

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Contempt Appeal No. 2 of 2018
and
CMP.No.6933 of 2018

1. R.Sivaprakasam
2. R.Annadurai .. Appellants

Versus

S.Rathinavelu Chettiar Trust
represented by its President
S.Sadasivam
Plot No.10, III Cross Street
Lakshmanaperumal Nagar, Kottivakkam
Chennai 600 041. .. Respondent

Presently at F.L. Bolck 4, Jain Sukruti Apartments
1, Jeswanth Nagar I Main Road
Mogaippur West, Chennai 600 037.

Appeal filed under Section 19(1)(a) of The Contempt of Courts Act, 1971 against the order dated 12.03.2018 passed by the learned Single Judge of this Court in Contempt Petition No.1829 of 2017 in SA.No.403 of 2014.

Prayer in Cont.P. No. 1829/2017:

Contempt Petition filed under Section 2(b) and 11 of the contempt of Courts Act 1971 praying to punish the respondents herein for contempt of court for committing civil contempt by wilfully disobeying the orders of this Honble court dated 27.07.2015 in S.A.No.403 of 2013 for committing wilful breach of an undertaking dated 27.07.2015. given to this court pursuant to the memorandum of compromise dated 27.07.2015 made in S.A.No. 403/2013 for interfering with the administration of Justice by giving the undertaking exclusively and thereafter by evading the same.

Prayer in Cont.P. 403/2014:

Second Appeal against the decree of the court of the II Additional Judge, City Civil Court at Chennai dated 30.10.2012 in A.S. No. 165/2009 preferred against the decree of the court of the XIII Assistant Judge, City Civil Court at Chennai dated 18.09.2008 in O.S. No. 1617/2004.

For Appellants	:	Mr. E. Boopathi
For Respondent	:	Mr. K. Ashok Kumar

JUDGMENT

R. Subbiah, J.

This contempt appeal is directed against the order dated 12.03.2018 passed by the learned Single Judge in Contempt Petition No.1829 of 2017 in Second Appeal No.403 of 2014.

2. The factual matrix leading to the filing of the present contempt appeal is as under:

2.1 The respondent Trust claims to be the sole and absolute owner of the vacant land measuring to an extent of 1200 sq.ft situated at Old No.1/59, New No.96/97 Gangadheeswarar Koil Street, Purasaivakkam, Chennai - 600 084 (hereinafter referred to as 'the demised land'). The father of the appellants requested the respondent Trust to lease the demised land for Rs.30/- per month. Pursuant to the said request, the respondent Trust leased out the demised land to the father of the appellants in November, 1951 for a monthly rent of Rs.30/-. By a letter dated 27/11/1951 from the respondent Trust to the father of the appellants, the tenancy was confirmed. The demised land is situated in a prime locality in the heart of City of Chennai.

2.2 While so, without the knowledge of the respondent Trust, the father of the appellants had put up a superstructure in the demised land and was carrying on the business of selling fire wood in the said place. By a letter dated 25.02.1952, the father of the appellants requested the respondent Trust to provide certain amenities and also committed to vacate the same, if the respondent Trust requests so. By another letter dated 17.03.1955, the father of the appellants further requested the respondent/Trust to provide additional amenities in the vacant premises. Since the father of the appellants had committed default in payment of rent from 1.1.1998, the respondent Trust issued a lawyer notice dated 12.04.2000 to the father of the appellants and to his three sons, inter alia calling upon them to pay the arrears of rent from 1.1.1998 to 31.3.2000 i.e., for 27 months and to pay the rent at Rs.2,000/- per month with

effect from 01.04.2000 and to cancel the settlement deed executed by the father of the appellants to his three sons, transferring the leasehold rights of the land and communicate the same to the respondent Trust.

2.3 As there was no response, the respondent Trust issued a notice under Section 106 of the Transfer of Property Act and thereafter, filed OS.No.1617/2004 on the file of the 13th Assistant City Civil Court, Chennai. The said suit was filed against the father of the appellants, appellants 1 and 2 and the brother of the appellants, for delivery of possession and damages and the same was dismissed on 18.09.2008. Feeling aggrieved, the respondent Trust filed AS.No.165 of 2009 on the file of the II Additional City Civil Court, Chennai. The first Appellate Court decreed the suit on 30.10.2012 directing eviction of the appellants and others. Consequent to the same, the respondent Trust initiated execution proceedings by filing EP No.4438/2013.

