

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

% **Date of decision: 12th January, 2022**

+ **CM(M) 36/2022**

ICICI BANK LIMITED

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Ripu Daman Bhardwaj, Mr.
Deepak Kaushik and Mr. Sanjeev
Bakshi, Advocates.

Versus

RASHMI SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM No. 2057/2022 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 36/2022 & CM No. 2056/2022 (for stay)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 2nd December, 2021 passed by the District Judge (Commercial Court)-06, Central District, Tis Hazari Courts, New Delhi (Commercial Court) in CS (COMM.) No. 2857/2021, whereby show cause notice has been directed to be issued to the petitioner Bank (hereinafter 'plaintiff'), to be answered and endorsed through the Chairman, as to why

criminal contempt should not be initiated against him for overreaching the process of the Court.

4. The facts giving rise to the filing of the commercial suit leading to the present petition are as follows:

- (i) The respondent (hereinafter 'defendant') approached the plaintiff for grant of a car loan cum hypothecation scheme of Rs.5,01,000/- for the purchase of a vehicle. The loan documents were executed and the loan was duly sanctioned to the defendant on 21st November, 2019.
- (ii) The defendant defaulted in payments of monthly instalments towards repayment of the loan and consequently, issued a notice dated 16th April, 2021 to the defendant to recall the loan facility available to the defendant.
- (iii) In August, 2021, the plaintiff filed a commercial suit for recovery against the defendant which was registered as CS (COMM.) No. 2857/2021.

5. The summons were issued in the commercial suit on 16th August, 2021. The relevant part of the order is set out below:

“Issue notice of suit (in the prescribed form viz. the summons for settlement of issues) as well as the accompanying applications with all the annexed documents to the defendants on filing of the process fee by the plaintiff. In case any address of the defendant(s) is of outstation, the ordinary process be sent through the District Judge concerned.

Process be also sent through registered/speed post AD. The sealed covers containing the summons and complete paperbook of the case be handed over dasti to the plaintiff/counsel for putting the same in the postal

transmission. The original postal receipt(s) along with the downloaded tract report from the site of India Post be placed on record by the plaintiff/counsel on the next date.

In case the plaintiff has any e-mail, fax ID and mobile number (having facility of whatsApp/Gims/Sandes App) of the defendant, defendant be served under Rule 12 of the Delhi Court Services of Process By Courier, FAX and Electronic Mail Service (Civil Proceedings) Rule 2010. The plaintiff shall file the affidavit qua the same.

In terms of Rule 13 plaintiff is directed to place on record a copy of the plaint and documents in electronic format/scanned images in compliance of Rule 13 for forwarding/annexing/attaching the same with the process. Requisite process fee for sending process by e-mail in compliance of Rule 14 be also filed along with the copies as above for onward transmission to Nazarat Branch, Tis Hazari Courts for service through e-mail."

6. In terms of the aforesaid order passed by the Commercial Court, the plaintiff took steps for affecting service on the defendant through ordinary process as well as speed post, by filing process fee and sealed covers containing the summons and paper book respectively. Pursuant thereto, steps were taken for affecting service on the defendant by ordinary process as well as through speed post. In this regard, reference may be made to the speed post notices issued and the speed post tracking report, as also the report of the Ahlmad, attached to the Commercial Court. In addition to the service through the above modes, the plaintiff also sent the photograph of the summons issued by the Commercial Court to the defendant by means of WhatsApp since the plaintiff had the phone number of the defendant provided in the loan documents.

7. When the matter came up before the Commercial Court on 2nd

December, 2021, the contention of the defendant was noted by the Commercial Court that the defendant had received a private notice of appearance for the said date through WhatsApp on 30th November, 2021 and further, that the defendant had not received any notice/summons from the Court. The contention of the plaintiff was also noted that the plaintiff had filed the process fee and in addition thereto, photograph of the summons was also sent through WhatsApp to the defendant. On the basis of the above, the Commercial Court passed the impugned order issuing show cause notice to the plaintiff as to why criminal contempt proceedings be not initiated against the plaintiff.

