

Rajan Chadha & Anr. Vs. Sanjay Arora

Civil Appeal No. _____ of 2025 rising out of SLP (C) No. 17013 of 2024 · Supreme Court of India · 2025-04-23 · B.R. Gavai · Augustine George Masih · F2J-C-1542

Full judgment text

Rajan Chadha & Anr. Vs. Sanjay Arora

[Civil Appeal No. _____ of 2025 rising out of SLP (C) No. 17013 of 2024]

B.R. Gavai, J.

1. Leave granted.

2. The present appeal takes exception to the judgment and final order dated 3rd July 2024 in CONT. CAS(C) 75/2021 passed by a learned Single Judge of the High Court of Delhi at New Delhi (hereinafter, "High Court") whereby the contempt petition filed by the Appellants came to be dismissed.

3. The facts, in brief, giving rise to the present appeal are as under:

3.1 One company by the name of "RBT Private Ltd." carried out the business of dyeing, printing and trading of fabrics. Rajan Chadha, Rajiv Chadha, Sanjay Arora and Sumit Gupta were the shareholders as well as Directors of the company. Rajan Chadha and Rajiv Chadha (Appellants) had a combined shareholding of 51.36%, Sanjay Arora (Respondent) had 25% and Sumit Gupta had 23.64%.

3.2 On 21st December 2019, a Memorandum of Understanding (MoU) was made and executed by and between the company, Appellants, Respondent, Sumit Gupta and one Shilpa Gupta. The MoU was entered into for transfer of shareholding in the company and to re-organize the company's management. In-effect, the Respondent was to purchase the entire shareholding of the Appellants and thereafter, the Respondent was responsible to run the affairs of the company. The MoU also provides that in case of any claim, dispute or difference, the parties shall seek to resolve the same by mutual consultation and negotiation. In the event, the parties are unable to reach a resolution, the dispute is to be settled by arbitration.

3.3 Alleging that the Respondent has failed to discharge his obligation under the MoU inasmuch as the Respondent has started operating another entity from the premises of the company, is siphoning off plant and machinery which was owned by the company and is defaulting in paying instalments of the term loan - the Appellants issued a legal notice to resolve the issues.

3.4 On receiving no reply from Respondent, the Appellants issued a notice in terms of Section 11 of Arbitration and Conciliation Act 1996 (hereinafter, "Arbitration Act"), on 17th March 2020. Pursuant thereto, the sole arbitrator was appointed by the company.

3.5 The Appellants, thereafter, filed a petition in the High Court under Section 9 of Arbitration Act inter-alia praying for a direction to restrain the Respondent from disposing off/alienating, siphoning off or in any manner creating any 3rd party interest or charge in the assets of the company, to restrain the Respondent from using the premises of the company for business operations of any other entity, etc.

3.6 On 11th June 2020, a learned Single Judge of the High Court disposed of the petition under Section 9 of the Arbitration Act by recording the submissions of the parties and by appointing a new arbitrator.

3.7 On 17th June 2020, before the arbitrator, the Appellants contended that the application filed before the High Court under Section 9 of the Arbitration Act be treated as an application under Section 17 of the Arbitration Act. The Respondent objected to the conversion of the application and its maintainability. The arbitrator, while giving time to the Respondent to file a reply, recorded that the statements made by the counsel for Respondent before the High Court (recorded in the order dated 11th June 2020) will be binding upon the Respondent.

3.8 On 1st July 2020, the arbitrator on a prima facie reading of the terms of the MoU observed that certain amount had to be infused into the loan account of the company by the Respondent and there is nothing on record to show that it has been done. It was further observed that the collateral security

for the loan is a house which is jointly owned by the Appellant No. 1 and his wife.

It was further observed that if, the EMI qua the loan account is not discharged by the company, the account would become a Non-Performing Asset (NPA) and would then be subject matter of SARFESI Act 2002. The arbitrator, therefore, being of the view that the apprehension of the Appellant has been prima facie established directed that, till the disposal of the petition, the Respondent shall continue to pay the EMIs into the loan account of the company as per the terms and conditions of the loan account.

3.9 The Appellants, thereafter, alleging that the Respondent is not complying with the order of the arbitrator and is removing the assets of the company illegally, filed an application before the arbitrator under Section 26 of the Arbitration Act inter-alia for a Local Commissioner to be appointed and to prepare an inventory of assets lying at the factory premises of the company. The same was allowed by the arbitrator on 16th December 2020.

