

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.286 OF 2016
in
ORIGINAL APPLICATION NO.357 OF 2015**

Phoenix Arc Private Limited ... Petitioner
vs
Accura Infotech Private Limited & ors . Respondents

Mr.C.T.D'Souza for Petitioner
None for Respondents

CORAM: G.S.KULKARNI,J
DATE: 22 AUGUST 2016

P.C.

1. Heard learned counsel for the petitioner.

2. The contempt which has been alleged is of an order dated 4 September 2015 passed by the Presiding Officer of the Debt Recovery Tribunal-III Mumbai. The prayer of the petitioner is that the respondents have committed a breach of the statement made before the learned Presiding Officer of the Debt Recovery Tribunal-III Mumbai as contained in para 3 to the extent it records that the respondents would disclose their assets of movable and immovable properties on oath within 30 days.

Para 3 of the said order reads thus :

“There is a question of grant of interim relief in respect of mortgage property and disclosure of their assets of movable and immovable properties. The learned counsel for the defendants makes a statement that defendants will not transfer, alienate,

create third party interest in respect of properties mortgaged. He further states that the defendants will disclose their assets of movable and immovable properties on oath within 30 days. He makes a statement that no third party interest will be created in respect of the properties so disclosed. In view of the above statement made from side of defendants, no interim order is required.” (Emphasis supplied)

3. It is submitted that as per the statement made on behalf of the respondents, the respondents having not disclosed their assets movable and immovable on oath within 30 days and thus they are liable to be proceeded under the Contempt of Courts Act, 1971.

4. Having heard learned counsel for the petitioner and having perused the order passed by the Presiding Officer of the Debt Recovery Tribunal-III Mumbai, I am of the clear opinion that this petition cannot be entertained. The order in question is an interlocutory order. The logical consequences of non-disclosure if any, would entail to the benefit of the petitioner in further proceedings. It is not the case that the petitioner has no remedy to pursue the proceedings before the Presiding Officer of the Debt Recovery Tribunal even on the issue of disobedience of the order of the Tribunal.

5. The petitioner in approaching this Court has

overlooked the provisions of section 19 (7) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which confers sufficient powers on the Tribunal to initiate action against the party disobeying its orders. The provision is based on the same principles of Contempt of Courts Act. Sub-section (17) of section 19 reads thus :

“In case of disobedience of an order made by the Tribunal under sub-sections (12) (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.”

6. The Supreme Court in the case **T.Sudhakar Prasad vs.Govt.of A.P. & ors reported in (2001) 1 Supreme Court Cases 516** considering the provisions of section 17 of the Administrative Tribunals Act,1985 has held that though the power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction power and authority to hear and decide the matters covered by sub-section (1) of section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which was vested in the High Court to punish for contempt of itself in the matters now falling within the

jurisdiction of Tribunals, if those matters would have continued to be heard by the High Court, has now been conferred on the Administrative Tribunals under section 17 of the Act. It is held that the jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971 and powers having been conferred on the Administrative Tribunal the jurisdiction of the High Court to that extent would stand obliterated as the same jurisdiction which is vested in the High Court to punish for contempt by itself in matters would fall in the jurisdiction of the Tribunal. It is also held that the provisions of the Contempt of Courts Act, 1971 are not as if lifted and incorporated in the text of the Administrative Tribunals Act, they remain there, where they are, yet while reading the provisions of the Contempt of Courts Act in the context of Tribunals, the same will be so read as to read the word “Tribunal” in place of the word “High Court”. The following observations of their Lordships are required to be noted:

“The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction, power and authority to hear and decide the matters covered by sub-section (1) of section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of Tribunals if those matters would have continued to be heard by

the High Court has now been conferred on the Administrative Tribunals under section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting section 17 arose, firstly to avoid doubts and secondly because the Tribunals are not “courts of record.” While holding the proceedings under section 17 of the Act the Tribunal remains a Tribunal and so would be amenable to the jurisdiction of the High Court under Articles 226/227 of the Constitution subject to the well established rules of self restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the Tribunals. However, any order or decision of the Tribunal punishing for contempt shall be appealable only to the Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in section 19 of the Contempt of Courts Act 1971 read with section 17 of the Administrative Tribunals Act 1985. Section 17 of the Administrative Tribunals Act is a piece of legislation by reference. The provisions of the Contempt of Courts Act are not as if lifted and incorporated in the text of the Administrative Tribunals Act (as is in the case of legislation by incorporation) they remain there where they are yet while reading the provisions of the Contempt of Courts Act in the context of Tribunals the same will be so read as to read the word “Tribunal” in place of the word “High Court” wherever it occurs, subject to the modifications set out in section 17 of the Administrative Tribunals Act.”

