

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Contempt Case No.1777 of 2016

&

CRPMP No.6720 of 2016 in CRP 5024 of 2015

COMMON ORDER:

The genesis of this contempt case is the order dated 21.12.2015 of this Court in C.R.P.No.5024 of 2015 between the respondents in the contempt case and the 6th respondent in the revision, i.e., the petitioner in the contempt case.

2. The 1st respondent in C.R.P.No.5024 of 2015 died. The respondents 2 to 5 in the said revision being not necessary parties are not impleaded in the contempt case either as co-petitioners or as respondents. Be it noted that the respondents in the contempt case (hereinafter, 'respondents') filed the above revision aggrieved of the orders dated 12.11.2015 in E.P.No.51 of 2014 in O.S.No.133 of 2003 on the file of the Court of the learned XXV Additional Chief Judge, City Civil Court, Hyderabad, whereby the executing Court ordered delivery of vacant possession of the EP schedule property to the petitioner in the contempt case (hereinafter, 'petitioner') by the respondents herein. This Court granted four months time to the respondents to vacate the premises subject to filing of an undertaking before the Registry of this Court within a period of two weeks from that day undertaking to vacate the premises before expiry of four months from that date, by serving a copy on the other side. In the said orders, the respondents were also directed to pay

rents regularly on or before 10th of every month. In obedience to the orders afore-stated, the 1st respondent filed a memo of undertaking on 29.12.2015 undertaking to vacate the property within four months from 21.12.2015, i.e., on or before 20.04.2016 as directed by this Court in the said orders passed in the said revision. However, without vacating the property as undertaken in the undertaking memo dated 29.12.2015, the respondents filed CRPMP 2542 of 2016 seeking extension of time by six months commencing from April 2016. This Court, by order dated 17.06.2016, directed the respondents to handover possession by 15.07.2016 and further directed to file an undertaking affidavit to that effect. The 1st respondent filed an undertaking affidavit [attested on 20.06.2016] undertaking to vacate the premises on or before 15.07.2016. However, the respondents did not vacate the property as undertaken in the said affidavit. As the respondents have given one undertaking once and failed to honour the same and sought extension of time and thereafter, filed another undertaking to vacate the property and failed to abide by the said undertaking given to this Court, the petitioner filed this contempt case. The respondents are resisting the said application.

3. In this backdrop of facts, the respondents also filed CRPMP No.6720 of 2016 seeking extension of time for delivery of possession by four weeks from 21.10.2016.

4. I have heard the submissions of *Sri N.Mukund Reddy*, learned counsel appearing for the petitioner in the contempt case and respondent in the CRPMP 6720 of 2016 and *Sri M.V.Suresh*, learned counsel for the respondents in the contempt case/ the petitioners in CRPMP 6720 of 2016. I have perused the material record.

5. Before proceeding further, it is apposite to note the operative portion of the order dated 21.12.2015 of this Court passed in C.R.P.No.5024 of 2015, which reads as under:

“However, four months time is granted to the petitioners to vacate the premises subject to filing an undertaking before the Registry of this Court within a period of two weeks from today, undertaking to vacate the premises before expiry of four months from today, by serving a copy on the other side. The petitioners shall pay rents regularly on or before 10th of every month.”

The 1st respondent in the contempt case filed an undertaking memo on 29.12.2015 undertaking to vacate the suit schedule property within four months from 21.12.2015, i.e., on or before 20.04.2016. However, without vacating the property as directed in the order in the revision and as undertaken in the undertaking memo, the respondents filed CRPMP No.2542 of 2016 seeking extension of time by six months commencing from April, 2016. This Court, by an order dated 17.06.2016 directed the respondents to handover possession by 15.07.2016 and further directed the respondents to file an undertaking to that effect. The operative portion of the order of this Court dated 17.06.2016 reads as under:

“After filing of this petition, on 27.04.2016 this Court granted interim extension of time for vacating the property by the petitioners till 15.06.2016 subject to certain conditions. Subsequently, the said order was extended till today. Admittedly, an execution petition was filed and the Court ordered delivery in the execution petition on 12.11.2015.

Having regard to the facts and the submissions, this Court is satisfied that the petitioners are not entitled for extension of time as prayed for in the petition. However, to enable the petitioners to vacate the property and handover possession of the same, time is extended till 15.07.2016. The 1st petitioner shall file an undertaking affidavit before the Registry within a week from today undertaking to vacate the premises on or before 15.07.2016 without fail by serving a copy on the other side. It is made clear that no further extension of time would be granted.

The petition is, accordingly, ordered.”

