

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

HPP Action No. 55 of 2013

IN THE ESTATE OF MANEKLAL
MAGANLAL

And

IN THE ESTATE OF PADMAVATI
MANEKLAL (alias) PADMAVANTI
MANEKLAL (Alias) PADMAVANTI
MANEKLAL

BETWEEN : **CHANDRA MOHAN MANEKLAL** of No. 193 Guangzhou
Dadao Bei Road, Tianhe District, Guangzhou 510075, China.

FIRST PLAINTIFF

: **RAMESH CHANDRA** of 37 Summit Drive, East Brunswick NJ
08816, U.S.A.

SECOND PLAINTIFF

: **DALEEP KUMAR MANEKLAL (alias) DILIP** of 238
Princess Road, Suva, Fiji.

THIRD PLAINTIFF

: **RENUKA JAMNADAS** of 20 Bronzewing Terrace, Bella Vista,
NWS 2153, Australia.

FORTH PLAINTIFF

AND : **PRAKASH GULABDAS** of 43 Toganivalu Street, Suva, Fiji

FIRST DEFENDANT

: **BHARTI RATHOD** of 41 Toganivalu Street, Suva, Fiji

SECOND DEFENDANT

: **BHARTI RATHOD** of 43 Toganivalu Street, Suva, Fiji

THIRD DEFENDANT

Counsel: Plaintiff: Mr Maharaj. V
Defendant: Mr Solanki. B

Date of Hearing: 27.01.2020

Date of Judgment: 28.01.2020

JUDGMENT

INTRODUCTION

1. This is contempt proceeding initiated by Plaintiffs against First and Second Defendants for alleged non-compliance of the orders made by Justice Kumar (as his lordship then was) on 31.7.2018. The said orders relate to discovery of specific bank accounts of the estate of Padma Wati Maneklal and details of the statements for specific period. The said accounts were maintained by BNP Paribas Singapore and account numbers were 8168254-001-000-840 and/or 8068254 and 8087061. Time period of statements were from 1.3.2010 to 31.5.2010. After said orders Defendants had provided bank statements in relation to Account Number 8087061 which was a joint account held by second Defendant with late Padma Wati Maneklal. Upon her death only second Defendant became the account holder. Plaintiffs admit that such statements were provided but state that it was a joint account, hence there was a violation of order as it was not late Padma Wati Maneklal's account. At the time of death of late Padma Wati Maneklas, it was a joint account hence it was impossible to change the status of that account by any person retrospectively and even after death there was no order to change the status of the said account, but to provide disclosures as to the account statements.
2. Defendants' solicitor by letter dated 30.8.2019 stated that "*full statement for account number 8068254 has already been disclosed in Prakash Gulabdas Affidavit sworn on 17.3.2014*". Again Plaintiffs admit such account statements being provided to them as stated in the affidavit in reply, but this account statements commenced from 14.6.2010 which is outside the time period stated in the said order. Defendants in the affidavit in reply state that said account No 8068254 with BNP Paribas, commenced after 14.6.2010 and there were no transactions on the said account from 1.3.2010 to 31.5.2010, the time period covered in the said order.
3. At the hearing both parties agreed that there were only two accounts with BNP Paribas, in relation to the orders made on 31.7.2018. Hence 8168254-001-000-840 and 8068254 denote only one account. There is no dispute that account statements for account 8168254-001-000-840 or 8068254 from 1.3.2010 to 31.5.2010 were provided. There is undisputed evidence that this account commenced on 14.6.2010 hence there will only be any account transactions for the said period. This is clearly understandable from the said statements. Said Account had commenced after death of

late Padma Wati it is impossible to have that account in a name of a deceased person, though the court order said so. The Plaintiff was aware of the names of account holders of that account, as they were already provided by the Defendants. Only perusal of already disclosed documents would have prevented from seeking such an order from court. So it was improper for Plaintiffs to seek such an order knowing that said account was not in the name of deceased.

4. Plaintiff state that accounts should have been in the name of estate, but that is not a matter to deal in contempt proceedings. Plaintiffs' alleged contempt regarding Account Number 8087061 of BNP Paribas was that it was only a joint account and not a sole account. Second Defendant had stated that it was converted to a joint account prior to death of late Padma Wati Maneklal, hence he could not held responsible for what had happened prior to him obtaining probate. There was no order of court to convert that account. In the circumstances there is no committal proved by the Plaintiff. It is impossible to open an account in the name of deceased person and also to provide statements of an account prior to commencement of such account. So there is no committal proved against any of the Defendants.

ANALYSIS

5. In a recent UK decision , *Olu-Williams v Olu-Williams* [2018] EWHC 2464 (Fam) (decided on 21 September 2018) dealt with breach of court orders and law relating to contempt and was held,

“The summary of the substantive law of contempt in relation to the breach of an order below derives from the following cases.

