

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Contempt Case No.1903 of 2014

ORDER:

This is an application by the petitioners in C.R.P.No.1149 of 2013 under Sections 10 to 12 of the Contempt of Courts Act requesting to punish the 2nd respondent in the said revision petition, i.e., the respondent herein, for wilful and deliberate violation of the orders of this Court dated 28.04.2014 in the aforementioned revision petition.

2. The case of the petitioners, as stated in the affidavit of the 1st petitioner, in brief, is this: 'The petitioners had filed E.A.No.56 of 2009 for return of documents deposited in connection with the mortgage loan transaction. The respondent herein and the 1st respondent Bank in the said application had resisted the execution application filed by the petitioners. The court of execution had dismissed the said petition of the petitioners, by order dated 21.01.2013. Aggrieved of the said orders, the petitioners had preferred C.R.P.No.1149 of 2013 before this court. This Court, by orders dated 28.04.2014 had allowed the said revision petition filed by the petitioners and had set aside the orders of the court below. As per the orders of this Court, the 2nd respondent in the execution application, i.e., the respondent herein is bound to return the title deeds to the petitioners. The orders of this Court are binding on the respondent. However, the respondent had not complied with the orders of this court. Therefore, the petitioners had got issued a notice dated 21.06.2014 calling upon the respondent to return the original documents.

Having received the said notice on 23.06.2014, the respondent did not choose either to issue a reply or comply with the demand in the notice. The petitioners are entitled for return of their title deeds and link documents from the respondent herein, as per the orders of this Court in

the revision petition. Therefore, the respondent is liable to be punished for his wilful and deliberate violation of the orders of this court.'

3. The respondent had filed a counter affidavit *inter alia* contending as follows: 'The documents, which were deposited at the time of mortgage loan transaction, were in court at the time when the registered assignment deed was executed and the decree obtained by the Bank stood assigned. The said documents having been filed by the plaintiff bank were taken return by the Bank alone and not this respondent. There is no finding by any court nor there was any documentary evidence to show that the documents were taken return by this respondent. The prayer in E.A.No.56 of 2009 is explicit and that the prayer is made against the Bank only. Hence, there cannot be any operative order against this respondent and this respondent cannot be styled as a contemnor. This respondent has always held and holds the orders of the court and justice in high esteem and regard. This respondent has not violated any orders to be termed as a contemnor.

The court below had restored the application in E.A.No.56 of 2009 to file and posted the matter to 19.01.2015. The documents were neither taken return from the court nor were in the custody of this respondent. The case is misconceived. The assignment is registered in favour of a society and the society is not a party to the proceedings. This respondent points out that the society is a necessary party. This respondent is acting in his capacity as a Secretary of the society. He is not liable in his individual capacity. By any stretch of imagination, it cannot be said that this respondent has committed contempt and he cannot be styled as a contemnor. Any person is entitled to receive the documents as mortgagor from the mortgagee only after the mortgagee has obtained a decree for foreclosure and only on a finding of the Court regarding foreclosure of the decree by full satisfaction and redemption of mortgage. The said course of events had not taken place in this case.

The order of executing court in E.P.No.49 of 1990 holding that right to redeem mortgage has been extinguished, has become final. There is no deliberate violation of the orders of this court. Hence, the petition may be dismissed.'

4. I have heard the submissions of the learned counsel for the petitioners and the respondent. I have perused the material record.

5. Now, the point for determination is:

'Whether the petitioners have made out valid and sufficient grounds to punish the respondent under Sections 10 to 12 of the Contempt of Courts Act for the stated wilful and deliberate violation of the orders of this court dated 28.04.2014 in C.R.P.No.1149 of 2013? What shall be the appropriate order to be made in this case?

6. **POINTS:**

6. (a) The Decree Holder Bank having obtained a final decree in a suit filed on the foot of a mortgage had filed an execution petition and prosecuted the same against the 1st judgment debtor and the legal representatives of the deceased 2nd judgment debtor. While so, the respondent herein had filed a claim petition and the same was dismissed. The appeal preferred by him before this court was also dismissed as withdrawn. Having obtained a deed of assignment from the Decree Holder Bank, the respondent herein had stepped into the shoes of the Decree Holder Bank. He had approached the court of execution and had taken return of the title deed document relating to the mortgaged property. Later, the judgment debtor sought permission to deposit the amount due under the decree and had also sought return of the documents. Though the said petitions were earlier dismissed, later, by virtue of the orders dated 14.06.2014 passed in E.A.No.144 of 2014 by the court of execution, the review petition was allowed and as a sequel

