

Case No :Cont.Cas(C) 0000006/2015

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Party Name : SHEROWALI HIMGHAR & SERVICES PVT. LTD Vs SHYAMAL KR. ROY & ANR

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. B. N. Majumder for the petitioner and learned counsel, Ms. S. Deb Gupta for the respondents (alleged contemnors).

The petitioner, a private limited Company, is running a cold storage at Khayerpur under West Tripura District and the petitioner is a consumer of Tripura State Electricity Corporation Limited (for short 'TSECL') for running the cold storage. The alleged contemnor- respondent No.1, is the Chairman-cum-Managing Director of TSECL and the respondent No.2 is the senior Manager of Khayerpur Electrical Sub-Division of TSECL. On 13.01.2015 the petitioner received a provisional assessment notice under Section 126(1) of Electricity Act, 2003 from respondent No.2 asking the petitioner to submit representation or to pay an amount of Rs.3,81,512/- within 02-00 pm on 19.01.2015. The petitioner submitted representation/objection against the provisional assessment notice supported by documents, but respondent No.2 on 19.01.2015 passed final assessment order under Section 126(3) of the Electricity Act and asked the petitioner to pay an amount of Rs.3,36,799/- within 02-00 pm of 27.01.2015.

Challenging the final assessment order dated 19.01.2015 the petitioner filed W.P.(C) No. 23 of 2015 before this Court along with a C.M. Application No. 28 of 2015 praying for an interim order suspending the operation of final assessment order dated 19.01.2015. The writ petition was filed on 22.01.2015, but since there was holiday in the meantime, it was listed before this Court on 27.01.2015 and on 27.01.2015 an interim order was passed by this Court in C.M.Appl. No. 28 of 2015 suspending the operation of final assessment order dated 19.01.2015.

It is contended by the petitioner that on 27.01.2015 itself the petitioner applied for certified copy, but could not obtain certified copy on that day and, therefore, the Lawyer of the petitioner issued a notice along with a copy of the cause list dated 27.01.2015 of this Court and made an attempt to serve the same to the alleged contemnors, but it was not received on that day on the plea that office hours was over. It is also alleged that on 28.01.2015 at 10-30 am and 11-20 am the notice was served on the respondents, but in spite of service of notice by the Lawyer, the respondents disconnected the electricity connection of the petitioner's cold storage. It is alleged by the petitioner that the respondents deliberately and willfully having notice about the order passed by this Court disconnected the electricity connection of the cold storage and thereby committed contempt of Court.

Respondent No.1 submitted written objection contending that he had no knowledge about the action taken by the respondent No.2 and also about the order issued by the respondent No.2. He has also stated that he always abide by the directions/orders passed by this Court and that there was no willful or deliberate flouting of the order of this Court on his behalf.

Respondent No.2 by filing objection, *inter alia*, contended that final assessment order was passed on 19.01.2015 directing the petitioner to deposit the amount by 02-00 pm of 27.01.2015 and since the payment was not made, he issued direction for disconnection of the electricity and according to his direction the disconnection was made on 28.01.2015 at 09-00 am and by that time there was no knowledge of the respondents about any order passed by this Court. It is also contended that the respondents did not violate the Court's order willfully or deliberately and that he expressed apology if any wrong has been done on his behalf.

Learned counsel, Mr. Nandi Majumder appearing for the petitioner submitted that an attempt was made on 27.01.2015 to serve a Lawyer's notice along with a copy of the cause list dated 27.01.2015 of this Court upon the alleged contemnors, i.e., the respondents, but that was not received by them on the pretext that office hours was over on that day. On 28.01.2015 the notice was served on both the respondents in the morning, but in spite of service of notice they disconnected the electricity connection and thereby violated the Court's order. It is also contended by Mr. Nandi Majumder that the electricity connection was not restored till 06.02.2015 though interim order dated 27.01.2015 was served on the respondents.

Learned counsel, Ms. Deb Gupta has submitted that notice about the interim order was served on 28.01.2015 at 11-20 am and the electricity connection was disconnected at 09-00 am on that day and till 09-00 am there was no knowledge of any interim order. She has also contended that the final assessment order was passed on 19.01.2015 directing to make payment by 02-00 pm of 27.01.2015 and during that span of time no information was given by the petitioner to the respondents that the petitioner preferred a writ petition before this Court challenging the final assessment order. So, the respondents were in dark about the writ petition and there was no deliberate and willful disobedience to the order.

The interim order dated 27.01.2015 of this Court suspending operation of final assessment order dated 19.01.2015 passed by the respondent No.2 was communicated by a Lawyer's notice to the respondents on 28.01.2015. According to the petitioner, the said Lawyer's notice was served on the respondents on 28.01.2015. A copy of that notice is annexed as Annexure P/2. The copy served in the Office of the respondent No.1 shows that it was received on 28.01.2015, but no time has been mentioned. The copy of notice served in the Office of the respondent No.2 shows that it was received on 28.01.2015 at 11-20 am.

According to the respondent No.1, he had no knowledge about the order passed by the respondent No.2 on the issue. Respondent No.2 contended that the disconnection was made at 09-00 am on 28.01.2015 since he had no knowledge about any order passed by this Court. There is nothing before this Court to show that the disconnection was made after 11-20 am on 28.01.2015, i.e. after receipt of notice of the order passed by this Court.

To establish that a person has committed contempt of Court, *prima facie*, it is to be proved that there was an order passed by the Court and that the respondents willfully and deliberately violated the order with the intention of lowering the dignity and image of the Court.

The respondent No.1 contended that he had no knowledge about the action taken by the respondent No.2 in respect of the petitioner's cold storage and that he has all regard about the order passed by this Court. The respondent No.2 contended that the disconnection was made as per his order at 09-00 am on 28.01.2015 and he received the notice at 11-20 am and, therefore, there was no deliberate and willful violation of the order on his part and he has also submitted that if there was anything wrong, he sought apology for it.

The interim order was passed by this Court on 27.01.2015. It was an *ex parte* order without service of notice on the respondents. The notice regarding the order was communicated to respondent No.2 on 28.01.2015 at 11-20 am so far the records placed before this Court. According to the respondents, the disconnection of the electricity was made at 09-00 am on 28.01.2015. There is nothing to show that the disconnection was made after 11-20 am on 28.01.2015. Therefore, I find no willful and deliberate disobedience of the order passed by this Court and hence, the petition seeking contempt is closed.