8. Relevant observations of the Commercial Court are set out below:

“Today this kind of debacle was seen in other cases of ICICI Bank Ltd. also but it was ignored. Now it appears that that plaintiff has adopted this kind of practice on a regular basis for the reasons best known to it and it certainly amounts to over reaching the judicial system. No party has a right to start a parallel system along with the judicial proceedings. The plaintiff has been called upon to explain the same.

XXX

XXX

XXX

Plaintiff to show cause as to why the action be not recommended against it for the criminal contempt of the court for over reaching the process of the court.

Show cause notice be replied, forwarded or endorsed through the Chairman of the plaintiff bank for the next date of hearing.”

9. Senior counsel appearing on behalf of the plaintiff assails the impugned order on the following grounds:

(i) There was no violation of the order dated 16th August, 2021 passed by the Commercial Court inasmuch as the plaintiff had taken steps for the ordinary service as well as service through speed post upon the defendant.

(ii) Process fee was duly filed in terms of which the summons were prepared for ordinary service by the process server and summons in respect of service through speed post were handed over to the plaintiff to be sent through speed post.

(iii) Even though steps were not taken by the plaintiff for service through email, but the photograph of the summons were duly sent to the defendant through WhatsApp as provided in the order dated 16th August, 2021.

(iv) The photocopy of the summons were sent through WhatsApp only to ensure presence of defendants before the Commercial Court on the next date of hearing.

(v) Reliance has been placed on the order dated 10th July, 2020 of the Supreme Court in *Suo Moto W.P.(C) No. 3/2022* to contend that the Supreme Court itself during the period of lockdown had directed service to be affected through various electronic means including WhatsApp.

(vi) Even if the photograph of the summons were sent to the defendant through WhatsApp, no case of contempt has been made out much less criminal contempt.

10. None appears on behalf of the respondent despite advance service. In the facts and circumstances of the case, no notice is required to be issued to the respondent.

11. In the considered view of this Court, there was no occasion at all for

the Commercial Court to issue show cause notice for initiating criminal contempt against the plaintiff. Just because the photograph of the summons were sent by the plaintiff to the defendant through WhatsApp cannot amount to overreaching the judicial system or running a parallel system with the judicial system. The aforesaid observations were completely uncalled for. As noted above, the plaintiff had duly filed process fee and taken steps for issuance of regular summons to the defendant through the ordinary process as well as speed post. The photograph of the summons were sent through WhatsApp only as an additional measure so as to ensure the appearance of the defendant before the Commercial Court. There is nothing *malafide* in the same and it cannot be said that that was an attempt to overreach the judicial proceedings. It was not that the plaintiff had sought to send the summons through WhatsApp in substitution of the ordinary service to the defendant. It was only sent as a secondary measure to ensure the presence of the defendant on the next date. Therefore, Commercial Court has completely gone overboard in issuing notice for initiating contempt proceedings.

12. The Supreme Court in its judgment in ***Dr. Prodip Kumar Biswas Vs. Subrata Das and Ors.*** (2004) 4 SCC 533, while dealing with the issue of criminal contempt has observed that proceedings for criminal contempt can be initiated only when the act prejudices or interferes or tends to interfere with the course of judicial proceeding or administration of justice. Contempt of court is a special jurisdiction which ought to be exercised sparingly and with great caution. Contempt proceedings should not be initiated lightly.

13. In any case, in view of Sections 10 and 15 of the Contempt of Courts Act, 1971, only High Courts have the power to take cognizance in respect of contempt of courts subordinate to it. Subordinate courts cannot assume

jurisdiction and issue show cause notice as to why contempt proceedings be not initiated. A subordinate court can only make a reference to the High Court for initiating contempt proceedings. Therefore, the impugned order is clearly in excess of the jurisdiction vested with the Commercial Court.

14. In view of the above, the order passed by the Commercial Court suffers from patent illegality and is also without jurisdiction and hence, cannot be sustained.

15. Accordingly, the petition is allowed and the impugned order is set aside to the extent show cause notice for initiating criminal contempt proceedings has been directed to be issued to the plaintiff.

AMIT BANSAL, J

JANUARY 12, 2022

Sakshi R.

नित्यमेव जयते