



2024:DHC:7762



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

% **Judgment reserved on : 12 August 2024**
Judgment pronounced on: 07 October 2024

+ **CONT.CAS(C) 493/2019**

M/S NIMBIT BUILDCON PVT LTDPetitioner
Through: Mr. Sunil Dalal, Sr. Adv. with
Mr. Tarjit Singh, Mr. Nikhil
Beniwal, Mr. Vikram Singh
Dalal, Mr. Navish Bhati, Mr.
Mahabir Singh and Ms.
Manisha Saroha, Advs.

versus

MALINI SEHGALRespondent
Through: Mr. K.K. Manan, Sr. Adv. with
Mr. Ankush Narang, Ms. Udit
Bali, Mr. Karmanya Singh
Choudhary and Mr. Lavish
Chandra, Advs.

+ **CONT.CAS(C) 494/2019**

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Through: Mr. Sunil Dalal, Sr. Adv. with
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Beniwal, Mr. Vikram Singh
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versus

MM SEHGALRespondent
Through: Mr. K.K. Manan, Sr. Adv. with
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MALVIKA KAURARespondent

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Mahabir Singh and Ms.
Manisha Saroha, Advs.

versus

ANJALI SEHGALRespondent

Through: Mr. K.K. Manan, Sr. Adv. with
Mr. Ankush Narang, Ms. Udit
Bali, Mr. Karmanya Singh
Choudhary and Mr. Lavish
Chandra, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA



JUDGMENT

1. The present petitions have been filed by the petitioner herein under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971¹ seeking initiation of contempt proceedings against the respondents in the above-captioned matters, who are all signatories to the Settlement Agreement/Memorandum of Understanding ['MOU'] dated 27.05.2013, for reneging from the undertakings contained in the said MOU, thereby committing wilful and deliberate breach of the directions of this Court.

BRIEF FACTS

2. The petitioner i.e., M/s Nimbit Buildcon Private Limited (formerly known as M/s Mohan Built and Developers Private Limited) along with M/s Jaishree Baba Projects and M/s Jagat Overseas, had extended financial assistance in the sum of Rupees 36.50 crores to M/s Kent Properties Private Limited, allegedly on the authorised representation of two of the respondents herein, namely Mr. MM Sehgal and Mrs. Anjali Sehgal.

3. It is pertinent to mention here that the respondents herein are family members. Mrs. Anjali Sehgal, director of M/s Kent Properties Private Limited, is the wife of Mr. MM Sehgal. Ms. Malini Sehgal and Ms. Malvika Kaura are their two daughters who are also the directors of M/s Kent Properties Private Limited. It is brought on record that Mrs. Anjali Sehgal has since expired, and therefore, the CONT.CAS(C) 496/2019 becomes infructuous. In so far as respondent/contemnor Mr. MM Sehgal is concerned, he is now stated

¹ CC Act



to be completely bed ridden at the age of 85 years. Apparently, the said respondent-family owns several other companies including M/s Sehgal Papers Private Limited and M/s Three M Properties Private Limited.

4. Reverting back to the instant matter, the distribution of debt among the aforesaid three creditors is tabularised hereinunder:

S. NO.	CREDITOR	LOAN AMOUNT
1.	Mr. Jag Mohan Gupta (Authorised Representative of M/s Mohan Built and Developers Private Limited)	Rs. 8.50 Crores
2.	M/s Jaishree Baba Projects Private Limited	Rs. 2.20 Crores
3.	M/s Jagat Overseas (partnership firm)	Rs. 25.80 Crores
	TOTAL PRINCIPAL AMOUNT	Rs. 36.50 Crores

5. Subsequently, M/s Jaishree Baba Projects and M/s Jagat Overseas assigned their respective debts to M/s Mohan Built and Developers Private Limited (petitioner herein) *vide* assignment deeds dated 14.04.2009 and 13.04.2009. Furthermore, Mr. Jag Mohan Gupta assigned his debt to the petitioner herein *vide* assignment deed dated 24.06.2013.

6. Unfortunately, certain disputes arose between the parties regarding repayment of the above mentioned sum of Rs. 36.50 crores, pursuant to which criminal proceedings were initiated against M/s Kent Properties Private Limited as well as all the respondents herein, resulting in lodging of an FIR bearing No. 131/12 with the Economic Offences Wing, New Delhi ['EOW'] against the respondents herein.

