Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUO MOTU SHOW CAUSE NOTICE NO. 2 OF 2017
IN
WRIT PETITION NO. 2334 OF 2013
WITH
NOTICE OF MOTION NO. 453 OF 2017
IN
WRIT PETITION NO. 2334 OF 2013
WITH
NOTICE OF MOTION NO. 383 OF 2017
IN
WRIT PETITION NO. 2334 OF 2013

High Court of Judicature at Bombay through the Prothonotary & Senior Master, Original Side, High Court, Bombay. …Petitioner

Versus

Mathews J Nedumpara, Advocate …Contemnor

Mr Shyam Mehta, Senior Advocate, *with SR Nargolkar, Amicus Curiae, High Court.*
Mr Mathews Nedumpara, *Respondent No. 1, present in person.*
Mr Subhash Jha, *with Rohini M Amin, for Respondent No. 1.*
Mr BV Samant, *for Respondent No. 2 (Janakalyan Sahakari Bank Ltd).*

CORAM G.S. Patel,
M.S. Karnik &
Bharati Dangre, JJJ.
DATED: 22nd September 2022

PC:-

1. We have heard Mr Jha, learned Advocate for the Respondent Contemnor, Mr M Nedumpara, Mr Nedumpara himself and Mr Shyam Mehta, learned Senior Advocate, who, along with Mr SR Nargolkar appears at our request as amicus in Suo Motu Show Cause Contempt Notice No. 2 of 2017.

2. The matter immediately arises from an order of 15th March 2017 (Dr Manjula Chellur CJ and GS Kulkarni J) in Writ Petition No. 2334 of 2013 (*Lalita Mohan Tejwani v Special Recovery Officer*). The Writ Petition itself has something of a background. It is of relevance in a separate Suo Motu Show Cause Contempt Notice No. 1 of 2013. That was listed before us at Sr. No. 1 today, but we had perforce to make an order removing it from our list for entirely different reasons.

3. While the Writ Petition may be the same, the cause for the issuance of the present Suo Motu Show Cause Notice No. 2 of 2017 is entirely distinct. This is set out at some length in the five page order of the Division Bench. It arises on what actually happened in Court, and which the Court recorded in paragraphs 2, 3, 4 and 5. We reproduce these below for completeness:

> "2. On the above backdrop, we were to further hear the present petition today. Learned counsel appearing for respondent Nos. 1 and 2 in compliance with our earlier

order dated 1st March 2017, has placed on record further affidavit pointing out various proceedings about eleven in number, filed by the petitioner and her family members. Learned counsel for respondent Nos. 1 and 2 submits that this petition is frivolous and an abuse of the process of court. When we pointed out to Mr Nedumpara that when earlier petition filed on the same cause of action and for similar prayers was dismissed, then whether this petition would be maintainable, on this what has happened and what transpired in the Court was most disturbing and shocking and we set out the same hereunder:-

3. Mr. Nedumpara, learned counsel for the petitioner replied that he does not want to answer any questions of the Court as for the petitioner as "dominus litis" he should be heard. We had not prevented Mr. Nedumpara from arguing but wanted him to answer the basic issue as urged on behalf of respondent Nos. 1 and 2. At this stage, the manner in which Mr. Nedumpara conducted himself and behaved before the Court to say the least was most abusive, contemptuous, lowering the dignity of the Court, as also unbecoming of an advocate and officer of the Court. This conduct of Mr. Nedumpara, in our opinion, amounts to contempt on the face of the Court. Not only that but his demeanor as an officer of the Court was also highly objectionable. Mr. Nedumpara not only created a scene in the Court but also made abuses at the learned counsel appearing for respondent Nos. 1 and 2. In fact, learned counsel appearing for respondent Nos. 1 and 2 pointed out that on every occasion Mr. Nedumpara was behaving and conducting himself in this manner.

4. What happened thereafter is further shocking. When the hearing was in progress and the learned counsel for respondent Nos. 1 and 2 was pointing out to us the details of the earlier decisions and the similar proceedings, Mr. Nedumpara walked out of the arguing seat and went behind

