



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

% **Judgment reserved on: 09 January 2025**
Judgment pronounced on: 18 March 2025

+ **CONT.CAS(C) 13/2020 & CM APPL. 30510/2022**

SUNIL GUPTA

.....Petitioner

Through: Mr. Gaurav Mitra, Mr.
Dushyant Kumar and Mr. Ishan
Roy Chowdhary, Advs.

versus

ANIL AGGARWAL & ORS.

.....Respondents

Through: Mr. Raghavendra Mohan Bajaj,
Ms. Garima Bajaj, Mr. Kumar
Karan and Mr. Sagun Agarwal,
Advs. for R-1.

Ms. Srishty Kaul, Adv. for R-2.
Mr. Rajshekhar Rao, Sr. Adv.
with Mr. Kunal Vajani, Mr.
Kunal Mimani, Mr. Shubhang
Tandon, Ms. Shraddha Chirania
and Mr. Mridul Yovesh Suri,
Advs. for R-3 and R-4.

Mr. Sandeep Sethi, Sr. Adv.
with Mr Sumer Dev Seth and
Mr. Harsh Agrawal, Advs. for
Mr. Ashok Goyal, proposed
respondent.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The present petition has been filed by the petitioner herein under Sections 10 and 12 of the Contempt of Courts Act, 1971¹

¹ CC Act



seeking initiation of contempt proceedings against the respondents for the alleged wilful disobedience and disregard of the consent decree dated 01.06.2009 passed by this Court in CS(OS) 2402/2008 titled “Sunil Gupta v. M/s Polar Industries Ltd.”.

BRIEF FACTS

2. Shorn of unnecessary details, pursuant to a suit for recovery of Rs. 1,38,79,026/- bearing CS(OS) 2402/2008 being filed by Mr. Sunil Gupta i.e., the petitioner herein, against a company, namely M/s Polar Industries Limited [‘PIL’], the parties in dispute entered into a compromise agreement dated 13.01.2009 in order to amicably resolve and settle the said commercial dispute.

3. As a matter of record, this Court, upon being satisfied with the terms and execution of the aforesaid compromise agreement dated 13.01.2009, decreed the civil suit CS(OS) 2402/2008 in terms of the aforesaid agreement *vide* order dated 01.06.2009.

4. The relevant portion of the compromise agreement dated 13.01.2009 executed by and between the petitioner herein and PIL through its chairman and managing director Mr. Anil Agarwal i.e., the respondent No.1 herein, reads as under:

“(i). Rs.20 lakh (Rupees Twenty Lakhs only) already paid as part of this understanding by RTGS in November 2008.

(ii). Rs.40 Lakhs (Rupees Forty Lakhs only) will be paid on 13.01.09 vide demand draft No.778129 dt.12.01.2009 drawn on ICICL Bank Limited for Rs. 25 lakhs (Rupees Twenty Five Lakhs only) and demand draft No.056088 dt.12.01.2009 drawn on The Jammu & Kashmir Bank Limited for Rs.15 lakhs (Rupees Fifteen Lakhs only).

(iii). Rs.40 lakhs (Rupees Forty Lakhs only) would be paid by cheque to be honoured within 30 days from the date of signing of this agreement.

(iv). Property at Kolkata, measuring 3140 Sq. Ft., mortgaged to



Mr. Sunil Gupta, would be sold by SG on behalf of PIL with prior concurrence of PIL on receipt of any / all advance / earnest money / total sale consideration and the entire proceeds (net of expenses to be incurred for converting from leasehold to freehold, for which PIL would initiate the process immediately) will form part of payment of the dues. Expenses for conversion would be funded by PIL out of advance received against sale of the property as above or out of its own funds, which would be deducted out of sale proceeds. The best offer received by either party will be binding on PIL (two weeks' time will be allowed to each other and the best price should be conveyed in writing). PIL would deliver the vacant peaceful physical possession of the above property and would simultaneously execute Power of Attorney etc. in this regard in favour of SG, within a week.

(v). Rs.4.50 Crores (Rupees Four Crores Fifty Lakhs only) to be paid over 33 months @ Rs. 13.64 lakhs (Rupees Thirteen Lakhs Sixty Four Thousand only) per month (cheque of Rs.7 lakhs dated 7th of each month and cheque of Rs.6.64 lakhs dated 15th of every month) starting from 7th/15th Feb' 09 till October 2011. This deferred payment of Rs.4.50 Crores would carry an interest @ 14 % p.a. to be settled by issue of Vinsa shares as per para mentioned herein below. Post Dated Cheques will be signed by Mr. Anil Aggarwal and Mr. Arun Thaman, CEO of PIL.

