



2024:DHC:9302



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

Reserved on: 19 July 2024

Pronounced on: 29 November 2024

+ O.M.P.(EFA)(COMM.) 1/2022, CCP(O) 41/2023,
EX.APPL.(OS) 123/2022, EX.APPL.(OS) 3473/2022,
EX.APPL.(OS) 398/2023, EX.APPL.(OS) 399/2023,
EX.APPL.(OS) 734/2023

VITERRA B.V. (FORMERLY KNOWN AS GLENCORE
AGRICULTURE B.V.)Decree Holder
Through: Mr. Darpan Wadhwa, Sr.
Advocate with Ms. Raunaq B. Mathur and
Mr. Keshav Somani, Advs. for the Decree
Holder.
Mr. Siddharth Sangali, Ms. Harshita
Agrawal, Advs. and Mr. Mukesh Kumar,
Manager, for the SBI.

versus

SHARP CORP LIMITEDJudgment Debtor
Through: Mr. Vikram Nankani, Sr.
Advocate with Mr. Arvind Kumar and Ms.
Heena George, Advs.
Mr. Karan Bharihoke, Adv. for R-3.
Mr. Sarthak Sachdev, Adv. for R-4 and R-5.

+ O.M.P.(EFA)(COMM.) 2/2022, CCP(O) 42/2023,
EX.APPL.(OS) 125/2022, EX.APPL.(OS) 3467/2022,
EX.APPL.(OS) 400/2023, EX.APPL.(OS) 401/2023 &
EX.APPL.(OS) 735/2023

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2024:DHC:9302



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CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

29.11.2024

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CCP(O) 41/2023 in OMP (EFA) (Comm) 1/2022

CCP(O) 42/2023 in OMP (EFA) (Comm) 2/2022

1. The petitioner, by this petition, alleges contumacious and wilful disobedience, by the respondents, of the following order passed by a learned Single Judge of this Court on 3 June 2022 in OMP (EFA) (COMM) 1/2022¹:

“1. I have heard Mr. Darpan Wadhwa and Mr. Jayant Mehta, learned Senior Counsel for the parties for some time.

2. Mr. Mehta state, the award of which execution is sought, is against the judgment debtor/respondent company. The liability cannot be fastened upon the Directors of the judgment debtor/respondent company.

3. He on instructions from Mr. Sanjay Singhal, Director of

¹ "the OMP" hereinafter



2024:DHC:9302



JD/respondent Company state, without prejudice to the rights and contentions of the judgment debtor/respondent company and also its Directors, he shall ensure the property being House No.83, Sunder Nagar, New Delhi is not alienated nor any third party rights are created, in respect to that property. The statement is taken on record.

4. It is made clear, the submission made by Mr. Mehta that the liability of the JD/respondent cannot be fastened on the Directors as noted above, shall be considered on the next date of hearing.

5. At this stage Mr. Wadhwa has drawn my attention to an affidavit filed on behalf of the judgment debtor company, more specifically pages 3 and 5 which depicts the immovable properties and FDRs in the name of the company, though under the charge of Banks to contend that the judgment debtor company be restrained from alienating and/or creating third party rights with regard to those immovable properties and the FDRs, subject to prior right of the financial institutions. Mr. Mehta is agreeable to the said submission of Mr. Wadhwa.

6. It is made clear that the immovable properties depicted under the heading "Immovable Properties" at pages 3 and 4 and also the FDR's under the heading "other securities-fixed deposit attached" at page 5 shall not be sold/alienated nor any third party rights be created, of course, subject to the prior right of any financial institution, till the next date of hearing.

7. Reply to the objections under Section 48 of the Arbitration and Conciliation Act be filed within six weeks. Rejoinder thereto be filed within two weeks thereafter.

8. List on September 07, 2022."

2. I have heard Mr. Darpan Wadhwa and Mr. Vikram Nankani, learned Senior Counsel, for the petitioner and the respondents/alleged contemnors, at length.

