

Ct. 36
Item No.01
26.06.2023
(Suvendu)

**CPAN 812 of 2023
In
WPA 12769 of 2022**

**Guha Roy Food Joint And Hotel Private Limited & Anr.
Vs.
Richa Singh & Ors.**

Mr. Rupak Ghosh
Ms. Sweta Gandhi

.....for the petitioners

Mr. Kishore Datta
Mr. Debnath Ghosh
Ms. Sudeshna Mazumder
Ms. Ranjabati Ray

.....for the alleged contemnors

1. The contempt arises out of a judgment and order passed by this Court on 30th March, 2023 in a writ petition filed by the petitioners for a direction on the respondent no. 3/ Finance Company to give the benefit of an Emergency Credit Line Guarantee Scheme (ECLGS) to the petitioners. The ECLGS was floated by the National Credit Guarantee Trustee Company Ltd. (NCGTC) of the Ministry of Finance, Government of India on 23rd May, 2020 by which the guarantee coverage was extended with regard to Working Capital Term Loans subject to certain conditions. The details of the Scheme would appear from the

judgment which is in contempt and are not required to be stated in the present proceeding.

2. The writ petition was disposed of by the judgment directing the respondent no. 3/ Finance Company to consider grant of benefit of the ECLGS to the petitioners in terms of the Resolution Framework/s circulated by the Reserve Bank of India and the Guidelines published by the NCGTC on 30th March, 2022 with regard to the ECLGS. The respondent no. 3 is one of the alleged contemnors before the Court and the petitioners seek appropriate directions on the respondent no. 3 in terms of the judgment and order in contempt.

3. The facts subsequent to the judgment are required to be briefly stated.

4. The alleged contemnors challenged the judgment and by an order dated 20th April, 2023, the Division Bench presided over by the Hon'ble the Acting Chief Justice of this Court (now, the Hon'ble the Chief Justice) the writ petitioners were directed not to initiate any coercive action for implementation of the impugned judgment and order till 26th April, 2023. The alleged contemnors, however, issued a Notice under the Security Interest (Enforcement) Rules, 2002 on 25th April, 2023, i.e. soon after the order of the Division Bench, to sell the assets of the petitioners to the

public in terms of the Notice. The assets consist of flats and office spaces of the petitioners and are described in the Notice itself. The writ petitioners brought this fact to the notice of the Division Bench in the appeal filed by the alleged contemnors and the Division Bench by its order dated 4th May, 2023 vacated the interim protection granted in its earlier order dated 20th April, 2023.

5. The observation of the Division Bench in paragraph 5 of the said order is set out below.

“It is submitted by the learned advocate appearing for the respondents / writ petitioners that after obtaining the interim protection, the appellants / financial institution has issued a sale notice. The appellants ought not to have proceeded in such a manner by taking advantage of an interim order granted by this Court restraining the respondents / writ petitioners from initiating any coercive action.”

6. The urgency in the present matter arises out of the fact that the closing date of the Scheme is 30th June, 2023.

7. Learned counsel appearing for the petitioners submits that the alleged contemnors have used fact of the pendency of the appeal to frustrate the direction of this Court passed in the judgment and order under contempt.

8. Learned counsel appearing for the alleged contemnors submits that the Court can always pass appropriate orders extending the timeframe for the eligibility of the Scheme together with the fact that the order is presently before the appellate Court.

9. Whatever be the merits of the arguments, the judgment and order passed by this Court makes it clear that all that the alleged contemnors were directed to consider the eligibility of the petitioners for the benefit of the ECLGS. The respondents were not directed to disburse the benefit of the Scheme to the petitioners but only to consider as to whether the petitioners were eligible for the Scheme within a specific timeframe. In fact, the alleged contemnors were directed to complete the entire exercise of consideration within an appropriate timeframe so that the Scheme remains subsisting and relevant as far as the petitioners are concerned.

10. The conduct of the alleged contemnors is contumacious and attempts to lower the dignity of this Court at several levels.

11. The alleged contemnors took advantage of the first order of the Division Bench dated 20th April, 2023 by proceeding to issue a Notice for Sale of the petitioners' assets under the 2002 Rules.

This act itself was done to frustrate the judgment and order passed by this Court since sale of the petitioners' assets would immediately render the petitioners an unviable financial concern. The alleged contemnors should not have taken such a step while the appeal was pending before the Division Bench and the petitioners had been restrained from taking any coercive steps for implementing the direction passed by the first Court.

12. The Division Bench noticed the conduct of the alleged contemnors and was pleased to vacate the interim protection on 4th May, 2023. The observation of the Division Bench would substantiate the apprehension of the petitioners, expressed before this Court. Significantly, the alleged contemnors have not taken any steps in furtherance of the appeal after 4th May, 2023 knowing fully well that the last date of closing of the ECLGS is 30th June, 2023.

13. The conduct is clear, the alleged contemnors sat by and waited for the time to pass so that the judgment and order became infructuous and the petitioners deprived of its right even to contest the appeal on merits.

14. The power of the Court in contempt jurisdiction to pass orders is an inherent power

and is available to the Court as a Court of record with plenary jurisdiction. The Court can exercise the power to vindicate its own dignity and to shield those who are entrusted to its care (Ref : *Ranjit Kumar Haider vs. State of West Bengal & Ors.*, (2006) 1 Cal LT 355). Several judgments of the Chancery Division including *Daniel Vs. Ferguson*, (1891) 2 Chancery Division 27 and *Von Joel Vs. Hornsey*, (1895) 2 Chancery Division 774 were referred to in *Ranjit Kumar Haider* on the issue whether injunction can be passed without reaching a finding on contempt. The Division Bench held that in an appropriate case the Court can certainly pass orders to implement its previous orders and to prevent its flouting by a party who resorts to manoeuvre or subterfuge.

15. The alleged contemnors in the case have sought to emasculate the directions of this Court by a subtle and not-so-subtle defiance of the orders but willful and deliberate on all counts. This Court is satisfied that appropriate orders may be passed on the alleged contemnors to uphold the dignity of this Court.

16. Litigants who seek refuge in Court processes must be reassured that the Court does not simply sit by when those who defy it go free : *Jennison vs. Baker*, (1972) 1 All ER 997. In the

words of Lord Denning (“The Due Process of Law”), the process of contempt of court is designed to secure that every person has a fair trial where the Court condemns any conduct which tends to prejudice a fair trial – “The Court will restrain it by injunction beforehand or by punishment afterwards”.

17. The alleged contemnors will therefore consider the eligibility of the petitioners with regard to the ECLGS within 3 p.m. of 28th June, 2023 and communicate the decision to the petitioners by 8 p.m. on that date.

18. The alleged contemnors shall follow the directions passed by the Court as given in paragraph 24 of the judgment and order in contempt.

19. Needless to say, this order shall not prevent the alleged contemnors to pursue the appeal which is pending before the Division Bench.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)