

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

% **Date of decision: 29th March, 2019.**

+ **CM(M) No.503/2019**

ACE DESIGN LTD. **Petitioner**

Through: Mr. G.S. Kannur, Sr. Adv. with Mr. Nithin Saravanan, Ms. Anurima Singh and Ms. Priyadarshini, Advs.

Versus

GAURAV SARUP SHARMA **Respondent**

Through: Mr. Sarvesh Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Petition under Article 227 of the Constitution of India impugns the order [dated 1st June, 2018 in Misc. DJ No.23/2018 of the Court of Additional District Judge-1 (North)] of dismissal as barred by time of the application filed by the petitioner for initiation of proceedings of Contempt of Court against the respondent Gaurav Sarup Sharma.

2. The senior counsel for the petitioner has argued that vide the same order as impugned in this petition an application, filed by M/s. Marshall Machines Private Limited (MMPL) being the plaintiff in the suit from which this proceeding arises, for initiation of Contempt of Court proceedings against one of the directors of the petitioner herein was also dismissed and MMPL had also preferred CM(M) No.720/2018 against the said order and which petition has been allowed vide order dated 23rd January, 2019 by

restoring the petition for Contempt of Court being Misc. DJ No.24/2018 to its original position.

3. Though on the basis of aforesaid contention it would follow that this petition also should be allowed but I have perused the impugned order as well as the application filed by the petitioner which has been dismissed, to find out whether in fact any case for initiation of proceedings under Contempt of Courts Act, 1971 is made out.

4. MMPL instituted a suit against the petitioner herein in the District Court for restraining infringement of design and passing off and in which suit by an *ex parte* order a commission was issued to the premises of the petitioner. MMPL filed Misc. DJ No.24/2018 alleging that the petitioner herein caused obstructions in the proceedings of the Local Commissioner. The petitioner filed Misc. DJ No.23/2018 application under Sections 10 & 11 of the Contempt of Courts Act pleading, (i) that the plaintiff MMPL had not approached the Court with clean hands and had made misleading statements and false claims; (ii) that MMPL continued abusing of the process of the Court by colluding with the Local Commissioner, in getting machines sealed which were not even the subject matter of the suit; (iii) that MMPL further made a mockery of the Court by filing an application for initiation of contempt proceedings inspite of the fact that no contempt was made out; (iv) that the contempt proceedings were initiated against a woman director of the petitioner who was not involved in the day-to-day affairs and was only an independent director; (v) that MMPL did not produce documents which if had been produced, the Court would have not issued the commission; and,

(vi) that territorial jurisdiction of the Courts at Delhi was invoked by pleading false facts. In the application itself, reference was made to *Subrata Roy Sahara Vs. Union of India* (2014) 8 SCC 470, *G.E. Countrywide Consumer Financial Services Ltd. Vs. Sri Prabhakar Kishan Khandare* 2006 SCC OnLine Del 777, *Javarilal Vs. N. Parthasarathy* 2016 SCC OnLine Mad 28469, *Advocate General, State of Bihar Vs. M/s Madhya Pradesh Khair Industries* 1980 (3) SCC 311 and *Trilok Chand Badariya Vs. Gyan Chand Badariya* 2016 SCC OnLine MP 1692.

5. By the impugned order, the aforesaid application was dismissed only on the ground of limitation.

6. In my opinion, on the aforesaid pleas, no case for initiation of contempt proceedings in any case was made out. It cannot be forgotten that the suit is still pending and has since been transferred to this Court and is registered as CS(COMM) No.217/2018. It is yet to be determined in the suit, whether MMPL, being the plaintiff therein, is guilty of any of the acts as pleaded in the application.

7. Attention of the senior counsel for the petitioner is drawn to the dicta of the Supreme Court and of this Court in *Amarsangh Nathaji Vs. Hardik Harshadbhai Patel* (2017) 1 SCC 113, *Indraprastha Power Generation Co. Ltd. Vs. Faheem Baig* 2015 SCC OnLine Del 6578 (DB) and *Punjab Tractors Ltd. Vs. International Tractors Ltd.* ILR (2010) II Delhi 352, though in the context of Section 340 of the Code of Criminal Procedure, 1973 (Cr.PC) but which in my opinion would have a bearing on the present controversy also. It has been held that applications under Section 340 of the

Cr.PC cannot be made in a routine manner, immediately after receipt of summons/notice, and to pressurise the plaintiff into settling and/or to browbeat the plaintiff. It has further been held in *Iqbal Singh Marwah Vs. Meenakshi Marwah* (2005) 4 SCC 370 and *Niwash Ojha Vs. Vishwanath Ojha* 1983 SCC OnLine Pat 217 that only if it is found that the plaintiff or any other litigant has indulged in any act which amounts to an offence under clause (b) of subsection (1) of Section 195 of the Cr.PC can a request for prosecution of that litigant be made.

8. The same is the position here. The acts, of which MMPL has been accused of, are still to be adjudicated in the suit and this Court in a contempt application, cannot arrive at findings before the findings in the suit. Suffice it is to state that as of now there is no finding in the suit of any of the said acts having been committed by MMPL.

9. As far as the errors are alleged with the commission executed, I have enquired from the senior counsel for the petitioner whether any objections have been filed to the report of the commission.

10. The senior counsel for the petitioner replies in the affirmative. However on further enquiry, whether the objections have been decided, the answer is in the negative.

11. Qua the remaining grievance, if the lady director of the petitioner has any grievance, in her personal capacity, it was for her to make that before this Court and not for the petitioner. Moreover if the actions of the Commissioner are beyond the mandate issued, the remedy therefor is to seek damages and at this stage proceedings for contempt cannot be initiated.

12. Thus, though on the parity of the order dated 23rd January, 2019 in CM(M) No.720/2018 the impugned order, insofar as on the application of the petitioner may also be liable to be set aside but once it is found that the application which was dismissed itself had no merits, it is not deemed necessary to multiply proceedings and to, for the sake of formality and technicality, restore the application and thereafter waste any further time thereon.

13. No merit is thus found in the petition.

14. The petition is dismissed with liberty to the petitioner to at appropriate stage, once findings have been returned, seek appropriate redressal of the grievances as had been made in the application which was dismissed vide the impugned order.

15 The petition is disposed of.

RAJIV SAHAI ENDLAW, J

MARCH 29, 2019

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