(vi). Balance amount will be paid by Mr. Anil Agarwal by getting transferred 15.72 % shares of Vinsa Electricals Pvt. Ltd. from its Promoters - Shareholders of Polar Brand, the Polar brand owner company, as soon as the shares are released from Eight Capital as 100% Vinsa shareholding is presently pledged with Eight Capital against their investment in Vinsa and in the shares of PIL. As per the present arrangement with Eight Capital, the shares will get released on repayment of their investment along with agreed returns by May, 2010. In the event the shares are not issued before 30.06.2010 then PIL as well as Mr. Anil Agarwal would be responsible to pay the balance amount to SG by 31.12.2012.

(vii). For the purpose of transfer of shares to settle his outstanding, the Vinsa value been taken at Rs.50 Crores (Rupees Fifty Crores only). Assuming total outstanding payable is approx. Rs. 15.61 Crores (Rupees Fifteen Crores Sixty One Lakhs) (including interest amounting to Rs.86 Lakhs on Rs.4.50 Crores) Less: payment of Rs.1 Crores, Rs.2.25 Crores against sale of Kolkata office (net of expenses) and Rs.4.50 Crores through PDCs, the balance amount would be Rs.7.86 Crores (Rupees Seven Crores Eighty Six Lakhs only), to be settled through shares of Vinsa. Under this calculation SG will hold around 15.72% holding of Vinsa as owner of the



shareholding effective signing of this compromise agreement. Any change in the share capital structure of Vinsa Electricals Pvt. Ltd., which may result into increase/decrease in the shareholding percentage of SG, Mr. Anil Agarwal would ensure that such increase/decrease is in the same proportion as of the remaining shareholders and it doesn't lead to decrease in the face value of the shareholding of SG.

(viii). The promoters of Vinsa and Polar will have the option to buy back the shares of Vinsa on or before 31.12.2012 at a price giving Mr. Sunil Gupta a return of 12% p.a. In case Mr. Sunil Gupta wants to dispose off the shares in the market he will have to offer it first to the promoters of POLAR as they will have the first right of refusal within two week.

(ix). While ARCIL has stipulated a condition that after the release of shares by Eight Capital the entire holding will be pledged with them, PIL will take approval from ARCIL to transfer the shares to Mr. Sunil Gupta and his firms as above. PIL on this day has already written to ARCIL for such permission (copy enclosed).”

(bold emphasis supplied)

5. Admittedly, clauses (i) to (v) have been complied with by the respondent No.1 to the satisfaction of the petitioner and are not in issue presently. Thus, what comes out is that the petitioner herein is only aggrieved by the non-compliance of clause (vi) of the said agreement *vide* which shares to the extent of 15.72% in M/s Vinsa Electricals Private Limited [**‘Vinsa’**] i.e., Respondent No.3 herein, owned by Ms. Shailja Agarwal i.e., respondent No.2 and wife of respondent No.1 herein, were to be transferred in favour of the petitioner herein by 03.06.2010, as part of discharge of the liability of PIL as well as respondent No. 1 towards the petitioner herein under the compromise agreement dated 13.01.2009.

6. Suffice it to state, the aforesaid compromise agreement clearly delineates the nature and scope of each respondent’s involvement as well as the extent of their respective outstanding liabilities towards the



petitioner. However, it is clearly discernible on a careful perusal of the compromise agreement as well as the pleadings of the petitioner that the discharge of liability towards the petitioner had fallen upon the shoulders of respondent No. 1. Furthermore, it is claimed that the Aggarwal family i.e., respondent Nos. 1 and 2, hold substantial shares in the respondent No. 3 company i.e., Vinsa (to the extent of 49%) which is claimed to be the owner of the 'Polar' Brand, as well as in the respondent No.4 company i.e., Vishva Electrotech Private Limited ['Vishva'] (to the extent of 42.74%) which is claimed to be the licensed user of the said brand and clocking a turnover of approximately Rupees 100 crores principally from the licensed use of the Polar trademark. Accordingly, it is claimed that the respondent Nos. 1 and 2 are generating a significant income from the use of the Polar Brand but are deliberately hiding their assets to escape their liability towards the petitioner herein. In the aforesaid backdrop, respondent Nos. 3 and 4 i.e., Vishva and Vinsa have also been impleaded in the present petition by the petitioner herein for allegedly aiding and abetting the contempt of the orders of this Court.

7. At this stage, it is also pertinent to indicate that the petitioner has also placed on record the copy of an authority letter cum undertaking dated 13.01.2009 issued by the respondent No.2 i.e., Ms. Shailja Aggarwal in this regard to the petitioner herein, which reads as under:

"I, hereby authorize Mr. Anil Agarwal, Chairman & Managing Director of M/s. Polar Industries Limited to agree to transfer 15.72% of total equity share capital in Vinsa Electricals Pvt. Ltd. out of 27.03% of equity shares held by me in favour of Mr. Sunil Gupta or in the name of his firms and or his nominees, upon



release from Eight Capital with whom my entire shareholding in Vinsa Electricals Pvt. Ltd. are pledged. Release of my entire shareholding from Eight Capital is expected to happen in the month of May/June, 2010. I understand that pledge of my 15.72% equity holding in Vinsa Electricals Pvt. Ltd. is as per the understanding entered into between Mr. Sunil Gupta & M/s. Polar Industries Limited vide Compromise Agreement dated 13.01.2009.