2.4 Pending the said Execution Petition, the appellants filed SA.No.403 of 2014 against the judgment and decree passed in AS.No.165/2009 by the II Additional City Civil Court, Chennai. During the pendency of the second appeal, the respondent Trust and the appellants entered into a Memorandum of Compromise on 27.07.2015, which was signed by all the parties and was filed before this Court. The terms and conditions of the said Memorandum of Compromise are as follows:

"(i) The defendants - lessees agree and undertake to handover vacant possession of the demised land (together with the superstructure thereon after removing the newly laid Zinc sheet roof and iron pole/rods supporting the same) on or before 31-7-2017.

(ii) The defendants - lessees, declare that they have no claim, by way of compensation or by any other name for the superstructure that now stands on the demised land or the remnants/remaining portions if any of the superstructure with which possession of the demised land shall be handed over to the respondent - Trust.

(iii) The defendants - lessees undertake to pay monthly rent at the rate of Rs.10,000/- (Rupees ten thousand only) per month for the demised land to the plaintiff-lessor for the 2 years from 1-8-2015 to 31-7-2017. This rent of Rs.10,000/- (Rupees ten thousand only) per month shall be computed in accordance with the English calendar from the 1st to the end of every calendar month.

(iv)

(v) The plaintiff - lessor agrees to give up its claim for damages for use and occupation post termination on 30-9-2003.

(vi) Plaintiff-lessor agrees and undertakes to give up the arrears of rent also upto 31-7-2015.....”

2.5 In terms of the aforesaid Memorandum of Compromise, the second appeal was disposed of, by the learned Single Judge on 27.07.2015. As per the judgment and decree passed in SA.No.403/2014, the appellants have to vacate and hand over the vacant possession on or before 31.07.2017.

2.6 In the mean while, EP. No. 4438 of 2013, which has been periodically adjourned, was finally, posted to 01.08.2017 for the purpose of recording the termination of the tenancy and closure of the execution petition. However, the appellants have not vacated and handed over the vacant possession of the demised land, even after expiry of the time frame i.e., 31.07.2017, in terms of the Memorandum of Compromise entered into between the parties. According to the respondent Trust, one of the clauses of the decree passed in the said Second Appeal clearly stipulates that the parties should do all that are necessary for the compliance of the terms of the Memorandum of Compromise and hence, they sought to proceed with the execution petition. The Appellants, instead of complying with the decree passed in the Second Appeal, filed a change of vakalat through another advocate in EP.No.4438 of 2013 on 01.08.2017 and filed Section 47 CPC application, wherein, they re-agitated the very same issue, which was already decided by the first Appellate Court in AS No.165 of 2009 and thereby, prevented the Execution Court from proceeding further as per the terms of the compromise decree passed in SA. No. 403/2014.

2.7 Though the appellants have themselves invited the judgment and decree in SA.No.403/2014 dated 27.07.2015 in terms of the Memorandum of Compromise, they have not vacated and handed over the possession to the respondent Trust and they have wilfully disobeyed the judgment and decree passed by the learned Single Judge in the said Second Appeal. Hence, the respondent Trust initiated contempt proceedings by filing a petition in Cont.P.No.1829 of 2017.

2.8 The said contempt petition was resisted by the 2nd appellant, who is the 4th defendant in the suit by name, R.Annadurai by filing a detailed counter affidavit on behalf of himself as well as on behalf of the first appellant herein. The first defendant namely R.Padmanabhan, brother of the appellants died during the pendency of the contempt proceedings. In the said counter affidavit, it has been stated that the demised land does not belong to the respondent Trust and it absolutely belongs to Arulmighu Gangadheeswarar Thirukoil, Purasaivakkam, Chennai - 84; the appellants came to know about the said fact

