

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Contempt Case no.14 of 2012
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ORDER:

This contempt case under Sections 10 to 12 of the Contempt of Courts Act is filed by the petitioner requesting to punish the 1st respondent for violation of the orders dated 29.11.2011 of this Court passed in WP.no.6320 of 2011.

2. I have heard the submissions of the learned counsel for the petitioner and the learned counsel for the 1st respondent. I have perused the material record.

3. Though the contempt case was originally filed against four respondents, the case against respondents 2 to 4 was dismissed *vide* separate orders of this Court.

4. The petitioner and the 1st respondent hereinafter would be referred to as the landlord and the tenant/1st respondent for convenience and clarity.

5. The 1st respondent is a tenant in the subject shop premises of the petitioner/landlord. While so, when the GHMC and the Assistant City Planner, GHMC had undertaken demolition activity of the said shop premises in the occupation of the tenant situate at Badi Chowdi, Narayanaguda, Hyderabad where he is running a business, he along with another tenant i.e., the 2nd respondent herein brought the writ petition 6320 of 2011 against the GHMC and its Assistant City Planner and also the petitioner, who is the landlord, to declare the said action viz., the demolition activity undertaken by the GHMC and its Officer in the process of road widening by taking consent from the landlord without giving proper notice and opportunity to the 1st respondent/tenant and the other tenant as illegal, arbitrary and for other reliefs. In the said writ petition, the grievance of the writ petitioners including

the 1st respondent herein was that under the guise of the consent given by the landlord, the Corporation is trying to demolish the entire structure. However, in view of the fact that the owner of the building has given consent to acquire the land in an extent of 25 feet for the purpose of road widening, the structure in the occupation of the tenant was required to be demolished only to that extent. Hence, the tenant had voluntarily come forward to demolish the structure to that extent and to use the remaining extent of structure for continuing his business by erecting necessary protection shutters to the shop. Thus, the tenant wanted to safeguard his interests in the matter. In the said circumstances, this Court disposed of the writ petition directing the other tenant of another premises and the tenant of the subject premises i.e., the 1st respondent herein to demolish the respective structures to an extent of 25 feet at their respective expenses and permitted them to thereafter erect shutters within a period of four weeks from the date of the receipt of the copy of the order in the writ petition; and further directed that the entire exercise shall be completed within four weeks. In the said orders, the Municipal Corporation was directed not to object for erecting of the shutters by the petitioners therein including the tenant/1st respondent herein. Pursuant to the orders in the above writ petition of this Court, the tenant/1st respondent had demolished the structure in his occupation as a tenant and erected a shutter and is now continuing his business in the shop property that remained after such demolition.

6. The complaint of the landlord in this contempt case is as follows: -
“Contrary to the orders of this Court, the 1st respondent/tenant had demolished the Mezzanine floor of the shop premises though as per the orders of this court he was required to demolish the structure up to 25 feet only. He had illegally, wilfully and deliberately demolished the Mezzanine floor admeasuring five (5) feet while demolishing 25 feet earmarked for demolition for road widening purpose. There are no Court orders permitting to demolish the Mezzanine floor. He did not take prior permission either from the landlord or from the court for demolition of the Mezzanine floor. The

tenant cannot take independent decision to demolish Mezzanine floor, which the Court did not permit him to demolish. Such demolition of the Mezzanine floor is wilful and in total violation of the orders passed by this Court. Due to the improper demolition of the Mezzanine floor, the super structure behind the shop premises developed cracks and became weak and it cannot stand and is likely to collapse. The tenant had got the plastering work done and got erected a shutter. The said actions are wilful and deliberate and amount to contempt of court attracting punishment under Sections 10 to 12 of the Contempt of Courts Act. The agreed lease period is over long time back. The possession of the shop premises is illegal. In the circumstances, the landlord got issued a notice dated 25.12.2011 calling upon the tenant to comply with the orders of this court in the writ petition by reconstructing the Mezzanine floor as was in existence earlier within three days from the date of the receipt of the said notice but, the 1st respondent did not comply with the demand in the said notice. Hence, the present contempt case is filed to punish the tenant for violation of the court orders.”

7. The defence of the tenant, which is relevant, in brief, is this:

This Court in the orders passed in the writ petition had permitted the tenant/this respondent to demolish the shop up to 25 feet to enable the Corporation to take up road widening programme and further permitted the tenant to erect a shutter in the remaining 6 to 7 feet property to enable him to continue his business. As permitted by this court, the tenant had demolished the structure upto 25 feet within the time fixed by this court and the Corporation had taken over the property. In the remaining 7 feet property, the tenant had erected shutter and has been doing his business in that small area. The said business is his only source of livelihood. The averment that this respondent/tenant had demolished the Mezzanine floor of the shop is incorrect. The Mezzanine floor was there since inception for the purpose of storing some articles and books etcetera and it had fallen down on account of the demolition of the structure. The averment that this respondent/tenant had intentionally and illegally demolished the Mezzanine floor admeasuring 5 feet in violation of court orders is denied. Having regard to the fact that only 6 to 7