Sd/-
SHAILJA AGARWAL
Shareholder of Vinsa Electricals Pvt. Ltd.
Place : New Delhi
Dated: 13.01.2009”

8. Anyhow, since the consent decree dated 01.06.2009 remained unsatisfied due to the failure on the part of the respondent Nos.1 and 2 to comply with clause (vi) of the compromise agreement dated 13.01.2009 i.e., failure to transfer the shares to the petitioner despite being released from M/s Eight Capital in 2010 itself, the petitioner states that he was constrained to file an execution petition bearing No. 174/2013 primarily against PIL and the respondent No.1, which is still pending before this Court, claiming that a sum of Rupees 26,41,46,121/- as on the date of filing of the said execution petition, is due upon the said consent decree from the judgment debtor No.1 i.e., PIL and the judgment debtor No.3 i.e., respondent No.1 herein. The break-up of the said amount, as shown by the petitioner in the execution petition, is reproduced hereinunder:



Particulars	Amount In INR
1. Decretal amount	10,48,67,935
2. Interest @ 20 % on above.	15,92,78,186
Total Dues	26,41,46,121

9. At this juncture, it would also be apposite to reproduce the averments made by the petitioner herein in the execution petition as regards the mode in which assistance from the executing Court was being sought by the petitioner with regard to the satisfaction of the consent decree dated 01.06.2009:

“10. The mode in which the assistance of the Court is required: The assistance of this Hon'ble Court is required by way of execution of the above decree by issuance of warrants of attachment and sale of the moveable and immovable properties detailed in Schedule-I for recovery of aforesaid money as decreed in the suit, and by detaining the Judgment Debtor No. 3 and all other Directors & Principal Officers of Judgment Debtor No. 1 in Civil Prison to compel the said Judgment Debtor No. 1 and its Directors to pay the decretal amount to the Decree Holder as per Order & decree dt. 01.06.2009, as per law. A list of Directors of the Judgment Debtor No. 1 is given in Schedule-II filed herewith, as the Judgment Debtor No. 1 and 3 have the sufficient funds and assets to pay the sums due under the aforesaid Judgment and decree dated 01.06.2009 passed by this Hon'ble Court.”

10. It is significant to note that as interim measures, this Court *vide* order dated 30.07.2013 passed in the execution proceedings restrained PIL from pledging/selling “15.27%” of 27.03% of equity shares in Vinsa Electricals Pvt. Ltd. owned by respondent No.2 i.e., Ms. Shailja Aggarwal and the Polar brand owned by Respondent No.3 i.e., Vinsa. It is also a matter of record that the typographical error in the said order stood corrected by a subsequent order dated 12.08.2013,



whereby this Court clarified that the *judgment debtors are restrained from pledging or selling 15.72% of 27.03% of equity shares in Vinsa Electricals Pvt. Ltd. owned by Mr. Anil Aggarwal and the Polar brand owned by Vinsa till the next date of hearing.*

11. However, a twist in the tale was unravelled when the petitioner herein brought to the fore that in the course of the execution proceedings, the respondent No.2/ Ms. Shailja Aggarwal filed an affidavit dated 22.02.2020 wherein it was allegedly disclosed for the first time to the petitioner herein that a Deed of Pledge dated 25.04.2012 was executed by all the shareholders of respondent No.3 i.e., Vinsa (at the time) in favour of one Mr. Ashok Goyal (Partner in M/s Excellent Moulders), who is the proposed respondent No.5 herein, by virtue of which, 51% of the paid-up shareholding of respondent No.3/Vinsa (VEPL) was pledged to Mr. Ashok Goyal in terms of a Business Exposure Agreement dated 24.04.2012. The attention of this Court has been drawn to Clause (V) of the Business Exposure Agreement dated 24.04.2012 entered into between respondent Nos. 1,3,4 as well as the proposed respondent No.5 on behalf of M/s Excellent Moulders [**‘EM’**] and M/s KKG Industries, besides M/s Polaron Marketing Limited represented by one Mr. Viraj Aggarwal and M/s Ranks Fiscals Private Limited represented by one Mr. Giriraj Ratan Kothari, which provides as under:

“V. VEPL shareholders presently own 443869 equity shares, being the entire paid up share capital of VEPL. Further, 82,791 equity shares, constituting about 15.72% of the post issue share capital of VEPL, are agreed to be issued to one Mr. Sunil Gupta and/or his nominees. VEPL shareholders declare and state that the present shareholding in VEPL is free from all charges, encumbrances,



pledges, liens and attachments which will represent 84.28% post-issue share capital of VEPL.”

