

**HIGH COURT OF TRIPURA  
AGARTALA**

**CONT. CAS(C) NO.30 OF 2023**

**M/s Jaypee Projects Limited**

a Company, incorporated under the Companies Act, 1956,  
having its registered office at Trinity 5G, 226/1, A.J.C. Bose Road,  
Kolkata-700020.

Represented by its Director, Sri Dilip Kumar Ghorai,  
son of Late Gobinda Prasad Ghorai  
having his registered office at Trinity 5G, 226/1,  
A.J.C. Bose Road, Kolkata-700020.

....Petitioner(s)

**Versus**

**1. Dr. Pradeep Kumar Chakravarty**, holding the post of  
Secretary, Department of Information, Cultural Affairs  
& Tourism, Government of Tripura, having his office at  
Secretariat Building, PO- Kunjaban, PS- New Capital Complex,  
Sub-Division-Agartala, District- West Tripura, Pin-799006.

**2. Sri Kedar Nath Sharma**, holding the post of  
Chief General Manager(Engg),  
National Buildings Construction Corporation Limited,  
having his office at NBCC House,  
RBG (NER) H.Q., Housefed Complex,  
6<sup>th</sup> Floor, West End Block, Dispur, Guwahati,  
Assam, Pin-781006.

**3. A. K. Pathak**,  
CGM (Engg),  
National Buildings Construction Corporation Limited.

....Respondent-Contemnors(s)

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mrs. Riya Chakraborty, Advocate
For the Respondent-Contemnor(s):	:	Mr. S. S. Dey, Sr. Advocate Mr. K. K. Pal, Advocate Ms. Ayantika Chakraborty, Advocate Mr. Kohinoor N. Bhattacharyya, Advocate
Date of hearing	:	<b>29.11.2023</b>
Date of delivery of Judgment & Order	:	<b>22.12.2023</b>
Whether fit for reporting	:	<b>Yes</b>

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH  
HON'BLE MR. JUSTICE ARINDAM LODH**

**JUDGMENT & ORDER**

*(Arindam Lodh, J.)*

This instant contempt petition has been filed by the petitioner for initiation of contempt proceeding against the respondents for alleged wilful and deliberate disobedience of the order of this Court dated 19.09.2022 passed in WA No.124 of 2022, wherein following directions were made:

*“In view of the aforesaid without going into any further detail, it is abundantly clear that the amount of Rs.38,72,993/-(Rupees Thirty Eight Lakh Seventy Two Thousand Nine Hundred & Ninety Three) is admittedly due to NBCC towards work purportedly performed by the appellant-company. Therefore, we are of the considered view that no dispute exists regarding the amount that is payable. Consequently, we dispose of the writ appeal directing the State to remit the outstanding amount as noted hereinabove in favour of NBCC within a period of 6(six) weeks as suggested by the learned Government Advocate. Upon receipt of such amount by NBCC, it shall also in turn remit whatever is due on the appellant in its favour within a further period of 2(two) weeks therefrom. In view of the directions issued by us in the present appeal, the directions made by the Hon'ble Single Judge stand quashed. If the State complies with this direction, it shall amount to full and final settlement of all dues of the appellant in the matter.*

*With the aforesaid directions, the writ appeal stands disposed of.”*

2. We have heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned counsel appearing for the respondent-contemnor no.1 as well as Mr. S.S. Dey, learned senior counsel assisted by Mr. K. K. Pal, learned counsel and Ms. Ayantika Chakraborty, learned counsel appearing for the respondent-contemnor nos.2 and 3.

3. Mr. Deb, learned senior counsel for the petitioner has submitted that admittedly a sum of Rs.38,72,993/- was due to NBCC, the respondent-contemnors herein which was to be paid by the State Government. Mr. Deb, learned senior counsel has further submitted that this Court had directed the State Government to clear the dues and pay the sum of Rs.38,72,993/- to the NBCC. In pursuance of the aforesaid order dated 19.09.2022, the State had paid the said sum of Rs.38,72,993/- to the NBCC towards successful completion of the work by the said company, but the respondents-NBCC had not paid the said sum of money to the petitioner despite the order dated 19.09.2022. Mr. Deb, learned senior counsel has drawn our attention to some correspondences wherein they apprised the NBCC about their dues of Rs.38,72,993/- which was not duly denied by the respondents-NBCC. Based on those correspondences, Mr. Deb, learned senior counsel had tried to persuade this Court that the NBCC had not paid the entire amount to the petitioner despite it was due to the petitioner. The petitioner had served demand notice dated 27.04.2021 to pay the outstanding dues but it was not acceded to.