3.10 On 22nd December 2020, the report of the Local Commissioner was received. As per the said report, all the machines were present and operational at the premises of the company except one - a Flat Bed Printing Machine.

3.11 Aggrieved by the findings of the Local Commissioner so also by the fact that the Respondent till that point of time had not deposited any amount of EMIs in the loan account, the Appellants filed a Contempt Petition bearing CONT. CAS(C) No. 75/2021 before the High Court on 13th January 2021. The Appellants inter-alia prayed that the Respondent be prosecuted and punished; and to ensure the immediate compliance of the order dated 11th June 2020 passed by the High Court and orders dated 17th June 2020 and 1st July 2020 passed by the arbitrator.

3.12 During the pendency of the Contempt Petition, the National Company Law Tribunal (NCLT) Chandigarh admitted a petition against the company under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter, "IBC"), initiated Corporate Insolvency Resolution Process (CIRP) and declared a moratorium in terms of Section 14 of the IBC. Resultantly, the arbitrator adjourned the proceedings sine die by an order dated 13th July 2021.

3.13 On 5th December 2023, a learned Single Judge of the High Court upon hearing the parties observed that the Respondent has removed material from the premises of the company and that though the Respondent was directed to pay EMIs of the loan account, the same has also not been done. It was further observed that the Respondent and the company are distinct entities, and the undertaking was given by Respondent. It was further observed that the Respondent is not under liquidation and the Section 14 IBC moratorium will not apply to the Respondent.

The learned Single Judge of the High Court, in the result, held that the Respondent is guilty of intentionally and malafidely violating orders dated 11th June 2020 and 1st July 2020 and has committed contempt of the orders of the Court. In light of the same, the learned Single Judge of the High Court granted 4 weeks' time to the Respondent to purge the contempt failing which the Respondent was directed to file an affidavit stating as to why he should not be punished under the Contempt of Courts Act, 1971. The matter was next listed on 5th March 2024.

3.14 Thereafter another learned Single Judge of the High Court, on change of roster, was seized of the contempt petition filed by the Appellants.

3.15 On 3rd July 2024, the learned Single Judge of the High Court by the impugned judgment and final order, came to the conclusion that there was no willful and deliberate disobedience by the Respondent of the order passed by the High Court and the arbitrator. The show cause notice issued to the Respondent was discharged.

3.16 Aggrieved thereby, the Appellants filed the present appeal by way of special leave.

3.17 On 9th August 2024, this Court while issuing notice - dispensed with the personal presence of the Respondent until further orders.

4. We have heard Ms. Vibha Datta Makhija, learned Senior Counsel appearing on behalf of the Appellants and Mr. Shikhil Suri, learned Senior Counsel appearing on behalf of the Respondent.

5. Ms. Vibha Datta Makhija, learned Senior Counsel appearing on behalf of the Appellants, submits that the approach of the learned Single Judge of the High Court in passing the impugned judgment and order is totally in breach of the settled legal position. It is submitted that once the learned Single Judge

of the High Court vide order dated 5th December 2023, on merits, held that the Respondent was guilty of intentionally and malafidely violating the orders dated 11th June 2020 and 1st July 2020 and, as such, had committed the contempt of the orders of the Court, another learned Single Judge of the High Court before whom the matter was subsequently listed could not have reviewed the matter and held the Respondent not to be guilty of contempt.

6. Ms. Vibha Datta Makhija submits that the learned Single Judge of the High Court vide the impugned judgment and final order dated 3rd July 2024 has virtually sat in an appeal over the order passed by another Single Judge of the High Court dated 5th December 2023.

7. It is, therefore, submitted that the present appeal deserves to be allowed and the impugned judgment and order passed by the learned Single Judge dated 3rd July 2024 be quashed and set aside.

8. Mr. Shikhil Suri, learned Senior Counsel appearing on behalf of the Respondent, on the contrary, submits that the learned Single Judge of the High Court after considering the affidavit filed by the Respondent and all the subsequent developments, by a well-reasoned order, has come to a considered conclusion that there was no deliberate and willful disobedience of the orders passed by the High Court and has rightly dismissed the contempt petition.