12. The petitioner herein has also sought to rely upon Clause (5.6) of Article 2 of the said Deed of Pledge dated 25.04.2012 executed by all the shareholders of respondent No.3 i.e., Vinsa (at the time) in favour of the proposed respondent No.5 i.e., Mr. Ashok Goyal, which reads as under:

“5.6. So long any amount of Business Exposure remains payable by Polar group and its associates to EM group and its associates, VEPL shareholders without prior written consent from the Pledgee shall not sell, transfer, pledge, charge, or encumber the 33.28% shares held by them in VEPL after setting aside 15.72% which may be allotted pursuant to clause 3.7 of the Business Exposure Agreement.”

13. It is claimed that a conjoint reading of the aforementioned relevant clauses of the Business Exposure Agreement dated 24.04.2012 and Deed of Pledge dated 25.04.2012 executed by and between the said respondents, makes it but apparent that the respondents as well as Mr. Ashok Goyal were well aware of the terms of compromise between the respondent No.1 and the petitioner, at the time when 51% of the paid-up shareholding of respondent No.3/Vinsa was pledged in favour of the proposed respondent No.5 Mr. Ashok Goyal.

14. The grievance of the petitioner herein is that on 27.01.2020, much to his detriment, 50,224 shares of respondent No.2/ Ms. Shailja Aggarwal in Respondent No.3/Vinsa stood transferred under the Deed of Pledge dated 25.04.2012 in favour of the proposed respondent No.5/ Mr. Ashok Goyal, due to which the shareholding of the



respondent No.2/ Ms. Shailja Aggarwal in respondent No.3/Vinsa has now sunk lower than the 15.72% threshold mandated to be maintained by the orders dated 30.07.2013 and 12.08.2013 passed by this Court in the execution proceedings.

15. Pursuant to the order dated 22.02.2022 passed by this Court in the present proceedings, the respondent No.2/ Ms. Shailja Aggarwal placed on record an affidavit dated 25.04.2022, detailing the manner in which her shares held in respondent No.3/Vinsa have been transferred to third parties, and all the shares in respondent No.3/Vinsa are now held by Mr. Ashok Goyal, M/s Virat Leasing Ltd. (allegedly a part of the group of companies controlled by Mr. Ashok Goyal) and Mr. Navrit Kumar Goel. The tabular detail is reproduced hereinbelow:

Date	Table depicting the shareholding of Shailja Aggarwal in Vinsa Electricals Pvt. Ltd.	["Vinsa"] and transfer thereof since the year 2009				
		Paid Up Share Capital (PUC) of Vinsa [in Shares]	Free Shareholding		Pledged Shareholding	
	Particulars		Number	%	Number	%
13.01.2009	Shares held by Shailja Aggarwal in Vinsa	443,869	1,00,000	27.03	-	-
13.01.2009	Compromise Agreement	443,869	1,00,000	27.03	-	-
30.06.2010	Date by which 15.72% shares held by Shailja Aggarwal were to be transferred to Sunil Gupta under the Compromise Agreement	443,869	120,000	27.03	-	-
25.04.2012	Pledge in favour of Mr. Ashok Goyal	443,869	69,776	15.72	50,224	11.32
31.03.2014	Private Placement of 38,640 shares by Vinsa which increased total number of paid up shares of Vinsa to 4,87,509 shares	482,509	69,776	14.46	50,224	10.41
16.08.2014	Rights issue of 1,14,721 shares by Vinsa which increased total numbers of paid up shares of Vinsa to 5,97,230 shares	597,230	69,776	11.68	50,224	8.41
21.06.2016	Sale of 20,000 shares [free shares] held by Shailja Aggarwal to a listed company i.e. Virat Leasing Ltd.	597,230	49,776	8.33	50,224	8.41
27.01.2020	Pledge invoked by Mr. Ashok Goyal	597,230	49,776	8.33	NIL	NIL
09.04.2021	Sale of 49,776 shares [free shares] to Mr. Navrit Kumar Goel pursuant to an Order dated 09.04.2021 passed by the Ld. Debts Recovery Tribunal, Delhi	597,230	NIL	NIL	NIL	NIL

16. It is in the aforesaid backdrop that the petitioner herein came to file the present contempt petition; and subsequently, CM APPL. 30510/2022 seeking the impleadment of Mr. Ashok Goyal, M/s Virat Leasing Ltd., and Mr. Navrit Kumar Goel in the present petition, for having aided and abetted the wilful and deliberate defiance of the orders of this Court dated 30.07.2013 and 12.08.2013 as well as the consent decree dated 01.06.2009.



LEGAL SUBMISSIONS ADVANCED AT THE BAR

17. At the stage of final hearing, learned senior counsels appearing for the respondents vociferously objected to the maintainability of the present petition, asserting that it is hopelessly barred by limitation as it has been filed after an inordinate and unexplained delay of several years, in view of the fact that the consent decree of which contempt is being alleged by the petitioner, dates back to the year 2009 and the stipulated time period to comply with clause (vi) of the compromise agreement stood expired on 31.12.2012. Accordingly, it was urged that since the prescribed limitation period for filing the present petition stood expired in 2010 and 2013 in terms of Section 20 of the CC Act, therefore the present petition is not maintainable in the eyes of the law.