Thus, according to learned senior counsel for the petitioner, the competent officers of the respondents-NBCC, i.e. the contemnors herein have willfully and deliberately disobeyed the order dated 19.09.2022 passed by this Court and they are liable to be tried and punished under Section 12 of the Contempt of Courts Act.

4. Opposing the submissions of learned senior counsel for the petitioner, Mr. S.S. Dey, learned senior counsel for the respondent-contemnors has submitted that there is no disobedience of the order of the

Court, least to say, wilful disobedience. Mr. Dey, learned senior counsel giving much emphasis on the order dated 19.09.2022 tried to persuade this Court that this Court in its order had directed the respondents-NBCC to pay whatever was due to the petitioner. Accordingly, the contemnors had paid Rs.13,14,427/-.

5. Mr. Dey, learned senior counsel for the contemnor-respondents has drawn our attention to the relevant portion of the order dated 19.09.2022 which would be apposite to reproduce hereunder, for convenience, in *extenso*:

*“Consequently, we dispose of the writ appeal directing the State to remit the outstanding amount as noted hereinabove in favour of NBCC within a period of 6(six) weeks as suggested by the learned Government Advocate. Upon receipt of such amount by NBCC, it shall also in turn remit whatever is due on the appellant in its favour within a further period of 2(two) weeks therefrom.”*

6. Mr. Dey, learned senior counsel showing the above extracted order has raised much emphasis on the expression *“whatever is due on the appellant”*. According to learned senior counsel the respondent-contemnors after receipt of the entire balance amount out of their works from the State Government of Tripura had paid the actual amount what was due to the petitioner. According to learned senior counsel, this Court in its order dated 19.09.2022 never directed the respondent-contemnors to remit entire sum of Rs.38,72,993/-.

7. Our attention was drawn to the statements made in para 2 of the affidavit in reply filed by the respondent no.2 and the respondent no.3 wherein it has been categorically stated *“That in compliance of the aforesaid order and after checking the records maintained by NBCC in their Books of Accounts, an amount of Rs.13,14,427/- was reflected to be payable to the petitioner and*

*the same stands released to him on 28.02.2023 thereby complied with the order of Hon'ble High Court dated 19.09.2022. It is herein clarified that NBCC has been directed to pay amounts that are due to the petitioner and not such amounts as claimed by the contractor/petitioner. It is again reiterated that NBCC has never disobeyed or violated the order of the Hon'ble High Court and has duly complied with the order by paying such amounts as reflected in our Books of Accounts."*

8. In view of this clear statement made by the respondent-contemnors we have revisited Section 2 of the Contempt of Courts Act, 1971 wherein "civil contempt" is defined in Section 2(b), which reads as under:

*(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;*

9. On bare perusal of the provision quoted above, it becomes abundantly clear that to make one liable or to bring charge against anyone for committing contempt, the complainant/petitioner must come up with a case so clear to the contemnors that *ex facie* it would be found that the contemnors have willfully and deliberately disobeyed/violated such order or direction passed by the Court. Furthermore, according to this Court such order or direction passed by the Court must be so clear and unambiguous that no room is left to misconstrue, misinterpret or misunderstand such order or direction by the implementers of the said order/direction.

10. Nature of contempt proceedings does not depend upon the Sections of the Act referred to in the application, but on the substance of the application. In the context of civil contempt, the Supreme Court has explained that the High Court, while exercising original jurisdiction under the Contempt

of Courts Act in relation to its own orders, is not exercising any review jurisdiction and, therefore, it was not necessary that the proceedings would have to be placed for decision of the same Judge or Judges who have made the orders, the violation of which gives rise to proceedings for contempt. [*Ref: High Court of Judicature at Allahabad vs. Raj Kishore Yadav, (1997) 3 SCC 11: AIR 1997 SC 1186*]

11. This Court in Contempt jurisdiction cannot determine the legality or the illegality of the action taken by the respondents. In contempt jurisdiction, the Courts should confine to the four corners of the order of which contempt is alleged and cannot travel beyond the order. Here, we may profitably rely upon the dicta of the Hon'ble Supreme Court in *Jharieswar Prasad Paul and Anr. vs. Tarak Nath Ganguly and Ors., (2002) 5 SCC 352* the operative portion of which runs as under:[SCC. p.359, 360 para 11]

*“11. 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. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to*

*have committed such disobedience is contumacious. 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.”*

From the above principle we can easily hold that the contempt jurisdiction should be confined to the question whether there has been any wilful or deliberate disobedience of the order of the Court and not to enter into any questions on the subject matter raised in the writ petition in which the Court had passed certain directions or orders.