9. Mr. Suri further submitted that the perusal of Sections 12 and 13 of the Contempt of Courts Act, 1971 would reveal that the learned Single Judge while passing the impugned judgment and final order has correctly considered the legal provisions and held the Respondent not to be guilty. He, therefore, submits that the present appeal warrants no interference and should be dismissed.

10. With the assistance of the learned senior counsel for the parties, we have perused the record.

11. At the outset, we clarify that we do not propose to go into the merits of the matter. We are only considering the correctness of the procedure adopted by the learned Single Judge of the High Court while passing the impugned judgment and order.

12. Undisputedly, the another learned Single Judge of the same Court after considering the merits of the matter and submissions of the rival parties had observed thus:

"19. For the said reasons, I am of the view that respondent No.1 is guilty of intentionally and malafidely violating the orders dated 11.06.2020 and 01.07.2020 and thus, has committed contempt of the orders of the Court.

20. 4 weeks are granted to the respondent to purge the contempt, failing which respondent No.1 shall file an affidavit as to why he should not be punished under the Contempt of Courts Act within 2 weeks thereafter.

21. List on 05.03.2024."

13. It can thus be clearly seen that the learned Single Judge of the High Court, in unequivocal terms, held the Respondent to be guilty of intentionally and malafidely violating the orders dated 11th June 2020 and 1st July 2020 and thus committing contempt of the orders of the Court. The learned Single Judge of the High Court vide the said order had granted time to the Respondent either to purge the contempt or failing which to file an affidavit as to why he should not be punished under the Contempt of Courts Act.

14. It is thus clear that the matter was postponed only for the purposes of enabling the Respondent either to purge the contempt or in the event he did not purge the contempt, to file an affidavit showing cause as to why he should not be punished under the Contempt of Courts Act.

15. When the matter was listed before the another learned Single Judge of the High Court after the change of roster, again after considering the rival submissions, the learned Single Judge of the same Court vide impugned judgment and final order observed thus:

"38. Having given thoughtful consideration to the facts and circumstances of the present case, and considering the material on record, it cannot be said that there is any wilful and deliberate disobedience by the respondents of the order passed by this Court and the learned Arbitrator. No merit is found in the present petition. Accordingly, notice to show cause as to why the respondent No.1 should not be punished under the Contempt of Courts Act, is hereby discharged.

39. The present petition is dismissed, in the aforesaid terms."

16. It is thus clear that the learned Single Judge of the High Court while passing the impugned judgment and final order dated 3rd July 2024 has reviewed the entire order of the learned Single Judge dated 5th December 2023. After the order was passed on 5th December 2023, another learned Single Judge could have only considered whether the Respondent had purged the contempt and if not purged the contempt, as to whether he should be punished or not under the Contempt of Courts Act, 1971. It was not permissible for the learned Single Judge to have revisited the issue as to whether the Respondent has in fact committed contempt or not.

17. If the Respondent was of the view that the order passed by the learned Single Judge dated 5th December 2023 holding him to be guilty of contempt was not correct in law, the only option available to him was to file an appeal under the provisions of Section 19 of the Contempt of Courts Act, 1971. Having accepted the order dated 5th December 2023, the Respondent could not have contended, or for that matter, the learned Single Judge could not have held that the Respondent has not committed contempt of the Court.

18. It is a different matter as to whether the Court while considering the provisions of Sections 12 and 13 of the Contempt of Courts Act, 1971 could have arrived at a finding as to whether the Respondent was liable to be punished or not or whether in the facts of the case he should be discharged or the punishment awarded was liable to be remitted on apology made to the satisfaction of the Court or not. In our view, the order of the learned Single Judge of the High Court by holding that the Respondent had not committed contempt amounts to sitting in an appeal over the order passed by the coordinate Bench dated 5th December 2023.

19. In our considered opinion, apart from this being in excess of the jurisdiction, it is also contrary to the well settled principles of judicial propriety. When one Judge of the same Court has taken a particular view holding the Respondent to be guilty of contempt, another Judge could not have come to a finding that the Respondent was not guilty of contempt.

20. In that view of the matter, we are inclined to quash and set aside the impugned judgment and final order. We order accordingly. The matter is remitted back to the learned Single Judge of the High Court for considering the issue from the stage of the passing of the order dated 5th December 2023.

21. In the light of the aforesaid observations, the appeal is allowed in the aforesaid terms. There shall be no order as to costs.

.....J. (B.R. Gavai)

.....J. (Augustine George Masih)

New Delhi;

April 23, 2025

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