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

+ CRL.M.C. 2428/2010

MONIKA & ORS

..... Petitioners

Through

Mr. Sanjay Jain, Sr. Advocate with Mr. Sanjeev
Sagar & Ms.Ruchi Jain, Advocates

Versus

GOVT OF NCT & ANR

..... Respondents

Through

Mr. Prabhat Kumar, Advocate for R-2

+ CRL.M.C. 2429/2010

STANDARD CHARTERED BANK

..... Petitioner

Through

Mr. Sanjay Jain, Sr. Advocate with Mr. Sanjeev
Sagar & Ms.Ruchi Jain, Advocates

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through

Mr. Prabhat Kumar, Advocate for R-2

+ CRL.M.C. 2430/2010

AMARJEET SINGH BINDRA & ORS

..... Petitioners

Through

Mr. Sanjay Jain, Sr. Advocate with Mr. Sanjeev
Sagar & Ms.Ruchi Jain, Advocates.

versus

G.E. MONEY FINANCE SERVICES LTD.

..... Respondent

Through

Mr. Prabhat Kumar, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER
21.03.2013

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1. The challenge in these three petitions has been made to the maintainability of the contempt petition bearing No. 331/1 and the notices of contempt dated 24.9.2009 issued therein by the concerned Magistrate to these petitioners.
2. Crl.M.C. No. 2428/2010 has been preferred by Ms. Monika and others, Crl. M.C. No. 2429/2010 has been preferred by the Standard Chartered Bank while Crl.M.C. NO. 2430 has been preferred by Mr. Amarjeet Singh Bindra and others.
3. The case of these petitioners in the present petitions is that all these petitioners have been impleaded in the contempt petition filed by the respondent no. 2/G.E. Money Finance Services Ltd., alleging that these petitioners have committed contempt of court by defying the order of the learned Magistrate dated 10.12.2007 passed under Section 83 of the Cr.P.C., directing attachment of the property bearing No. 2024 Extn., 06, Basant Avenue, Dugri, Ludhiana on account of non appearance of one of the co-accused persons in FIR No. 258/2007.

4. The heart of the controversy is that Sh. Maninder Singh and Smt.Kulwant Kaur had taken loan from M/s. G.E. Finance Services Pvt. Ltd., and these two very persons had borrowed the loan amount of Rs.18.27 lacs (approx.) from the Standard Chartered Bank apart from the other banks. Ms. Kulwant Kaur who was owner of the property bearing no. 2024 Extn., 06, Basant Avenue, Dugri, Ludhiana had created a first charge over the said property with Standard Chartered Bank and both the accused persons failed to liquidate their loan liabilities as were outstanding against them from these financial institutions including the Standard Chartered Bank and M/s. G.E. Money Finance Services Ltd. So far the Standard Chartered Bank is concerned they had taken steps by sending notice to the accused persons under Section 13(2) of the SARFAESI Act, 2002 and thereafter had filed necessary application before the Magistrate to seek possession of the said property, while on the other hand M/s. G.E. Finance Services had proceeded to lodge an FIR against the said borrowers under Sections 420/406 IPC.

5. So far the criminal case filed by G.E. Money Finance Services Ltd. was concerned, the accused Kulwant Kaur had failed to appear before the court which led to initiation of proceedings under Sections 82 and 83 Cr. P.C. and vide order 10.12.2007 the court directed attachment of the said

property under Section 83 Cr.P.C.. On the other hand, M/s. Standard Chartered Bank proceeded to seek possession of the said property after obtaining an order from the concerned Magistrate and it is only thereafter that they had published a notice under Section 13(2) of SARFAESI Act for the sale of the said property pursuant to the order passed by the Debt Recovery Tribunal. The respondent M/s. G.E. Money Finance Services Ltd. gained knowledge about the sale of the said property and informed the bank that in the criminal case filed by them the accused Maninder Singh was in judicial custody since 21.7.2007 and co-accused Ms. Kulwant Kaur was absconding. It further informed the bank that the said premises of the borrowers, Ms. Kulwant Kaur and Mr. Maninder Singh had been seized and sealed on 20.12.2007 by Delhi Police on directions/ order of Hon'ble Court of Metropolitan Magistrate, Rohini under Section 83 Cr.P.C. It is also the stand of the G.E. Money Finance Services Ltd. in the said contempt petition that the Standard Chartered Bank did not pay any heed to the information supplied by it through its letter dated 30.05.2008 and proceeded to sell the property by public auction. As per the respondent, M/s. G.E. Money Finance Services Ltd., all these petitioners have committed contempt of court as defying the said order of the Magistrate, the officers of the petitioner bank

