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

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Date of Decision: 25.05.2022

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CCP(O) 33/2022 in CS(COMM) 602/2016

**JIVA INSTITUTE OF VEDIC SCIENCE  
& CULTURE AND ANR**

..... Petitioners

Through: Mr. Sudeep Chatterjee, Mr. Tejveer  
Singh Bhatia and Mr. Rohan Swarup, Advocates.

versus

**PUNEET CHHATWAL & ORS**

..... Respondents

Through: Mr. Mukul Rohatgi, Senior Advocate  
with Ms. Meghna Mishra, Mr. Arjit Benjamin and  
Ms. Aishwariya Chaturvedi, Advocates for R-1 to  
5.

Mr. Sandeep Sethi, Senior Advocate with  
Ms. Meghna Mishra, Mr. Arjit Benjamin and  
Ms. Aishwariya Chaturvedi, Advocates for R-6.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JYOTI SINGH, J. (ORAL)**

1. Present contempt petition has been filed with the following prayers:-

*“a. That this Hon’ble Court be pleased to hold the Respondents No. 1 to 6 hereinabove, guilty of gross, deliberate and continuing contempt of the orders dated 17.10.2006, 30.05.2008 and the order dated 04.04.2016 along with the undertaking recorded in the order dated 04.04.2016 passed by this Hon’ble Court;*

*b. That Respondents 1 to 5 who are responsible for the day-to-day management and conduct of affairs of the Respondent No.6 Company be punished with civil imprisonment and exemplary fine;*

c. *Attach the movable and immovable properties of the Respondents no. 1 to 6;*

d. *In case this Hon'ble Court comes to the conclusion that the same constitutes criminal contempt, the matter be referred to the Hon'ble Division Bench for taking appropriate action in accordance with law;*

e. *That immediate orders be passed directing the Respondents No. 1 to 6 as mentioned hereinabove, to comply with the 17.10.2006, 30.05.2008 and the order dated 04.04.2016 along with the undertaking recorded in the order dated 04.04.2016 passed by this Hon'ble Court;*

f. *That immediate orders be passed directing the Respondent No.6 to file the true and correct accounts of its income and expenditure relating to its business of their JIVA Spas in this Hon'ble Court in compliance with the order dated 30.5.2008 passed by the Hon'ble Division Bench, and if the same has been filed every six months, to direct the Respondent No. 6 to provide a copy of the same to the Petitioners;*

g. *That immediate order be passed directing the Respondent No. 6 to file true and correct accounts of the income from the advertisement and marketing of products under the mark 'JIVA' and/or its sub-brands and to furnish a copy of the same to the Petitioners;*

h. *That immediate orders be also passed restraining the Respondent no. 6 from in any manner using the mark/word JIVA either as a trademark, trade name, corporate name, house mark or in any other manner;*

i. *Impose exemplary cost on the Respondents for committing acts amounting to contempt of this Hon'ble Court;*

j. *Pass any other order/s that this Hon'ble Court deems fit and proper in the interest of justice."*

2. Factual exposition, as set out by the Petitioners/Plaintiffs is that *vide* order dated 17.10.2006, this Court had granted an *ex parte ad interim* injunction against Respondent No.6 herein (Defendant No.1 in the suit) and its Managing Director (Defendant No.2 in the suit), restraining them from adopting and/or using the trademark 'JIVA' or any other identical or deceptively similar or confusing mark, in relation to their goods and services and from manufacturing, advertising and marketing, etc. any goods or services under the said trademark. In an appeal against the said order, the Division Bench of this Court, *vide* order dated 30.05.2008 partly allowed the appeal, whereby the order dated 17.10.2006, restraining the Appellants therein from using the trademark 'JIVA' for their Spas run in the hotels established by them, was vacated, subject to certain conditions, while the order to the extent it restrained the Appellants from selling, using or offering for sale/use any ayurvedic product under the trademark 'JIVA', was confirmed.

3. In 2014, it is averred, that when it came to the knowledge of the Petitioners that the orders were being violated by Respondent No.6, a contempt petition being CCP(O) No.126/2014 was filed, wherein, after hearing the parties extensively, the Court had taken on record the statement and assurance on behalf of the Respondents therein including Respondent No.6 that they would not use the mark 'JIVA' in relation to disputed goods or for any cosmetic, soaps, ayurvedic, non ayurvedic, or any other allied and cognate goods, except in respect of 'JIVA' for Spa and in relation to pillow, towels, handkerchiefs and other articles related to the Spas.

4. Learned counsel for the Petitioners submits that recently, it has come to the notice of the Petitioners that Respondent No.6 has been advertising and marketing its non-ayurvedic products such as towels, under the trademark 'JIVA' on the websites of its hotels as well as through e-mails. Along with the pictorial presentation of the facilities available in the Spas, Respondent No.6 is providing a written description of variety of Spa services and other therapeutic treatments available, including description of the ayurvedic products used therein, thereby indirectly advertising the products, against which there is a restraint order, leading to a deceptive association of its ayurvedic and non-ayurvedic products to the trademark 'JIVA'. Such advertisements, according to the learned counsel, are in clear violation of the order dated 17.10.2006 read with order dated 30.05.2008 and the assurance given by Respondent No.6 to the Court on 04.04.2016.

