

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CONTEMPT CASE No.2428 of 2016

ORDER:

This Contempt Case is filed, under Sections 10 to 12 of the Contempt of Courts Act, to punish the respondent for willful disobedience and violation of the judgment dated 17.08.2015 passed in A.S.No.467 of 2015.

It is alleged in the petition that the petitioner filed an appeal before this Court in A.S.No.467 of 2005. By its judgment dated 17.08.2015, this Court passed the following order:

“Accordingly, the Appeal is allowed and consequently, the suit O.S.No.145 of 2011 is decreed in part declaring that the appellant/plaintiff is legally wedded wife of Subhani. The 1st respondent, being a nominee, is entitled to receive the death benefits and F.D.Rs. amount lying with respondents 7 and 8 and distribute the same among the legal heirs including respondents 2 and 3 and the appellant. The appellant is entitled to 1/8th share in the death benefits and F.D.Rs. amount.”

The petitioner - plaintiff filed the suit before the Trial Court to declare her as the legally wedded wife of Sri Mahaboob Subhani and for payment of her due share consequent upon the death of Sri Mahaboob Subhani including share in FDR bearing No. 839941161 for Rs.1,65,000/-; FDR bearing No.796426736 for Rs.1,50,000/- at Indian Bank, Peddapalli Branch; F.D.R. bearing No.855874352 for Rs.1,60,000/-; and F.D.R.bearing

No.741641384 for Rs.1,90,000/- at Indian Bank, Patnam Bazar Branch, Guntur; and to grant permanent injunction restraining defendant Nos.1 to 3 from withdrawing the death benefits and other benefits of Sri Mahaboob Subhani. The Trial Court dismissed the suit. In appeal, this Court granted relief of declaration that the appellant – plaintiff was the legally wedded wife of Sri Mahaboob Subhani and directed the respondents to withdraw the amount from the authorities concerned, being the nominee as per Section 39 of the Insurance Act, and directed her to pay due share to the petitioner – plaintiff.

Thus, this Court passed a decree as prayed for by the contempt petitioner. Such decree is executable under Order 21 CPC. But, instead of proceeding under Order 21 CPC, resorted to file the present petition as if the respondent committed contempt on the ground that the contemnor is a lady and is exempted from arrest and did not possess either movable or immovable property to proceed against her. But, when this Court allowed the appeal, it is a decree within the meaning of Section 2(2) CPC which is executable under Order 21 CPC. Failure to pay the amount does not amount to contempt unless it is willfully disobeyed. The petitioner wanted to take advantage of specific provision exempting woman from arrest and adopted shortcut method of executing decree indirectly by initiating proceedings under the Contempt of Courts Act. Therefore, I find no prima facie

willful disobedience of the order of this Court. However, the petitioner is permitted to file execution proceedings under Order 21 CPC. With this observation, I find no ground to proceed against the petitioner under Sections 10 to 12 of the Contempt of Courts Act.

The Contempt Case is dismissed at the stage of admission.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:09.12.2016
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