

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT
AT JABALPUR

Contempt Petition	1714 of 2020
Parties Name	M/s Sumeet Agencies Vs. Mrs. Sonia Meena and another
Bench Constituted	Single Bench
Judgment delivered By	Hon'ble Shri Justice Vishal Dhagat.
Whether approved for reporting	Yes.
Name of counsel for parties	For Applicant : Shri Sanjay Agrawal, Advocate. For Respondent No.1 : Shri Anshuman Singh, Advocate.
Law laid down	Error of judgment or decision is not contempt but <i>ex-facie</i> disobedience of the order amounts to contumacious conduct, which attracts contempt proceedings against concerned party.
Significant paragraph number	8

(O R D E R)
28/01/2022

Petitioner has filed this contempt petition making a prayer for initiation of contempt proceedings against respondents contemnors, who had deliberately and voluntarily disobeyed orders of this Court dated 19.08.2019 and 17.09.2019 passed in Arbitration Appeal No. 60/2019.

2. Counsel appearing for petitioner submitted that by order dated 21.07.2016, Managing Director-respondent No.1 had cancelled agreement of way side amenity situated at Sakadehi, Betul and petitioner was asked to hand over vacant possession to M.P. State Tourism Development Corporation. Petitioner raised a dispute before Arbitrator as per Clause 36

of agreement. Arbitrator vide its award dated 03.10.2017 passed following orders : -

"For the reasons analysed hereinabove this authority gives the following order to the respective relief sought in the claim filed by the applicant.

(i) This authority is of the view that the impugned order dated 21.07.2016 passed by respondent No.3 regarding termination of the contract will remain enforceable and there is no need to interfere with it.

(ii) In the light of the fact that the contract has been already terminated there is no need for this authority to direct the Corporation to give direction for providing facilities at the WSA.

(iii) In this relief the applicant has to pay the lease rent as demanded by the respondent Corporation.

As far as counterclaim filed by the respondent Corporation the same are bare demands and only service tax and interest as per the contract which justifiably should be paid by the applicant to the Corporation. Thus it should be paid by the applicant to the corporation. Hence this authority awards the counterclaim of Rs. 9,76,247.65/- in favour of Corporation the respondent. The cost claimed by the respondent Corporation of Rs. 1,00,000/- (One lakh only) is not accepted by this authority and it is disallowed. Both the parties will bear their respective costs."

3. Petitioner filed an application under Section 34 of Arbitration and Conciliation Act, 1996 calling in question award dated 03.10.2017. Learned 3rd Additional District Judge, Betul vide its order dated 25.07.2019 dismissed the application. Petitioner filed Arbitration Appeal No. 60/2019 before High Court under Section 37 of Arbitration and Conciliation Act, 1996. High Court vide its order dated 19.08.2019 stayed operation of impugned orders dated 03.10.2017 and 25.07.2019.

4. Counsel appearing for petitioner submitted that sole Arbitrator passed award that order dated 21.07.2019 passed by Managing Director, M.P. State Tourism Development Corporation will remain enforceable. Said order was stayed in Arbitration Appeal, therefore, termination of way side amenity agreement was stayed and respondents contemnors had committed wilful disobedience of stay order by taking possession over way side amenity. On basis of aforesaid submission, prayer was made for initiating contempt proceedings and punish the contemnors for disobedience of Court order.

5. Respondent No.1 filed reply to contempt petition and submitted that there was no wilful and voluntary disobedience of Court order dated 19.08.2019. After stay over operation of order dated 03.10.2017, recovery of Rs. 9,76,247.65/- was not effected against petitioner. No order was passed staying order dated 21.07.2016, therefore, possession was recovered from petitioner. Respondent respects the order passed by this Court. Respondent had not made any recovery. This Court has not stayed termination of agreement dated 21.07.2016. It is further submitted that as per doctrine of merger, judicial orders merge on confirmation by appellate authority but administrative order does not merge in judicial order. Therefore, the order passed by High Court does not have effect of staying termination of agreement unless and until same has been specifically prayed for by petitioner and granted by High Court.

6. Counsel for respondent No.1 relied on judgment passed by Apex Court in case of *Shree Chamundi Mopeds Ltd. vs Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1* and

submitted that stay of operation of order does not have effect of reviving proceeding, which has been disposed off. Stay of operation only means that order would not be operative from date of passing of stay order. Counsel for the respondent No.1 also relied on judgment of Supreme Court passed in case of *Ram Kishan vs Tarun Bajaj and others, (2014) 16 SCC 204*. Relying on said judgment, it was submitted that if two interpretations are possible for an order passed by a Court and the authority has taken one of the interpretation, then action cannot be said to be contumacious and contempt proceedings would not be maintainable. In view of aforesaid submissions, counsel appearing for the respondent No.1 made prayer for dismissal of contempt proceedings.

7. Heard the counsel for petitioner as well as respondent.

8. Principal Secretary, Department of Tourism, Government of Madhya Pradesh, who was sole Arbitrator in the case, by its award dated 03.10.2017 dismissed the claims of petitioner for setting aside impugned order dated 21.07.2016. Though Principal Secretary has worded the order that "impugned order dated 21.07.2016 passed by respondent No.3 regarding termination of contract will remain enforceable and there is no need to interfere with it," no positive direction was given by sole Arbitrator but, he only affirmed the impugned order dated 21.07.2016 and dismissed claim of petitioner. In arbitration appeal, High Court has stayed the award passed by sole Arbitrator dated 03.10.2017. In view of same, recovery, which has been ordered against petitioner relying on counterclaim by respondents, was stayed. It cannot be said that impugned order of termination of agreement dated 21.07.2016 was also stayed in arbitration

appeal. This Court has only stayed the award of Arbitrator, who had dismissed the arbitration claim of petitioner by its order dated 03.10.2017 and has allowed counterclaim of respondents. Stay over order of sole Arbitrator will not revive way side amenities in favour of petitioner, which were terminated vide order dated 21.07.2016. In view of same, it cannot be said that respondents had committed contempt by taking over possession of way side amenity. Error of judgment or decision is not contempt but *ex-facie* disobedience of the order amounts to contumacious conduct, which attracts contempt proceedings against concerned party.

9. In view of same, contempt petition filed by petitioner is **dismissed**.

(VISHAL DHAGAT)
JUDGE