5. Mr. Mukul Rohatgi and Mr. Sandeep Sethi, learned Senior Counsels appearing on behalf of Respondents No. 1 to 5 and Respondent No.6 respectively, vehemently oppose the allegations made by the Petitioners. It is submitted that the undertaking given to the Court on 04.04.2016 is being complied with in letter and spirit and it is reiterated and reassured on behalf of the Respondents that they shall continue to do so and will not use the mark 'JIVA' in relation to the disputed goods or goods such as cosmetics, soaps, ayurvedic/non-ayurvedic products and/or allied or cognate goods, as undertaken before the Court on 04.04.2016. It is further submitted that the Division Bench had, *vide* order dated 30.05.2008, vacated the restraint order dated 17.10.2006 to the extent of use of the trademark 'JIVA' for the Spas run by Respondent No.6 in its hotels and there is no restriction or restraint from advertising or marketing products using the trademark 'JIVA' related

to running of the Spas or the products such as pillows, towels etc., used in relation thereto.

6. I have heard learned counsel appearing on behalf of the Petitioners and learned Senior Counsels appearing on behalf of the Respondents.

7. From the above narrative, shorn of unnecessary details, it emerges that *vide* order dated 17.10.2006, this Court had restrained the Defendants therein from using the mark 'JIVA' or any identical or deceptively or confusingly similar mark in relation to the impugned goods and services. The restraint order extended to *inter alia* offering for sale and/or advertising, marketing any goods or services under the said trademark. Operative part of the order dated 17.10.2006, is as follows:-

*“Accordingly, till the next date of hearing, the defendants, their agents, representatives, assigns, their hotels, resorts etc. are restrained from adopting and/or using the trade mark ‘JIVA’ or any other identical or deceptively similar or confusing trade mark and/or trademark ‘JIVA’ in relation to any of their goods and services from directly or indirectly adopting and/or using the same. The defendants are further restrained from manufacturing, producing or rendering or offering for sale and/or advertising marketing any goods or services under the trade name and/or trademark ‘JIVA’.”*

8. However, the Division Bench in an appeal in **FAO(OS) No.44/2007** passed two different directions, partly allowing the appeal. For the sake of ready reference, order dated 30.05.2008 is extracted hereunder:-

*“46. In the result, we allow this appeal in part and to the following extent:*

*a. Order dated 17th October, 2006 passed by the learned Single Judge to the extent the same restrains the appellant from using the trademark ‘JIVA’ for its Spas run in the hotels established by it shall stand vacated, subject to the appellant filing an*

*undertaking to the effect that (i) it shall maintain true and correct accounts of its income and expenditure relating to the business of the said Spas and file the same in this court every six months; and (ii) that it shall not start any spa independent of hotel owned/leased or mortgaged by it under the trademark 'JIVA'.*

*b. The impugned order to the extent it restrains the appellant from selling/using or offering for sale/use any ayurvedic product under the trademark 'JIVA' shall stand confirmed and made absolute pending final disposal of the suit."*

9. On a contempt petition being filed by the Petitioners in 2014 being CCP(O) No.126/2014, in the present suit, Respondent No.6 made a statement before the Court, which as captured in para 17 of the order dated 04.04.2016, is as under:-

*"17. He submits that such use was not intentional or deliberate. Upon instruction from his client, the statement was made that during the pendency of the suit, the defendants are prepared to make the statement that they would not use the mark JIVA in relation to disputed goods as alleged by the plaintiff except in respect of JIVA for spa and in relation to pillow, towels and handkerchief and only related articles of spa but would not use JIVA for any cosmetic, soaps, ayurvedic or even non-ayurvedic or any other allied and cognate goods, but it would do without prejudice to contest the suit on merit."*

10. On the basis of the said assurance, given on behalf of Respondent No.6, the Court observed as under and disposed of the contempt petition:-

*"18. In view of the statement made on behalf of the defendants, I am of the view that there is force in the submissions of the defendants. The said suggestions of the defendants are reasonable and they are entitled to use the same during the pendency of the suit, however as stated by them they shall not use the mark JIVA for soaps, cosmetics, ayurvedic and non ayurvedic in order to avoid confusion. The same would be used as Jiva Spa Centre."*

11. Succinctly put, contention of the learned counsel for the Petitioners is that Respondents are guilty of violating the orders of this Court, as they are advertising and marketing on their websites and through e-mails, non-ayurvedic products such as towels under the trademark 'JIVA'. It is also the contention that along with the pictorial representations of the non-ayurvedic products, Respondent No.6 also provides a written description of its various Spa services and a list or description of ayurvedic products and goods being used in various treatments, thereby deceptively associating its ayurvedic products under the trademark 'JIVA'. The screenshots of the websites, according to the Petitioners, clearly show advertisement of non-ayurvedic products in association with advertisement of therapies and Spa using signature oils, etc. In my considered view, the contentions, as aforesaid, are devoid of merit.