went ahead to sell the said property by public auction. After the said contempt petition was preferred by the respondent M/s. G.E. Money Finance Services Ltd., the notice of contempt petition was issued by the learned Magistrate against all these petitioners and feeling aggrieved with the filing of the said contempt petition and the notices issued to them the petitioners have preferred the present petitions.

6. Addressing arguments on behalf of petitioners, Mr.Sanjay Jain, Sr.Advocate submits that these petitioners have not committed any contempt of Court rather they were taking all legitimate steps under the SARFESI Act to possess, attach and then ultimately sell the said property by public auction. Counsel also submits that no order of the Magistrate was ever received by these petitioners nor the same was brought to the notice of these petitioners by M/s. G.E. Money Finance Services Ltd. except sending of a very unspecific and cryptic notice which contained no details of the order or the copy of the order of the Court. Counsel also submits that the petitioners had immediately responded to the said notices and vide their letter dated 09.06.2008 informed the respondent no.2 that the said property was lying mortgaged with the bank and they were taking action under the SARFESI Act on account of the failure of the said borrowers to liquidate their loan liability

of the Standard Chartered Bank. Counsel also submits that no rejoinder to the said reply was sent by respondent no.2, nor any further communication or copy of the order passed by the learned M.M was sent to them, to the Standard Chartered Bank or any of its officers. Counsel further submits that the petitioners went ahead with the proceedings under the SARFESI Act and the said proceedings eventually led to the auction of the said property on 21.5.2009. Counsel thus submits that the petitioners took all legal steps as were available to them under the SARFESI Act and therefore the petitioners cannot be held guilty of committing a contempt of Court and the conduct of the petitioners cannot be held to be wilful or contumacious. Counsel also submits that the learned Magistrate without there being any application of mind had issued contempt notices against the petitioners and therefore the said contempt proceedings deserve to be set aside on this ground too.

7. Opposing the present petitions, counsel for the respondent no.2 submits that the respondent no.2 vide their letter dated 30.5.2008 brought to the notice of the petitioners the order passed by the learned Magistrate thereby directing to proceed against the accused persons under Section 83 Cr.P.C. Counsel also submits that once the petitioners came to know about

passing of the said order by the learned M.M., they should not have proceeded ahead to sell the said property without taking the leave of the concerned Magistrate.

8. I have heard the learned counsel for the parties at a considerable length and given my conscious considerations to the arguments advanced by them.

9. The question whether there is contempt of court or not is undoubtedly a very serious question. For the survival of the rule of law, the orders of the courts have to be obeyed by one and all unless such orders are modified or stayed by the higher courts. Incidents which undermine the dignity of the courts have to be viewed very seriously and also dealt with swiftly. The dignity and authority of the courts has to be respected and maintained at all stages and by all concerned, failing which the very constitutional scheme and public faith in the judiciary would run the risk of being lost. Having said this, it is also a settled legal position that the contempt proceedings being quasi-criminal in nature must not conclude in conviction for alleged act of contempt unless a clear cut case of obstruction in administration of justice is made out against the alleged contemnor who with a clear cut intention and contumacious conduct, not explainable otherwise, commits any act of contempt thereby flouting or defying the orders of the court. It has been held by the Apex court in *Debrata*

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“9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. It must be realised that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

10. It is also a well settled legal position that in contempt proceedings the standard of proof required is the same as in the criminal cases and the alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt.