18. Faced with the aforesaid submissions, Mr. Gaurav Mitra, learned counsel for the petitioner urged that the petitioner is alleging contempt of the orders dated 30.07.2013 and 12.08.2013 passed by this Court in EX.P. 174/2013 that was instituted by the petitioner for the execution of the consent decree dated 01.06.2009. In view of the aforesaid, it was contended that the objection raised by the respondents with respect to the bar of limitation is not tenable since the violation alleged by the petitioner is of the restraint orders of this Court dated 30.07.2013 and 12.08.2013, the operation of which orders is “continuing” in nature. Accordingly, it was contended that since this Court reaffirmed the obligation stipulated in the consent decree dated 01.06.2009 through its orders dated 30.07.2013 and 12.08.2013, and since this obligation was violated by the act of alienation of shares in



favour of Mr. Ashok Goyal on 27.01.2020, the present petition, which was filed in January 2020, is well within the prescribed period of limitation provided under the Contempt of Courts Act, 1971 and unquestionably maintainable as per law.

19. On merits, it was vehemently urged by Mr. Mitra that this Court cannot permit the issuance of fresh shares in Vinsa to the petitioner at diluted prices, as doing so would contravene the letter and spirit of the consent decree as well as the orders of this Court dated 30.07.2013 and 12.08.2013. It was further submitted that the consent decree did not contemplate or provide for the transfer of fresh, additional, or diluted shares but expressly mandated the transfer of 15.72% of the shares held by Ms. Shailja Aggarwal in Vinsa as per the value at which they existed at the time of the execution of the compromise agreement dated 13.01.2009, and any deviation from this mandate would amount to a violation of the consent decree and the aforementioned orders.

20. Furthermore, as regards CM APPL. 30510/2022 filed by the petitioner herein, seeking impleadment of Mr. Ashok Goyal in the present contempt proceedings as respondent No.5, Mr. Mitra sought to rely upon the additional affidavit dated 22.02.2020 filed by Ms. Shailja Aggarwal in the execution proceedings, wherein she has deposed that the impugned shares were alienated in favour of Mr. Ashok Goyal i.e., the proposed respondent No.5, without her knowledge or notice, and she found out about the same on 27.01.2020 via an email from the CDSL. Learned counsel further apprised this Court that the said pledge was invoked in favour of Mr. Goyal on



27.01.2020 pursuant to a notice of invocation dated 22.11.2019, both of which developments took place after the passing of the orders dated 30.07.2013 and 12.08.2013. Placing reliance on the Deed of Pledge dated 25.04.2012 executed by the respondent Nos. 1 and 2 and other shareholders of Vinsa Electricals Pvt. Ltd. in favour of Mr. Ashok Goyal, as well as Business Exposure Agreement dated 24.04.2012, Mr. Mitra contended that at the time of invocation of the pledge by Mr. Ashok Goyal, he was well aware that 15.72% of the shares in Vinsa Electricals Pvt. Ltd. are mandated to be left untouched in adherence of the orders of this Court, yet he exercised the pledge and got the shares transferred in his favour on 27.01.2020.

21. For the aforesaid reasons, it was vehemently urged that Mr. Ashok Goyal i.e., the proposed respondent No.5, is liable to be impleaded and held in contempt of Court along with the other respondents. In this regard, learned counsel placed reliance upon the decisions in **Sita Ram v. Balbir @ Bali**², and **Krishna Gupta v. Narendra Nath**³ among others, to substantiate his argument that not only the judgment debtors but also third parties who may not have been parties to the execution proceedings of a decree but are responsible for violating the orders of the Court, can be held liable for contempt of Court as per law.

22. Controverting the aforesaid contentions, Mr. Raghavendra Mohan Bajaj, learned counsel for the respondent no.1/Mr. Anil Aggarwal, urged that the orders passed by this Court in the execution

² 2017 (2) SCC 466

³ (2017) SCC Online Del 10990



proceedings do not have the effect of extending the prescribed period of limitation for initiating contempt proceedings, especially in light of the fact that the relief sought in the execution proceedings is not with respect to release of the shares, rather the petitioner, in the execution proceedings, has only sought money and protection of the said shares. Accordingly, it is contended that the present contempt proceedings are a fallacy in view of the fact that the present contempt petition against the respondent No.1 is not for the hiding his assets or the sale of shares, rather it is only for “the non-payment of a money decree”. Learned counsel further contended that since the objections filed by the respondent No.2/Ms. Shailja Aggarwal in the execution proceedings are pending adjudication, thus the present contempt does not lie since there is no final order operating on the issue of the sale of shares. Finally, it was urged that the petitioner is seeking the same reliefs in the present contempt proceedings as he is seeking in the execution proceedings filed before this Court, which is not permissible in view of the settled law on the subject.

