



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

HCCC NO. 35 OF 2006

RADHABAI SHIVJI BHANDERI

(Suing as administrator of the estate of)

SHIVJI RAMJI BHANDERI (DECEASED).....PLAINTIFF

VERSUS

JYOTIBALA A. DESAI1ST DEFENDANT

SUMANT A. DESAI2ND DEFENDANT

ROSE HOLDINGS LIMITED3RD DEFENDANT

RULING

1. The Application before Court of 14th September 2020 seeks that the Respondents be cited for contempt of Court of the Order of 28th June 2019 and that, on citation, the Respondents be jailed for a term not exceeding 6 months.

2. As I see it the success or failure of the application depends on whether there was breach of the Court Order of 28th June 2019. I say so because the Respondents concede being aware or made aware of the Order but take the view that they have obeyed it as they have furnished the accounts of the 3rd Defendant Company for the year ended June 2019 and that of June 2020.

3. In paragraph 18 of its ruling of 28th June 2019, the Court held and ordered as follows:-

“[18] For the reasons stated the Notice of Motion of 16th January 2019 succeeds to the very limited extent in terms of prayer 2 thereof, which I hereby allow. The books of accounts and all financial records of the Company shall be furnished within 30 days of today. The other prayers are disallowed. Costs of the application shall be to the Defendants.”

4. So what the Court granted was prayer 2 of the Notice of Motion of 10th January 2019. The prayer read:-

“The Judgment Debtor be ordered to provide books of accounts and all financial records in their possession relating to the third Defendant Company for purposes of preparing final accounts to enable the winding up of the company.”

5. It does not seem in dispute that upon the demise of Shivji Bhanderi on 5th April 2004, the 1st and 2nd Judgment-Debtors have been in control of the affairs of the 3rd Defendant Company. In making the order for accounts the Court noted as follows:-

“[17] That said, and notwithstanding the option to be taken, the taking of accounts of the Company is necessary, if not inevitable. In this regard the Estate of Shivji bespeaks the books of accounts and all financial records of the Company for purposes of preparing final accounts. In paragraph 13 of the Replying affidavit the 2nd Defendant accedes to this request.”

6. In the paragraph referred to (23 not 13), the 2nd Defendant had stated:-

“That we are ready and willing to furnish all the books of accounts of the company.”

7. All the books of accounts in respect to which the Order was granted and which was readily understood by the alleged contemnors would be books of accounts for the period in which they have been in control of the company and which would be from 5th August 2004 to date. That was the breadth of the Court Order. To construe it as only referring to accounts for 2019 and 2020 is both dishonest and obstructionists.

8. The 1st and 2nd Respondents are in disobedience of a Court Order they understood and are hereby cited for contempt of this Court’s Order of 28th June 2019. This Court shall shortly appoint a date when it will receive any mitigation from the two before meting out sentence. In the meantime, the two shall also meet costs of the application of 14th September 2020.

DATED AND SIGNED THIS 5TH DAY OF JULY 2021

F. TUIYOTT

JUDGE

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY 2021

D. S. MAJANJA

JUDGE