As directed in the above mentioned orders, the respondents filed the undertaking affidavit of the 1st respondent (attested on 20.06.2016) undertaking to vacate the premises on or before 15.07.2016. However, neither the orders of this Court dated 17.06.2016 were complied with by duly vacating the property nor the undertaking in the affidavit given was honoured by the respondents. Therefore, the contempt case was filed on 08.09.2016. CRPMP No.6720 of 2016 is filed by the alleged contemnors/ respondents on 24.10.2016 seeking extension of time by four weeks from 21.10.2016. Thus, after the contempt case is filed, CRPMP seeking extension of time was filed.

6. The case of the petitioner is that the respondents have given the undertakings twice as directed in the aforesaid orders of this Court but had failed and neglected to handover possession of the

suit schedule property to the petitioner as per the specific orders and successive undertakings and that the respondents having sought extension of time and availed the extended time had willfully and negligently and with a *mala fide* intention violated the orders of this Court and also failed to honour their own undertakings and that the gross violation of the orders of this Court on the part of the respondents is evident from their conduct and that their deliberate conduct reflects that they showed disrespect and disobedience to the orders of this Court and that the negligent and deliberate acts and the said disrespect and disobedience, which is wilful and deliberate, amounts to contempt of Court and therefore, the respondents are liable to be punished for contempt of Court under Sections 10 to 12 of the Contempt of Courts Act, 1971.

7. Per contra, the case of the respondents is this:

It is true an undertaking affidavit agreeing to vacate the plaint schedule premises before 15.07.2016 was filed before this Court after extension of time was granted. However, the respondents could not deliver vacant possession of the suit schedule property to the petitioner in the contempt case by 15.07.2016 for two reasons. *Firstly*; the respondents have no intention to squat on the property beyond the period of extended time; and the 1st respondent was under a *bona fide* impression that the Bailiff from a civil Court will come and take possession from him pursuant to the orders of this Court. *Secondly*; the 1st respondent's wife, Syeeda

Ahmed, aged 62 years, was suffering from Cardiac problem for the past three months and she underwent a check up for her said ailment at Century Hospital, Banjara Hills, Hyderabad, on 04.10.2016; the doctor, who attended on her, advised her to go for coronary angiogram; and accordingly, she underwent the said test; and she was later taken to one S.Haider Khan, who is a consultant and interventional cardiologist; and, he advised her to undergo angioplasty; and, accordingly, she had underwent angioplasty on 12.10.2016; and later she was advised complete three months bed-rest and not to be under any stress. In view of the said medical advice, the respondents were unable to move her from the house, i.e., the petition schedule property. As such, the respondents could not comply with the directions of this Court and could not deliver possession of the plaint schedule property to the petitioner in the contempt case by 15.07.2016.

8. Coming to the 1st contention that the 1st respondent was under the *bona fide* impression that a Bailiff from the City Civil Court will come and take possession and therefore, he did not vacate and deliver the property before 15.07.2016 cannot be countenanced. In the first place, when he was under such a *bona fide* impression and when the extended time and the time mentioned in the undertaking affidavit is getting lapsed, he ought to have approached this Court which has extended time and sought necessary directions. In the alternative, he ought to have served a notice on the counsel appearing for the petitioner in the contempt case or on the

petitioner directly expressing his readiness to vacate and deliver the property. But, he did not do so. Further, on 14.10.2016, this Court, after hearing the learned counsel for the petitioner and the respondents in the contempt case passed the following interim order:

Sri M.V. Suresh, learned counsel, entered appearance for respondents 1 and 2. He seeks time to file a counter with explanation of the respondents 1 and 2. It is stated that the respondents are prepared to vacate the property and deliver possession but they could not do so as they are awaiting delivery through Court Officer.

In that view of the matter, the respondents 1 and 2 are directed to serve a notice through their learned counsel on the learned counsel for the petitioner informing the date and time of delivery of vacant possession of the schedule property to the petitioner and deliver possession before 05:00 p.m., on 20.10.2016 and report to the Court on 21.10.2016 the necessary compliance.

Despite such orders also, the respondents failed to vacate the property and deliver vacant possession of the property to the petitioner and filed the petition for extension on 21.10.2016 raising an additional new ground, namely, ill health of the wife and the treatment etcetera and the medical advice given to her. In the circumstances, considering the conduct of the respondents, this Court passed a detailed interim order on 26.10.2016. The material portion of the said order reads as under:

“As already noted the disposal of the Contempt Case and extension petition need not delay the delivery proceedings. In view of the chronology of events and the conduct of the alleged contemnors, this Court is of the considered view that the

alleged contemnors will not vacate the property if they are personally directed to vacate and deliver the possession of the property to the petitioner in the Contempt Case. Hence, this Court deems it appropriate to give directions to the executing Court to pass appropriate orders in EP.No.51 of 2014, which is said to be pending and not terminated.