11. In the facts of the present case, the issue as to the liability of the petitioners under contempt proceedings initiated by respondent No.2 against them revolves around the question whether the order dated 10.12.2007 passed by the learned Magistrate under Section 83 of the Cr.P.C. whereby the learned

Magistrate had directed the attachment of the property owned by co-accused Smt. Kulwant Kaur was brought to the notice of the petitioners and if so, in what manner. It is an undeniable fact that the petitioners were not a party to the criminal proceedings initiated by respondent no.2 by lodging an FIR No.258/2007 against Sh.Maninder Singh and his wife Smt.Kulwant Kaur and, therefore, the petitioners were not expected to know the developments taking place before the concerned Magistrate arising out of the said FIR 258/2007. As per the petitioners, they were even unaware of the said order dated 10.12.2007 directing the attachment of the said property under Section 83 of the Cr.P.C. passed by the concerned Magistrate as they were never intimated about any such order by respondent No.2 or by the police or even through publication in the newspaper.

12. On the other hand, the stand of respondent No.2 is that when it came to know that the petitioners were trying to dispose of the said property then it immediately vide notice dated 30.05.2008 intimated the manager of the Standard Chartered Bank about the attachment of the said property by the order of the concerned Magistrate directing initiating of process against co-accused Smt. Kulwant Kaur under Section 83 of the Cr.P.C. It is also the stand of respondent No.2 that in fact the Standard Chartered Bank in the reply dated

09.06.2008 categorically admitted that there was no fresh charge or transaction in regard to the said property, therefore, occasion arises for the petitioners committing the contempt of the court.

13. Before I proceed further, let us first see what exactly was communicated by respondent No.2 to the manager of the Standard Chartered Bank vide their letter dated 30.05.2008. The said letter is a short letter. The contents of the said letter are reproduced hereunder:-

“In pursuance to information received from notice published by your organisation in Newspaper. This is to inform you that in the FIR No.258/2007, PS Saraswati Vihar, New Delhi, accused Maninder Singh is in judicial custody since 25th July, 2007 and co-accused Smt. Kulwant Kaur is absconding in the case. This is further to inform you that the above mentioned premises situated at Ludhiana has been seized and sealed on 20th December, 2007 by Delhi Police on directions/ order of Hon’ble Court of Metropolitan Magistrate, Rohini under Section 83 Cr.P.C. in FIR No.258/2007.

Please note any further transaction/creation of fresh charge on the context property without permission of concerned Hon’ble Court is an illegal act and will amount to contempt of Hon’ble Court.”

14. It would also be worthwhile to reproduce the reply dated 09.06.2008 sent by the Standard Chartered Bank through its counsel. The contents of the said reply are reproduced hereunder:-

“Please take note of the following reply on behalf of our clients M/s Standard Chartered Bank, New Delhi in regard to your intimation letter dated 30.05.2008 w.r.t. one property at Ludhiana in the name of Sh.Maninder Singh & Smt.Kulwant Kaur.

We really thank you for informing us of the latest development of the case in FIR No.258/2007 before the Metropolitan Magistrate, Rohini, Delhi and are into the process of verifying the fact if the property has been ordered to be sealed by the Magistrate at Delhi u/s 83 Cr.P.C. but you have nowhere mentioned the concern of your company or interest of your company in the said property at Ludhiana.

The property bearing House No.2024, Extn.-6, Basant Avenue, Ludhiana in the name of Sh.Maninder Singh & Smt.Kulwant Kaur has been mortgaged by them with our clients since November 2004. Further we must inform you, as pointed out in your letter, that there is no fresh charge or transaction in regard to the said property and hence there arises no question of any kind of contempt of court.

Our clients have further instructed us to make it clear to all that since the entire loan amount has been recalled by way of SARFESI notice accordingly they shall be proceeding to get clearance of the entire loan amount as per law and accordingly unless and the entire demanded amount is not paid, the legal proceedings under the SARFESI Act shall not be stopped.

Our clients shall give every possible help/support to your company in recovery of debts against Sh.Maninder Singh & Smt.Kulwant Kaur. You are thus requested to inform us of your company's interest in the said property along with the supported documents.