23. On the issue as to whether there has been a wilful and deliberate disobedience on the part of respondent No.1, it was contended by Mr. Bajaj that the default in payment is not wilful and deliberate since the respondent No.1 is heavily under debt and has initiated personal insolvency proceedings before NCLT, Cuttack, besides diligently contesting the execution petition filed by the petitioner that is still pending before this Court. Additionally, it was contended that the petitioner herein has not come with clean hands inasmuch as he has made deliberate concealments of material facts from this Court. In this



regard, the attention of this Court has been drawn to affidavit dated 12.12.2024 filed by the respondent No.1, annexing the copy of an e-mail dated 14.03.2014 sent by the petitioner to one Mr. Kanishk Goyal (belonging to the family of Mr. Ashok Goyal) forming part of the record in EX.P. 174/2013, to suggest that that it was well within the knowledge of the petitioner that the Goyal group is dealing with the shares in Vinsa Electricals Pvt. Ltd., and thus, the petitioner cannot contend before this Court that he had no knowledge or apprehension of the invocation of the pledge by Mr. Ashok Goyal on 27.01.2020 till before the said development took place. In support of his submissions, learned counsel has sought to rely upon the decisions of the Supreme Court in the cases titled **Niyaz Mohammad v. State of Haryana**⁴, **Ram Kishan v. Tarun Bajaj**⁵, as well as **S. Tirupathi Rao v. M. Lingamaiah**⁶.

24. Mr. P Chidambaram, learned senior counsel for the respondent No.3/Vinsa, apart from raising a preliminary objection *qua* bar of limitation, contended that since the respondent No.3 is neither a party to the suit in which the consent decree dated 01.06.2009 was passed and the contempt of which is presently alleged, nor is as yet a party to the execution proceedings in which orders dated 30.07.2013 and 12.08.2013 were passed, thus, contempt proceedings do not lie against the respondent No.3. Referring to the table depicting the shareholding of respondent No.2/Ms. Shailja Aggarwal in respondent No.3/Vinsa, Mr. Chidambaram contended that the respondent No.3 is a private limited company and any individual is entitled to have a shareholding

⁴ (1994)6 SCC 332

⁵ (2014) 16 SCC 204

⁶ 2024 SCC OnLine SC 1764



in it, the transfer of which is free and beyond the control of the company. Accordingly, it was argued that the petitioner's assertion that the respondent No.3 had any personal stakes involved or acted with *mala fide* in relation to the invocation of the pledge of shares by Mr. Ashok Goyal on 27.01.2020, is both misplaced and devoid of merit. Lastly, it was urged that the sale of all her shares by the respondent No.2/Ms. Shailja Aggarwal on 09.04.2021 was not to Mr. Ashok Goyal, rather it was a different Mr. Goel who has no involvement in the instant matter.

25. Mr. Sandeep Sethi, learned senior counsel for the proposed respondent No.5/Mr. Ashok Goyal, challenged the maintainability of the present petition on the ground of limitation. It was also contended that the orders dated 30.07.2013 and 12.08.2013 passed by this Court in the execution proceedings are not the subject matter of the present petition, as is evident from the prayer clause in the pleadings of the petitioner, and the petitioner, by seeking the impleadment of Mr. Ashok Goyal in the present proceedings, is trying to enlarge the scope of the present petition which is not permissible in law. It was further contended that the appropriate remedy available to the petitioner against Mr. Ashok Goyal is by way of instituting fresh suit proceedings against him and not by roping him into the present contempt proceedings. On merits, Mr. Sethi argued that the present contempt proceedings do not lie against Mr. Goyal since he is neither a party to the suit in which the consent decree dated 01.06.2009 was passed, nor is a party to the execution proceedings in which the orders dated 30.07.2013 and 12.08.2013 were passed. Accordingly, it was



prayed that the impleadment application as well as the present petition be dismissed by this Court for being an abuse of the process of law.

26. Mr. Rajshekhar Rao, learned senior counsel for the respondent No.4/Vishva, contended that Vishva is a complete stranger to the *lis* between the petitioner and the respondent Nos.1 and 2, as the sub-license agreement between the respondent No.4/Vishva and the respondent No.3/Vinsa regarding the use of Polar Brand was never the subject matter of the consent decree dated 01.06.2009, thus, no cause of action for aiding, abetting, or conspiring in the wilful disobedience of the consent decree dated 01.06.2009 can arise against the respondent No.4/Vishva. In addition to the arguments in the same vein as already addressed by the other respondents, learned senior counsel, while reiterating the settled law that contempt jurisdiction cannot be invoked as a substitute for execution proceedings, contended that the present petition is nothing but an attempt on the part of the petitioner to harass and exert undue pressure on the respondent No.4. to enter into one more settlement.

