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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L) NO.494 OF 2024
IN
WRIT PETITION (L) NO.30706 OF 2023**

HDFC Bank Limited Petitioner.
V/s
Kishore K. Mehta and Anr. Respondents.

Appearance:

Mr. Kevic Setalvad, Senior Advocate a/w Mr. Dharam Jumanani a/w. Mr. Mihir Nerurkar a/w. Ms. Prapti Kedia a/w Mr. Sagar Dhakane i/by Agama Law Associates for the Petitioner.

Mr. Anil V. Anturkar, Senior Advocate with Mr. Malcolm Siganporia a/w. Mr. Abhishek Prabhu a/w. Mr. H. N. Thakore a/w. Ms. Jyoti Ghag a/w. Mr. Shailesh Prajapati a/w Mr. Jash Gandhi i/by Dua Associates for Respondent No.1.

Mr. Kartik Seth a/w Mr. Rajesh Dodia for Respondent No.2.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE: 27TH FEBRUARY, 2024

P.C.:-

1] In this Contempt Petition, the Petitioner prays that this Court be pleased to take action against the Respondents for having committed breach of the undertakings given by them on 12/12/2023 which resulted in breach of the orders dated 08/11/2023 as modified by the



Supreme Court on 20/11/2023.

2] Writ Petition (L) No. 30706 of 2023 has been filed by the Respondents raising a challenge to the order dated 25/10/2023 passed by the Recovery Officer in Recovery Proceedings No.409 of 2004. By the said order, it was directed that a warrant of arrest against the Respondents be issued alongwith attachment of their bank accounts, lockers and shares. Various other directions were also issued by the Recovery Officer. When the aforesaid writ petition raising challenge to the order dated 25/10/2023 was heard, the Court on 8/11/2023 passed an interim order. Paragraphs 5 to 7 of the said order being relevant for the present purpose are being reproduced hereunder:-

“5 Considering these facet, to even consider the Petition and the preliminary objection, we put the Petitioners on the condition of a deposit of 25% of the amount of debt as of today in this Court. This deposit shall made within a period of two weeks from today in this Court, and the receipt be placed on record of the Petition on an affidavit to be filed in the Registry with a copy of the affidavit to the Respondent-Bank. We make it clear that if the amount is not deposited, the Writ Petition will stand dismissed without reference to the Court.



6 We make it clear that no further extension for deposit would be granted. If the amount is so deposited, place the Petition on Board on 29 November 2018 (sic 2023) under the caption “For Directions”.

7 As regards suspension of the arrest warrant till the next date, we place two conditions. First, an affidavit/undertaking will be filed by the Petitioners within a period of one week, that the amount of 25% as above would be deposited within two weeks as above. Second, the amount as above be deposited within two weeks from today. Subject to these two conditions, the date given for enforcement of the arrest warrant will stand deferred till the next date. In default of either of these conditions, the deferment will stand vacated, and the arrest warrant will come into force forthwith. The Petitioners will be bound by the undertaking on affidavit, and breach thereof will be considered, in addition, as contempt of this Court.”

3] This order dated 08/11/2023 was the subject matter of challenge before the Supreme Court in SLP No.25594 of 2023. On 20/11/2023, the Supreme Court did not interfere with the aforesaid order but extended time that was granted to the Respondents to deposit 25% of the amount till the end of December, 2023. The time to file undertakings as directed was also extended till 15/12/2023. In



accordance with the aforesaid order, the Court on 29/11/2023 modified the earlier order dated 08/11/2023 indicating that the compliance as directed would be required to be done within time as extended by the Supreme Court.

4] According to the Petitioner, the Respondents filed their affidavits on 12/12/2023 stating therein that the affidavits/undertakings were being filed to abide by the order dated 20/11/2023 passed by the Supreme Court of India. The Respondents by 27/12/2023 deposited an amount of Rs 3,68,63,000/-. It is in the light of the aforesaid that this Contempt Petition has been filed.