> and sat in the last row showing utter disregard and indifference to the sanctity of the court proceedings. Thereafter, when learned counsel for respondent Nos.1 and 2 and was addressing this Court, Mr Nedumpara came forward and interrupted the learned counsel for respondent Nos. 1 and 2 and was again abusive towards the Court, and vehemently insisted that he be heard and he need not answer any query of the Court. When we pointed out that our queries on the basic issues were required to be answered so that further hearing can be proceeded, Mr. Nedumpara walked out of the Court and then did not return.
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> 5. We find that what happened in the Court today is not only most unfortunate but highly objectionable affecting the solemnity and sanctity of the judicial proceedings. The conduct of Mr. Nedumpara has seriously affected not only the dignity of the Court but also the interest of administration of justice. We may observe that the solemn function of the Court is to dispense justice according to law and, therefore, it is well settled that the proceedings inside the Court are always expected to be held in a dignified and an orderly manner. The counsel of the Court is expected to be a responsible officer of the Court and if such contemptuous behavior on the part of Mr. Nedumpara is not seriously dealt with, the same would erode the dignity of the Court and corrode the majesty of the Court impairing confidence of the public in the efficacy of the institution of the Court. This conduct of Mr. Nedumpara, in our opinion, amounts to a gross contempt of the Court and, therefore, it is necessary that an action as per the provisions of the Contempt of Court Act, 1971 is initiated."

4. As we can see, what happened in Court that day had nothing whatever to do with the merits of Writ Petition No. 2334 of 2013, nor with the substance of Suo Motu Show Cause Contempt Notice

No. 1 of 2013. It was limited to what we can only describe as Mr Nedumpara's conduct in Court that day. There is equally no doubt that the Division Bench was agitated and expressed its grave displeasure at what happened before it.

5. Now in response to this, there were two possible courses of action open to Mr Nedumpara. One was to defend his conduct and to justify it. The other was to accept that the conduct was unjustified, to accept the error and to unconditionally and bona fide apologise for that conduct.

6. There is an Affidavit in Reply of 2nd May 2017. The first portion of that Affidavit up to paragraph 4 attempts a linkage on facts to the other contempt show cause notice. That is entirely immaterial and irrelevant to the present show cause notice. It serves as no justification for the conduct in Court. It is not in any sense a seeking of absolution nor an apology. The attempt there is only to show that there is some linkage, but that is of no concern to us. To put it differently, even if we were to proceed in an order in contempt against Mr Nedumpara, what is stated up to paragraph 4 of that Affidavit would not enter the discussion because it would be entirely immaterial.

7. What is of interest to us is what Mr Nedumpara has to say in this Affidavit in regard to incident in Court on that date, 15th March 2017. We find this in paragraph 4 and particularly the latter portion of it and at the forefront in paragraph 11. Those two paragraphs at pages 7 to 8 and 11 to 12 of the Affidavit read thus:

"4. The order dated 15th March 2017 directing issuance of notice for contempt of Court against me, I beg to submit, does not reflect the true sequence of events. It is a fundamental principle of law that if the minutes of a Court or Tribunal are erroneous, the only forum before which its correction could be sought is the very same Court or Tribunal whose record is erroneous. I beg to submit that the order dated 15th March 2017 contains many factual errors. The allegation in the notice that I was abusive towards the Court and the counsel for the opposite side; that I sat on the last row of seats in the Court and that I walked out of the Court and did not return are not factually correct. I say so not because I am not remorseful of my admitted mistakes; not because I am argumentative, but because they are factually incorrect. I did not use any abusive language towards the Hon'ble Court. All that I said was that being the lawyer for the Petitioner, I am the *dominus litis*; I am the master of the proceeding, I alone have control over it and I am, therefore, entitled to begin the argument; that the right of the Respondent is only to reply and that right comes after my addressing the Court, which I was not permitted to do. I did not say that I will not answer the questions of the Court; I said that I will answer all questions but that can happen only after I am allowed to open my case as, the Respondent was interested in misguiding the court by quoting the Petitioner out of context. I also did not use any abusive language against the opposite side counsel. All that I said was "My dear friend, be patient, allow me to begin my case". I did not sit in the last row. When I was not allowed to present my case, I took a seat in the second row only to tell Mrs Rohini Amin, the Advocate on record, that I preferred not to appear any more in the matter and she should seek an adjournment to engage some other counsel. When she tried to submit the same, I only said that if the Hon'ble Court is not willing to hear me, let me go, and I left

the Court in a moment of mental trauma and palpitation. I being an Advocate of the Bar for more than 32 years, the Court being the only temple which I visit, I could not imagine my demeanor to be disrespectful towards the Court. But I am a human being with blood, marrow, emotions and it is possible that the frustration, anger and palpitation in me might have reflected. That only others can judge, not me. Having come out of the Court in the aforesaid mental trauma and after having a glass of water, it took some time to be consoled myself. I felt so sad and so pained; so too remorseful for not being able to remain as cool as a cucumber. I came back to the Court, skipping my lunch, and tendered profuse apology in the presence of a large crowd. Though my tendering apology had a soothing effect on the Hon'ble Judges, still the apology was not recorded despite my repeated requests in that respect. Hence, it has become imperative for me to seek correction of the records. A separate application for the said purpose is being filed.

