

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

COCP No. 1248 of 2017 (O&M)

Date of Decision :06.06.2017

Venkys India Ltd.

.....Petitioner

Vs.

Raj Kumar & ors.

.....Respondents

CORAM: HON'BLE MR. RAJAN GUPTA

Present: Mr. Pankaj Jain, Advocate for the petitioner.

RAJAN GUPTA, J

Petitioner seeks to invoke contempt jurisdiction of this court for alleged violation of undertaking given by respondents before the court of Additional Civil Judge (Senior Division) Chandigarh on 03.09.2015. Petitioner filed a suit for recovery against the respondents. During the pendency of suit, a settlement is stated to have arrived at between the parties. In full and final satisfaction of the claim, nine post dated cheques were handed-over to the petitioner-Firm by the contesting respondents. However, all the cheques were dishonored on presentation. Learned counsel for the petitioner, thus submits that this amounts to contempt of this court. I am not convinced by this plea. A perusal of agreement dated 02.09.2015 (Annexure P1) shows that same incorporates ample safeguards in the eventuality of dishonor of cheques. Relevant para of the undertaking reads as under:-

“That as per settlement, first party is not claiming the interest of the above said outstanding but if the second party will not make/clear the outstanding payment as per above mentioned scheduled, in that case, second party will also be liable to pay interest @ 18% p.a. on the above mentioned outstanding from the date of due till dated of payment and in addition of this, second party will also be liable to pay the litigation charges to the first party.

The first party assured the second party that first party will not file the Winding up petition, if the second party will clear its outstanding as per given above schedule. In case of failure of second party, first has a right to file the winding up petition against the second party.

That it is further assured by the first party that after submitted this present settlement and giving the statement by the second party in the court, first party will withdrawn the case. In case of failure of second party in regard to above said outstanding, then the first party has a right to file the suit of recovery again in the Courts of Chandigarh.”

It is, thus evident that all aspects of the settlement find mentioned in the undertaking and the consequences of violation thereof. The stand of the petitioner that action of the respondents in not adhering to the undertaking amounts to contempt of this court is not only misconceived but wholly

untenable/contumacious. During pendency of this petition a query was put to counsel for the petitioner about the maintainability of the instant petition. He moved C.M. No. 12064-CII of 2017 for placing on record certain reported/unreported judgments. Despite this, query has not been answered satisfactorily. No clear response is forthcoming about the primary question why petitioner cannot initiate appropriate proceedings against the respondent in view of settlement dated 02.09.2015 arrived at before the court below. The judgments referred to have no applicability to the facts of the instant case wherein parties were conscious that safeguards had to be incorporated in the settlement in the eventuality same is not adhered to. Tendency of the litigants to mislead the court and file petition of this nature needs to be discouraged. From the facts and circumstances of the case, it is evident that present petition is totally frivolous. Same is dismissed being without any merit. Petitioner is burdened with ₹20,000/- as costs for filing a frivolous petition before this court.

June 06,2017

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No