3. Mr. Wadhwa contends that, by selling the property situated at Khasra 646, Siraspur², on 28 November 2022, without disclosure

² "the Siraspur property" hereinafter



2024:DHC:9302



either to the petitioner of this Court, the respondents, chiefly Respondent 2, have committed contumacious and wilful contempt of this Court. The Siraspur property, it is pointed out, is one of the immovable properties, the alienation of which was restrained by the order dated 3 June 2022. Mr. Wadhwa contends that the records of Respondent 1 Sharp Corp Ltd³, of which Respondents to ace the Managing Director, did not disclose any pre-existing charge or collateral, in respect of the Siraspur property, with any financial institution. The relevant documents, evidencing this position, have been filed with the contempt petition. Mr. Wadhwa has also taken me through affidavit dated 25 May 2022, filed by Sharp in the proceedings in the OMP, which do indicate that the Siraspur property is one of the immovable properties enlisted therein. For having thus contumaciously breached the interlocutory injunction granted by this Court on 3 June 2022, the petitioner seeks initiation of contempt action against the respondents.

4. Mr. Wadhwa also invites attention, in this context, to affidavit dated 23 February 2024, filed by the State Bank of India⁴, paras 2 and 4 of which read thus:

“2. THAT, To answer the query of this Hon’ble Court, the subject property Khasra No 646, measuring 4 Bigha, 11 Biswas situated in Village Siraspur, was not mortgaged with the State Bank of India or the consortium of banks, to the knowledge of the Bank.

4. THAT, it is true that the amounts of ₹ 50,00,000/- (on 28.10.2022) and ₹ 49,00,000/- (on 17.11.2022) were deposited in

³ "Sharp" hereinafter

⁴ "the SBI" hereinafter



2024:DHC:9302



the Sharp Corp Limited's Trust and Retention Account maintained in the SBI on behalf of the Consortium of Lenders, from the account of one Anil Gupta, which amounts were distributed, the letters towards outstanding amounts. The Consortium of Banks were not a party to the sale of the subject Property since the said Property was not mortgaged with the Banks.”

5. No registered document, creating any charge over the Siraspur property, exists, submits Mr. Wadhwa. No document, creating any mortgage in respect of the said property, is forthcoming either.

6. Mr. Wadhwa exhorts this Court, therefore, to proceed against the contemnors for committing wilful and contumaciously disobedience and, consequently, contempt, of this Court.

7. Responding to Mr. Wadhwa's submissions, Mr. Nankani submits that the contempt petition ventilates an entirely imaginary grievance. He emphatically refutes any allegation of disobedience, by the respondents, of the order dated 3 June 2022, contumacious or wilful, or otherwise.

8. The restraint on alienation of the immovable properties, to which para 6 of the order dated 3 June 2022 makes reference, he submits, has expressly be made subject to the prior right of any financial institution. The expression used, he submits, is “prior right”, not “mortgage”. The SBI, Mr. Nankani submits, correctly certified that the Siraspur property was not mortgaged with the Bank or the consortium of Banks. Nonetheless, submits Mr. Nankani, the Bank did have a “prior right” over the Siraspur property, and it was only to enforce this prior right that the property was sold. Such sale, having



2024:DHC:9302



been effected to enforce the prior right of the SBI over the Siraspur property, he submits, did not breach the interdiction placed by para 6 of the order dated 3 June 2022.

9. In support of his submission that the SBI date of prior right over the Siraspur property, Mr. Nankani first invites attention to para 5 of the affidavit dated 25 May 2022, filed by the SBI, on which Mr. Wadhwa had also placed reliance. The paragraph reads thus:

“5. THAT, it is pertinent to point out that against the outstanding dues of the Sharp Corp Ltd, a One-Time Settlement⁵ was sanctioned by the State Bank of India on 11.08.2020 for an amount of ₹ 117.81 crores, while the amount agreed for a compromise with all lenders was more than ₹ 200 crores. The loan account(s) of the Sharp Corp Ltd with the SBI were, ultimately, settled on 02.09.2023 for an amount of around ₹ 146 crores inclusive of interest or the OTS amount, which amounts were paid to the SBI in instalments at various stages, the final payment being done on 02.09.2023.”