7. Shorn of unnecessary details, upon the directions of this Court dated 09.05.2013 in BAIL APPLN. 751/2013, the present matter was



referred to the Delhi High Court Mediation and Conciliation Centre, and pursuant to several meetings with the appointed mediator, the respondents herein (referred to as “first party”) entered into MOU dated 27.05.2013 with Mr. Jag Mohan Gupta (referred to as “second party”), and M/s Mohan Built and Developers Private Limited i.e., the petitioner herein (referred to as “third party”), the relevant terms of which MOU are reproduced hereinunder:

“...2. The parties agree and undertake that a total amount of Rs. 116 Crores alongwith simple interest @ 15 % p.a. from the date of this MOU shall be paid as full and final settlement by the First Party to the Second Party in discharge of the outstanding of Rs. 36.5 Crores given by the Second and Third Party to the First Party, (hereinafter referred to as' "Settlement Amount". The settlement amount alongwith interest @ 15% p.a. as aforesaid would be paid on or before the period of 3 years from the date of execution of this MOU in the following manner:

- a. Rs. 25 Lacs by way of post dated cheques at the time of execution of this MOU to be cleared within 1 month.*
- b. Rs. 75 lakhs on or before a period of 6 months.*
- c. Rs. 109,83,81,000/- on or before period of three years.*

...6. The Second Party and Third Party hereby agree and undertake that they will fully co-operate with the First Party for seeking quashing of FIR No.131/12 registered with Economic Offences Wing, New Delhi and all proceedings arising therefrom before the competent Court and for which purpose shall sign any affidavit, application, give statements or the like as and when required by the First Party. The parties further agree that all misunderstanding between them have been resolved and removed.



The Second and Third Party agree and undertake to sign all documents giving 'No Objection' including affidavits etc. for quashing of the above mentioned FIR and all proceedings arising therefrom within seven days from the date of re-opening of the Delhi High Court after the Summer vacations in 2013.

...11. The First Party agrees and undertakes to deposit the original title documents including Khasra, Khatoni & fard, etc. with respect to Farm bearing No.13, Kapashera Estate, Kapashera, Delhi, and allotment letter and other related documents with respect to property bearing SCO No.30, Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon -122001 and Property bearing SCO No. 31 Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon-122001 before Registrar, Delhi High Court, New Delhi, within seven days from the date of re-opening of the Delhi High Court after the Summer vacations in 2013. The photocopy of the documents of the aforesaid security are annexed herewith as ANNEXURE-E (Colly). The First Party represents that the conveyance deed/Lease deed of the properties bearing SCO No.30, Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon -122001 and Property bearing SCO No. 31 Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon -122001 are not in their possession.

The First Party hereby declares and agrees that the securities mentioned herein are free from all or any encumbrance, charges, lien or the like, except as mentioned hereafter with respect to the property bearing SCO No. 31 Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon -122001 and SCO No. 30 Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon - 122001. It is represented by the First party that HUDA has raised a demand with respect to the said two securities amounting to Rs.2.25 crores (approx.) in relation to an alleged interest on both the said securities



is pending challenge before, the competent Courts/ authorities and no other encumbrances or claims exist with respect to the said two securities.

Notwithstanding the above, the First Party shall be entitled to lease the security at Plot bearing SCO No. 31 Huda Commercial Centre, Sector 14, Delhi Gurgaon Road, Gurgaon-122001 for a period of three years with a renewal of an additional period of 3 + 3 years as deemed fit by the First Party. The other property shall also be entitled to be leased out for three years from the date of execution of this MOU.

...14. In case the First Party does not pay the outstanding amount as due and payable to the Second Party by virtue of this MOU, all the parties agree that immediately on completion of 3 years from the date of the execution of this MOU, the securities will be sold by way of court auction and from the proceeds of the sale amount, first the amount due and payable to the Second and Third Party will be paid. The surplus amount/sale consideration shall be released /handed over to the First Party forthwith. The First party- undertakes that all the charges for Court auction shall be borne exclusively by the First party and the same shall not be adjusted in the settlement amount. In case the amount realized from such sale does not covers the entire settlement amount then the balance/deficient settlement amount shall be paid by the First Party to Second party within a period of three months after completion of such auction.”