- a) *London Borough of Southwark v B* [1993] 2 FLR 55
- b) *Mubarak v Mubarak* [2001] 1 FLR 698
- c) *Re A (Abduction: Contempt)* [2008] EWCA Civ 1138, [2009] 1 FLR 1
- d) *Re S-C (Contempt)* [2010] EWCA Civ 21, [2010] 1 FLR 1478
- e) *Re L-W* [2010] EWCA Civ 1253, [2011] 1 FLR 1095.
- f) *Re J (Children)* [2015] EWCA Civ 1019
- g) *Y v Z* [2016] EWHC 3987 (Fam)

33. The principles are:

- a) *The contempt which has to be established lies in the disobedience to the order.*
- b) *To have penal consequences, an order needs to be clear on its face as to precisely what it means and precisely what it prohibits or requires to be done. Contempt will not be established where the breach is of an order which is ambiguous, or which does not require or forbid the performance of a*

particular act within a specified timeframe. The person or persons affected must know with complete precision **what it is that they are required to do or abstain from doing**. It is not possible to imply terms into an injunction. The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to **identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do**. That is a question of construction and, thus, a question of law.

c) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see *Benham v United Kingdom* (1996) 22 EHRR 293 at [56], *Ravnsborg v. Sweden* (1994), Series A no. 283-B);

d) The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) ECHR)

e) **Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. If it be the case that the accused cannot comply with order then he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his power to do it. That burden remains on the applicant throughout** but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the accused provided the applicant can satisfy the judge so that he is sure that compliance was possible.

f) **Contempt of court must be proved to the criminal standard:** that is to say, so that the judge is sure. The judge must determine whether he is sure that the defendant has not done what he was required to do and, if he has not, whether it was within his power to do it. Could he do it? Was he able to do it? These are questions of fact.

g) It is necessary that there be a clear finding to the criminal standard of proof of what it is that the alleged contemnor has done that he should not have done, or **in this case what it is that he has failed to do when he had the ability to do it**. The judge must determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it.

h) If the judge finds the defendant guilty the judgment **must set out plainly and clearly (a) the judge's finding of what it is that the defendant has failed to do and (b) the judge's finding that he had the ability to do it.**" (emphasis added)

6. The burden of proof of committal is fairly and squarely on the applicant (Plaintiffs) and the standard of proof is criminal burden (see *Dean v. Dean*, The Times, November 13, 1986, C.A.)¹
7. The Orders of the Court are as follows;
 - (i) *Orders made on 31st July 2018 is varied to include the following Order:-*

First and Second Defendants obtain Statement of Account or transaction listing for the period 1st March 2010 to 31st May 2010, in respect to PNB PARIBAS SINGAPORE Account Number 8168254-001-000-840 and/or 8068254 and account number 8087061 in the name of PADMAWATI MANEKLAL and provide it to the Plaintiff's Solicitors within (30) days from the date of this Ruling [23/07/2019];
 - (ii) *There be no order as to costa for Application filed on 10th July 2019;*
 - (iii) *Matter to be called before a Master.*
8. Above order compels first and second Defendants, to provide statements within 30 days specific accounts. The account numbers are given and name of the account holder is also given.
9. As relevant facts are not dispatched both parties relied on affidavits filed in committal proceedings and no oral evidence adduced.
10. It is admitted at the hearing that above orders referred only to two accounts maintained by BNP Paribas, Singapore and account numbers 8168254-001-000-840 and 8068254 denote only one account.
11. After said court order Plaintiffs provided with bank statements for the period of Account Number 8087061. There is no dispute as to that. This account was a joint account and said order of the court never stated that status of the account should be changed and living account holder's name should be deleted and or converted fully to an estate account. What was requested was specific discovery and order for discovery cannot convert and or change evidence retrospectively.
12. So the contention that account should only be in the name of deceased cannot be complied in terms of the said order. There was no direction by the court to alter and or change status of evidence that was ordered to be disclosed to the Plaintiffs.
13. 8168254-001-000-840 and 8068254 was opened after death of late Padma Wati Maneklal on 14.6.2010. So there will be no statements for the said account for the

¹ The Supreme Court Practice(White Book) 1988 52/4/4 ,page 783

period stated. Again there is no order to change the status of account. This account is in the name of First and Second Defendants and that was how it was opened at that time, when it was opened after the death of late Padma Wati Maneklal.

14. The fact that this account was in the name of first and second Defendants, was known to the Plaintiff, as this was already discovered. So there was no need to seek discovery of those statements.
15. There were no orders to change the status of accounts. It only ordered to provide statements of the stated accounts and that had been complied.
16. Defendants had complied with the orders of the court as required by said order. The fact that one account was a joint account with the deceased prior to her death cannot be altered retrospectively, and that was not the purpose and or scope of the said order for specific discovery. The fact that Account Number 8168254-001-000-840 or 8068254 was a new account which was opened after death of deceased and why it was not opened in the name of estate, are not the scope of this inquiry in to committal. There was no order to convert such accounts by courts or to change the status of evidence in an order for specific discovery. So there was no proof of committal. First and Second Defendants are acquitted and discharged from the charges of contempt. The cost of this committal proceedings summarily assessed at \$2,500 to be paid within 21 days.

FINAL ORDERS

- a. Both First and Second Defendants are acquitted from the charges of contempt.
- b. Cost of this committal proceeding is summarily assessed at \$2,500 to be paid within 21 days.

Dated at Suva this 28th day of January, 2020.



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Justice Deepthi Amaratunga
High Court, Suva