



2025:DHC:1810



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

Date of decision: 18th MARCH, 2025

IN THE MATTER OF:

+ **O.M.P.(I) (COMM.) 17/2023**

RUDRABHISHEK ENTERPRISES LIMITED & ANRPetitioners

Through: Mr. Joydip Bhattacharya, Ms.
Anjalika Sharma, Advocates

versus

SHREEMAA INFRAREALTY PRIVATE LIMITEDRespondent

Through: Ms. Nupoor Maharaj, Advocate for
Respondent in CCP 17/2023
Ms. Nupoor Maharaj, Advocate for
Petitioner in CCP 22/2023

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CCP(O) 17/2023 & CCP(O) 22/2023

1. CCP(O) 17/2023 has been filed by the Petitioner in O.M.P.(I) (COMM.) 17/2023 under Section 9 of the Arbitration and Conciliation Act, 1996 seeking initiation of contempt proceedings against the Respondent/Contemnor for willful breach of Order dated 24.01.2023 passed by this Court in O.M.P.(I) (COMM.) 17/2023.
2. O.M.P.(I) (COMM.) 17/2023 is a Petition filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996.
3. Material on record indicates that an Engineering, Procurement, Construction and Marketing Agreement dated 25.06.2018 was entered into between the Petitioners and the Respondent whereby the Respondent was



2025:DHC:1810



awarded a Project for a residential Township Project “Shri Krishna Villas Project” to the Petitioners on a turnkey basis. It is stated that the Respondent has terminated the Engineering, Procurement, Construction and Marketing Agreement before completion of the Project. It is stated that the said Agreement contains an Arbitration Clause, therefore, the Petitioners has filed the instant Petition being O.M.P.(I) (COMM.) 17/2023 under Section 9 of the Arbitration and Conciliation Act, 1996 for stay on illegal termination of the said Project and for *ad interim ex parte* order directing the Respondent not to re-arrange/re-assign any work covered under the said Agreement to any third party.

4. On 24.01.2023, the Respondent had appeared on advance notice. *Vide* Order dated 24.01.2023, this Court had directed both the parties to maintain *status quo*.

5. The instant contempt petition being CCP(O) 17/2023 has been filed stating that the *status quo* order dated 24.01.2023 has been violated by the Respondent despite the *status quo* Order dated 24.01.2023 passed by this Court. The Respondent No.1 was continuing with the construction work at the Project site which amounted to violation of the *status quo* Order dated 24.01.2023 passed by this Court.

6. Notice was issued on 03.05.2023 against the Respondent/Contemnor to show cause as to why the contempt proceedings should not be initiated for willful breach/disobedience of the Orders of this Court.

7. The Contemnor/Respondent submitted an unconditional apology to the show cause notice on 16.05.2023 stating that the violation was unintentional.

8. After submitting an unconditional apology, reply to the said contempt



2025:DHC:1810



Petition has also been filed by the Respondent. In reply, it was stated that the Petitioners had not prayed for staying of the construction and therefore the *status quo* Order has to be construed in terms of the prayer made in the petition under Section 9 of the Arbitration & Conciliation Act. It was stated that construction over the property would not amount to the violation of the *status quo* order passed by this Court. It was further stated that before the Order dated 24.01.2023 was passed, the Contract had been assigned to a third party i.e. Shrihari Realty Private Limited through an Agreement for Construction and Marketing dated 03.01.2023 and the *status quo* Order would not apply to the third party i.e. Shrihari Realty Private Limited which was not a party to the proceedings under Section 9 of the Arbitration & Conciliation Act. It is stated that in view of the above, it cannot be said that there is a willful violation of the Orders passed by this Court. Paragraphs No.5, 6, 7, 8 and 9 of the Reply reads as under:-

“5. That on dated 03.01.2023 the Respondent has already assigned the construction works to another company after service of the termination notice/s to the Petitioner. True copy of the work assignment has been annexed hereto and has been marked as Annexure C1.

6. That vide order dated 24.01.2023 this Hon'ble Court has specifically not compelled the Respondent to stop the construction works which was continued in the larger public interest.

7. That it is most respectfully submitted that the Petitioner are highly illusioned that any contemptuous activities has been committed by the Respondent.

8. That it is most respectfully submitted that the Respondent has continued with the construction works as per the order dated 24.01.2023 to maintain the



2025:DHC:1810



existing state of affairs in a bonafide.

9. That the Respondent has a prima facie merit to succeed.”

9. Material on record also indicates that against the Order dated 24.01.2023, the Petitioner had filed an Appeal being FAO (OS) (COMM) 102/2023 praying for a stay of the Order dated 24.01.2023. It is stated that the said Appeal was withdrawn on 12.05.2023.

10. Learned Counsel appearing on behalf of the Petitioner states that the unconditional apology, which has been given by the Respondent, is of no significance as it is not an apology showing remorse. The Petitioner challenged the Order dated 24.01.2023 passed by this Court after the issuance of show cause notice on the contempt petition. The appeal was withdrawn *vide* Order dated 12.05.2023. It is further stated that after giving an unconditional apology, a reply has been filed, justifying the action taken by the Respondent to submit that there is no willful violation of the Orders passed by this Court.