5] Mr. Kevic Setalvad, the learned Senior Advocate for the Petitioner referred to various orders passed in the proceedings and submitted that by the order dated 08/11/2023 passed in Writ Petition (L) No.30706 of 2023, the Respondents were required to deposit 25% of the amount of debt as of that date in the Court. This was a condition precedent for considering the writ petition. Though consequence of the failure to deposit the aforesaid amount was indicated in the said order, it was submitted that by filing affidavit/undertaking as stated in paragraph 7



of the said order, the execution of the arrest warrant was stalled. The Respondents failed to deposit 25% of the amount of debt as on 08/11/2023 which amount was liable to be considered in the light of the Recovery Certificate dated 30/11/2004. The amount indicated in the Recovery Certificate was Rs 14,74,51,929.35 which was payable with interest @ 16% per annum from the date of filing of the application. Reliance was placed on the decision in 2023 SCC OnLine SC 12 (*Sidha Neelkanth Paper Industries Private Limited and Another vs. Prudent ARC Limited and Others*) to submit that 25% of the entire amount due was liable to be deposited. The Respondents failed to deposit 25% of the amount of debt and merely made a show of seeking to deposit part of the said amount as if the order dated 08/11/2023 was being complied with. As a result of affidavit/undertaking filed by the Respondents, the enforcement of the arrest warrant was deferred. Thus, the Respondents in their affidavit merely stated that certain amounts were deposited by them which they were aware was not 25% of the amount of debt as on 08/11/2023. Inviting attention to the judgment of the Supreme Court in 2023 SCC OnLine SC 1139 (*Balwantbhai Somabhai Bhandari vs. Hiralal Somabhai Contractor (Deceased) rep. By Lrs and Others*), it was submitted that the



Respondents by submitting false undertakings and thereafter not complying with the same were guilty of having committed civil contempt as defined under Section 2(b) of the Contempt of Courts Act 1971 (for short, the Act of 1971) In view of the undertakings, as submitted, the further action in the form of execution of arrest warrant had been deferred. The said action was deferred only in view of the submission of the undertaking and therefore by breaching the said undertaking, the Respondents were guilty of having committed civil contempt. In that regard, reference was made to the communication dated 06/01/2024 addressed by the learned Counsel for the Respondents to the Commissioner of Police, Mumbai stating therein that as the order passed by the Supreme Court dated 20/11/2023 had been complied with, the warrants of arrest had become unenforceable. The orders passed by the Recovery Officer on 09/01/2024 and 10/01/2024 were also referred to. The learned Senior Advocate also referred to paragraph 7 of the order dated 08/11/2023 to submit that this Court had made it clear in the said order that the Respondents herein would be bound by the undertakings submitted by them and breach thereof would be considered, in addition, as contempt of court. It was thus submitted that the action in exercise of contempt



jurisdiction deserves to be taken against the Respondents.

6] Mr. Anil V. Anturkar, the learned Senior Advocate for the Respondent No.1 submitted that the Respondent No.1 did not breach the order dated 08/11/2023 as modified by the Supreme Court on 20/11/2023. Referring to the order dated 08/11/2023, it was submitted that the condition of depositing 25% of the amount of debt was only with a view to “consider the petition”. The same could not be construed as a direction to deposit the aforesaid amount and it was only to enable the Court to consider as to whether the writ petition warranted consideration. Assuming that 25% of the amount of debt was not deposited, the same would result only in dismissal of the writ petition and the same would not amount to breach of the said order much less its disobedience. It was thus submitted that non-compliance of such conditional order would not amount to its breach amounting to commission of “civil contempt” under Section 2(b) of the Act of 1971. In that regard, the learned Senior Advocate referred to the judgment of the Madras High Court in AIR 1970 Madras 14 (*Abdul Razack Sahib vs. Mrs Azizunnissa Begum and others*) as well as the judgment of the Delhi High Court in 2000 (55) DRJ (*Indian Overseas Bank vs. Lalit Kumar Aggarwal and Anr.*) and submitted that the proceedings filed by



the Petitioner were misconceived. The learned Senior Advocate also referred to the decisions in (2021) 20 SCC 365 (*Suman Chadha and Another vs. Central Bank of India*) and in (2021) 13 SCC 166 (*Hukum Chand Deswal vs. Satish Raj Deswal*) in that regard. Considering the fact that Respondents had deposited Rs 3,68,63,000/- in Court in terms of the undertaking, it was clear that there was no intention whatsoever of disobeying any order passed by this Court or the undertakings as submitted. It was thus submitted that the proceedings as filed were not liable to be entertained and the same ought to be dismissed.