8. In a nutshell, the respondents undertook to pay the petitioner herein an amount of Rupees 116 crores alongwith interest @15% per annum, within a period of three years from the date of the execution of the MOU dated 27.05.2013, failing which, the amount due and payable would be realised from the respondents by selling certain immovable properties owned by the respondents under the name of



M/s Sehgal Papers Private Limited.

9. It is borne from the record that while granting anticipatory bail to the respondents herein, this Court had taken cognizance the said MOU *vide* orders dated 29.05.2013 passed in BAIL APPLN. 751/2013 and 739/2013 titled “*Malini Sehgal v. State*” and “*Malvika Kaura v. State*” respectively, besides orders dated 31.05.2013 passed in BAIL APPLN. 783/2013 and 802/2013 titled “*MM Sehgal v. State*” and “*Anjali Sehgal v. State*” respectively. Relying on the said orders passed by this Court, the Learned Chief Metropolitan Magistrate (South), Saket Courts, New Delhi, [‘CMM’] *vide* orders dated 17.11.2014 and 10.02.2015 granted regular bail to the respondents *viz.*, Mrs. Anjali Sehgal, Malini Sehgal, and Malvika Kaura (except MM Sehgal) in the proceedings arising out of the FIR no. 131/12.

10. It is the claim of the petitioner that after enjoying the benefits of MOU dated 27.05.2013 by securing bail on the basis of the said MOU, the respondents herein wilfully and deliberately reneged from the undertaking given under the said MOU in so far as they failed to pay the agreed amount to the petitioner by 27.05.2016 i.e., within three years from 27.05.2013; and also defaulted in depositing the original title documents of the secured properties before the Registrar of this Court, thus being in blatant violation of clauses (2) and (11) of the said MOU.

11. What precipitated the filing of the present petitions on 25.05.2019 is that in the proceedings arising out of the FIR² No. 131/12, the respondents were regularly seeking adjournments before

² First Information Report



the learned CMM on the ground that efforts were being made to settle the matter, as evidenced by order dated 12.07.2018 passed by the Learned CMM wherein it was recorded that “*Some more time is sought by both the parties for settling the matter. Keeping in mind the said fact, adjournment is granted.*”, besides orders dated 15.05.2018, 25.01.2017, 12.05.2016, and 11.04.2016, whereby adjournments were granted on the same ground. It is stated that the respondents never intended to honour the settlement between the parties and sought adjournments in the police report case only in order to evade their liabilities towards the petitioner for as long as possible. Under the aforementioned circumstances, the petitioner says that it is constrained to file the present contempt petitions.

LEGAL SUBMISSIONS ADVANCED AT THE BAR

12. Learned senior counsel for the respondents raised a preliminary objection *qua* bar of limitation, contending that the present petitions have been filed after an unexplained and considerable delay of six years, in view of the fact that the three years’ period in terms of the MOU dated 27.05.2013 stood expired on 27.05.2016, accordingly the limitation period for filing the present petitions stood expired on 27.05.2017 in terms of Section 20 of the CC Act.

13. *Per contra*, the learned senior counsel for the petitioner while relying on the decision of the Supreme Court in the case of **Firm Ganpat Ram Rajkumar v. Kalu Ram and Ors.**³ and **Santosh Kapoor & Ors. v. Apex Computers Pvt. Ltd.**⁴, urged that the

³AIR 1989 SC 2285

⁴ILR (2009) III Delhi 628



present case pertains to a “continuing wrong”, which is not hit by the bar of limitation under Section 20 of the CC Act. Additionally, it is urged that the respondents had lastly stated before the learned CMM during the hearing on 12.07.2018, that they were in the process of settling the matter, and since the present petitions were filed in May 2019 i.e., within one year from 12.07.2018, the present contempt petitions are not barred by limitation.

