

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/MISC. CIVIL APPLICATION NO. 384 of 2021****In****R/FIRST APPEAL NO. 184 of 2021**=====

SONAL AASHISH MADHAPARIYA

Versus

AASHISH HARJIBHAI MADHAPARIYA

=====

Appearance:

MR BJ TRIVEDI(921) for the Applicant(s) No. 1

MR JT TRIVEDI(931) for the Applicant(s) No. 1

MS JIGNASA B TRIVEDI(3090) for the Applicant(s) No. 1

MR KIRTIDEV R DAVE(3267) for the Opponent(s) No. 1

MR RAHUL K DAVE(3978) for the Opponent(s) No. 1

=====**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and**HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 22/08/2022****CAV ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)**

1. By way of this Misc. Civil Application under the provisions of Contempt of Courts Act and also under Article 215 of the Constitution of India, the petitioner has prayed for the following reliefs:

"5(a) To allow this petition and to arraign the respondent for willful breach of the non-compliance of the order dated 27.01.2021, which order came to be extended from time to time, passed in Civil Application 1 of 2021 in First Appeal No. 184 of 2021, and confirmed vide final order dated 20.04.2021, wherein the petitioner had moved for stay of

proceedings of Family Proceedings No. BV20D02693, filed by the respondent herein in the learned Family Court at Willesden, United Kingdom. The Hon'ble Division Bench of this Hon'ble Court was pleased to stay the further proceedings of the same, vide the said order, and deal with him in an exemplary manner;

And

(b) to grant such further and other reliefs, as may be deemed to be just and proper."

2. The background of facts which has given rise to the present contempt petition is that the petitioner - original appellant had filed substantive First Appeal No. 184 of 2021 in which the petitioner has moved Civil Application No. 1 of 2021 for stay of the proceedings in Family Suit No. BV20D02693 filed by the respondent herein in Family Court at Willesden, United Kingdom. In the First Appeal, the Division Bench of this Court was pleased to stay the further proceedings of the aforementioned proceedings of the Court at United Kingdom vide order dated 27.01.2021 which order came to be extended from time to time and according to the petitioner ultimately the said Civil Application No. 1 of 2021 came to be allowed by confirming ad-interim relief till final disposal of First Appeal.

3. It is further the case of the petitioner that order of stay dated 27.01.2021 was passed in presence of representative i.e. lawyer of respondent but even direction was given to the Registry to provide a copy of said order to the learned advocate which was done on same day itself, i.e. on 27.01.2021 at about 12:45 PM which was communicated through an E-mail to the learned advocate Mr. Kirtidev R. Dave who represented the respondent. However, during subsequent hearings, it was informed to the learned advocate appearing for the petitioner that the learned Solicitor indicated that respondent would be challenging the order before the Hon'ble Supreme Court of India and surprisingly, it was noticed in one affidavit filed by the respondent that his Solicitor (Mr. Ashwin Patel) had replied *inter alia* informing the respondent that there was no need on their part to intimate the Family Court at Willesden, United Kingdom and also that unless an application with an advance copy to him is moved, by the petitioner, the Family Court at Willesden, United Kingdom will not be staying the proceedings and the decree would be passed. From the communications, according to the petitioner it is not clear as to what reply is

received by the respondent from his learned Solicitor and though the E-mail sent to the learned Family Court at Willesden, United Kingdom by the learned advocate appearing for the petitioner on 27.01.2021 itself, but the Family Court at Willesden passed a preliminary decree. According to the petitioner it was further noticed that respondent had challenged ad-interim order dated 27.01.2021 passed in Civil Application No. 1 of 2021 in First Appeal No. 27985 of 2020 converted to First Appeal No. 184 of 2021 by way of filing Special Leave Petition No. 2515-2516 of 2021 in which the Hon'ble Supreme Court was pleased to dismiss the Special Leave Petition on 15.02.2021 and accordingly, the Hon'ble Supreme Court has not interfered with the order which has been passed by coordinate Bench on 27.01.2021. Even later on, said Civil Application No. 1 of 2021 was allowed vide order dated 20.04.2021 in which ad-interim stay granted initially on 27.01.2021 was confirmed till final disposal of First Appeal No. 184 of 2021, but it appears that by that time, the Family Court at United Kingdom was pleased to pass a preliminary decree as stated above on 28.01.2021 pending the said proceedings here

in the Court.