For any further queries you can get in touch with Sh.Amarjit Singh Bindra at our clients Parliament Street office or at his mobile No.9811838387.”

15. It can be clearly seen from the said letter dated 30.05.2008 that respondent No.2 had supplied a very vague information to the Standard Chartered Bank about the order passed by the learned M.M. under Section 83 of the Cr.P.C. in FIR No.258/2007. In fact, respondent No.2 failed to disclose even the exact date of the order passed by the learned Magistrate, nor even the name of the learned Magistrate who passed the said order. Respondent No.2 also did not choose to send a copy of the order dated 10.12.2007 passed by the said Magistrate which, in fact, was the right course available to respondent No.2 to bring to the notice of the bank the order of the attachment passed by the learned Magistrate. Further, if the reply dated 09.06.2008 sent by the Standard Chartered Bank is examined, this Court could not possibly find any instance of contempt of court on part of the petitioners. Petitioners only intimated respondent No.2 that there is no fresh charge or transaction in regard to the said property as the petitioners and the said bank was already having charge over the said property much prior to the order of sealing passed by the learned Magistrate. The Standard Chartered Bank also apprised respondent No.2 that the legal proceedings already initiated by them under the SARFAESI Act, 2002

shall not be stopped. One can also not lose sight of the fact that in order to recover the loan amount from the said borrowers (herein Sh.Maninder Singh & Smt.Kulwant Kaur), the Standard Chartered Bank had issued a notice dated 28.02.2008 under Section 13(2) of the SARFESI Act, 2002 and the said notice was also published in the newspapers namely, '*Economic Times*' dated 29.03.2008 and Punjabi Daily newspaper '*Jagwani*' dated 29.03.2008. As per the Standard Chartered Bank, an application under Section 14 of the SARFAESI Act, 2002 was filed with the District Magistrate, Ludhiana and vide order dated 07.11.2008 the District Magistrate, Ludhiana had appointed the Tehsildar, Ludhiana (W) to take possession of the said property bearing No. 2024, Extn.- 06, Basant Avenue, Dhandhra Road, Dugri, Ludhiana. It is also the case of the petitioners that based on the said order dated 07.11.2008 passed by the District Magistrate, Ludhiana, the petitioners also obtained the order dated 28.11.2008 from the office of the SSP, Ludhiana so as to take possession of the said property. Ultimately, the possession of the said property was in fact obtained by the petitioners on 06.01.2009. It is also the case of the petitioners that after completion of all necessary formalities, the said property was ultimately auctioned on 17.04.2009 to the highest bidder for a sum of Rs.55.20 Lacs and accordingly a Sale Certificate dated 29.05.2009 was issued in favour

of the auction purchaser. It is also an admitted fact that even respondent No.2 is the beneficiary of the sale of the said property as it had received a payment of Rs.18 lacs towards satisfaction of the loan amount from the said sale proceeds.

16. It is thus seen that the petitioner, the Standard Chartered Bank and its officers sought attachment of the mortgaged property as per the legal remedy available to them under 'The Securitisation & Reconstruction of Financial & Enforcement of Security Interest Act & Rules, 2002' and these legal steps were initiated by the petitioner bank much before the letter dated 30.05.2008 was sent by respondent No.2. Another important factor which cannot be ignored is that the proceedings under Section 83 of the Cr.P.C. came to be terminated after the said co-accused Smt. Kulwant Kaur had surrendered before the Magistrate, as per the admitted stand taken by the counsel for the parties.

17. In the light of the aforesaid discussion, this Court does not find that there was any wilful disobedience on the part of the petitioners in not obeying the order of the Magistrate dated 10.12.2007. The conduct of the petitioners cannot be termed as contumacious warranting initiation of contempt proceedings against them.

18. The petitions are accordingly allowed. The notice of the contempt dated 24.09.2009 issued by the learned Magistrate against the petitioners and the

contempt petition bearing No. 331/1 pending in the court of learned M.M. are hereby quashed.

19. It is ordered accordingly.

MARCH 21, 2013
mg/v

KAILASH GAMBHIR, J.