27. Finally, Ms. Srishty Kaul, learned counsel for the respondent No.2/ Ms. Shailja Aggarwal adopted the arguments advanced on behalf of the other respondents by their respective learned counsels, besides contending that Ms. Shailja Aggarwal has since separated from her husband i.e., respondent No.1, and the authority letter dated 13.01.2009 was issued by her merely as a security contingent upon the transfer of shares, and not as an “undertaking given to a Court” under Section 2(b) of the CC Act. Accordingly, it was urged that the present contempt proceedings are not maintainable against the respondent



No.2/ Ms. Shailja Aggarwal. Reliance in this regard has also been placed on the decision of the Supreme Court in the case of **Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased) Rep. by LRs**⁷.

ANALYSIS AND DECISION:

28. 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 placed on record including the case law cited.

(1) IS THE PETITION BARRED BY LIMITATION

29. At the outset, the present petition is hopelessly barred by limitation. On a bare perusal of the prayer clause of the present petition, it is apparent that the contempt alleged by the petitioner at the time of filing of the present petition, was only as regards the consent decree dated 01.06.2009, meaning thereby the petitioner filed the present petition to only agitate the non-compliance of clause (vi) of the compromise agreement dated 13.01.2009. Evidently, the said clause was in two trenches: first, transfer of shareholding latest by 30.06.2010; and second, in the event of failure, the respondent No.1 was to pay the balance amount latest by 31.12.2012.

30. It is well settled that in contempt jurisdiction, the Court cannot travel beyond the four corners of the order of which contempt is alleged. As admittedly, the shareholding was not released from M/s Eight Capital by 30.06.2010, the petitioner was vested with the legal right to seek recovery after 31.12.2012. Thus, in such circumstances,

⁷ (2023) 17 SCC 545



the petitioner had one year from the said date i.e., till 31.12.2013, to file the present contempt in terms of per section 20 of the CC Act. However, the present petition only came to be filed in 2020 rendering it *ex facie* time barred.

31. Faced with such challenge as to the maintainability of the present petition, the petitioner thereafter changed his stand and contended that the cause of action to institute the present contempt proceedings against the respondents herein arose in his favour on 27.01.2020 when the earmarked 15.72% shares of respondent No.2/Ms. Shailja Aggarwal were transferred in favour of Mr. Ashok Goyal, and thus, it was sought to be urged that the petition is well within the period of limitation. While on the first blush, for the sake of convenience, there may appear to be merit in the plea of the petitioner that the limitation period got extended by the orders of the Court passed on 30.07.2013 and 12.08.2013 in the execution proceedings, which continue to operate till this day, it is pertinent to note that the present petition was filed on 08.01.2020 i.e., before the impugned invocation of pledge by Mr. Ashok Goyal dated 27.01.2020.

32. Thus, it becomes evident that the petitioner is attempting to enlarge the scope of the present petition since the cause of action now being alleged by the petitioner herein had not even arisen at the time of filing of the present petition. This also explains why the prayer clause or for that matter anywhere in the initial pleadings of the petitioner make no mention of the invocation of pledge dated 27.01.2020 which the learned counsel for the petitioner has harped on much about at the stage of final arguments. As per the own case of the



petitioner, he only found out about the said invocation through the affidavit dated 22.02.2020 filed by Ms. Shailja Aggarwal in the execution proceedings, which development also came after the filing of the present petition.

33. Thus, the plea of the petitioner that the present petition is maintainable since this Court reaffirmed the obligation stipulated in the consent decree dated 01.06.2009 through its orders dated 30.07.2013 and 12.08.2013, which obligation was violated by the act of alienation of shares in favour of Mr. Ashok Goyal on 27.01.2020, does not cut any ice and deserves to be ruled out for being merely an afterthought. In essence, the foundation of the present contempt petition is the consent decree dated 01.06.2009 and not the orders passed in the execution petition, wherein the respondent Nos. 3 to 7 are not even a party.

34. Without further ado, the plea of the petitioner that the wrong committed by the respondents herein is “continuing” in nature, cannot be countenanced in law. Reference in this regard can be made to a recent case titled **S. Tirupathi Rao v. M. Lingamaiah**⁸, in which the Supreme Court has comprehensively dealt with the issue of limitation in civil contempt petitions and what constitutes a “continuing wrong/breach/offence”. The relevant observations are reproduced hereinunder: -

“...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

⁸ 2024 SCC OnLine SC 1764



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.”

XXX XXX XXX

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. ...**”

{bold portions emphasized}



35. In view of the aforesaid discussion, at the cost of repetition, evidently the cause of action to file the present petition arose when the respondent No.1 failed to pay the balance amount to the petitioner by 31.12.2012 as per clause (vi) of the compromise agreement on the basis of which the consent decree dated 01.06.2009 was passed. Thus, the very act of breach committed by the respondents which caused a corresponding injury to the petitioner herein, stood completed as on 31.12.2012. Accordingly, the limitation period began running on such date and stood expired upon a year therefrom i.e., 31.12.2013. Evidently, the petitioner failed to initiate contempt proceedings within the statutorily prescribed period of limitation and instead he slept over his rights, only filing the present petition at a much belated stage in January, 2020.