This, submits Mr. Nankani, indicates that the SBI was in full control over the Siraspur property. He further demonstrates this by reference to a communication dated 15 October 2018 from the SBI to A.K.G. & Associates, Chartered Accountants⁶, while appointing them as concurrent auditors of Sharp, the relevant paragraphs of which read as under:

“Dear Sir,

Appointment as Concurrent Auditors of Sharp Corp Ltd

With reference to the discussion with you, we are pleased to entrust the job of concurrent auditor (w.e.f. 15.10.2018) of the above company who are enjoying various credit facilities from Consortium Banks led by SBI/Term Lenders. The Company's account is NPA with State Bank of

⁵ "OTS" hereinafter

⁶ "AKG" hereinafter



2024:DHC:9302



India & irregular with all JLF members. State Bank of India as mandated for TRA mechanism to be implemented in the account along with appointment of concurrent Auditor.

The scope of concurrent auditor will be as under: –

- a) To submit report on monthly basis and/or specific dates as required by the Bank about company performances/operations/financial etc. vis-à-vis the assumption/projection taken by the lenders for the purpose of assessing viability of restructuring package.
- b) To monitor TRA account and verify the cash flow statement with the projection and actual data from the books on daily basis.
- c) To verify the stock statements with the books on monthly basis.
- d) To verify that the borrower shall not be any capital expenditure save and except those permitted in terms of the restructuring package without prior approval of JLF.
- e) *To verify that the borrower shall not sell any of its fixed assets/investments save and except those as permitted in terms of the restructuring package.*
- f) To verify that the various terms and conditions put by the JLF has been implemented and status report on the same.
- g) To verify that the company shall not declare any dividend on its equity shares (if any) without prior consent of JLF.
- h) To verify that the various terms and conditions put by the lenders have been implemented and furnish status report on them.
- i) To verify that the borrower shall not escrow its future cash flow (except discounting of bills in the normal course of business) or create any charge or the lien or interest thereon of whatsoever nature except as provided in TEV study and approved by the JLF.
- j) To obtain a list from the company of any CDs, the outcome of which would have a material impact on the debt servicing capability of the company.



2024:DHC:9302



- k) To report on the change in the management setup without prior permission from JLF.
- l) To verify that the borrower cannot open/maintain any about or email any type of banking services/facilities from any Bank(s) other than Banks/FIs from whom the borrower is enjoying credit facilities. Any deviation in this regard needs to be approved by JLF.
- m) To verify and inspect companies of course, company is advised to provide viewing rights of the ERP software maintained at that the company to the concurrent auditor.
- n) Any other matter as required by the JLF.”
(Emphasis supplied)

10. Following the above appointment as concurrent auditor of Sharp, it is pointed out that the AKG wrote to Arvind Mittal & Associates on 13 March 2024, specifically asserting, inter alia, as under:

“The property situated at Khasra No. 646 measuring 4 Bigha 11 Biswas situated in Village Siraspur, Delhi-110042, was under the charge of the lenders through Joint Deed of Hypothecation dated 25/06/2015, 21/11/2015, 22/01/2016, and 01/07/2016 whereby it is written that all present and future properties of Sharp Corp Ltd are charged to lenders.”

11. Mr. Nankani has also invited my attention to Form CHG-1, furnished by Sharp for modification of Charge ID 10198156, as per the Joint Deed of Hypothecation⁷ dated 25 June 2015 in favour of the State Bank of Mysore, for securing an amount of ₹ 600 crores. Among the properties charged, as per the said Form CHG-1 are “all current assets, movable, finished goods, whether in the present or in future wherever situated ranking *pari passu* with all working capital

⁷ "JDH" hereinafter



2024:DHC:9302



lending banks in SBM Consortium”.

12. Mr. Nankani also invited attention to the definition of “charge” in Section 100⁸ of the Transfer of Property Act⁹, 1882. As per the said definition, he submits that the Bank has a clear prior charge over the Siraspur property and, therefore, the sale of the property to liquidate the charge cannot be treated as contempt.

13. Arguing in rejoinder, Mr. Wadhwa submits that the statement of Sharp, in its affidavit, that the title deeds of the Siraspur property are with the Bank is incorrect, as there is no equitable mortgage created in respect of the said property. He submits that the property was purchased by Sharp on 1 September 2014, and the agreement creating charge basis of 25 June 2015. He further submits that the respondents are well aware of the law, and cannot be extended the benefit of doubt in a case such as this.