4. It is further asserted by the petitioner that despite reply having been sent on 14.05.2021 against the communication dated 05.05.2021 Annexure-E, to the surprise of the petitioner she received a final decree from the Family Court at Willesden, United Kingdom on 21.05.2021 through post and that is how the respondent deliberately and willfully failed to instruct his Solicitor in turn to apprise the Family Court at Willesden, United Kingdom and thereby contumaciously continued to flout the binding order which results in willful disobedience and it amounts to contempt. According to the petitioner, though there was a clear stay of proceedings by the Division Bench of this Court, the respondent willfully disobeyed and committed breach of the order and practically allowed the Family Court at Willesden, even to pass a final decree. According to petitioner, this tantamounts to 'Civil Contempt' as defined under Section 2(b) of the Contempt of Courts Act, 1971 and as such, for upholding the Majesty of Law, a request is made to deal with the respondent under the provisions of Contempt of Courts Act

and as such, the present application is brought before the Court.

5. It appears that the co-ordinate Bench of this Court on 28.06.2021 was pleased to issue notice upon the respondent who in turn appeared and tried to defend by filing affidavit-in-reply and after few orders came to be passed by the co-ordinate Bench of this Court, matter came up for consideration before this Court on 10.01.2022 and upon request of the learned advocates appearing for both the parties and since pleadings were complete, it came to be heard by the Court. With this background, the present application is being dealt with by this Court.

6. Mr. Brijesh Trivedi, learned advocate appearing for the petitioner has vehemently contended that gross contempt is committed by the respondent and by taking strict view, appropriate action to be taken and prayer for suitable order being passed. For the purpose of substantiating his stand of willful breach of the order of this Court, he has taken the Court

to various orders passed by the co-ordinate Bench of this Court in the main proceedings wherein, Civil Application for stay has been dealt with and for that purpose, he has referred to orders dated 06.01.2021, 15.02.2021, 25.02.2021 and in addition to it, he has also drawn attention of this Court to an order passed by the Hon'ble Apex Court which had not disturbed the order passed by the co-ordinate Bench of this Court on stay application and by referring to it, he has vehemently contended to take action against the respondent under the provisions of Contempt of Courts Act.

7. Mr. Trivedi, learned advocate has further submitted that a systematic design has been adopted by the respondent not only to flout the order by not communicating properly to the concerned Solicitor and it rather appears to have proceeded before the Family Court at Willesden, United Kingdom and allowed that Court to pass an order, with a view to sabotage the present main proceedings and tarnish the Majesty of Law. It has been further submitted that Family Court at Willesden has also ignored the proceedings pending before this Court in which stay

is operative and when a request was made to release certain documents, a reply was forwarded which is attached to the present proceedings that Family Court at Willesden has in clear terms informed that Court cannot release the documents on the Court file to third party including a request from Foreign Court and as such, this indication is also sufficient enough to indicate as to what extent the respondent and its Solicitor has allowed the Family Court at Willesden to hurry up the proceedings to its conclusion and even allowed the Court to pass a final decree. This is nothing but a sheer contempt committed by the respondent *inter se* and hence, this is a fit case in which appropriate steps be taken against the respondent under the provisions of Contempt of Courts Act. Mr. Trivedi, learned advocate has further submitted that violation of interim orders are to be viewed seriously as held by catena of decisions and hence, taking note of the aforesaid circumstance prevailing on record, this Court may kindly grant the reliefs as prayed for in the application.