14. Learned senior counsel for the respondents has urged that the petitioner cannot invoke the jurisdiction of this Court to execute the terms of the MOU since the contempt proceedings cannot substitute execution proceedings, and even otherwise, the present matter would not attract the provisions of CC Act as there is no specific “undertaking given to a court” *per se*, rather this is a case of an “undertaking given to the party to the *lis*”. It is submitted that the petitioner has concealed that they themselves are in violation of clause (6) of the MOU by not cooperating in getting the FIR no. 131/12 quashed. The respondents have relied upon the decisions passed in **Babu Ram Gupta v. Sudhir Bhasin and Ors.**⁵, **Hindustan Motors Ltd. v. Amritpal Singh Nayar and Anr.**⁶, **Vikas Vij and Ors. v. Rajiv Marwah and Ors.**⁷, and **S. Tirupathi Rao v. M. Lingamaiah and Ors.**⁸.

15. In rebuttal, learned senior counsel for the petitioner has alluded to orders dated 23.09.2013 and 23.09.2014 passed by this Court

⁵ AIR 1979 SC 1528

⁶ 2002 (64) DRJ 394 (DB)

⁷ 148 (2008) DLT 791

⁸ 2024 SCC OnLine SC 1764



whereby the petitions preferred by the respondents for quashing of the FIR No. 131/12 were dismissed for being pre-mature as the respondents had failed to abide by clause (11) of the MOU and the terms of settlement between the parties had not fully been acted upon. It is urged that in view of the decision of the Supreme Court in the case of **Rama Narang vs. Ramesh Narang**⁹, the MOU in question is effectively an “undertaking given to a Court” as per Section 2(b) of the CC Act.

ANALYSIS AND DECISION:

16. I have bestowed my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and I have also gone through the relevant material on record including the case law cited.

17. First things first, it would be expedient to re-produce sections 20 and 23 of the CC Act, which provide as follows:

20. Limitation for actions for contempt.—No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

23. Power of Supreme Court and High Courts to make rules.—The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

18. Avoiding a long academic discussion, in a recent case titled **S. Tirupathi Rao vs M. Lingamaiah** (*supra*), the Supreme Court has comprehensively dealt with the issue of limitation in civil contempt petitions and what constitutes a “continuing wrong/breach/offence”.

⁹ (2006) 11 SCC 114



While referring to certain earlier judgments passed by the Supreme Court, it was observed as under:

“...76. This Court too, as far back as in 1958, with reference to the Limitation Act of 1908, discussed in *Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan*⁵¹ what would constitute a continuing wrong. The relevant passage reads thus:

“20. *** s. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.***

As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action *de die in diem*. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of s. 23 in such a case.***”

77. The decision of this Court in *Balkrishna Savalram Pujari* (supra) was endorsed by this Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*⁵² wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows:

“343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. **A continuing wrong arises where there is an obligation imposed by law,**



agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. ...

Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.”

78. The order on the writ petition directed the appellant to effect mutation in the revenue records in favour of the first respondent, in accordance with the final decree. The direction for mutation having been issued on 05th March, 2009, the appellant had a period of 2 (two) months therefrom to effect such mutation, as stipulated by the Writ Rules, which we shall assume the appellant failed or neglected to comply without just reason. From 04th May, 2009, i.e., the starting point for the limitation period for initiation of contempt action to commence, till 10th February, 2014, i.e., the date of the filing of the contempt petition, the appellant failed to effect mutation, as ordered by the Single Judge. Could it be said that every day thereafter that the appellant did not effect mutation gave rise to a fresh cause of action so as to constitute a “continuing wrong/breach/offence”? To our minds, the answer is a clear and unequivocal ‘NO’. Upon application of the test laid down by this Court in *Balkrishna Savalram Pujari* (supra) and *M. Siddiq* (supra), it is evident that when, by 04th May, 2009, the



appellant failed to implement the direction of the High Court, the act of disobedience was complete as on that date itself. Every day thenceforth, the name of the first respondent continued to be absent from the revenue records but such absence could not be characterised as the injury or wrongful act itself; it was merely the damage which flowed from the standalone act of breach committed by the appellant - that of not effecting the mutation. The injury was not repetitive or in other words, did not arise *de die in diem*, but rather, it was the effect of the injury which continued till the date the first respondent presented the contempt petition on 10th February, 2014. ...”

19. In view of the aforesaid proposition of law, evidently the cause of action arose when the respondents failed to deposit the title deeds in respect of the properties as detailed in clause (11) of the MOU, with the Registrar General of this Court, within the time stipulated. In any case, the very act of breach committed by the respondents which caused a corresponding injury to the petitioner, stood completed when the three years’ time period, as provided in the MOU expired on 27.05.2016.

