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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION No. 163 OF 2016
IN
WRIT PETITION No. 3913 OF 2013

Shri Arun Kumar Saxena ... Petitioner
Vs.
Shri Gangaram Aggarwal,
The Secretary,
Ministry of Railways (Railway Board) & Ors. ... Respondents

Mr. S. R. Atre, for the Petitioner.
Mr. T. J. Pandian, for Respondent No. 3.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : JULY 25, 2016

PC.

1. According to the Petitioner, the Respondents have committed breach of the order passed by this Court dated 2.7.2013 in Writ Petition No. 3913 of 2013, and therefore they have committed contempt of this Court as per the provisions of the Contempt of Courts Act, 1971.

2 Brief facts of the case are as under:

The Petitioner was transferred from Pune Railway Station to Loni Railway Station as a station master on 29.7.2005. The Petitioner did not vacate the quarter which was allotted to him when he was posted at Loni. The Petitioner was transferred back to Pune on 9th March, 2007. The Respondent- Railway authorities came to a conclusion that the Petitioner has been in unauthorised occupation of the railway quarter, held by him at Pune, and therefore, he was directed to pay damage rent @ Rs. 9,800/- per month from 10th October, 2005, and further directed to vacate the quarter immediately. The Petitioner challenged the order of recovery of damage rent @ Rs.9,800/- from 10th October, 2005 by filing an application before the CAT, Bench at Mumbai. The Tribunal was pleased to pass an interim order on 11.5.2011 granting stay to the recovery from the salary of the Petitioner on account of damage rent, which was sought to be recovered by the railway authority. However, subsequently on 12th July, 2011 the Tribunal modified its order and directed the Petitioner to pay the damage rent, as calculated by the Respondent from 10th October 2005 to 9th March 2007. The Tribunal, however, stayed the

recovery of the balance amount.

3. The Tribunal, however, decided Original Application No. 29 of 2013 by judgment and order dated 29.1.2013 and dismissed the said OA preferred by the Petitioner, and further held that the Petitioner was an unauthorised occupant of the premises, after he was transferred from Pune, and therefore, he was liable to pay the penal rent.

4. Being aggrieved by the said order, the Petitioner preferred writ petition in this Court, being Writ Petition No. 3913 of 2013. The said petition is pending and an interim order was passed on 2nd July, 2013, granting interim relief in terms of prayer clause (B). The said prayer clause (B) reads as under:

“(B) Pending the hearing and final disposal of the present writ petition, this Hon'ble Court be pleased to restrain the Respondents, their servants and / or agents from effecting any further recovery from the monthly emoluments of the Petitioner.”

5. It is the case of the Petitioner that he had paid the damage rent from 10.10.2005 to 9.3.2007. This Court by virtue of an interim order has granted stay to the further recovery. The recovery, according to the Respondents, was not made thereafter. However, during

pendency of this petition, the Petitioner attained the age of superannuation on 31.1.2016, thereafter when he applied for his retiral benefits, the amount of Rs. 9,85,931/- has been withheld from his retiral dues.

6. The learned counsel appearing on behalf of the Petitioner submitted that withholding the amount of Rs. 9,85,931/- is in breach of the interim order passed by this Court dated 2nd July, 2013. It is, therefore, submitted that the Respondents have committed breach of the said order and they are liable to be punished under the Contempt of Courts Act, 1971.

7. On the other hand, Mr. T. J. Pandian, learned counsel appearing for Respondent No. 3 submitted that the said amount was withheld from the retiral dues, so that in the event, Petitioner's petition Writ Petition No. 3913 of 2013 was dismissed, the said amount could be recovered from the amount which was withheld by the railway authorities. It is submitted that therefore the Respondents have not committed breach of the order.

8. We are of the view that there is much substance in the

submissions made by the learned counsel appearing for the Respondents. Respondents in their reply dated 5th July, 2016 have stated that the Petitioner may be permitted to withdraw the said amount, upon his furnishing security to the satisfaction of this Court. It is further submitted that the Respondents were ready and willing to deposit the said amount in this Court. However, this offer is not accepted by the Petitioner.

9. It is obvious that if the Petitioner does not succeed in the writ petition, which is filed by him in this Court, it will be difficult for the railway authorities to recover the said amount from him. We are of the view that the stand taken by the Respondents is genuine one, and there is no breach of the order passed by this Court on 2nd July, 2013. Contempt petition is therefore dismissed.

[M. S. SONAK, J.]

[V. M. KANADE, J.]

Vinayak Halemth