14. Mr. Wadhwa has also placed reliance, in this context, on a list of properties enlisted in the Annexure to the Working Capital Consortium Agreement¹⁰, to point out that the Siraspur property is not one of the charged properties shown therein.

⁸ **100. Charges.** – Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

⁹ "TPA" hereinafter

¹⁰ "the Consortium Agreement" hereinafter



2024:DHC:9302



15. Mr. Nankani advances a surrejoinder solely with respect to the final contention of Mr. Wadhwa. He draws attention to the opening Clause 1 in Article II of the Consortium Agreement, which reads as under:

“1. The Borrower agrees that the said facilities together with interest, compound interest, additional interest, liquidated damages, costs, charges, expenses and other moneys payable in respect thereof will be secured in favour of the said Banks by a first pari passu charge by way of hypothecation and/or pledge of the Borrowers Current Assets, namely, Stocks in Trade, Stores and Spares not relating to plant and machinery (consumable stores & s), Packing Material Bills Receivable and Book Debts and all other movables of the borrower/of the borrowers pertaining to the said division, both present and future excluding such movables as may be permitted by the said Banks from time to time AND Also by way of Mortgage in favour of the said Banks ranking first pari passu charge on the Borrowers immovable properties both present and future and also such other securities more specifically set out in the third Schedule to the said Consortium Agreement in the form and manner acceptable to the said Banks.”

Analysis

Incidents and indicia of contempt jurisdiction

16. The easiest aid, to understanding the primary characteristic of contempt of court, is the plain etymological meaning of the word “contempt”, shorn of legalese. Merriam-Webster’s Dictionary defines “contempt” as “the act of despising: the state of mind of one who despise, disdain, lack of respect or reverence for something”. The Cambridge Dictionary defines “contempt” as “a strong feeling of disliking and having no respect for someone or something”. Collins Dictionary defines the expression as having no respect for someone or something, or thinking them to be unimportant, and enlists, as its



2024:DHC:9302



synonyms, “scorn, disdain, mockery”.

17. The meaning of the expression “contempt”, when used in the context of the court, is not too far removed from its normal etymological connotation. The essence of contempt of court, therefore, is disdain and disrespect for the court, and acts which reflect that attitude.

18. Thus, every disobedience, or breach, of an order passed by a court, is not contempt. Intent is the essence of contempt. Sans intent, there can be no contempt.

19. Thus, clause (b) in Section 2 of the Contempt of Courts Act, 1971¹¹ defines “civil contempt” as “*wilful* disobedience to any judgement, decree, direction, order, writ or other process of court or *wilful* breach of an undertaking given to a court”. Disobedience of an order or a direction of the Court, or breach of an undertaking given to the Court is *not*, therefore, contempt, *per se*. It *becomes* contempt when it is *wilful*.

20. That said, the expression “wilful” has to be understood in the context of the understanding of contempt of court as an attitude, or an act, which belittles, or undermines, the need to comply with court directives. The duty to respect orders and directives of the court, and to honour undertakings tendered before court, includes, within it, a positive obligation to do so. If, therefore, *in awareness of the said*

¹¹ “the Act” hereinafter



2024:DHC:9302



directive or undertaking, a party acts in a manner which displays total indifference to the need to comply, that, too, in a given case, may partake of the character of contempt.

21. One of the sequiturs of intent being a necessary ingredient for contempt is that, where the intent to disobey, or commit breach, is not *ex facie* apparent, and there is a possibility that the alleged contemnor has failed to comply only on account of innocent oversight, the Court normally affords, to the contemnor, an opportunity to remedy the breach and, thereby “purge the contempt”, where it is possible. The charge of contempt, once purged, does not survive, and the possible sin of the contemnor stands expiated. Where, however, despite grant of opportunity, the disobedience, or breach, continues, an inference of intent is inevitable, and the consequences of committing contempt inexorably follow.

