

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

(SUO MOTO) CONTEMPT PETITION NO. 53 OF 2018
IN
WRIT PETITION NO.13099 OF 2017

High Court in its own motion .. Petitioner.
v/s.
1 Mr. M. N. Navale
The President, Sinhgad Technical
Education Society, Erandwane,
Pune 411 004
2 Mr. Sadashiv Mokashi
Tax Recovery Officer (Central), Pune .. Respondents.

Mr. J. P. Yagnik, APP, for the State.
Mr. Aspi Chinoy, Senior Advocate with Mr. V. P. Sawant, Mr. Vijay Patil
i/b. Mr. Nitin Dhumal, for Respondent No.1.
Mr. Sham Walve, for Respondent No.2.

**CORAM: M.S.SANKLECHA, &
SANDEEP K. SHINDE, JJ.**

**RESERVED ON: 8th AUGUST, 2018
PRONOUNCED ON: 28th AUGUST, 2018.**

JUDGMENT (Per M.S.SANKLECHA,J.):

On 5th August, 2018, this Court directed the Registry to issue to Respondent No.1 – Mr. M. N. Navale- President, Sinhgad Technical Education Society and Respondent No. 2- Mr. Sadashiv Mokashi, the Tax Recovery Officer (Central), Pune as to why action for Civil Contempt should not be taken under the Contempt of Courts Act, 1971. The basis of the same was the willful disobedience of the order dated 28th November, 2017 passed by this Court.

2 Consequent to the above, the contempt was issued on 14th February, 2018 by the Registry to both the Respondents. The basis of the above notice as stated therein are the reasons recorded in the order dated 5th January, 2018 passed by this Court i.e. the willful disobedience of the order of this Court dated 28th November, 2017.

3 On 28th November, 2017, this Court passed the following order:-

“ Not on board. Taken on board.

1. Heard the learned Senior Counsel appearing for the petitioner. By the impugned order, as a condition for grant of stay pending the final hearing of an appeal preferred by the applicant before the Appellate Tribunal, the applicant has been directed to deposit a sum of Rs.18 crores in three installments. The total demand subject matter of challenge is Rs.14 crores and more.

2. On instructions learned Senior Counsel appearing for the petitioner states t hat the petitioner is not in a position to deposit any amount as of today. Hence, no case is made out for grant of ad-interim relief. Place this petition for admission after all office objections are removed.”

4 Respondent No.1- Mr. M. N. Navale, filed his additional affidavit in reply dated 26th March, 2018 to the Civil Contempt Notice. In the affidavit, Respondent No.1 tendered an unconditional apology to this Court and further stated that he had not intend to dis-regard the orders of this Court. Respondent No.2 – Mr. Mokashi filed affidavit in reply dated 12th March, 2018 to the above show cause notice and offers an unconditional apology to this Court.

5 We have considered the submission of Mr. Aspi Chinoy, the learned Senior Counsel appearing for Respondent No.1 and Mr. Walve, learned Counsel appearing for Respondent No.2.

6 We find that the order dated 28th November, 2017 had only refused an ad-interim relief sought for by respondent No.1. The ad-interim relief, if granted, would have restrained the Respondent-Revenue from adopting coercive measures to recover its tax dues from the Petitioner. The order dated 28th November, 2017 did not in any manner deal with the attachment of Bank Accounts. In fact, on that date i.e. 28th November, 2017, there was no attachment of the Bank Account in Punjab National Bank. The Bank Account in Punjab National Bank were attached on 15th December, 2017 i.e. much after the order dated 28th November, 2017 was passed. We find that Respondent Nos.1 and 2 did not do any act which would amount to dis-obedience of the order of this Court dated 28th November, 2017. The two communications of Respondent No.1 dated 20th and 21st December, 2017 to the Tax Recovery Officer and to the Branch Manager, Punjab National Bank and the communication dated 21st December, 2017 of the Tax Recovery Officer to the Branch Manager, Punjab National Bank were in the context of the proceedings in Court on 19th December, 2017. The application by the Petitioner on 28th November, 2017 was only seeking a stay of the order dated 10th November, 2017 of the Tribunal and/or the Revenue acting in pursuance thereof.

7 Civil Contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971 means willful dis-obedience to any judgment, order or directions of the Court or willful breach of undertaking given to the Court. In this case, the order dated 28th November, 2017 of this Court refused to grant any ad-interim relief to the Petitioner. However, the refusal to grant any ad-interim relief would not dis-entitle Respondent No.2 from varying the order of attachment of the bank account of the Petitioner-Institution in Punjab National Bank. In this case, there was no order passed on 28th

November, 2017 nor directions given in respect of the attached Bank Accounts so as to even allege any breach or willful dis-obedience of the order dated 28th November, 2017.

8 The Suo-Moto Civil Contempt notice has been issued for willful dis-obedience of the order dated 28th November, 2017 and not in respect of the proceedings which took place before this Court on 19th December, 2017. Consequently, there could be no dis-obedience or breach of the order dated 28th November, 2017. The breach, if any, was in mis-representing the proceedings of the Court and attributing a directions to this Court on 19th December, 2017, when, in fact, no such directions was passed. However, the basis of the show cause notice issued to the Respondents, is not the proceedings which took place on 19th January, 2017 but breach of the order dated 28th November, 2017 of this Court.

9 In the above view, the notice issued for Civil Contempt under Section 2(b) of the Contempt of Courts Act, 1971, would not be sustainable.

10 Accordingly, the notice for Civil Contempt issued on 14th February, 2018, consequent to the order dated 5th January, 2018 of the Court to the Respondent Nos. 1 and 2 stand discharged.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)

Smita
Rajnikant
Joshi

Digitally
signed by
Smita
Rajnikant Joshi
Date:
2018.08.28
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+0530

S.R.JOSHI