Accordingly, notwithstanding the pendency of the proceedings before this Court, the executing Court/XXV Additional Chief Judge's Court, City Civil Court, Hyderabad, is directed to issue a warrant/fresh warrant of delivery of possession to the Field Assistant of the Court as expeditiously as possible and the Field Assistant shall remove all obstructionists claiming through the JDrs, if any, and handover vacant possession of the schedule property to the Decree Holder/petitioner in the Contempt Case. The executing Court, if necessary, shall direct the Station House Officer of the police station concerned to render assistance to the Field Assistant in execution of the warrant of delivery of possession to ensure that vacant possession of the entire premises is peacefully handed over to the DHR. The executing Court shall submit a report in this regard to the Registry of this Court by 02.11.2016.

It is made clear that since the disposal of the extension petition may have a bearing on the orders that may be made in the Contempt Case and considering the willingness of the alleged contemnors to deliver the property, the above orders are passed to avoid further delay in delivery of the property."

Subsequently, with the aid of the police, the suit schedule property was delivered by the Field Assistant of the Court below to the petitioner under the cover of a panchanama on 01.11.2016. Thereafter, the petitioner in the contempt case filed a memo on 16.11.2016 before this Court reporting that the property was duly delivered to the petitioner. Therefore, the first contention of the respondents does not merit consideration.

9. Coming to the second contention regarding the ill-health, treatment, including angioplasty said to have been undergone on 12.10.2016 by the wife of the 1st respondent, and the medical advice given to her to take complete bed rest for three months and the inability of the respondents to vacate and deliver possession of the property on that ground, it is to be first noted that when this Court passed orders dated 14.10.2016, no whisper was made about the said aspects of the matter before this court. Without honouring the orders of this Court, the CRPMP 6720 of 2016 seeking extension of time was filed on 24.10.2016, that is, ten days after the above said orders were passed on 14.10.2016. In support of the contention regarding the ill-health, treatment and the medical advice given to the wife of the 1st respondent, copies of certain medical record are filed. None of these documents are signed by the doctor concerned. When the genuineness of these documents was seriously disputed at the hearing, even then also copies duly attested by the doctor or the original record signed by the doctor is not produced before this Court. In fact, during the course of arguments, it is stated on behalf of the petitioner in the contempt case that the enquiries made by the petitioner revealed that Dr. S.Hyder Khan has not given any such medical record or legal advice. Even then also, no authentic medical record or record above board is produced to counter the said argument. In fact, on one occasion, i.e., 02.11.2016, *Sri M.V.Suresh*, learned counsel for the alleged contemnors/ the respondents in the contempt case, submitted that

after the matter was adjourned on 26.10.2016, the respondents did not contact him. Thus, the second ground urged by the alleged contemnors stands unsubstantiated and clearly appears to be a fashioned ground to somehow explain away their conduct, which clearly is in the nature of contempt of orders of this Court. The respondents neither obeyed the orders of this Court nor honoured their own undertakings and raised unsustainable and unsubstantiated grounds in support of their defence having deliberately and willfully failed to obey the orders of this Court and honour the undertakings given by them.

10. On the above analysis, this Court is satisfied that the respondents in the contempt case are liable for punishment in view of the fact that their acts and omissions are deliberate and are in defiance of the orders of the Court as well as the undertaking given by the 1st respondent on their behalf and that therefore, this Court finds that this is a fit case for awarding punishment. However, while awarding sentence, the Court has to uphold the rule of law and the majesty of the law and ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. Be that as it may. In the case on hand, the property was already delivered. Therefore, the question that remains to be considered is as to what is the proper punishment to be awarded to the contemnors to uphold the rule of law. Further, during the course of hearing on behalf of the

respondents/contemnors, an unconditional apology was also tendered while *inter alia* submitting that without putting any spokes, the property was delivered when the Field Assistant of the Court came for delivering the property. In that view of the matter and having regard to the facts and the conduct of the respondents/contemnors, this Court is of the considered view that it is a fit case to impose fine instead of imprisonment.

11. Accordingly, the contempt case is allowed and the contemnors/ respondents in the contempt case are sentenced to pay a fine of Rs.2,000/- each. The said fine amount shall be deposited to the credit of the [terminated] execution proceedings before the Court of execution, within two weeks from the date of receipt of a copy of this order. On such deposit, the petitioner in the contempt case is permitted to withdraw the same without furnishing any security and by following the procedure established by law.

In view of the findings recorded in the contempt case and as the property was already delivered, there is no need to pass any separate orders for extension of time as sought for by the contemnors/ respondents in the contempt case; and hence, the CRPMP No.6720 of 2016 shall stand disposed of in terms of the orders in the contempt case.

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

M.Seetharama Murti, J

08th December, 2016
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