11. When this Court put a question to the learned Counsel appearing for the Respondent that as to how the action of the Respondent could be justified after tendering an apology, the learned Counsel for the Respondent states that the Respondent has not violated the Orders of this Court and the apology is only in the alternative in case the Court comes to a conclusion that the Respondent has violated the Orders passed by this Court then the apology be accepted.

12. The argument of the learned Counsel for the Respondent to state that the unconditional apology is only in the alternative cannot be accepted.

13. What should be the nature of the apology of a Respondent/Contemnor



2025:DHC:1810



has been pithily stated by a Full Bench of this Court in Surat Singh v. Des Raj etc., **1967 SCC OnLine Del 169**. The Full Bench of this Court in Surat Singh (*supra*) has observed as under:-

*“6. Before dealing with the case on the merits, we consider it proper once again to repeat what is axiomatic and is, without doubt, well-known. An apology by a contemner, in order to be a mitigation factor, must, among other things, be outpouring of a penitent heart moved by a genuine feeling of remorse and it must never be an apology or a convenient device to escape punishment. **There cannot be both justification and apology, for they are incompatible. An apology is not a weapon to purge the guilt, it is merely meant to serve as an evidence of real contrition. Those who drafted affidavits on behalf of both the contemnors before us seem to be labouring under wholly erroneous and unfounded impression that the stage apology comes only after the Court holds them guilty of contempt. This is a complete misconception of the real legal position and has been repeatedly pointed out in a long series of cases the latest one being a Bench decision of this Court in R.K. Gupta v. Delhi Administration, Cr. O. 36 of 1967 decided on 13-9-1967(1).”*** (emphasis supplied)

14. Similarly, a Division Bench of this Court in H. Syama Sundara Rao v. Union of India and others, **2006 SCC OnLine Del 1392**, while dealing with the issue of apology in contempt proceedings, has observed as under:-

*“23. We may now deal with the question of apology, **In the course of arguments, the petitioner did apologize to the advocate for the respondents. However, immediately thereafter, the petitioner pressed his arguments in reply to the notice to show cause and stated that he had in fact not committed any contempt. Even in the written submissions handed over by the petitioner in the course of arguments on 2nd***



2025:DHC:1810



*November, 2006, the petitioner starts by saying “he has not committed any contempt and in fact it is the advocate for the respondents who has committed professional misconduct, criminal contempt and fraud on judiciary.” Thereafter, the petitioner has reiterated all the averments that he made against the advocate in the notices served upon the advocate as also in the earlier reply to the notice to show cause issued by us. **The petitioner was informed by the Court that if he thought it proper he may tender an unconditional apology and that he could not add any riders or stipulations to his apology. The petitioner thereafter continued to address us on the contempt and sought to justify his acts. Therefore, the question of dropping the proceedings was ruled out.***

24. The conduct of the petitioner shows that the apology tendered by him was only paying a lip service and was a mere device adopted to escape the punishment of his conduct. He is not feeling repentant or remorseful for his conduct. In any case, such an apology which has been tendered by the petitioner in one breath while in other breath, it is coupled with fresh allegations against the counsel for the respondents, cannot be accepted or taken note of. It is beyond any cavil that, an apology by a contemner does not entitle him to an order of discharge and it merely mitigates the offence in certain circumstances and indeed, the Court has to consider the matter only from the point of view of administration of justice. A Full Bench of this Court in the case of State v. Bhavani Singh reported as ILR (1968) Delhi 1 observed as below:

“.....In order to be a mitigating factor, the apology must be tendered at the earliest opportunity and it must be outpouring of a penitent heart moved by a genuine feeling of remorse and overcome by a sense of one's guilt. It should not be merely an apology for an



2025:DHC:1810



apology or a convenient device to escape punishment. Belated apology as an afterthought thus serves no purpose. It must be indicative of repentant regret and contrition tendered at the earliest opportunity, exhibiting realisation of wrong having been done by the contemner and it must be free and frank expressions of his feelings.”

25. Same is the opinion expressed by the; Supreme Court in the cases of Shri C.K. Daphtary Sr. Advocate v. Shri O.P. Gupta reported as (1971) 1 SCC 626 : AIR 1971 SC 1132 : (1971 Cri LJ 844) and National Textile Workers’ Union v. P.R. Ramakrishnan reported as (1983) 3 SCC 105 : AIR 1983 SC 759 : (1983 Cri LJ 1102).

26. In AIR 1940 Nag 407 Sub-judge First Class Hoshangabad v. Jawaharlal Ramchand. it was held that:

“An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is “intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong doer's power. Only then is it of any avail in a court of justice..... Apology must, in order to dilute the gravity of the offence, be voluntary, unconditional and indicative of the remorse and contrition and it must be tendered at the earliest opportunity.”

27. In AIR 1955 SC 19 : (1955 Cri LJ 133) M. Shareef v. Hon'ble Judges of Nagpur Court, it was observed as below:

“There cannot be both justification and an apology. The two things are incompatible.”