7] Mr. Kartik Seth, the learned Counsel for the Respondent No.2 besides adopting submissions as urged by the learned Senior Advocate for Respondent No.1, invited attention to the order dated 05/02/2020 passed by the Recovery Officer in the proceedings between the parties. Referring to the order dated 27/02/2023 passed in Writ Petition No.132 of 2023 (*Kishore Mehta and Anr. vs. Recovery Officer, Debts Recovery Tribunal, II, Mumbai*) he submitted that insolvency proceedings relating to the respondents were still pending. The proceedings therefore did not warrant consideration and the same



ought to be dropped.

8] In reply, the learned Senior Advocate for the Petitioner submitted that the judgment of the Madras High Court in the case of *Abdul Razack Sahib* (supra) was no longer good law in view of the subsequent decision of the same High Court 1990 10 PTC 131 (*S. P. S. Selvaraj vs. V. Muthusamy Naicker*). Considering the conduct of the Respondents in not complying the order dated 08/11/2023 despite submitting undertakings in that regard, it was clear that the Respondents did not have any regard for the orders passed by this Court. Hence this Court ought to take appropriate action against the Respondents.

9] We have heard the learned Counsel for the parties on the issue as to whether any prima facie case of wilful breach of the undertakings dated 12/12/2023 thus resulting in breach of the order dated 08/11/2023 has been made out against the Respondents. Having considered the submissions made in that regard and having perused the documentary material on record, we are satisfied that a prima facie case for issuance of notice to the Respondents and proceeding further



against them has been made out for the following reasons:-

(a) By the order dated 08/11/2023, the Respondents were put to a condition of deposit of 25% of the amount of debt as of that day within a period of two weeks. Failure to deposit such amount was to result in dismissal of the writ petition without reference to the Court. In addition, the said order required the Respondents to file an affidavit/undertaking that “the amount of 25% as above” would be deposited within a period of two weeks. It was stated that subject to the aforesaid being complied with, the date given for enforcement of arrest warrant would stand deferred till the next date. It was made clear that the Respondents would be bound by the undertaking on affidavit and breach thereof would be considered, in addition, as contempt of the Court. The amount deposited by the Respondents pursuant to the said order is Rs 3,68,63,000/-. The amount of debt as on 08/11/2023 to the extent of 25% exceeds the amount deposited by the Respondents in view of the fact that



the Recovery Certificate dated 30/11/2004 was for an amount of Rs 14,74,51,929.35 alongwith interest @ 16% per annum. The direction to deposit 25% of the amount of debt as on 08/11/2023 would include the interest accrued till the date of the order. 25% of the debt has not been shown to have been deposited.

(b) Assuming that failure to deposit such amount would result in dismissal of the writ petition without reference to the Court, paragraph 7 of the order dated 08/11/2023 binds the Respondents by the undertaking filed by them on an affidavit and makes it clear that breach thereof would be considered, in addition, as contempt of Court. The Respondents on the strength of deposit of the amount of Rs 3,68,63,000/- sought deference of the execution of the arrest warrant as is clear from the communication dated 06/01/2024 addressed on their behalf to the police authorities. In *Balwantbhai Somabhai Bhandari* (supra), it has been held that if on the



basis of an undertaking given by the party, the Court sanctions a particular course of action then breach of such undertaking could amount to contempt.

10] The aforesaid reasons are prima facie sufficient for the Court to proceed in accordance with Rule 1036 of the Contempt of Courts (Bombay High Court) Rules, 1994.

11] Accordingly, issue notice to the Respondents returnable on 17th April 2024 to show cause why action under the Contempt of Courts Act, 1971 should not be taken against them for wilful breach of the undertakings/affidavits submitted by them on 12/12/2023 which result in breach of the order dated 08/11/2023 passed in Writ Petition (L) No.30706 of 2023 within the time as extended by the Supreme Court in its order dated 20/11/2023.

12] In terms of Rule 1037 of the Rules of 1994, the Respondents to file their reply affidavit within a period of four weeks from service of notice.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]