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

I.A.Nos.2346/2020, 2348/2020, 4303-05/2020 & 4777/2020 in  
+ **CS(OS)No.67/2020**

ANURADHA .....Plaintiff  
Through : Mr. Moazzam Khan, Mr. Alipak  
Banerjee and Md. Kamran, Advs.  
versus

BAJRANGI & ANR. ....Defendants  
Through : Mr. Nikhil Borwankar and Mr.  
Shimona Ghosh, Advs. For D-1 along  
with defendant no. 1-in-person.  
Mr. Shashank Garg, Advocate as the  
Court Commissioner.  
Mr. Kush Wadhwa, representative of  
Pwc.

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

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**02.12.2020**

[Court hearing convened *via* video-conferencing on account of COVID-19]

**I.A. No.4777/2020**

1. Pursuant to the last order, Mr. Nikhil Borwankar, who appears on behalf of defendant no. 1, has placed on record an affidavit of defendant no.1 dated 02.11.2020 along with annexures D-1 to D-6.

1.1 This affidavit was furnished in a sealed cover. I have opened the sealed cover today and read the contents of the affidavit.

1.2 Broadly, in the affidavit, defendant no. 1 has, *inter alia*, averred that the external hard drive is now in the possession of a body constituted under the orders of the Supreme Court to look into tax-evasion.

1.3 It appears that defendant no. 1, in the first instance, furnished the information contained in the external hard drive to another advocate, who was not engaged in the instant matter.

1.4 The concerned advocate, it appears, as a first step, copied the information onto a USB pen drive and passed the same to the two statutory authorities.

1.5 This information was passed, as per the annexures appended to the affidavit, to the statutory authorities under the cover of letters dated 15.03.2019.

1.6 These letters and the USB pen drives, were apparently, delivered to the statutory authorities on 20.03.2019.

1.7 As indicated above, it appears, thereafter, the external hard drive was delivered to the body constituted under the orders of the Supreme Court. Apparently, the external hard drive was accompanied by a letter dated 14.08.2020.

1.8 Thus, according to defendant no. 1, the external hard drive is, presently, not in his custody.

1.9 At the moment [since I have neither seen the information contained in the external hard drive nor am I, presently, concerned with it], what is disconcerting is the manner in which defendant no. 1 has proceeded in the matter. What has emerged is that, defendant no. 1, in these proceedings, has not been upfront inasmuch as he did not, up until now, communicate to the Court that he had taken the aforementioned steps, as adverted to hereinabove, *vis-à-vis* the information contained in the external hard drive.

2. As a matter of fact, on 27.02.2020, when the matter was heard by my predecessor, it was portrayed that the external hard drive was in the possession of defendant no. 1's advocate.

2.1 Paragraph 10 of the order dated 27.02.2020, which reflects this position, is extracted hereafter:

*“10. The senior counsel for the plaintiff states that the defendant No.1 has made a statement that he is in possession of Seagate (External Portable) Hard Drive 500 GB and of which he refused to part with and stated that it is with his Advocate.”*

2.2 Moving further, on 11.06.2020, when a direction was issued *qua* defendant no. 1, the Court was given to understand that the external hard drive was in the power and the possession of defendant no. 1. This position clearly emanates if one were to read the direction contained in paragraph 7.7 of the order dated 11.06.2020, which is, extracted hereafter.

*“7.7 Besides this, defendant No.1 is also directed to handover the external hard disk, which is, admittedly, in his possession, for examination, both by the Local Commissioner and PwC. Even according to Mr. Borwankar, the said device is adverted to in defendant No. 1's disclosure application.”*

2.3 Mr. Nikhil Borwankar, who appears on behalf of defendant no. 1, says that it was only in September 2020 that defendant no. 1 became aware that the external hard drive has been handed over by his advocate [not engaged in the matter] to the body constituted under the orders of the Supreme Court.

2.4 On being queried, as to why defendant no. 1 did not move the Court, immediately, at least after 11.06.2020, to place on record the fact that the external hard drive was not in his custody, Mr. Borwankar had no satisfactory response to give to the Court.

2.5 Therefore, clearly, according to me, defendant no. 1 has been less than upfront in informing the Court as to the correct state of affairs.

2.6 As alluded to above, this Court is not concerned, as to whether or not the information available in the external hard drive is relevant, for the purposes of the government agencies to enable them to take the matter forward as per law.

2.7 However, the fact remains that defendant no. 1, did not seek modification of the interim orders, passed by this Court, including order dated 11.06.2020, and, thus, enabled their violation.

3. Therefore, issue show cause notice to defendant no. 1 as to why he should not be proceeded under the Contempt of Courts Act, 1971 and the attendant powers available, in that behalf, to the Court.

3.1 The reply, if any, will be filed within three weeks from today.

4. Insofar as the access to the WhatsApp messages, embedded in the three mobile phones, is concerned, Mr. Kush Wadhwa, who represents PwC, will formally write to Mr. Borwankar as to the information that he requires to access the messages. This communication will be sent by Mr. Wadhwa to Mr. Borwankar within two days from today, *qua* which Mr. Borwankar will revert within next 24 hours.

4.1 In case the information furnished by Mr. Borwankar is sufficient for the purposes of Mr. Wadhwa for accessing the information contained in the WhatsApp messages, which are embedded in the three mobile phones, [that are, I am told, in the custody of the Court Commissioner i.e. Mr. Shashank Garg], Mr. Wadhwa will proceed further in the matter.

4.2 Mr. Wadhwa will, thereafter, convene a meeting which will be attended by the Mr. Garg i.e. the learned Court Commissioner, Mr. Moazzam Khan, who represents the plaintiff, and Mr. Borwankar.

4.3 Mr. Wadhwa, along with the aforementioned persons, who constitute the confidentiality club [as indicated in the order dated 27.02.2020], will examine the WhatsApp messages. Mr. Wadhwa will create copies and/or mirror images of only that part of the information, which is, contained in the WhatsApp and/or text messages, which concerns the plaintiff.

4.4 Once this exercise is over, the three-mobile phones will be returned to defendant no. 1. However, in case, Mr. Wadhwa is not able to extract the information, because of defendant no. 1 not furnishing him the requisite information and/or phone numbers, which are registered with the WhatsApp platform, Mr. Wadhwa will file a report, in that behalf, with this Court. Once the report is filed, the Court will take the matter forward including, if necessary, drawing an adverse inference against defendant no. 1.

5. I may indicate that Mr. Borwankar, upon instructions of defendant no.1, who has joined the present proceedings, has categorically stated that defendant no. 1 has not maintained any copy of the information contained in the external hard drive.

6. Mr. Borwankar says that he will check with the advocate, to whom defendant no. 1 had handed over the external hard drive, as to whether he had copied the information contained in the external hard drive and retained the same.

6.1 Mr. Borwankar will file an affidavit, in that behalf, with the Court before the next date of hearing.

7. The affidavit of defendant no. 1 dated 02.11.2020 is returned to the Registry. The Registry will place the said affidavit, once again, in the sealed cover, which would be produced before the Court, as and when directed.

8. Since a confidentiality club is in place, as indicated in the order dated 11.06.2020, the order passed today will not be uploaded on the High Court website.

9. However, the Court Master attached with this Court will transmit the order passed today, *albeit* electronically, to Mr. Khan, Mr. Borwankar and Mr. Garg.

10. List the matter on 25.02.2021.

**RAJIV SHAKDHER, J**

**DECEMBER 02, 2020**

*Click here to check corrigendum, if any*