22. Civil contempt actions, too, partake of quasi-criminal character, inasmuch as, if contempt is found to have been committed, the punishment that follows may entail loss of liberty. Courts have, therefore, to be cautious while arriving at findings of commission of contempt, and can in no case be over-sensitive in their approach. Sensibility, while dealing with contempt actions, is of the essence; sensitivity is to be eschewed. The necessity of caution in such cases was thus underscored by the Supreme Court, in *Rosnan Sam Boyce v B.R. Cotton Mills Lt¹²*:

“We are, of course, quite conscious of the fact that the proceedings in the contempt are quasi-criminal in nature, that the law of

¹² (1990) 2 SCC 636.



2024:DHC:9302



contempt has to be strictly interpreted and that the requirements of that law must be strictly complied with before any person can be committed for contempt.”

The degree of proof, for contempt to be found to exist is, therefore, the degree which applies to criminal cases, which is proof beyond reasonable doubt.¹³ As far back as in *Bathina Ramakrishna Reddy v State of Madras*¹⁴, it was observed that “the power to punish for contempt is to be sparingly used and should be used only for protecting the interest of administration of justice”.

23. The nature of civil contempt proceedings was thus classically expressed in *Baradakanta Misra v Bhimsen Dixit*¹⁵:

“Contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order, it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute.”

*Rama Narang v Ramesh Narang*¹⁶ observes thus, in para 55:

“55. It is thus clear that for bringing an action under the ambit of civil contempt, there has to be a wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to the court.”

In *Ram Kishan v Tarun Bajaj*¹⁷, the Supreme Court held as under, apropos contempt, clearing the air on several counts:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty

¹³ R.S. Sehrawat v Rajeev Malhotra, (2018) 10 SCC 574

¹⁴ AIR 1952 SC 149

¹⁵ (1973) 1 SCC 446

¹⁶ (2021) 15 SCC 338

¹⁷ (2014) 16 SCC 204



2024:DHC:9302



of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but *that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities.* (Vide **V.G. Nigam v Kedar Nath Gupta**¹⁸, **Chhotu Ram v Urvashi Gulati**¹⁹, **Anil Ratan Sarkar v Hirak Ghosh**²⁰, **Bank of Baroda v Sadruddin Hasan Daya**²¹, **Sahdeo v State of U.P.**²² and **National Fertilizers Ltd. v Tuncay Alankus**²³.)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide **S. Sundaram Pillai v V.R.**

¹⁸ (1992) 4 SCC 697

¹⁹ (2001) 7 SCC 530

²⁰ (2002) 4 SCC 21

²¹ (2004) 1 SCC 360

²² (2010) 3 SCC 705

²³ (2013) 9 SCC 600



2024:DHC:9302



*Pattabiraman*²⁴, *Rakapalli Raja Ram Gopala Rao v Naragani Govinda Sehararao*²⁵, *Niaz Mohammad v State of Haryana*²⁶, *Chordia Automobiles v S. Moosa*²⁷, *Ashok Paper Kamgar Union v Dharam Godha*²⁸, *State of Orissa v Mohd. Illiyas* and *Uniworth Textiles Ltd. v CCE*²⁹.)

13. In *Lt. Col. K.D. Gupta v Union of India*³⁰ this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that :

“4. ... withholding the amount cannot be held to be either mala fide nor is there any scope to impute that the respondents intended to violate the direction of this Court.”

14. In *Mrityunjoy Das v Sayed Hasibur Rahaman*³¹, the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to the complainants held that it would not give rise to a contempt petition. The Court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this Court was not applicable to the said complainants while dealing with the case under the provision of the West Bengal Land Reforms Act, 1955.