20. Unhesitatingly, the limitation period began running on 27.05.2016 and stood expired after a year therefrom. The present petitions, however, came to be filed in May, 2019. Thus, the mere fact that the effect or damage of the said injury is continuing in nature for the petitioner in as much as the amount agreed upon has not been paid to them in entirety as till date, does not *ipso facto* raise an inference that the wrong/breach is a continuing one.

21. In the said backdrop, the contention of the petitioner that the respondents kept seeking time in the criminal proceedings to settle the matter, and thus, the wrong is continuing, does not cut any ice.



Moreover, even after passing of the order dated 05.04.2017 by the learned CMM, wherein it was recorded that all settlement talks between the parties had come to an end, the petitioner did not elect to file any contempt petition, and instead they slept over their rights and filed the present petitions at a much belated stage i.e., May, 2019. The law does not help those who sleep over legal rights. This Court cannot mechanically accept a plea of “continuing wrong” as soon as it is raised by the petitioner, rather the petitioner has to show and fully satisfy this Court that the wrong or injury caused has indeed arisen *de die in diem*, which Latin maxim implies “on a day to day basis”, so as to save themselves from the bar of Section 20 of CC Act. Thus, it appears that although the petitioner is a victim of the strategy adopted by the respondents in reneging from the undertaking recorded in the MOU and accepted by the Court, it does not lie in their mouth to claim initiation of an action in contempt on the premise of a “continuing wrong”. At the cost of repetition, a wrong indeed was committed but it stood complete in 2016. The plea canvassed by learned counsel is not fathomable since the petitioner cannot be allowed to choose a convenient time to approach this Court contrary to the law.

22. In this regard, it would be apposite to refer to some more observations made by the Supreme Court in *S. Tirupathi Rao (supra)*, which read as under:

“56. A caveat needs to be added here. For a “continuing wrong/breach/offence” to be accepted as a ground for seeking exemption in an action for contempt, the party petitioning the court not only has to comprehend what the phrase actually means but



would also be required to show, from his pleadings, the ground resting whereon he seeks exemption from limitation. Should the party fail to satisfy the court, the petition is liable to outright rejection. Also, the court has to be vigilant. Stale claims of contempt, camouflaged as a “continuing wrong/breach/offence” ought not to be entertained, having regard to the legislative intent for introducing section 20 in the Act which has been noticed above. Contempt being a personal action directed against a particular person alleged to be in contempt, much of the efficacy of the proceedings would be lost by passage of time. **Even if a contempt is committed and within the stipulated period of one year from such commission no action is brought before the court on the specious ground that the contempt has been continuing, no party should be encouraged to wait indefinitely to choose his own time to approach the court. If the bogey of “continuing wrong/breach/offence” is mechanically accepted whenever it is advanced as a ground for claiming exemption, an applicant may knock the doors of the Court any time suiting his convenience. If an action for contempt is brought belatedly, say any time after the initial period of limitation and years after the date of first breach, it is the prestige of the court that would seem to become a casualty during the period the breach continues.** Once the dignity of the court is lowered in the eyes of the public by non-compliance of its order, it would be farcical to suddenly initiate proceedings after long lapse of time. Not only would the delay militate against the legislative intent of inserting section 20 in the Act (a provision not found in the predecessor statutes of the Act) rendering the section a dead letter, the damage caused to the majesty of the court could be rendered irreparable. It is, therefore, the essence of justice that in a case of proved civil contempt, the contemnor is suitably dealt with, including imposition of punishment, and direction as well is issued to bridge the breach.”

{bold portions emphasized}

23. In view of the foregoing discussion, unfortunate as it may appear, although the respondents were indeed guilty of deliberately and contumaciously reneging from the undertaking given and recorded *vide* the MOU dated 27.05.2013, the present petitions seeking action against them are held to be not maintainable for being *per se* barred by limitation.



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24. However, the petitioner shall be at liberty to institute appropriate civil proceedings for execution of the terms of the MOU by seeking benefit of section 14 of the Limitation Act, 1963 and in accordance with law.

25. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case. The present petitions, along with pending applications, if any, are disposed of accordingly.

DHARMESH SHARMA, J.

OCTOBER 07, 2024

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