during the third week of May 2017, when the Joint Commissioner, H.R & CE Department, Chennai issued a show cause notice to the appellants, brother of the appellants as well as the respondent Trust on 16.3.2017; in the above said notice, it has been stated that the appellants are said to have encroached the demised land comprised in S.No.227 to an extent of 1200 sq.ft belonging to Sri Gangadeeswarar Koil situated at Gangadeeswarar Koil Street, Chennai-84; the appellants sent a detailed explanation dated 14.6.2017 to the Joint Commissioner and the Executive Officer, HR&CE, Arulmighu Gangadheeswarar Koil, Chennai stating that the father of the appellants viz., K.Rathina Sabapathy Mudaliar became the tenant in respect of the demised land under one S.Rathinavelu Chettiar Trust in the year 1951 on a monthly rent of Rs.30/- and the said Rathinavelu Chettiar Trust received advance of Rs.90/- in the year 1951 and with the permission of the said Rathinavelu Chettiar Trust, the appellants' father built up superstructure, paid Corporation Tax, electricity service connection charges, drainage, sewerage and other revenue taxes to the concerned local authority and the appellants have been running flour mill and fire wood businesses from 1951 to till date without any let or hindrance and the appellants are ready and willing to pay fixation of fair rent of the land belonging to Arulmigu Gangadheeswarar Koil; after receiving the explanation, the Assistant Commissioner, H.R & C.E, Chennai and the Executive Officer, Arulmighu Gangadeeswarar Thirukoil, Chennai-84 filed applications under section 78(2) of the H.R.& C.E. Act seeking direction to the appellants as well as the respondent Trust to vacate and hand over the demised land. Thus, the appellants stated that the demised land is belonging to the temple and not belonging to the respondent Trust and hence, they sought for dismissal of the contempt petition.

2.9 On 12.03.2018, the learned Single Judge, after hearing both sides, found the appellants guilty of contempt for having disobeyed the decree passed by this Court in the Second Appeal and having committed breach of undertaking given to this Court as per the Memorandum of Compromise dated 27.07.2015 and hence, disposed of the contempt petition with the following observations and directions:

(i) The respondents/contemnors (appellants herein) are directed to vacate and handover possession of the suit property, namely, vacant land measuring 1200 sq.ft. and thereabouts situate in Old No.1/59, New No.96/97, Gangadheeswarar Koil street, Purasawalkam, Chennai, forthwith.

(ii) The respondents/contemnors (appellants herein) are directed to pay arrears of rent, as agreed in the MOC, in the sum of Rs.10,000/- per month, if not already paid, for the period from 01.08.2015 to 31.07.2017, within a period of six weeks from the date of receipt of a copy of this order.

(iii) The respondents/contemnors (appellants herein) are also directed to pay a sum of Rs.5,000/- for each day's breach from 01.08.2017 till handing over possession of the demised premises.

(iv) The respondents/contemnors (appellants herein) are sentenced to undergo simple imprisonment for three months and to pay fine of sum of Rs.10,000/- (Rupees ten thousand only). The respondents/contemnors (appellants herein) shall pay the fine amount within one week and in case of default, they shall undergo simple imprisonment for a further period of fifteen days.

2.10 Aggrieved by the aforesaid order, the appellants have filed the present Contempt Appeal.

3. Assailing the order impugned in this appeal, the learned counsel for the appellants would submit that originally, the respondent Trust filed O.S.No.1617 of 2004 before the 13th Assistant City Civil Court, Chennai, for recovery of possession and damages, which was dismissed by the trial court on 18.9.2008, holding that the respondent Trust is not the owner of the demised land; challenging the same, the respondent Trust filed AS.No.165 of 2009 before the II Additional City Civil Court, Chennai, which was allowed by decreeing the suit as prayed for, relying on Ex.A19-certified copy of the sale deed dated 10.02.1940 executed by the Trustees of Arulmighu Gangadeeswarar Temple in favour of the respondent Trust; aggrieved by the same, the appellants filed SA.No.403 of 2014, in which, both the parties entered into a Memorandum of Compromise and in terms of the same, the second appeal was disposed of; subsequent to the disposal of the second appeal, the appellants as well as the respondent Trust have received a show cause notice from the Joint Commissioner, HR&CE, Chennai, under Section 78(2) of the HR&CE Act, calling upon them to vacate and hand over the possession of the demised land, which would disclose that the demised land is absolutely belonging to Arulmighu Gangadeeswarar Temple and not belonging to the respondent Trust; when such being the case, according to the learned counsel, it cannot be said that the appellants have disobeyed the decree of this Court dated 27.07.2015 and committed the contempt of Court and hence, they are liable to be discharged from the contempt proceedings, by setting aside the order impugned herein.

