeded to act, was that the respondent was entitled to let out the entire premises, including the room in question as the petitioner had refused to accept and occupy the said room.

28. It is also important to note that the petitioner had moved an application in Suit No.7558/2008 on or about 20.11.2008 to seek a direction that the respondent herein should deposit the advance amount, security amount and the rent of the premises in question in those proceedings and had also sought the release of the same

in his favour. In my view, the petitioner cannot blow hot and cold at the same time. On the one hand he is aggrieved by the letting out of the entire premises, including the room in question which he alleges to be a deliberate and willful disobedience of the order dated 11.08.2008 passed by the learned ASJ and the order dated 13.01.2009 passed by this Court, while on the other hand he wishes to derive the income from the said letting done by the respondent.

29. In view of the aforesaid discussion, I am not inclined to proceed further in these proceedings against the respondent. I, accordingly, dismiss this petition and discharge the notice issued to the respondent. Parties are left to bear their own respective costs.

**(VIPIN SANGHI)
JUDGE**

JULY 01, 2010
sr/rsk