E.A.No.334 of 2003 was allowed subject to the condition of the review petitioner taking steps for revival of the E.P, which was dismissed for statistical purpose. E.A.No.215 of 2004 which was filed for revival of the E.P 49 of 1990 was allowed. E.A.No.334 of 2003 filed by the Judgment debtor also stood allowed. The claim petition and the revision filed by the respondent were dismissed by this Court. This court declined to revise the orders in E.A.No.215 of 2004, E.A.No.144 of 2004 and E.A.No.334 of 2004. Thus, the orders in favour of the judgment debtors in all aspects have become final and binding. Now, the respondent herein who is the assignee of the rights of the decree holder bank had become entitled to realise the decree debt having stepped into the shoes of the Decree Holder Bank. The amount due under the decree was already deposited by way of challan was not disputed before this court at the time of hearing of the revision. Thus, the mortgage debt stood repaid as per the final decree. Therefore, the judgment debtor/mortgagors are entitled for return of their title deeds and link documents in respect of the mortgaged property. The respondent herein, who had stepped into the shoes of the decree holder bank as an assignee of the decree obtained by the decree holder bank, and he having realised the decree debt in view of the deposit made by the judgment debtors into court is bound under facts and law to return the documents to the judgment debtors who are the petitioners herein. Therefore, this court having examined the chronology of events, while setting aside the orders of the court below in E.A.No.56 of 2009 in E.P.No.49 of 1990 in O.S.No.226 of 1973 had allowed the C.R.P.No.1149 of 2013. Further, the said order of this court has become final is not in dispute. Therefore, the 2nd respondent in the revision petition who is the respondent herein is bound to return the title deeds, i.e., the documents in respect of the mortgaged property to the revision petitioners/petitioners herein. He did not return the documents till today. Despite receiving a legal notice dated 21.06.2014 got issued by the petitioners, he had neither issued a reply nor complied with the

demand in the notice by returning the documents. Even if the documents are in court, he is bound to take return of the same and deliver to the petitioners herein or in the alternative he shall extend cooperation to the petitioners herein for taking return of the documents from either the Bank or the Court. Further, if he had already taken return of the documents from the court below or the Bank, it is his bounden duty to return the documents to the petitioners as per the facts and law. In case the Bank has taken return of the documents from the Court, being the assignee of the decree obtained by the Bank and having stepped into the shoes of the Bank and having also realised the decree debt, the respondent herein has to take steps to see that the documents are returned to the petitioners as it is the legal obligation of the respondent to return the documents to the petitioners. Since he has neither returned the documents to the petitioners nor has taken any steps for returning the documents, the petitioners, who are aggrieved, filed this contempt case. Since the order of this Court has become final, any contention that the respondent is not required to comply with the orders dated 28.04.2014 passed in C.R.P.No.1149 of 2013 cannot be countenanced. Therefore, this court finds no tenable objections in the counter.

6. (b) In the decision in **Ram Kishan v. Sh.Tarun Bajaj and Ors.**^[1], the legal position, which is relevant, is stated as follows: "Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly, intentional, conscious, calculated and deliberate with full knowledge of consequences flowing there from. It excludes casual, accidental, *bona fide* or unintentional acts or genuine inability. Wilful acts do not encompass involuntary or negligent actions. The act has to be done with a 'bad purpose or without justifiable excuse

or stubbornly, obstinately or perversely'. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be calculated action with evil motive on his part. Even if there is disobedience of an order, but such disobedience is the result of some compelling circumstances under which it is not possible for the contemnor to comply with the order, the contemnor cannot be punished. 'Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.' One of the contentions of the respondent is that the documents that were filed by the plaintiff bank were taken return by the Bank alone and not this respondent. However, if that is so, the respondent who had suffered an order ought to have approached the Bank and ought to have requested the Bank to deliver the documents to the petitioners and should have accordingly complied with the orders in the revision petition. He did not do so. If the documents are lying in the court, the respondent ought to have taken return and delivered the same to the petitioners. Or in the alternative, he ought to have given a reply to the notice of the petitioners stating the circumstances and ought to have extended cooperation to the petitioners for obtaining possession of their documents. However, whether the documents were taken return either by the Bank or the respondent and whether the documents are still in the court are facts, which are to be verified. Therefore, it is just and fair to direct the respondent to deliver to the petitioners, the documents as per the orders of this court within two months from the date of the receipt of a copy of this order. Failing such compliance, the petitioners shall approach the court of execution and file an appropriate execution application and seek the remedies, which the law permits. The points are accordingly answered.

7. The contempt case is accordingly disposed of. No costs.

M. SEETHARAMA MURTI, J

27th February 2015
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[\[1\]](#) 2014(2) SCJ 694