

**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**CONTEMPT CASE No.1729 of 2014**

**ORDER:**

This contempt case under Sections 10 to 12 of Contempt of Courts Act is filed by the petitioners/appellants against the sole respondent requesting to punish the respondent for willful violation of the injunction order dated 11.10.2007, which was revived by this Court by order dated 23.09.2014 passed in S.A.M.P.No.1798 of 2014 in S.A.No.1280 of 2007.

2. I have heard the submissions of the learned counsel for the petitioners and the learned counsel for the respondent. I have perused the affidavit filed in support of the contempt case and also the counter-affidavit filed by the respondent.

3. The facts necessary for consideration in brief are as follows:

The Second Appeal of the petitioners was dismissed for default on 05.08.2014. Therefore, they had filed S.A.M.P.No.1798 of 2014 for restoration. The learned counsel for the respondent having sought time for filing counter did not ultimately file a counter resisting the said application. This Court by an order dated 23.09.2014 had allowed the said S.A.M.P. and had restored the Second Appeal to file by setting aside the dismissal order for default dated 05.08.2014. While restoring the Second Appeal to file this Court had observed that interim orders, which were in force as on the date of the dismissal of the second appeal for default shall stand revived. Now, the grievance of the petitioners is that in spite of the fact that by the above said orders this Court had revived the earlier interim orders, the respondent having knowledge of

the orders of this Court had intentionally and willfully blocked the Raastha and prevented the petitioners from using the Raastha, which is the subject matter of the lis, and that the respondent had also given a complaint to the police and that the police had summoned the petitioners and that at that time the petitioners had shown the order of this Court to the police and that in spite of the said facts, the respondent is not allowing the petitioners to use the raastha and that, therefore, the respondent is liable for punishment for willful violation of the injunction orders of this Court.

4. The case of the respondent is that on the date when the Second Appeal was dismissed for default he was very much present in the Court and that from that date onwards he was under the impression that the interim orders were not in force and that he had never prevented the petitioners from using the raastha when the orders were in force and that later he could not contact his counsel at Hyderabad and that when the petitioners tried to use the raastha in October, 2014 he had approached the local police and that by that time the petitioners were already in the Police Station and that at that time they had produced the restoration order of his Court and that then only he had come to know about the revival of the earlier interim orders and that by that time the Petitioners had already removed the stones and were using the raastha and that he had never prevented them from using the raastha and that the allegation that he had violated the orders of this Court is not correct and that he had come to know of the revival of the earlier interim orders only on 09.10.2014 and that he had never violated the orders of this Court much less with knowledge and willfully.

5. At the time of hearing learned counsel for both the sides advanced arguments in line with the respective pleaded cases, which are already

stated supra.

6. There is no dispute that there is an order in favour of the petitioners and against the respondent. The only question is as to whether or not the respondent had knowledge of the said Order of this Court and whether the violation, if any, of the Order is willful or not.

7. The learned counsel for the petitioners would submit that the orders were passed in the Miscellaneous Petition and that the interim order was revived in the presence of the learned counsel for the respondent and that in the counter affidavit the respondent did not state that the counsel did not inform him about the restoration order passed by this Court and that therefore, it shall be presumed that he was having knowledge of order and that violation is willful.

8. On the other hand, the learned counsel for the respondent would submit that he had taken only one adjournment for filing the counter in the M.P. that was filed seeking restoration of the second appeal and that later he could not file a counter and that the application for restoration was allowed by this Court and that it is stated in the present Counter affidavit of the respondent that he could not contact his counsel. The learned Counsel for the respondent had further submitted at the Bar that he did not inform about the revival of the interim order to the client i.e., the respondent, till a copy is received and that, therefore, during the period in which the violation was alleged, the respondent had no knowledge of the revival order, and, hence, the obstruction, if any, caused for the use of the raastha is only on account of the lack of knowledge of the orders of this Court and that such obstruction is not willful or deliberate and that since the date of the knowledge of the orders of this Court and even at present the respondent is not objecting

and is not causing any obstruction for the use of the subject raastha by the petitioners.

9. I have given earnest consideration to the facts and I have noted the submissions. Having regard to the facts and the circumstances of the case and having considered the plausible reasons assigned by the respondent, this Court is of the considered view that there is no unimpeachable evidence to hold that the respondent had knowledge of the order of this Court and that on the other hand there is reason to accept that the respondent had come to the know of the order, after its revival, only when the petitioners had produced a copy of the revival order before the Police concerned and not before. In that view of the matter there is no material to hold that the respondent had prevented the petitioners from using the raastha willfully and with the knowledge of the said orders. Further, the respondent had categorically stated that the petitioners are using the raastha even now. Therefore, I find that no grounds are made out to allow the Contempt Case and punish the respondent. Be that as it may, the submission of the respondent that he is not preventing the petitioners from using the raastha and that he is not going to cause any obstruction in that regard till the final disposal of the second appeal is recorded.

10. The Contempt Case is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Contempt case shall stand closed.

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**M. SEETHARAMA MURTI, J**

July 17, 2015

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