4. On the contrary, the learned counsel for the respondent Trust would submit that the appellants have themselves invited the decree dated 27.7.2015 by filing a Memorandum of Compromise, wherein, they agreed to vacate and hand over the possession of the demised land on or before 31.07.2017. However, they failed to vacate and hand over the vacant possession even after expiry

of the time frame, as agreed by them. Further, they filed a change of vakalath through another advocate in EP.No.4438 of 2013 and filed an application under Section 47 CPC for the purpose of re-agitating the very same issue that was already decided by the First Appellate Court in AS.No.165 of 2009, so as to prevent the Execution Court from proceeding further. Such course adopted by the appellants is clear disobedience of the order of this Court by wilful breach of undertaking given by them in SA.No.403 of 2014. Therefore, the order passed by the learned Single Judge is perfectly right and the same warrants no interference.

4.1 In support of his submission, the learned counsel for the respondent Trust placed reliance on the decisions of the Supreme Court in (i) (1990) 1 SCC 259 (Noorali Babul Thanewala v. K.M.M.Shetty and others); (ii) (1996) 6 SCC 14 (Rita Markandey v. Surjit Singh Arora) and (iii) (2017) 8 SCC 592 (Jaspal Kaur Cheema and another v. Industrial Trade Links and others).

5. We have heard the submissions made by the learned counsel appearing for the parties and carefully gone through the materials placed before us.

6. As there is no dispute with regard to the factual aspects, we need not traverse into the same in detail.

7. Now, the only issue that arises for consideration herein is as to whether the appellants have committed the contempt of Court, by wilfully disobeying the compromise decree passed by this Court in SA.No.403/2014, as held by the learned Single Judge.

8. On a perusal of the records, it could be seen that the appellants have voluntarily entered into the Memorandum of Compromise with the respondent Trust on 27.07.2015 in SA. No. 403 of 2014, as per which, they agreed to vacate and hand over the vacant possession of the demised land on or before 31.07.2017. But, instead of honouring the undertaking given to the Court, the appellants, taking advantage of the notice issued by the Joint Commissioner, HR&CE, Chennai, filed a change of vakalat through another advocate in EP.No.4438 of 2013 and filed an application under Section 47 CPC trying to re-agitate the same issue as raised in AS.No.165 of 2009, which was already decided by the First Appellate Court in favour of the respondent Trust and attained finality.

9. According to the appellants, as per the notice dated 16.03.2017 issued by the Joint Commissioner, HR&CE, Chennai under Section 78(2) of the HR&CE Act, the demised land is not belonging to the respondent Trust, but is belonging to Arulmigu Gangadeeswarar Temple and as such, the appellants have not

vacated and handed over the possession to the respondent Trust, which cannot be said to be disobedience of the decree of this Court dated 27.07.2015 passed in SA.No.403/2014, whereas, the same is seriously disputed by the respondent Trust, stating that the appellants have admitted the tenancy and have suffered a decree from the Civil Court and hence, they are estopped from raising such plea that the respondent Trust is not the owner of the demised land.

10. At this juncture, it is apropos to point out the dictum laid down by the Supreme Court in the decisions cited on the side of the respondent Trust, which are as follows:

10.1 In Noorali Babul Thanewala case, it has been held as under:

"When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing the first respondent-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same."

10.2 In Rita Markandey case (cited supra), in paras 11 and 12, the Supreme Court observed thus:

"11.From the above narration of facts it is evident that the appellant did not comply with the order of this Court dated October 5, 1994 and that his assertion in both his affidavits filed on September 28, 1995 and January 8, 1996 that he had

handed over vacant possession of the suit premises to the petitioner on October 14, 1995 was false for, as the report of the Rent Controller- discloses, such possession was given only on March 7, 1996. The question, therefore, that now falls for our determination is whether the respondent is liable to be punished for contempt of this Court of his above commissions and omissions.

12. Law is well settled that if any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of Court, notwithstanding non furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be held liable for contempt for alleged breach of the above order. As regards the contention of the petitioner that by trespassing into some other portion of the house in question during the pendency of the appeal the respondent has committed contempt of Court, we are unable to accept

the same: firstly because, the respondent's claim is that he has been in occupation thereof since long and this contentious issue cannot be decided solely on the basis of affidavits and secondly because the above issue does not fall within the limited scope of our enquiry in this proceeding which centres round the order dated October 5, 1994."