12. From a holistic reading of the aforesaid orders, it is evident that the Division Bench had vacated the order dated 17.10.2006 to the extent it restrained the Appellants therein from using the trademark 'JIVA' for their Spas run in their hotels, subject to certain conditions, which are incorporated in para 46(a) of the said order. Clearly, there was no restraint on any advertisement or marketing with respect to running of the Spas, the services and facilities offered therein or articles such as pillows, towels, handkerchiefs, etc. related to the Spas, under the trademark 'JIVA'. Restraint order by the learned Single Judge, on offering for sale/use of the ayurvedic products under the trademark 'JIVA', as confirmed by the Division Bench in para 46(b) of the order, cannot be extended to running of the Spas and the articles used therein, which is evident from a plain and

conjoint reading of paras 46(a) and 46(b) of the order dated 30.05.2008. Reading of para 17 of the order dated 04.04.2016, as extracted above, fortifies that Respondents were permitted to use the mark 'JIVA' in respect of the Spas, run by the Respondents in their hotels as well as in relation to pillows, towels, handkerchiefs and other articles related to the Spas. It is on this understanding that the Court had disposed of the contempt petition on 04.04.2016, upon being satisfied with the explanation tendered by the Respondents and recording their assurance to comply with the Court orders.

13. Perusal of the documents, on which the Petitioners have predicated their allegations of contempt, annexed with the present petition, reflects that Respondents have only advertised facilities and services rendered in their Spas along with pictures of the articles used in relation thereto. Pictorial presentations indicate that Respondents have only given descriptions of the various therapies, Spa treatments etc. available at their Spas along with the benefits that flow out of the said treatments. *Albeit* the pictures in the e-mails and on the websites showcase certain products, however, the mark 'JIVA' is only reflected on the towels. The bottles alleged to be the infringing products do not contain any label or description so as to even remotely indicate or suggest that any ayurvedic or non-ayurvedic products under the trademark 'JIVA' are being advertised or marketed, in violation of the orders of the Court, as alleged by the Petitioners. It is significant to note that each of the articles depicted in the pictures are those which are related to the Spas, particularly, the towels, and fall within the window of permitted user, by virtue of the order of the Division Bench and statement given to the Court on behalf of Respondent No.6, on 04.04.2016. Petitioners, by their arguments and relying on the documents annexed to the present petition, are



wanting this Court to interpret the orders of the Court to read that the Respondents were restrained from marketing/advertising the products used in relation to the services rendered in the Spas. Firstly, this Court is unable to find any such restraint in the order passed by the Division Bench in para 46(a) of the order dated 30.05.2008 and secondly, as noted above, the Respondents are, in fact, not advertising or selling ayurvedic or non ayurvedic products for any other purpose, through the advertisements on their websites or the e-mails, as alleged by the Petitioners.

14. The power vested in the High Court to punish for contempt is a very special and drastic power and needs to be exercised with great care and caution, as held in various judgments. It is equally settled that while exercising the contempt jurisdiction, Court cannot travel beyond the four corners of the orders, alleged to be violated or read into the order what is not explicitly directed or restrained. A Petitioner approaching the Court alleging contempt, cannot call upon the Court, in a contempt jurisdiction, to interpret the order differently from the manner in which it reads and only those directions which are plainly self-evident have to be taken into account to determine the violation or disobedience. It bears repetition to state that this Court is unable to read any explicit or even implied direction/restraint in any of the orders, referred to and relied upon by the Petitioners which restrained the Respondents from marketing, advertising the articles used in relation to their Spas. I draw strength in my view from the judgment of the Supreme Court in ***Jharieswar Prasad Paul and Another v. Tarak Nath Ganguly and Others*, 2002 SCC OnLine 583**, relevant para of which is as follows:-

*“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest*

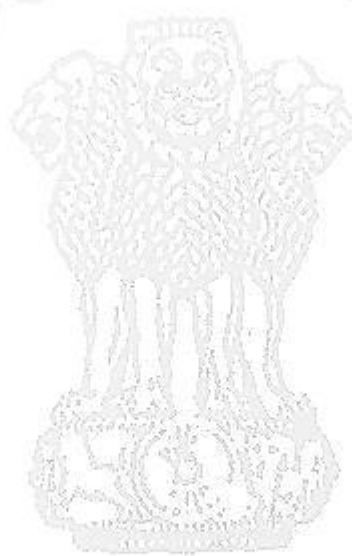
*guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief*

*and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”*

15. For all the aforesaid reasons, no contempt is made out.
16. Contempt petition is, accordingly, dismissed.

**MAY 25, 2022/rk**

**JYOTI SINGH, J**



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