8. As against this, Mr. Kirtidev R. Dave, learned advocate

appearing for the respondent has submitted that respondent has intimated through E-mail an order of stay passed by this Court on 27.01.2021 and even the advocate appearing for the petitioner has also intimated to the lawyer of opponent in United Kingdom and it is not the case that the respondent has not informed nor drawn attention of the Court at United Kingdom. It has been asserted that on 26.01.2021 the respondent had informed his counsel in United Kingdom that he proposes to challenge the earlier order i.e. order dated 27.01.2021 before the Hon'ble Apex Court and has time and again informed the counsel through E-mails in United Kingdom. The respondent hence cannot be held liable for action of that Court. Mr. Dave, learned advocate has further pointed out that there is no specific order against the respondent, but it is against the Court at United Kingdom and that Court has not restricted itself from proceeding ahead with the suit and as such, for the action of Court, the respondent herein cannot be held responsible for contempt. In fact, petitioner who is not only a resident of United Kingdom but is also a citizen had also challenged the dismissal of her divorce petition in the Family

Court and hence the Court of the Country has now granted the relief of divorce in the form of decree. It appears according to the respondent that present petitioner is not interested in the decree of divorce but is in the mood of applying pressure tactics by way of this proceedings and wants some property dispute to be settled and with ulterior motive under the guise of present proceedings.

9. Mr. Dave, learned advocate has also drawn our attention from the assertion made in the affidavit-in-reply filed at page 113 of the present application compilation and has submitted that on every occasion, wherever the order of grant of interim stay and extension thereof was passed, it has been timely intimated to the counsel at United Kingdom and along with the intimation a copy of order of this Court was always attached and according to the learned counsel in United Kingdom that order was already communicated to the Court in United Kingdom and respondent has presented all these E-mails along with affidavit-in-reply and thereby submitted that respondent since has always communicated the orders for appropriate action to his counsel in United Kingdom and has taken all care to see that

appropriate steps be taken. But if Court at United Kingdom has not restricted itself, the respondent cannot be held responsible for such action which is beyond his control and has prayed for dismissal of the application.

10. Having heard the learned counsel appearing for the respective parties and having gone through the material on record, following circumstances deserves consideration before arriving at final conclusion in the present proceedings.

11. Before examining the factual details and the controversy involved in the present application, perusal of proposition of law on the Contempt of Courts deserves to be kept in mind. As held by catena of decisions, Court has to confine itself in contempt jurisdiction to the four corners of order alleged to have been disobeyed and the Court adjudicating alleged contempt cannot travel beyond the order alleged to have been flouted. In the case of ***Sushila Raje Holkar v. Anil Kak*** reported in **(2008) 14 SCC 392**, the Hon'ble Apex Court has held that whether contempt has been committed or is not a matter of mechanical application of mind. In a given case, it has to be tested having

regard to the subject matter of the proceedings in which it is made and the nexus between the alleged contumacious act.

12. In the case of **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited & Ors., v. M. George Ravishekaran & Ors.**, reported in **(2014) 3 SCC 373**, Hon'ble Apex Court has indicated the contours on exercise of contempt jurisdiction and relevant paragraph 19 since relevant deserves to be quoted hereunder :-

"19. 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, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others[3], V.M.Manohar Prasad vs. N. Ratnam Raju and Another[4], Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others[5] and Union of India and Others vs. Subedar Devassy PV.”

11. In a very recent decision rendered by the Hon'ble Apex Court in the case of **Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain & Anr.**, reported in **2022 LiveLaw (SC) 264** the law on the contempt has been expressed and it has been observed that “when a party who is required to comply with the terms or direction in an order has not done so within time stipulated, two options are available to the party, firstly, give an explanation to the Court as to the circumstances due to which the party could not comply with the order and secondly, seek for further time to comply with the order of the Court and

if either of the two options not resorted to, the party responsible may be held to have committed contempt of Court.

12. Further, in the recent past, yet in another decision of the Hon'ble Apex Court in the case of **Dr. U.N. Bora, Ex-Chief Executive Officer & Ors., v. Assam Roller Flour Mills Association and Anr.**, reported in **(2022) 1SCC 101** has also discussed at length and observed that while dealing with the 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 has to be applied with more vigour when disputed questions of facts have arisen and the documents produced are true and genuine being in the realm of adjudication ought to have been taken up for adjudication and the relevant extract about such proposition is contained in paragraphs 8, 9 and 10 which are extracted herein-below:-

“8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the willful disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge.

When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. 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 has to be applied with more vigor 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.