12. In the instant case, Mr. Deb, learned senior counsel appearing on behalf of the petitioner has tried to persuade this Court on the basis of some statements made in the writ petition as well as in the counter affidavit and also some correspondences made between the petitioner and the respondent-NBCC to justify that the contemnors were liable to pay entire amount of Rs.38,72,993/-. Learned senior counsel also urged with vehemence that the Court might look into those statements and the correspondences to consider that the petitioner was entitled to Rs.38,72,993/- and not Rs.13,14,427/-.

13. However, we are unable to accept the submissions of learned senior counsel and we are more inclined to see and read the specific order passed by this Court. The order dated 19.09.2022 is very specific. The language of the relevant portion of the order is also very clear. In the order, this Court had specifically directed the State Government to remit the outstanding amount of Rs.38,72,993/- within a period of 6(six) weeks to the NBCC and upon receipt of the said amount by NBCC, it would in turn remit **whatever is due to the petitioner within next 2(two) weeks.**

14. In our opinion, there is no whisper in the order that the respondent-contemnors had to pay the entire amount of Rs.38,72,993/-. Further, in our considered view, the above order passed by this Court directing the contemnors to pay whatever amount was due to the petitioner is clear and specific in the sense that it does not quantify the amount due.

15. Again, Mr. Somik Deb, learned senior counsel tried to highlight a Whatsapp message sent by the Manager of the Project Director wherein, according to the petitioner, the Manager had undertaken on behalf of the respondent-NBCC to pay Rs.38,72,993/-. According to learned senior counsel



for the petitioner, violation of this undertaking given by the Project Director of NBCC tantamount to Contempt of Court. To develop his argument, Mr. Deb, learned senior counsel candidly submitted that this was a clear promise given by promisee-NBCC and such a promise made in the course of legal proceedings by the Project Director may be enforced by this Court while deciding this contempt petition.

16. We have taken into consideration the decision of the Supreme Court in *Rita Markandey vs. Surjit Singh Arora*, (1996) 6 SCC 14 as relied upon by Mr. Deb, learned senior counsel for the petitioner. Having gone through the judgments, we do not find any relevance of the said decision to the facts of the instant case. In *Rita Markandey(supra)*, the Supreme Court held that “*Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt.....*”[SCC. p.20 para 12]. It was further held in *Rita Markandey(supra)* that if a party to a litigation files any representation to the Court and on the basis of such representation the Court passes an order which afterwards is found to be false and if it appears that the said party never intended to act upon it, then, such party may be held to be liable for contempt since such representation induced the Court to sanction a particular course of action.

17. We have given our conscious thought to the submissions advanced by learned senior counsel for the petitioner *qua* the principles laid by the Supreme Court in *Rita Markandey(supra)* in respect of the consequence of alleged violation of any undertaking given to the Court. Mr.

Deb, learned senior counsel tried to persuade us that the correspondence made by the Project Director to the petitioner would constitute promise in the form of an undertaking on behalf of the NBCC. However, we are not impressed by the said submission of learned senior counsel appearing for the petitioner, primarily, for the reason that the respondent-contemnors have never given any undertaking constituting promise or never submitted any representation before this Court inducing the Court to pass an order directing the respondent-contemnors to pay the entire amount of Rs.38,72,993/-. Even there is no reflection in the order dated 19.09.2022 as regards of any undertaking or representation given by NBCC, to say the least, by the contemnors.

