

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION (L) NO. 51 OF 2015
IN
WRIT PETITION NO. 1172 OF 2015**

Dr. Sheetal C. Shah .. Petitioners.
vs.
Mr. Domind De'Mello and ors. .. Respondents.

Mr. V.S. Kapse i/b Fast Track Legal for the petitioner.
Mr. Brian D'Lima i/b D'Lima & Associates for respondent Nos.1 to 3.
Ms Savita Ganoo i/b D'Lima and Associates for respondent No.4.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.
DATE : 04 APRIL 2016.**

P.C.:

- 1] Heard learned counsel for the parties.
- 2] The petitioner has alleged that the respondents have willfully and deliberately avoided compliance with the directions issued by this Court in its order dated 17 June 2015, in the matter of restoration of possession of the suit premises to the petitioner.
- 3] The petitioner has instituted securitisation application before the Debt Recovery Tribunal (DRT) questioning notice issued by the respondent-bank demanding an amount of approximately Rs.31 lakhs. The petitioner failed to obtain any interim relief from the DRT and therefore, instituted an appeal

before the Debts Recovery Appellate Tribunal (DRAT). On the ground that the Chairman of DRAT was not readily available, the petitioner instituted Writ Petition (L) No. 1361 of 2015 before this Court and applied for interim reliefs to restrain the respondent bank from taking over suit premises.

4] This Court in the aforesaid writ petition, by order dated 6 May 2015, directed maintenance of *status quo* for a period of two weeks, so as to enable the petitioner to approach the DRAT, Chennai and obtain interim reliefs. The petition was in fact, disposed of.

5] After expiry of two weeks, the bank, it appears, has taken over the possession of the suit premises. The petitioner, thereupon, moved this Court in Writ Petition No. 1172 of 2015 complaining that fair opportunity was denied to the petitioner. This Court, by order dated 17 June 2015 directed the respondent-bank to restore the possession to the petitioner within 48 hours. The petitioner was again given liberty to approach DRAT and pursue the application for interim relief.

6] The respondent bank instituted Petition (S) for Special Leave to Appeal (C) No. (s). 17057 of 2015 before the Hon'ble Supreme Court. Therein, *status quo* as regards possession, title and interests of the property in question was directed to be maintained by the parties. The Hon'ble Supreme Court has also recorded the statement made on behalf of the petitioner that the

present contempt proceedings, instituted in the meanwhile, will not be pressed.

7] The special leave petition was disposed on 24 September 2015, by continuing the *status quo* for a period of thirty days and at the same time, granting the petitioner liberty to approach the DRAT, which had, in the meantime commenced functioning.

8] As some ambiguity was projected in the orders made by the Hon'ble Supreme Court, the bank, applied for clarification and the Hon'ble Supreme Court on 15 December 2015, made the following order:

*“UPON hearing the counsel the Court made the following
O R D E R*

We have heard learned Counsel for the parties. In order to put to any misunderstanding at rest, we direct the Debt Recovery Appellate Tribunal, Mumbai to decide the disputes between the parties on merits, without being influenced, in any manner whatsoever, by the Orders passed by the High Court. Special Leave Petition stands disposed of.”

9] In pursuance of the liberty granted by the Hon'ble Supreme Court, the petitioner, by order dated 15 January 2016, has obtained interim reliefs from the DRAT. In the connected Writ Petition No. 834 of 2016, instituted by the respondent-bank, however, we have stayed the order dated 15 January 2016. This stay was granted by us because the DRAT has granted a complete waiver in the matter of pre-deposit, even though, the provisions

contained in Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI) do not permit or contemplate such complete waiver. As such, the very entertainment of the appeal by the DRAT, was found to be *prima-facie*, in breach of the provisions contained in Section 18 of the SARFESI as interpreted by the Hon'ble Supreme Court in ***Narayan Chandra Ghosh V. UCO Bank and ors.***¹. That apart, upon perusing the order dated 15 January 2016, we also found that the DRAT has permitted itself to be influenced by the earlier orders made by this Court, even though, the Hon'ble Supreme Court, by its aforesaid order dated 15 December 2015, had made it clear that the DRAT should decide the matter, without being influenced, in any manner whatsoever, by the orders made by this Court.

10] Upon perusing the material on record, including *inter alia*, the reply filed by the respondents, we are satisfied that this is not a fit case for exercise of our contempt jurisdiction.

11] The respondents had taken out proceedings against the order dated 17 June 2015, of which, the contempt is alleged. The respondents, did obtain interim reliefs from the Hon'ble Supreme Court, in the matter of compliance with the directions contained in the order dated 17 June 2015. The petitioner, at the time when the Hon'ble Supreme Court made its order dated 9 July 2015, made a statement that the contempt proceedings shall not

1 AIR 2011 Supreme Court 1913

be pressed. The petitioner has contended that such statement was to survive only until disposal of the special leave petition. The respondents, however, contend that this was not so. They further contended that the Hon'ble Supreme Court in its earlier order dated 9 July 2015, has not recorded that the statement was limited up to disposal of special leave petition.

12] At this stage, we are really not required to address the aforesaid controversy. Suffice to note that the interpretation suggested by the respondents cannot be rejected outright, as an implausible one. In any case, the issue is really not whether interpretation suggested by the petitioner or the respondents is right. The issue is whether there is any lawful or deliberate disobedience of the orders made by this Court. We are satisfied that in the facts and circumstances of the present case, it cannot be said that the respondents have willfully or deliberately breached the directions issued by this Court. The respondents no doubt, have agitated the issue of validity of directions before the Hon'ble Apex Court. The respondents have also obtained certain interim reliefs on basis of which, they have continued in possession of the suit premises. Thereafter, the petitioner was granted liberty to obtain interim reliefs from the DRAT. Upon cumulative consideration of such facts and circumstances, we are not satisfied that this is a fit case for exercise of our contempt jurisdiction.

13] It is settled position that jurisdiction of contempt is not to be lightly exercised. The Court has to be satisfied that there has been willful and deliberate violation of its directions for initiating or taking any action against the party under the provisions of the Contempt of Courts Act, 1971. In situation, where two interpretations are reasonably possible and where, the party alleged to have committed contempt is perusing remedies available under the law, there is no case for exercise of contempt jurisdiction.

14] Accordingly, we dismiss this contempt petition. There shall be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)