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*, 2020 SCC Online SC 438 wherein the celebrated judgment in *Ram Kishan v. Tarun Bajaj*, (2014) 16 SCC 204, has been quoted. The following paragraphs would govern the aforesaid principle: (*Hukum Chand Deswal* case 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 vs. Tarun Bajaj & Ors.* In paragraphs 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 5 (2014) 16 SCC 204 18 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, (1992) 4 SCC 697, Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530, Anil Ratan Sarkar v. HIRAK GHOSH, (2002) 4 SCC 21, Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360, Sahdeo v. State of U.P., (2010) 3 SCC 705 and National Fertilizers Ltd. v. Tuncay Alankus.)

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. Attabiraman, (1985) 1 SCC 591, Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255, Niaz Mohammad v. State of 19 Haryana, (1994) 6 SCC 332, Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282, Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1, State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 and Uniworth Textiles Ltd. v. CCE.

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, (2008) 14 SCC 392 and Three Cheers Entertainment (P) Ltd.

v. CESC Ltd.,

21. Similarly, in *R.N. Dey & Ors. vs. Bhagyabati Pramanik & Ors.*, this Court expounded in paragraph 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, 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 6 (2000) 4 SCC 400 20 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.

25. Pertinently, the special leave petitions were filed by the respondent against the order dated 28.1.2019, 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 & Anr. vs. Tarak Nath Ganguly & Ors., in paragraph 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, 7 (2002) 5 SCC 352 23 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.

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 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 willful 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 concerned forum/Court 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.

10. On facts, we find that the High Court on the earlier occasion while dealing with the challenge made to Section 21 of the Act, made a categorical assertion that it did not wish to go into the disputed questions of fact. However, in the order under challenge it was done. A finding has been given on the documents produced by the respondent no.1 which could at best be pieces of evidence to be appreciated by the committee constituted already. It is the specific case of the appellants that they did not violate the directives of the court. There is no material to either establish their knowledge on the action of their subordinates, or that they acted in collusion with each

other. Vicarious liability as a principle cannot be applied to a case of contempt. The question as to whether the drivers of two members of the respondent no.1 showed the order passed by the court and the documents produced are true and genuine being in the realm of adjudication, ought not to have been taken up by the High Court while exercising contempt jurisdiction.”

13. In the wake of aforementioned proposition on the contempt jurisdiction, we have examined the case on hand. What has been alleged is violation of order dated 27.01.2021 and the final order dated 20.04.2021. A perusal of the said order indicates that while admitting First Appeal, the co-ordinate Bench while entertaining the Civil Application for interim order on discussion has passed an order on 27.01.2021 which requires to be extracted. It reads:-

“4. It is pointed out that the proceedings before the Family Court at Willesden, United Kingdom are kept tomorrow and if no ad-interim relief is granted, this appeal would become infructuous. Hence, by way of ad-interim relief, the proceedings of Case no.BV20D02693, which is pending before the Family Court at Willesden, United Kingdom, are stayed till the next date of hearing.

5. Reply, if any, be filed before the next date of hearing. A copy of the order is permitted to be served through Email.”

14. A perusal of the above order indicate that by way of ad-interim order the proceedings of Case No. BV20D02693 pending

before the Family Court at Willesden, United Kingdom are stayed till the next date of hearing. Upon perusal of this order indicates that there is no direction issued to the respondent to do any particular act. Even continuance of said interim order does not indicate any positive direction having been issued by calling upon the respondent to do any particular act. The copy of the orders all the way were given by way of direct service to the learned counsel appearing for the petitioner for onward communication. Even perusal of order dated 25.02.2021 would indicate that writ was ordered to be issued to U.K. Court and Registry of this Court was directed to give a copy of the writ to the learned counsel appearing for the petitioner Mr. Trivedi. Again by order dated 05.04.2021, similar direction was issued. The order which has been alleged to have been violated is dated 20.04.2021 which came to be passed after hearing both parties. Certain observations made thereunder requires to be noticed as it would have a direct bearing on the issue involved in this proceedings. They read as under:

“9. Similarly, the Hon'ble Bombay High Court in the case of Arunima Naveen Takiar Vs. Naveen Takiar, reported in 2019(3) Mh.L.J. 885, has in similar circumstances, stayed the proceedings pending before the Court at UK. In the

case on hand also, the appeal is already admitted against the order passed by the Family Court, Bhuj-Kachchh challenging the order passed by the Family Court wherein on the ground of resjudicata it is held that the suit is barred which is to be heard on merits. Pending the same, if the stay as prayed for for is not granted, the appeal would become infructuous. On overall consideration of the fact on record, it is a matter of fact that the marriage between the applicant and and the respondent took place at village Madhapar, District Bhuj as per the Hindu rites. In facts of this case, the applicant has got a very good prima facie case and balance of convenience is in favour of the applicant. Following the judgment of the Apex Court in the case of Madhavendra L. Bhatnagar (supra), ad interim relief granted earlier is continued till the final disposal of this appeal. The appeal is at large pending before this Court. Till then the proceedings pending before the Family Court at Willesden, United Kingdom deserves to be stayed as it would not only render the appeal infructuous but would result into irreparable loss to the applicant. Hence, by way of interim relief, the proceedings of Case no.BV20D02693, which is pending before the Family Court at Willesden, United Kingdom are stayed till final disposal of this appeal.

10. As far as the contention raised by Mr. Trivedi, learned advocate for the applicant as regards contempt of Court and of taking action against the respondent and his solicitor, the same is not necessary to be dealt with while considering this application for stay and same are kept open."

15. Perusal of aforesaid order would indicate that stand of the petitioner is that the Solicitor ought to have taken steps and it has been agitated that learned Solicitor had no regard to the order passed by this Court and as such it was urged therein that

stringent action has to be taken against the respondent as also against his Solicitor. The Coordinate Bench adjudicating the First Appeal while confirming the ad-interim order dated 27.01.2018 till the final disposal of First Appeal has stayed the proceedings of the Case No. BV20D02693 pending before the Family Court at Willesden, United Kingdom and the issues relating to contempt of court by the respondent and his Solicitor has not been considered and the issue has been kept open. It appears that co-ordinate Bench has stayed the proceedings of Family Court at Willesden, United Kingdom, but there appears to be no positive direction upon the respondent or his Solicitor to do any particular act. From the E-mail correspondence placed before the Court, it appears that this stay order had been communicated to the Court at Willesden, United Kingdom by the petitioner, but it appears that the Court at United Kingdom did not wait and proceedings have been taken forward which culminated in passing of a decree.

16. In the background of aforesaid circumstances, to examine whether there is any contumacious act on the part of the

respondent or not, we have perused *prima facie* view culled out from the E-mail correspondence placed on record. It appears order which has been passed on 27.01.2021 have been communicated by the learned counsel appearing for the petitioner to Sonal Halai as well as copy was given to Mr. Kirtidev Dave, Advocate intimating ad-interim order having been granted and its extension having been communicated. One of the email dated 9.4.2021 placed on record would indicate an attempt was made to make a phone call to Family Court at Willesden, United Kingdom by the applicant Sonal Madhapariya who was in United Kingdom at the relevant point of time and he is said to have not received any response and phone call was not received. According to complainant, specific intimation is said to have been forwarded to the Family Court not to proceed with the pending proceedings and said attempt is said to have gone in vain. In one of the e-mail addressed by the respondent to the complainant, it is stated thereunder that conduct of the respondent is to get an order somehow from English Court and the gist of the said communication which reflects the attempt of the respondent deserves to be quoted hereunder :-

*"From : Ashwin
Sent ; 27 January, 2021 21:00
To : Ashish Madhapariya
Subject : RE: High Court have issue stay order in uk case.*

Dear Ashish

Thank you. I think this is all without merit. I do not at present think that they can grant a stay of proceedings in an English court and I don't think it has any force. I intend to leave the matter where they are and let the Willesden county Court pronounce Decree nisi as scheduled. The only way anything will arise here is if the Solicitors for the respondent put in an application for stay, I cannot see that succeeding as the court has already said the matter should proceed as undefended petition. If any application is lodged by the Respondent at Willesden County Court, I will let you know. Failing any application tomorrow or Friday I am of the opinion that decree nisi will be granted and I should receive it a week to ten days later.

On a separate note it seems to me that the proceedings there are simply adding to costs and the matter has become one of ego or pride. I hope the proceedings here will ultimately bring all of this to a conclusion, I will let you know if I am served with any application to Willesden County Court.