10.3 In Jaspal Kaur Cheema case (cited supra), the Supreme Court was of the view that "the principle of estoppel arising from contract of tenancy is based upon the principle of law and justice that a tenant who could not have got possession but for a contract of tenancy admitting the right of the landlord, should not be allowed to put his landlord in some inequitable situation taking undue advantage of the position that he got and any probable defect in the title of his landlord."

11. In this case, admittedly, as per the Memorandum of Compromise dated 27.07.2015, the appellants have agreed and given an undertaking to hand over vacant possession of the demised land on or before 31.07.2017, based on which, the learned Single Judge passed a decree on the very same day in SA.No.403/2014. Despite the same, they have been squatting over the demised land and wilfully disobeyed the order of this Court, placing reliance on the notice dated 16.03.2017 issued by the Joint Commissioner, H.R&CE, Chennai, which is subsequent to the proceedings. When it is categorically admitted by the appellants that they were inducted by Rathinavelu Chettiar, in whose name, the very trust is created, they cannot question the ownership of the respondent Trust, stating that the demised land is belonging to Arulmigu Gangadheeswarar Temple. The appellants tenant cannot assert a title and even if any right is claimed, in the instant case, such right can be made only through the land lord. In this case, the appellants, all along, claimed themselves to be a tenant under the respondent/ Trust. Now, they are intending to resile from the undertaking given before this Court to vacate and handover the vacant possession of the demised premises and thereby contravenes the undertaking recorded by this Court in the Second Appeal No. 403 of 2014. Further, the appellants have not even tendered unconditional apology in the counter affidavit filed in the contempt petition.

12. That apart, the appellants have taken out Section 47 CPC application before the Execution Court to re-agitate the very same issue, as raised in AS.No.165/2009, which was already decided in favour of the respondent Trust by the First Appellate Court and attained finality. At this juncture, it is relevant to refer to the decision reported in (2009) 6 SCC 609 (Sardar

Estates v. Atma Ram Properties Private Limited), wherein, the Supreme Court held as follows:

"8.It is evident that frivolous objections have been filed in the execution case which is an abuse of the process of the court and a flagrant violation of the eviction decree against the appellant against which appeals had been rejected and even SLP in this Court was dismissed.

9.It is evident that after the first round of litigation was over, the tenant started a second round of litigation on frivolous grounds, which was a flagrant abuse of the process of the court. This is a practice which has become widespread and which the court cannot approve of, otherwise no judgment will ever attain finality. Hence, we dismiss this appeal and impose a cost of Rs.10,000/- (Rupees Ten Thousand Only) on the appellant which shall be paid to the respondent within two months from today. The appellant shall also hand over the premises in question, which is in his possession, to the landlord within three months from today failing which he will be evicted by police force."

13. In our considered opinion, such conduct of the appellants, if viewed in the light of the dictum laid down by the Supreme Court as extracted above, would amount to wilful and deliberate violation of the court's order and contumacious conduct on their part, for which, they are liable to be punished under the Contempt of Courts Act. Even assuming that the landlord did not have a title, the tenants cannot deny the ownership as statutorily recognised in Section 116 of the Indian Evidence Act, 1872. Since the appellants are claiming right in the property as a tenant only through the landlord/respondent herein all along, now the appellants/tenants, who do not have independent right over the property, are estopped from denying the ownership of the landlord.

14. After analysing the backdrop of the case, the learned Single Judge rightly held that once it is admitted that the respondent Trust is the owner and the appellants were inducted as tenants only by the trustees, merely because there is a subsequent notice, which has been sent by the H.R & C.E, which is also subject to challenge, the appellants cannot disobey the orders of this Court in violation of the undertaking given by them to the Court. The learned Single Judge further opined that even assuming that the temple is the owner, as claimed by the H.R&CE Department, till such time, the same is determined by a court of law, it is not a choice of the appellants to refuse to comply with the undertaking given to the Court; thus, the appellants are clearly guilty of committing contempt of court by

deliberately and wilfully disobeying the undertaking given by them to the court; and therefore, it becomes imperative that in order to maintain sanctity of the orders of this Court, the appellants must receive appropriate punishment for deliberately flouting the orders of this Court, based on their undertaking given in S.A. No. 403 of 2014.