36. In summary, although the effect or damage of the alleged injury is continuing in nature for the petitioner insofar as the amount agreed upon remains unpaid by respondent nos. 1 & 2 to the petitioner till date, that does not *ipso facto* give rise to an inference that the breach constitutes a “continuing wrong”. It is well ordained that the law does not help those who sleep over their rights. This Court cannot mechanically accept a plea of “continuing wrong” as soon as it is raised by the petitioner; rather, the petitioner bears the burden of demonstrating, to the satisfaction of this Court, that the alleged wrong or injury has indeed accrued *de die in diem*—meaning “from day to day”— so as to save himself from the bar of Section 20 of CC Act. While, unhesitatingly, the petitioner has suffered due to the



respondents' disregard for the terms of the compromise agreement, such a grievance does not entitle the petitioner to invoke the doctrine of "continuing wrong" to circumvent the rigors of limitation. At the cost of repetition, a wrong indeed was committed but it stood completed for non-payment of the agreed amount of liability by 31.12.2012. The plea canvassed by learned counsel is not sustainable since the petitioner cannot be allowed to choose a convenient time to approach this Court contrary to the law.

(2) ON EXECUTION PROCEEDINGS

37. Pertinently, the execution proceedings have already been filed by the petitioner herein, which are still pending before this Court, wherein the petitioner is seeking the same reliefs as being sought herein, and the respondents herein have also filed their objections which are pending adjudication. In view of the aforesaid, the present contempt proceedings do not lie as it is trite law that the contempt jurisdiction cannot be invoked when an alternate remedy is available to the petitioner against the alleged contemnor. Reference in this regard may be invited to the decision of the Supreme Court in **R.N. Dey & Ors. V. Bhagyabati Pramanik & Ors.**⁹, wherein it was observed as under:

"...7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court..."

⁹ (2000) 4 SCC 400



{bold portions emphasized}

38. Reference may also be invited to **Sudhir Vasudeva Vs. George Ravishekeran**¹⁰, wherein the Supreme Court has observed that a Court exercising jurisdiction under the Contempt of Courts Act, 1971 must not travel beyond the four corners of the orders in relation to which contempt has been alleged. The same goes as under:

“15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. **Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon.** No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar,.....”

{bold portions emphasized}

39. Further, the Supreme Court in the landmark case **Jhareswar**

¹⁰ (2014) 3 SCC 373



Prasad Paul v. Tarak Nath Ganguly¹¹, opined as under:

“11. ... The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. **If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction ‘that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute’ in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”** {bold portions emphasized}

40. Reference can also be invited to another case decided by the Supreme Court in **Kanwar Singh Saini v. High Court of Delhi**¹², wherein it was held as under:

“20. The proceedings under Order 39 Rule 2-A are available only during the pendency of the suit and not after conclusion of the trial of the suit. **Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit**

¹¹ (2002) 5 SCC 352

¹² (2012) 4 SCC 307



itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order 21 Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both.”

{bold portions emphasized}

41. A Coordinate Bench of this Court in **Jamna Datwani v. Kishin Datwani**¹³, has held as under:-

“6. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the judgments cited. The questions which arise for consideration, in the instant case, are firstly, whether a case for initiation of contempt proceedings against respondent No. 1 is made out and **secondly, even if it is prima facie made out, whether the petitioner has an alternate efficacious remedy available to her in getting the order implemented, then she must, in the first instance, resort to the same. Moreover, the grievance of the petitioner is essentially for recovery of monies which can be resorted to by filing an execution under Order 21 CPC in the court where the suit is pending adjudication.** Reliance in this regard can be placed on the judgment of the Apex Court in *Kanwar Singh Saini v. High Court of Delhi*; (2012) 4 SCC 307. {bold portions emphasized}

42. There is no gainsaying that the power to punish for contempt under the Contempt of Courts Act is not only discretionary but is also to be used sparingly by this Court. A trend which has been noticed by this Court is that parties invariably try to invoke the provisions of the Contempt of Courts Act, 1971, in order to get orders implemented while there is already a machinery provided under the Code of Civil

¹³ 2014 SCC OnLine Del 1735



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Procedure, 1908, for the purpose of getting orders, decrees or directions executed.

43. In view of the aforesaid discussion, the present contempt proceedings are not maintainable for being barred by limitation. Accordingly, the present petition is hereby dismissed. The pending application also stands disposed of.

44. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the matter between the parties in the execution proceedings.

DHARMESH SHARMA, J.

MARCH 18, 2025

Sadiq /ES