For the moment please do not worry. I have no concern that little will happen here before decree nisi is pronounced."

17. Perusal of said exchange of thought no doubt reflects the intent of the respondent is to somehow get the order from the

Family Court at Willesden, but from the said mere correspondence it does not clearly transpires that there is any positive steps taken at the Family Court to press the matter for orders irrespective of the stay granted by the Court in India by the co-ordinate Bench of this Court. It may be an expression of hope, but nothing comes out of the same indicating that any precipitative steps were taken by the respondent before the Court at Willesden. From yet another letter dated 14.05.2021 petitioner appears to have written to Ms. Ward, Family Section, Family Court at Willesden informing about the grant of ad-interim order and continuance thereof, including the confirmation of interim order and the same having attained finality as the said order is not disturbed by the Hon'ble Supreme Court and as such complainant is said to have requested the Family Court at Willesden to recall the order dated 28.01.2021 about the order of Decree Nisi, and has made further request not to proceed further with the matter till final disposal of First Appeal No.184 of 2021. However, complainant's request is said to have not been considered by the Family Court and order appears to have been passed on

22.03.2021 with notes - '*declaring marriage be dissolved*'. The said communication reads as under :-

"No. of matter BV20D02693

*Between Ashish Madhaparia Petitioner
and Sonal Madhaparia Respondent*

Referring to the decree made in this cause on the 28th January, 2021, whereby it was decreed that the marriage solemnized on the 1st January, 2009.

*at MADHAPAR-KUTCH370020
Between Ashish Madhaparia the Petitioner
and Sonal Madhaparia the Respondent*

Be dissolved unless sufficient cause be shown to the court within six weeks from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the 5th May, 2021, made final and absolute and that the said marriage was thereby dissolved.

Dated : 22nd March, 2021

Notes :

1. Divorce affects inheritance under a will where a will has already been made by either party to the marriage then, by virtue of Section 18A of the Wills Act, 1837;

(a) any provisions of the will appointing the former spouse executor or trustee or conferring a power of appointment on the former spouse shall take effect as if the former spouse had died on the date on which the marriage is dissolved unless a contrary intention appears in the will;

(b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass

as if the former spouse had died on the date on which the marriage is dissolved unless a contrary intention appears in the will;

2. Divorce affects the appointment of a guardian

Unless a contrary intention is shown in the instrument of appointment, any appointment under Section 5(3) or 5(4) of the Children Act, 1989 by one spouse of his or her former spouse as guardian is, by virtue of section 6 of that Act, deemed to have been revoked at the date of the dissolution of the marriage."

18. There appears to be no concrete material available on record whereby, it is possible for this Court to safely arrive at a conclusion that there is willful disobedience of the order passed by this Court by the respondent herein. It is also not forthcoming from the records that respondent herein and his Solicitor at United Kingdom had made endeavour to see that despite order of stay granted by this Court being within the knowledge of Family Court, U.K., was persuaded by the respondent to pass an order. Had there been such material, the Court possibly might have a different view of the matter, but from mere communication dated 16.05.2021, it is not possible to hold there has been willful disobedience of the order passed by this Court and thereby respondent having committed contempt.

In the absence of any positive material to said effect, it is difficult for this Court to arrive at a conclusion that contempt is committed by respondent, more particularly when this issue is quasi criminal in which there must be a specific material to indicate willful disobedience. In the absence of any cogent material on record, it is not possible for this Court to arrive at a conclusion that respondent has willfully disobeyed or violated any of the direction of this Court. Hence, we are unable to accede to the request of the petitioner.

19. Further, we may make it clear that if there is any concrete and positive material indicating with certainty that respondent and their Solicitors had taken positive steps to press for hearing of the proceedings before Family Court at Willesden, United Kingdom, we hereby grant the liberty to the complainant to take out appropriate proceedings against the respondent in the substantive appeal which is very much pending for adjudication.

20. With this observation and in view of the settled proposition of exercise of contempt jurisdiction where the Court is expected

to examine with blinkers eye, we are not inclined to process the present application any further.

21. With these observations, the present contempt proceedings stands disposed of.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

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