15. We wish to observe that this Court is vested with power under Section 12 of the Contempt of Courts Act to initiate contempt proceedings against those who violate or fail to comply with any direction or order issued. However, the powers conferred under Section 12 of the Contempt of Courts Act are seldom invoked by this Court unlike exercise of power vested under Article 226 or 227 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure, which are exercised time and again to issue a Mandamus or direction. While dealing with Contempt Petitions, whenever, it is reported that an order or direction issued by this Court has been complied with, of course even after expiry of time granted for compliance of such order, this Court merely records such compliance and drops all further contempt proceedings against the Contemnor. Thus, this Court normally hesitates and remains slow in the matter of initiating contempt proceedings against a person who is complained of having violated the order passed by this Court and that is the reason why this Court is confronted with the task of disposing of burgeoning contempt petitions. At the same time, if it is noticed that an order or direction issued by this Court is flouted with impunity or there is wilful or deliberate negligence in complying with a direction or order passed by this Court, which would have the effect of eroding the majesty of this Court or to obstruct the course of judicial proceeding and the administration of justice, this Court will not hesitate to invoke the powers conferred under Section 12 of the Contempt of Courts Act.

16. We wish to add that adherence to Rule of Law by one and all is an essential facet of Justice delivery system. No one is above Law and Law is Supreme. The important function of Courts is not only to ensure that the grievance of a litigant is redressed by reason of passing an order or issuing a direction, but it must ensure that such order or direction is complied with in letter and spirit without being flouted. If the orders or direction issued by this Court are not complied with, it will not only frustrate the litigants in whose favour such an order or direction was issued, but it would have the effect of shaking the very Justice Delivery System. In such event, this Court will have no other option but to wield the judicial sword to uphold the Majesty of Law so as to repose faith and instil confidence in the minds of the litigants that no one could thwart the rule of law. In the above context, useful reference can be made to the decision rendered in (Mohd Aslam @ Bhure vs.

Union of India, State of Uttar Pradesh and others) reported in 2005 1 SCC 705 wherein it was held by the Honourable Supreme Court as follows:-

"30. It is unhappy that a leader of a political party and Chief Minister has to be convicted of an offence of contempt of Court. But it has to be done to uphold the majesty of law. We convict him of the offence of contempt of Court. Since the Contempt raises larger issues which affect the very foundation of the secular fabric of our nation, we also sentence him to a token imprisonment of one day. We also sentence him to pay a fine of Rs.2000/-. The fine shall be paid within a period of two months. For the sentence of imprisonment a warrant will issue."

17. This Court is quite aware that the powers conferred under the Contempt of Courts Act has to be exercised cautiously and sparingly. But, when there is ample material on record to show that the appellants have wilfully disobeyed the order and further committed breach of the undertaking given before Court of law, they should not be allowed to go scot-free, as it will send wrong signals to the society, particularly the common man who repose faith and confidence in the judiciary as a last hope. In such view of the matter, we find no infirmity in the order passed by the learned Single Judge, warranting our interference.

18. Before parting, we wish to observe that apart from approving the sentence imposed on the appellants by the learned Single Judge for having not honoured the undertaking given before this Court, the respondent/Trust has to be enured with the benefit of getting back the demised premises as well. In this context, we are fortified by the order passed by the Honourable Supreme Court on 10.05.2018 in SLP (C) No. 12188 of 2018 an identical situation wherein it was observed as follows:-

"The petitioners, in fact, gave an undertaking to vacate the premises, in pursuance to an order dated 22.07.2016 of this Court but yet did not vacate the premises but filed objections in the execution as obstructionist. This endeavour also failed till the High Court by the impugned order.

We cannot let the matter simply rest at dismissing the special leave petition. The petitioners must firstly made to pay for occupying this premises beyond the period of undertaking and secondly they must face the consequences of violating the undertaking given to this Court.

We thus direct that the decree be executed within a period of one week from today by the executing Court.

The petitioners are further directed to pay damages at the rate of Rs.10,000/- per month commencing

from the date they were required to vacate the premises in pursuance of the undertaking till date of vacation to the respondents.

We also consider it appropriate to initiate contempt proceedings against all the petitioners. Let notice issue to the contemnors/petitioners. The contemnors are directed to remain present in the Court on the next date.

The special leave petition is dismissed.

List the matter for initiating contempt proceedings against all the petitioners on 17.05.2018.

A copy of this order be forthwith sent to the executing Court."

