

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Jurisdiction)

DATED : 25th October, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Cont.Cas(C) No.03 of 2024

Petitioners : Passi Lamu Sherpa and Another

versus

Respondent : The Branch Manager,
New India Assurance Company Limited

Application under Sections 11 and 12 of the
Contempt of Courts Act, 1971

Appearance

Mr. Umesh Ranpal, Advocate with Ms. Rubusha Gurung and Ms. Choki Sherpa, Advocate.

Mr. Dipayan Roy, Advocate, for the Respondent (*through VC*).

ORDER

Meenakshi Madan Rai, J.

1. Heard Learned Counsel for the parties.

2. The question that arises before this Court is, Whether the Respondent Company is guilty of civil contempt for wilful disobedience of the Judgment of this Court dated 14-05-2024 in MAC App. No.07 of 2023 (*Passi Lamu Sherpa and Another vs. The Branch Manager, New India Assurance Company Limited Another*), in terms of Section 2(b) of the Contempt of Courts Act, 1971. The said provision reads as follows;

"2. Definitions.— In this Act, unless the context otherwise requires,—

.....
(b) "Civil Contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
....."

3. The Supreme Court in *Niaz Mohammad and Others vs. State of Haryana and Others*¹ explaining the expression “wilful disobedience” has held *inter alia* as follows;

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as ‘the Act’) defines “civil contempt” to mean “wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...”. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.”

4. It is submitted by Learned Counsel for the Respondent Company that although the impugned Judgment was pronounced on 14-05-2024 and the process for filing of Appeal before the

¹ (1994) 6 SCC 332

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Supreme Court against the Judgment began on 22-05-2024, on account of the procedure involved due to the Respondent being an unwieldy organisation and considering the various levels of authorities that the File had to be processed through the delay had occurred. That, the delay was neither wilful or intentional neither was there any attempt to wilfully and intentionally disobey the Judgment of this Court. Hence, the Contempt Petition be dismissed.

5. Learned Counsel for the Petitioner *per contra* submitted that the ground put forth deserves no consideration as the Appeal was filed only on 19-09-2024 when the impugned Judgment was of May, 2024, besides there is no proof of admission of the Appeal before the Hon'ble Supreme Court. Consequently, the Respondent is guilty of wilful disobedience of the Judgment of this Court and ought to be penalized proportionately.

6. Having been given due consideration to the facts and circumstances placed before me, I find that the Respondent did initiate steps for filing the Appeal which has now been filed before the Hon'ble Supreme Court (Annexure R1). Although the ground that the Appeal was allegedly delayed due to the hierarchical layers of Authority that the File had to be processed through, has to be taken with a pinch of salt, nonetheless, it stands to reason that given the unwieldy size of the organization and the lackadaisical attitude of every officer perhaps, the delay has occurred. Therefore, I am of the considered view that there is no ground to enable this Court to conclude that there has been wilful or intentional disobedience of the Judgment of this Court, nor has Counsel for the Petitioners been able by any measure whatsoever to establish the allegation.

7. In *Kishor s/o Bhikansingh Rajput* vs. *Preeti w/o Kishor Rajput*² the Court held that;

“**8.** Normally, when this Court is ceased (sic: seized) of the matter, it is expected of the subordinate courts to stay their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September, 2006 was challenged before this Court by the present petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this Court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition.”

(i) In *Pradhyumansinh Bhavubha Jadeja* vs. *L/H of Deceased Sitaba Girvansinh Gohil*³ the Court observed that;

“**6.** In response, learned advocate for the applicants has submitted that in view of the decision of the Bombay High Court in the case of *Kishor Bhikansingh Rajput v. Preeti Kishor Rajput*, 2007 (3) Bom.C.R. 279, the order of subordinate Court is totally perverse as it is totally ignored the order of this Court as when the High Court is ceased of the matter, it is expected of the subordinate court to stay till further order to be passed by the High Court. He has prayed to allow the present application.”

(ii) Although the two matters referred to *supra* are concerned with the High Court and the District Judiciary, the same principles would be applicable when the High Court and the Hon’ble Supreme Court are concerned. Judicial propriety must be adhered to considering that the Appeal has been presented before the Hon’ble Supreme Court.

8. In view of the foregoing discussions, the Contempt Petition stands dismissed and disposed of.

(Meenakshi Madan Rai)
Judge
25-10-2024

Approved for reporting : **Yes**

ds/sdl

² 2007(2) Mh.L.J. 481 : 2007 SCC OnLine Bom 102

³ 2019 SCC OnLine Guj 1911