11. While beseeching the mercy, indulgence and absolution of this Court, as aforesaid, and seeking my discharge, touching the feet of lady *justitia*, asking for forgiveness for whatever lapses and mistakes on my part, if the contempt of Court proceeding is to be continued, I pray that I may be heard on my instant application for discharge/ before charges are framed, for which the judgment of the Full Bench of the High Court of Chattisgarh in *Anil Kumar Dubey v Pradeep Kumar Shukla*[1] is an authority. It was held in the said judgment that an order framing charges is one appealable to the Supreme Court in terms of Section 19(1) of the Act. A separate application seeking the above prayers, for which the instant affidavit constitutes evidence, is filed herewith, which deserves to be allowed in the interests of justice."

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1 Miscellaneous Appeal No. 45 of 2016, decided on 25th January 2017.

8. We have deliberately refrained from emphasizing any portion of the foregoing extract. It must be read as a whole.

9. We asked Mr Nedumpara today whether he stands by these statements or wishes to retract them. We asked him to instruct Mr Jha who appears for him. Mr Nedumpara personally and Mr Jha on his instructions both say that Mr Nedumpara stands by these statements. He regrets his conduct. He says there was undoubtedly a lapse on his part and a momentary failure to observe and maintain the discipline and decorum necessary in any court of law. But this was inadvertent; perhaps in the heat of the moment. Mr Nedumpara claims he apologised that very day. This apology is one that he repeats today, and also does so on Affidavit and before us through his counsel.

10. Everyone has bad days. Counsel — and possibly even judges — are no exceptions. The question is how such a momentary lapse should be approached. Courts have available to them the power of punishing for contempt. Should the full brunt of the law and especially the stringency of the law of contempt, a formidable power in the hands of the superior Court, be brought to bear on every single occasion? Or should, as they say, there be an approach of justice tempered with mercy. We do not understand this to mean unwarranted leniency by the court, nor that courts must be timorous and let themselves be intimidated. But Courts are, after all, institutions of a great formality. The administration of justice, and more particularly public faith in the administration of justice, depends not just upon how it is administered, but also on how it is

seen to be administered. This requires certain standards of conduct throughout the day. We cannot, therefore, help but deprecate the conduct that is recorded in the impugned order. Our order today is not to be seen or read as condoning that conduct in the slightest.

11. But as Mr Mehta points out, our task today is to see whether we can exercise our powers under Section 12 and the proviso to sub-Section (1) and its explanation. Section 12 of the Act in its entirety reads thus:

> "**12. Punishment for contempt of court.—**
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> (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:
>
> Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.
>
> *Explanation.*—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.
>
> (2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.
>
> (3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment,

direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purposes of sub-sections (4) and (5),—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

12. That there is an apology by Mr Nedumpara is not once but is now three times confirmed. Is that apology conditional or qualified in any way? Mr Nedumpara is at some pains to say that it is not, and it is the most unqualified apology that is in his power to offer. He has, as he says, nothing beyond this to give. He has offered this apology without attempting any explanation — correctly so — and without instructing Mr Jha to make any explanation linked to any other facts or even to the other suo motu show cause notice. It is for this reason that Mr Jha submits that the apology must be accepted. Nothing more then this can be done, Mr Jha says, to establish that the apology is indeed bona fide.

13. Mr Mehta submits that this is all very well, and while it is possible that Mr Nedumpara suffered a really bad day once, and even if this is to be allowed to pass with an acceptance of his apology, it must surely be accompanied with the necessary undertaking expected of an Advocate of Mr Nedumpara's standing of several decades that he will strain every nerve to ensure that there is no such repetition in any Court in future whatever the provocation. We appreciate Mr Mehta's concern, but it is not our intention to humiliate anyone; and certainly not by an order of a court. We need no such undertaking to be separately voiced, for the simple reason that this undertaking is part and parcel of the very sanad that allows every advocate to practice law.

14. Having considered the circumstances in their totality, we are inclined to accept the apology given by Mr Nedumpara. We accept as bona fide, unconditional and unqualified the statement made by

Mr Nedumpara today. We do so because it is within our power and remit to accept an apology in these terms, and also because we believe that the contempt powers of this Court must be exercised sparingly. Where there is an apology that meets the requirements of the statute itself, and is to the satisfaction of the Court, surely no further action is required.

15. The Contempt Notice is discharged.

16. We thank all Counsel for their assistance.

(G. S. Patel, J)

(M. S. Karnik, J)

(Bharati Dangre, J)