19. Therefore, in the light of the aforesaid order passed by the Honourable Supreme Court, while approving the order passed by the learned Single Judge, we further hold that the directions issued by the learned Single Judge in the order dated 12.03.2018 in Contempt Petition No.1829 of 2017 shall be executed by the Executing Court in E.P. No. 4438 of 2013 in O.S. No. 1617 of 2004 on the file of the 10th Assistant Judge, City Civil Court, Chennai and a compliance report in respect of delivery of possession of the suit property shall be filed within a period of two weeks from the date of receipt of a copy of this Judgment.

20. In the result, we confirm the order dated 12.03.2018 passed by the learned Single Judge in Contempt Petition No.1829 of 2017 in SA.No.403 of 2014 with the aforesaid directions. Consequently, the Contempt Appeal fails and it is dismissed. Connected Miscellaneous Petition is closed.

Today, after pronouncing the Judgment in the above Contempt Appeal No. 2 of 2018, the learned counsel appearing for the appellants prayed this Court to suspend the substantive portion of the sentence of imprisonment alone so as to enable the appellants to prefer an appeal before the Honourable Supreme Court.

2. Having regard to the above submission of the counsel for the appellants, we are inclined to suspend the substantive sentence of imprisonment alone for a period of four weeks. Accordingly, the substantive sentence of imprisonment alone is suspended for a period of four weeks.

-s/d-

Assistant Registrar (CS-IV)

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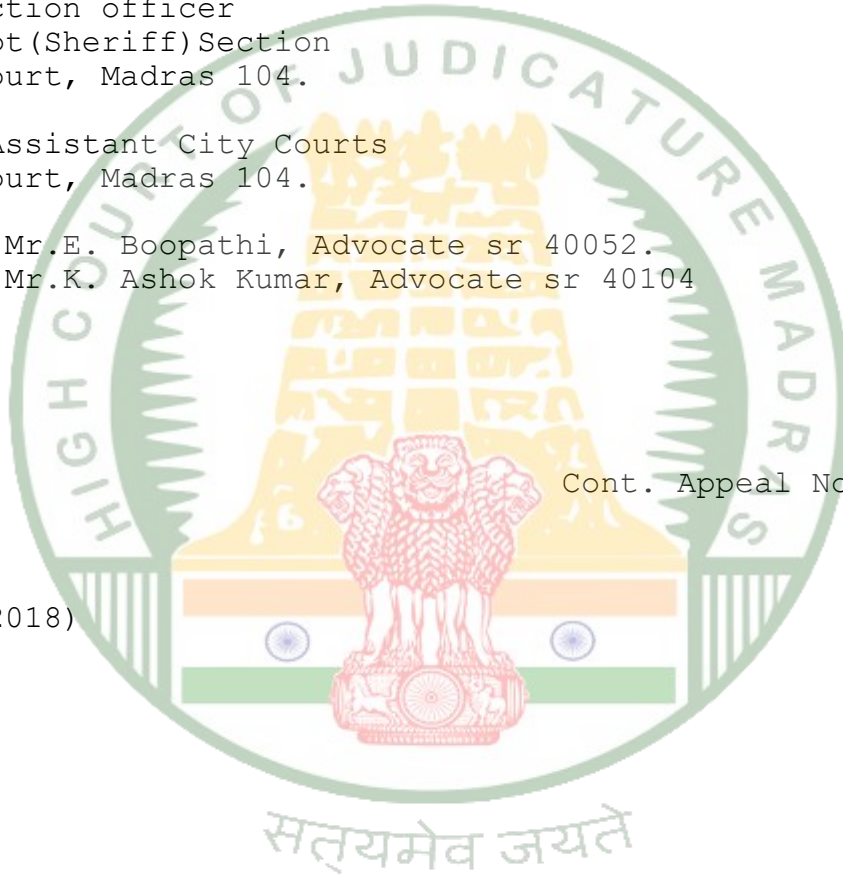
Sub-Assistant Registrar

To

1. The II Additional Judge
City Civil Court, Chennai.
 2. The XIII Assistant Judge
City Civil Court, Chennai.
 3. The Sub Assistant Registrar(O.S)
High Court, Madras 104.
 4. The Section officer
Contempt (Sheriff) Section
High Court, Madras 104.
 5. The X Assistant City Courts
High Court, Madras 104.
- +4 Ccs to Mr.E. Boopathi, Advocate sr 40052.
+2 CCS to Mr.K. Ashok Kumar, Advocate sr 40104

AK (CO)
SP (27/06/2018)

Cont. Appeal No. 2 of 2018



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