15. It is well-settled principle of law that *if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See *Sushila Raje Holkar v Anil Kak*³² and *Three Cheers Entertainment (P) Ltd. v. CESC Ltd.*³³]*”

24. In order for disobedience, or breach, to be contemptuous, the

²⁴ (1985) 1 SCC 591

²⁵ (1989) 4 SCC 255

²⁶ (1994) 6 SCC 332

²⁷ (2000) 3 SCC 282

²⁸ (2003) 11 SCC 1

²⁹ (2013) 9 SCC 753

³⁰ (1989) 3 SCC 566

³¹ (2001) 3 SCC 739

³² (2008) 14 SCC 392

³³ (2008) 16 SCC 592



2024:DHC:9302



direction, of which disobedience or breach is alleged, must be clear and unequivocal. Ambiguity in the direction, or the order, of which disobedience is alleged is, therefore, if found to exist, an absolute defence to a contempt action. The possibility of the order being amenable to more than one interpretation is equally fatal to a plea of contempt. This is obviously for the reason that, where the direction is not clear, or unequivocal, it is not possible to return a finding that the disobedience, or breach, is deliberate. The possibility of two interpretations of the directions given by the Court, therefore, fatally imperils any charge of contempt.

25. Analogously, the breach, which is allegedly contemptuous, must stare one in the face. The Court is not justified, in a contempt action, in embarking into any lengthy interpretative or inquisitorial exercise in order to divine the intent of the order allegedly breached, or the intent of the alleged contemnor, even if breach is found to occur. The *intent* of the order is not ordinarily important; what matters is what the order *says*.

26. These, then, are the principles on the basis of which the present petition would have to be decided.

Applying the principles

27. Applying the above principles, it is obvious that, in selling the Siraspur property, no contempt can be said to have been committed by Sharp.



2024:DHC:9302



28. The paragraph from the order dated 3 June 2022, of which contumacious breach is alleged to have been committed by the respondents, may, at the cost of repetition, be reproduced:

“5. At this stage Mr. Wadhwa has drawn my attention to an affidavit filed on behalf of the judgment debtor company, more specifically pages 3 and 5 which depicts the immovable properties and FDRs in the name of the company, *though under the charge of Banks* to contend that the judgment debtor company be restrained from alienating and/or creating third party rights with regard to those immovable properties and the FDRs, *subject to prior right of the financial institutions*. Mr. Mehta is agreeable to the said submission of Mr. Wadhwa.”

29. The paragraph records the submission of Mr Wadhwa, based on the affidavit of Sharp, which acknowledges that the Siraspur property, among others, was “under the charge of Banks”. This assertion, which was not disputed by Mr Wadhwa, even by itself, constitutes an acknowledgement that the Banks had a prior right over the Siraspur property. This fact also stands established by para 5 of the affidavit dated 25 May 2022 of the SBI, the communication dated 15 October 2018 from SBI to AKG, the letter dated 13 March 2024 from AKG to Arvind Mittal & Associates, and Form CHG-1 furnished by Sharp, in terms of the Joint Deed of Hypothecation dated 25 June 2015. Inasmuch as these documents pre-date the order dated 3 June 2022, they certainly created a prior right of the Bank over the Siraspur property. Section 11 of the TPA also supports this conclusion.

30. The emphasis, by Mr Wadhwa, on the fact that no equitable mortgage was created, over the Siraspur property, in favour of the Banks, is irrelevant. The order dated 3 June 2022 does not use the



2024:DHC:9302



expression “equitable mortgage”; it merely insulates properties, in respect of which any financial institution had a “prior right”, from the injunctive reach of para 5. Reading “prior right” as “equitable mortgage” would require re-writing of the order dated 3 June 2022, which is obviously impermissible.

31. That the Siraspur property was one over which the Bank had a prior right within the meaning of para 5 of the order dated 3 June 2022 is, therefore, in my view, indisputable.

Reasons for sale of the Siraspur property

32. Though, with this finding, the allegation of contempt must fail, I have also satisfied myself that the sale of the Siraspur property was indeed *bona fide*. The respondents have justified the sale of the property thus, in the reply to the present contempt petitions, which also answer the petitioner’s contention that it was sold for an unreasonably low price:

“20. It may be further noted that the banks had filed multiple petitions before DRT regarding the recovery of its dues, which were filed much prior to the passing of the order dated 03.06.2022 by this Hon’ble Court. Interim orders have also been passed in some of these matters. The details of the said petitions are as follows:

S. No.	Bank Name	OA NO.
1.	United Bank of India	OA/1334/19
2.	State Bank of India	TA/299/22 (Earlier OA/1031/19)
3.	ICICI Bank Ltd.	TA/2983/22 (Earlier OA/606/20)
4.	Syndicate/ Canara Bank	OA/916/19
5.	UCO Bank	OA/219/21



2024:DHC:9302



6.	IDBI Bank	TA/429/2023 (Earlier OA/64/2020)
7.	Indian Bank	OA/267/21

21. It may be noted that some of this litigation in DR T is in the process of being settled/closed.

22. In these compelling circumstances, the Company Sharp Corp Ltd. sold off the Siraspur Property in order to make payment to the Banks for their pre-existing loan amounts.