2025:DHC:1810



28. Where the stand taken by the contemner in the show cause petition was that if the Court considered that contempt had been committed then he tendered an unqualified apology and the proceeding was hotly contested, the apology offered by counsel was held to have been robbed of all grace and the show of regret was held to be unworthy of consideration, and a Division Bench of the Patna High Court in the matter of Bholanath Chaudhary reported in AIR 1961 Pat 1 : (1961 (1) Cri LJ 134) noted that:

“The question as to whether the Court should or should not accept the apology would depend upon the circumstances of each particular case and a Court can refuse to accept an apology if it is not believed to be genuine and even if it is accepted, it can commit the offender to prison or otherwise punish him.”

29. In a recent judgment delivered by a Division Bench of this Court on 19th October, 2006 in the case, Court on its own motion v. Mr. Gulshan Bajwa, (Cri. Cont. Case Nos. 16 and 17/2006) in relation to the law of tendering and accepting an apology, it has been observed as below:

“It is a settled principle of law that an apology besides being expressed in words literally should be bona fide and a real repentance of the offending acts. Normally, offer of an apology should be right at the initial stages besides being bona fide and upon complete realisation of the mistakes done, should also be unequivocal declaration of genuine concern for due course of administration of justice and upholding of the dignity. If any of these ingredients are missing, the apology may not be accepted by the Court as it lacks real intent of bona fide.”

30. To the same effect are the Judgments of the



2025:DHC:1810



Supreme Court in the cases of Jaikwal v. State of U.P. reported as (1984) 3 SCC 405 : AIR 1984 SC 1374 : (1984 Cri LJ 909) and M.V. Shareef v. The Hon'ble Judges of the High Court of Nagpur reported as AIR 1995 SC 19.” (emphasis supplied)

15. A perusal of the aforesaid judgments would show that justification and apology cannot go in hand and they are incompatible. An apology is the acceptance of guilt and the person who apologizes for the mistake actually prays for apology of contempt by expressing sincere regard for atonement of that guilt.

16. In the present case an unconditional apology has been given on 16.05.2023, and the same has been followed by a justification in terms of the reply by the Respondent. This only indicates that the apology is merely perfunctory.

17. To compound the situation further, when this Court asked the learned Counsel for the Respondent, that this Court is inclined to accept the apology of the Respondent provided that the learned Counsel does not proceed ahead and defend the contumacious actions of the Respondent, the learned Counsel for the Respondent insisted on defending the action taken by the Respondent stating that no contempt has been committed. This makes the apology completely nugatory.

18. This Court is aware that the power to punish for contempt is a special power and needs to be exercised with care and caution, and it should be used sparingly by the Courts. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and whether the conduct of the party who is alleged to have committed such disobedience is contumacious or not. [Refer to:- Jhareswar



2025:DHC:1810



Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352].

19. The Supreme Court in Re: Vinay Chandra, (1995) 2 SCC 584, had delineated the purpose of the law of contempt in building confidence in the judicial process. The relevant paragraph of the said judgment has been reproduced as follows:

“39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration



2025:DHC:1810



of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

20. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined.

21. As stated hereinabove, the apology cannot be accepted as the Respondent/Contemnor himself has filed a Reply subsequent to the filing of the unconditional apology justifying his actions and the learned Counsel for the Respondent also has stated that the case of contempt is not made out and the apology is only the alternative which cannot be accepted.

22. *Vide* Order dated 24.01.2023 this Court had granted *status quo*. It is the defense of the learned Counsel for the Respondent that the work had already been assigned prior to the passing of the order of this Court Shrihari Realty Private Limited. The Directors of the Respondent and Shrihari Realty Private Limited are same which means that despite being aware of the Order of *status quo* passed by this Court. The Directors of both the Companies, the Contemnor and the assignee being the same, knew that the matter is *sub judice* and steps should not be taken to overreach the issue pending before the Court and any action taken by a party to overreach an issue pending before the Court amounts to willful disobedience of the Court and therefore amounts to contempt. The argument of both the companies i.e., the



2025:DHC:1810



contemnor and the Assignee, that they are different juristic person cut no ice and this Court is inclined to pierce the corporate veil to ascertain as to whether steps have been taken to circumvent the Status Quo Order or not. It was always open to the Respondent to approach this Court to get clarification as to whether Stay Order is limited to termination alone or would it extend to carry out further construction.

23. Keeping in view the aforesaid facts and circumstances, this Court is of the opinion that the Respondent/Contemnor is guilty of willfully disobeying the Orders of the Court. The Respondent cannot be permitted to take the shield of the fact that work had been assigned to a third party prior to the issuance of the contempt. The third party was nothing but an alter ego of the Respondent/Company with same Directors who are aware of the Orders of *status quo*.

24. In view of the above, this Court is of the opinion that the Respondent has willfully disobeyed the Order dated 24.01.2023 passed by this Court and has committed contempt of Court under Section 2(1)(b) of the Contempt of Courts Act, 1971.

25. A separate order issuing directions to the Contemnors shall be passed today itself.

SUBRAMONIUM PRASAD, J

MARCH 18, 2025

RJ