18. At the cost of repetition, we may gainfully refer a decision of the Supreme Court in *Dr. U.N. Bora, Ex. Chief Executive Officer and Ors. vs. Assam Roller Flour Mills Association and Anr.*, (2022) 1 SCC 101 as relied upon by Mr. Dey, learned senior counsel wherein it was laid down that while dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle had to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings. The Hon'ble Supreme Court in *Dr. U.N. Bora(supra)* had observed thus:

*“9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] , has been quoted. The following paragraphs would govern the aforesaid principle : (Hukum Chand Deswal case [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] , SCC paras 20-21 & 25-27)*

*“20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)*

*‘11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] )*

*12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or*

*misconduct.” (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255] , Niaz Mohd. v. State of Haryana [Niaz Mohd. v. State of Haryana, (1994) 6 SCC 332] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .*

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*15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592] ]*

*21. Similarly, in R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400] , this Court expounded in para 7 as follows : (SCC p. 404)*

*‘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. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, the appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.’*

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25. Pertinently, the special leave petitions were filed by the respondent against the order dated 28-1-2019 [Sagu Dreamland (P) Ltd. v. Jingal Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720] , which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing court. The plaintiff-petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in *Jhareswar Prasad Paul v. Tarak Nath Ganguly* [Jhareswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352 : 2002 SCC (L&S) 703] , in para 11, opined thus : (SCC p. 360)

‘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.’

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26. Thus understood, we find force in the explanation offered by the respondent that as per its bona fide understanding, there was no outstanding dues payable to the petitioner. Moreover, as observed [Sagu Dreamland (P) Ltd. v. Jingal Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720] by the High Court, these aspects could be answered by the executing court if the parties pursue their claim(s) before it in that regard. Suffice it to observe that it is not a case of intentional violation or wilful disobedience of the order passed by this Court to initiate contempt action against the respondent. Instead, we hold that it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in respect of the issue(s)

*under consideration. In such proceedings, all aspects can be considered by the forum/court concerned on merits in accordance with law. We say no more.*

*27. Reverting to the allegation about damage caused to the suit property by the respondent at the time of vacating the same, in our opinion, the respondent has made out a formidable case that it did not cause any damage, much less permanent damage to the structure in the suit property. Whereas, the petitioner was relying on photographs concerning the debris on the site left behind at the time of vacating the suit property. The debris cannot cause damage and it is certainly not a case of defacement of the suit property. That position is reinforced from the fact that the water park in the suit premises was started and became fully functional within 2-3 months. Viewed thus, it is rightly urged that it can be safely assumed that no damage was caused by the respondent to the structure in question. Minor repairs required to be carried out by the petitioner for making the water park functional cannot be painted as intentional disobedience of the order of this Court. In any case, that being a complex question of fact, need not be adjudicated in the contempt proceedings. We leave it open to the petitioner to pursue even that claim in execution proceedings or such other proceedings as may be permissible in law. We may not be understood to have expressed any final opinion in respect of condition of the suit premises, whilst handing over possession to the petitioner. We hold that even this issue under consideration does not warrant initiation of contempt action against the respondent.”*

*(emphasis supplied)*

**19.** In view of the principle, in our ultimate analysis, we reiterate that in the present case, this Court while disposing of the writ appeal vide order dated 19.09.2022 never came to a finding that the NBCC was liable to pay Rs.38,72,993/- rather, this Court had passed a direction upon the NBCC to pay/remit the amount *whatever was due* on the appellant after receipt of the payment of the entire amount of Rs.38,72,993/- payable by the State Government. In line of the aforesaid order, the contemnors have already made payment of Rs.13,14,427/- which they paid with the bona-fide belief that what they paid was the amount actually due to the petitioner as per their Books of Accounts.

**20.** Resultantly, we reiterate that the action of the respondent-contemnors is bona-fide and we do not find any substance to hold that there is

any willful disobedience of the order dated 19.09.2022 in W.A. No.124 of 2022 on the part of the respondent-contemnors.

**21.** As a sequel, the present contempt petition stands dismissed being devoid of merits. However, there shall be no order as to costs.

**22.** After the pronouncement of this judgment and order, Mr. Deb, learned senior counsel has urged this Court orally to grant leave to prefer appeal before the Hon'ble Supreme Court of India referring to Article 134A of the Constitution of India. We have considered the said submission. However, we do not find any ground to issue a certificate of the nature referred to in clause(1) of Article 132, or clause(1) of Article 133 or under sub-clause (c) of clause(1) of Article 134 of Constitution of India. Accordingly, prayer for issuance of certificate as provided under Article 134A of Constitution of India is hereby rejected.

**(ARINDAM LODH, J)**

**(APARESH KUMAR SINGH, CJ)**

*Rohit/Snigdha*

**SANJAY** Digitally signed by  
**GHOSH** SANJAY GHOSH  
Date: 2024.01.08  
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