7. A useful reference can also be made to the decision of the Division Bench of the Karnataka High Court in the case of **Shaik Mohiddin vs Section Officer Karnataka Electricity Board, Kaiwara reported in 1994 CRI. L.J.3689** wherein the Court has held that it is not necessary for the High Court to take cognizance of the complaints of disobedience of breach of injunction order issued during pendency of a suit inasmuch as the very Court itself whose orders are alleged to have been disobeyed being competent to make use of the machinery available at its disposal and pass appropriate orders giving

reliefs to the aggrieved in accordance with law. In the facts of the case it was held that as the Civil Procedure Code provided for procedure for seeking remedy to enforce the right available to a citizen arising out of substantive law and therefore the question of it being construed as a special law to hold that it prevails over the general law causes some difficulty. The Division Bench agreed with the view which was taken in an earlier Division Bench judgment in **Rudraiah vs State of Karnataka AIR 1982 Kar 182**. The Court in paragraphs 5, 20 and 21 has observed thus:

5. “In cases of disobedience or breach of injunction order issued temporarily during the pendency of a suit, either under R.1 or 2 of Order 39 CPC it is inexpedient to invoke and exercise contempt jurisdiction. In such cases, action is contemplated by the very Court which issues the injunction order under R.2A of Order 39 CPC. It contemplates the forfeiture of property as also putting of the person who commits breach into civil prison for a period not exceeding three months. The provision thereunder is obviously based on the principles of Contempt of Court. That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder for forcing the party to obey the injunction order.”

20. To conclude, we are clearly of the opinion that so far as the complaint of disobedience of the orders of the Courts below and remedial measures sought for by invoking section 10 of the Act are concerned it is not necessary for this Court to take cognizance of the complaints of this kind in as much as the very Court itself whose orders are alleged to have been disobeyed being competent to make use of the machinery available at its disposal under Rule 2A of O.39 of CPC can pass appropriate orders giving reliefs to the aggrieved in accordance with law. It is only when the citizen fails to avail himself of that remedy or when it becomes impossible for him to get the remedy at the hands of the Court passing the order alleged to have been disobeyed, he may think of approaching this Court under section 10 of the Act and not otherwise.”

21. For the above reasons we drop these proceedings. However, it is open to the complainants to seek for appropriate reliefs before the Courts for disobedience of whose orders, these complaints are filed. Ordered accordingly.”

8. Adverting to the principles of law which can be derived from the above decisions what is manifest is that the intention of the legislature is that a party who is aggrieved by any disobedience of the order passed by the Tribunal has to approach the Tribunal as a remedy is made available to such a party in that regard. Such jurisdiction is required to be invoked failing which the provisions conferring jurisdiction against disobedience of the orders vested in the very same Court/Tribunal would be rendered nugatory.

9. Now coming to the case in hand, the Court cannot be unmindful that the nature of the contempt as being alleged would require an inquiry as to whether the alleged disobedience on the part of the contemnor is an action amounting to intentional and deliberate disobedience of the orders of the Tribunal, which would be precisely the scope of inquiry, for which the Tribunal is clothed with powers as conferred under sub-section (17) of section 19 of the Act.

10. In any event, this Court in exercise of the jurisdiction conferred under the Contempt of Courts, Act 1971 as also jurisdiction

under Article 215 of the Constitution of India would not exercise a executory jurisdiction against the orders passed by the learned Presiding Officer of the Debt Recovery Tribunal and more particularly considering the nature of the order passed and the disobedience complained, it is for the Tribunal to decide and pass appropriate orders on any such application if the petitioners so apply.

11. Having regard to the view which I have taken, I do not find it necessary to advert to the decisions which are relied on behalf of the petitioners which are in the context of breach of an undertaking amounting to contempt. There cannot be any quarrel on this proposition of law. If the petitioner's complaint is of disobedience of the orders passed by the Tribunal as observed above, the remedy for the petitioner is to approach the Tribunal and it would be permissible for the petitioner to raise all such contentions before the Tribunal.

12. For the above reasons the present petition need not be entertained and is rejected, however, permitting the petitioner to invoke the jurisdiction of the Tribunal under sub-section (17) of section 19 of the Recovery of Debts due to Banks and Financial

Institutions Act, 1993. All contentions in that regard are kept open.

{G.S.Kulkarni, J}