23. The Siraspur Property was purchased for Rs.51 lakhs vide Sale Deed dated 01.09.2014 and was sold vide Sale Deed dated 28.11.2022 for Rs.1 crore. It may be noted that Circle Rate of the Siraspur Property is Rs.50 lakhs.

24. As such, the property has been sold for almost twice to its Circle Rate and also almost twice the purchase price.

25. It is submitted that this amount of Rs. 1 Crore (less TDS - Rs. 1 lakh) was deposited in TRA Account with the Lead Bank SBI and was appropriated by the bank consortium members towards their loan amount as also admitted by SBI in its Affidavit dated 23.02.2024. It is submitted that full sale consideration was utilized by the Company towards payment of liabilities of the lenders and no money was appropriated by the Company or the Answering Respondent for any other purpose. As aforesaid, TRA Account is managed with the permission and under the supervision of the Lead Bank i.e. SBI acting on behalf of the Bank Consortium. Details of the payment received is provided in the table herein below:-

Date of Payment Received	UTR Details	Amount (Rs.)
28/10/2022	UTIBR52022102800358646	50,00,000/-
17/11/2022	UTIBR52022111700359312	49,00,000/-

The said receipts were deposited in the TRA Account and details of amounts adjusted from TRA Account by Lead Bank by remitting to itself and other banks, are as follows:

S.no.	Disbursement Date	Bank Name	Amount (Rs.)	UTR No.
1.	29/10/2022	Indian Bank	272,577/-	SBIN122302273276
2.	29/10/2022	Canara Bank	141,275/-	SBIN122302273595



2024:DHC:9302



3.	29/10/2022	PNB	576,711/-	SBIN122302271302
4.	29/10/2022	IDBI Bank	136,206/-	SBIN122302279160
5.	29/10/2022	UCO Bank	275,193/-	SBIN122302275829
6.	29/10/2022	SBI	1,926,349/-	Bank Transfer to SBI
7.	29/10/2022	ICICI Bank	171,689/-	SBIN122302279516

S.no.	Disbursement Date	Bank Name	Amount (Rs.)	UTR No.
1.	05/12/2022	Indian Bank	311,200/-	SBIN422339618517
2.	05/12/2022	Canara Bank	161,600/-	SBIN422339623907
3.	05/12/2022	PNB	659,200/-	SBIN422339615148
4.	05/12/2022	IDBI Bank	155,200/-	SBIN422339644550
5.	05/12/2022	UCO Bank	314,800/-	SBIN422339626132
6.	05/12/2022	SBI	2,202,000/-	Bank Transfer to SBI
7.	05/12/2022	ICICI Bank	196,000/-	SBIN422343108455

S.no.	Disbursement Date	Bank Name	Amount (Rs.)	UTR No.
1.	09/12/2022	Indian Bank	233,400/-	SBIN422343460929
2.	09/12/2022	Canara Bank	121,200/-	SBIN422343464541
3.	09/12/2022	PNB	494,400/-	SBIN422343458509
4.	09/12/2022	IDBI Bank	116,400/-	SBIN422343505134
5.	09/12/2022	UCO Bank*	236,100/-	SBIN123038205222
6.	09/12/2022	SBI	1,651,500/-	Bank Transfer to SBI
7.	09/12/2022	ICICI Bank	147,000/-	SBIN422343564875

* UCO payment dated 09/12/2022 returned so again made on 07th Feb 2023.