feet had remained, the tenant would have reaped the benefit had the Mezzanine floor not collapsed since that floor would have enabled this respondent/tenant to have some more space. The further averment that due to the demolition, the super structure situated on the back side of the shops developed cracks and became weak and is likely to collapse is false and invented to harass this respondent/tenant. The shop is a single floor shop. The allegation in regard to building constructed getting damaged is imaginary. The possession of this tenant is not illegal. In response to the notice that was issued by the landlord, this respondent/tenant could not take any steps for reconstruction of the Mezzanine floor as there is no permission granted to the tenant/respondent by Court to make any constructions and as this Court permitted the tenant only to demolish the structure up to 25 feet and erect a shutter. The landlord is bent upon evicting this respondent from his shop without following the due process of law. This respondent had strictly implemented the orders of this court and demolished the structures within four weeks time granted by the court and had erected the shutter in the remaining 6 to 7 feet and is carrying on his small business. In the circumstances, the contempt case may be dismissed.

8. I have heard the submissions of the learned counsel for both the parties. I have perused the material record.

9. Though an interim order, during the pendency of the contempt case, in regard to the Mezzanine floor was asked for, no such interim order was granted in this case. During the course of hearing, there was a proposal for compromise; and pursuant to the said proposal for compromise, the tenant had agreed to reconstruct the Mezzanine floor and had also filed additional affidavit undertaking to reconstruct the Mezzanine floor within six weeks from the date of the said undertaking. In the said additional affidavit the tenant had stated that the total height of the shop in which he is doing business is 14 feet and that he is advised that Mezzanine floor can be allowed at the height of 8 to 9 feet so that it can withstand within the 5 feet (width) shop, which is now in his possession. However, the proposal for compromise did not fructify as there was no amicable agreement in regard to the height at which the

Mezzanine floor should be erected or laid. Therefore, the learned counsel for both the parties advanced arguments in line with their respective contentions and requested this court to pass appropriate orders, on merits, in the contempt case.

10. All the facts which lead to the filing of this contempt petition by the landlord against the tenant are stated supra, in detail. As per the orders of this court in the writ petition, the tenant demolished 25 feet structure of his shop and erected a shutter for the remaining portion of the shop and is carrying on business as per the directions in the orders of this court in the aforementioned writ petition. The demolished portion of 25 feet was taken over possession by the GHMC for road widening. Now the grievance of the petitioner/landlord is that while demolishing the structure the tenant had wilfully and intentionally demolished the Mezzanine floor which is in existence from the inception and that, therefore, he had violated the orders of this court and that he had resorted to such demolition of such Mezzanine floor either without the consent of the landlord or without the permission of the court in the orders in the writ petition. It is the further submission of the landlord that inspite of notice, the Mezzanine floor was not restored.

11. On the other hand, the case of the 1st respondent is that while demolishing 25 feet structure which is a major portion of the structure of the shop, the Mezzanine floor had collapsed and that the remaining portion is only 6 to 7 feet and that the demolition of the Mezzanine floor is not intentional and that it collapsed while demolishing the major portion of the structure of the shop in his occupation.

12. Now the short question is as to whether Mezzanine floor was demolished intentionally and deliberately by the tenant as contended by the landlord or whether it had collapsed when the major portion of the structure i.e., to the extent of 25 feet was demolished as per the orders of this Court. It is a complex question of fact. The writ orders were passed on 09.11.2011. Within 4 weeks from that day, the demolition work was undertaken. After demolition of 25 feet structure, the tenant erected a shutter for his shop and

he is running his business. A notice complaining violation of court orders was given on 25.12.2011 and the present contempt was filed on 02.01.2012. Neither of the parties adduced oral evidence. In the facts and circumstances of the case, there is no material to come to a safe conclusion and for accepting the version of the landlord that the demolition of the Mezzanine floor was intentional and deliberate. It is pertinent to note that the tenant contended that it would have been advantageous to him had the Mezzanine floor remained in tact as he would have more space for his business activity as the reduced extent of shop area is now 6 to 7 feet. In a recent decision in **Bihar State Govt. Section Scl. Teachers Assn. Vs Ashok Kumar Sinha and Ors**^[1] the Supreme Court referred to the decision in **Chhotu Ram v. Urvashi Gulati and another**^[2] wherein the Supreme Court in paragraphs 2 and 3 held as under:

2. As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the " standard of proof ", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.

3. Lord Denning (in *Bramblevale Ltd., Re*) lends concurrence to the aforesaid and the same reads as below: (All ER pp. 1063H-1064 C).

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence...Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt.

Unless the action of violation complained of is proved satisfactorily by producing necessary evidence or material of the required standard, it is not possible to hold that the 1st respondent is guilty of contempt. Where there are two equal consistent possibilities open to the court, it has no right to hold that the offence complained of is proved beyond reasonable doubt.

13. Having regard to the facts and in the absence of required standard of evidence or material, this Court holds that that there is no material to hold that

the tenant/1st respondent has committed any act of contempt of Court.
Therefore, the Contempt Case is liable to be dismissed.

14. In the result, the Contempt Case is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this contempt case shall stand closed.

M. SEETHARAMA MURTI, J

18th March, 2016
Vjl

[\[1\]](#) AIR 2014 SC 2824

[\[2\]](#) (2001) 7 SCC 530