A copy of the bank statement showing payments to Banks is annexed hereto and marked as **Document No.2.**

26. It is submitted that the restraint Order dated 03.06.2022 passed by this Hon'ble Court is subject to *prior rights of the financial institutions* and as the full amount from the sale of *Siraspur property* was appropriated by the banks of the



2024:DHC:9302



consortium, for their prior debts. It is submitted that there is no violation much less deliberate violation as alleged or otherwise, of the order dated 03.06.2022 passed by this Hon'ble Court. Further, the Answering Respondent and the Company have acted *bonafide* as per its understanding of the order and the rights of the banks.

27. The Banks were seeking to recover their dues and the Company was compelled to sell the said Siraspur property and it is humbly submitted that the sale proceeds of the Siraspur property have been utilized in terms of the prior rights of the financial institutions. Further, as per the OTS terms, the time period for making the payments was extremely short and there was no other recourse but to sell the property as also mandated by the Banks.”

33. Mr Wadhwa has not been able to seriously contest the correctness of these submissions. However, I may note that, in para 26 and 27 of its rejoinder to the reply of Sharp to the contempt petition, it is averred thus:

“26. The contents of paragraphs 19 and 20 are denied for want of knowledge and Sharp Corp is put to strict proof thereof. In any event, the Petitioner submits that the supervision of Sharp Corp’s business by the Consortium of the initiation of multiple petitions before the Debt Recovery Tribunal by the consortium of banks is irrelevant to the Contempt Petition at the alienation of the Siraspur Property by Sharp Corp in deliberate violation of the Order.

27. The contents of paragraphs 21 and 26 are incorrect and denied, for the reasons set forth above. The SBI Affidavit states that a one-time settlement with respect to Contemnor No. 1 was sanctioned on 11 August 2020 and was ultimately settled, 2 years later, on 2 September 2023. Contemnor No 1’s assertion that the time period for making payment under the OTS was “extremely short and there was no other recourse but to sell the property” is plainly false, and does not, in any event justify violation of a court order. In any event, it is denied that Sharp Corp had no other recourse but to sell the Siraspur Property. They asserted that the sale proceeds were utilised in terms of the prior rights of the financial institutions is denied, and Contemnor No 1 is put the strict proof thereof. Contemnor No 1 has not produced the documents relating to the sale of the Siraspur Property or any evidence of the sale consideration received. They asserted that the sale of the Siraspur Property was mandated by the consortium of banks contrary to the SBI Affidavit and to submit statement. The



2024:DHC:9302



SBI Affidavit states that the consortium of banks was not party to the sale of the Siraspur Property undertaken by the contemnors. The sale of the Siraspur Property was therefore undertaken directly by the contemnors and outside of Contemnor No 1's loan arrangement with the consortium of banks. It is denied that Contemnor No 1 was compelled to sell the Siraspur Property, whether in connection with its settlement with the consortium of banks or otherwise, but this would not in any event justify violation of the Order or contempt of court.”

There is, thus, no real traversal to the respondent's contention that the Siraspur Property was sold in order to meet the financial obligations of Sharp towards the Banks, consequent, *inter alia*, on the orders passed by the DRT. The submission, of the petitioner, that the said orders are irrelevant, cannot be accepted, as they indicate that the sale of the Siraspur Property was not an attempt to overreach the order passed by this Court, but was a bona fide financial decision, to meet the obligations of Sharp. The rival pleadings on this aspect, therefore, indicate that, by selling the Siraspur property, there was no attempt by Sharp, wilful or otherwise, to breach, or disobey, the order dated 3 June 2022 passed by this Court.

34. In any event, in a contempt petition, this Court is not required to enter into a detailed vivisection of the circumstances in which the Siraspur property was sold. *Prima facie*, the assertions in the afore-extracted paras 20 to 27, made on oath, inspire confidence.

35. In that view of the matter, it cannot be said that, by selling the Siraspur property, the respondents were guilty of disobedience, much less wilful disobedience or breach, of para 5 of the order dated 3 June 2022 passed by this Court in OMP (EFA) (Comm) 1/2022.



2024:DHC:9302



36. No case of contempt is made out.
37. Accordingly, the contempt petition is dismissed.

C. HARI SHANKAR, J.

NOVEMBER 29, 2024

dsn

[Click here to check corrigendum, if any](#)