

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Cont.P.No.1829 of 2017

in

S.A.No.403 of 2014

S.Rathinavelu Chettiar Trust
rep. By its President S.Sadasivam,
Plot No.10, III Cross Street,
Lakshmanaperumal Nagar,
Kottivakkam, Chennai-600 041

presently at
FL, Block No.4, Jain Sukruti Apartments,
1, Jeswanth Nagar I Main Road,
Mogappair West,
Chennai-600 037.

... Petitioner/Respondent

Vs.

1. R.Padmanabhan (Died) *
2. R.Sivaprakasam
3. R.Annadurai

... Respondents/appellants

* R1 died - recorded vide memo dated 22.01.2018

* * *

Prayer : 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 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 of 2013 for interfering with the administration of justice by giving the undertaking elusively and thereafter by evading the same.

* * *

For Petitioner :Mr.K.Ashok Kumar

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents:Mr.E.Boopathy for RR 2 and 3

J U D G E M E N T

This contempt petition is filed praying to punish the respondents for committing civil contempt of court by wilfully disobeying the order of this Court dated 27.07.2015 made in S.A.No.403 of 2013 and for committing wilful breach of an undertaking given to this Court in the memorandum of Compromise of even date, that was filed in the aforesaid Second Appeal.

2. The plaintiff is a Trust and claims to be the absolute owner of the suit property, namely, 1200 sq.ft of vacant land and thereabouts situate in Old No.1/59, New No.96/97, Gangadheeswarar Koil street, Purasawalkam, Chennai. The defendants requested the plaintiff Trust to lease the vacant land for a monthly rent and accordingly, the same was leased out to them on 27.11.1951. The defendants/tenants had also put up a superstructure on the land without the permission or consent of the plaintiff. The defendants also requested the plaintiff Trust to provide them certain amenities. While so, the defendants committed default in payment of the monthly rent of Rs.30/- p.m. from 01.01.1998. Hence, a legal notice was issued on 12.04.2000 to all the defendants/respondents calling upon them to pay the arrears of rent from 01.01.1998 to 31.03.2000. The said notice also called upon the respondents to pay a sum of Rs.,2000/- p.m. with effect

from 01.04.2000. As there was no response, the plaintiff had issued notice under Section 106 of Transfer of Property Act and filed a suit in O.S.No.1617 of 2004 on the file of the XIII Assistant City Civil Court, Chennai. The suit was dismissed on 18.09.2008. Being aggrieved, the plaintiff Trust had preferred A.S.No.165 of 2009 on the file of II Additional City Court, Chennai. The first appellate Court had decreed the suit on 30.10.2012 directing eviction of the defendants/tenants. The plaintiff also had filed an execution petition in E.P.No.4438 of 2013. However, the defendants/tenants had preferred S.A.No.403 of 2013 before this Court.

3. When the Second Appeal was pending, the plaintiff Trust and the defendants/tenants had entered into a Memorandum of Compromise (in short "MOC") dated 27.07.2015, signed by all the parties, which was recorded and a judgment and decree in terms of the said MOC was passed on 27.07.2015. It is agreed by the defendants/tenants in the said MOC 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."

4. As stated earlier, the decree was passed in terms of the above MOC as per which the defendants/tenants had to vacate and handover the vacant possession on or before 31.07.2017. E.P.No.4438 of 2013 was also kept pending and

was periodically adjourned. The defendants/tenants, even after the expiry of the time frame fixed under the MOC, had not vacated and handed over possession to the plaintiff Trust, but filed an application under Section 47 of the Code of Civil Procedure, 1908 (in short, "CPC") and trying to agitate the same issue, that was already decided in the suit, thereby preventing the execution proceedings. As the defendants have given an undertaking in the MOC, which was even in terms of the decree, failure to honour the same would amount to wilful disobedience of the orders of this Court. Hence, the contempt petition is filed by the petitioner.

5. The third respondent, namely, one Annadurai had filed a counter affidavit on behalf of himself and on behalf of the second respondent also. The first respondent R.Padmanaban died. While denying the allegations and averments, as stated in the affidavit filed in support of the contempt petition, the respondents had mentioned that the contempt petition itself is not maintainable. In paragraph 4, the respondents had denied the ownership of the suit property. The lease in favour of the respondents dated 24.10.1951 is admitted in paragraph 7. The superstructure put up by them is also admitted. However, it is stated that it was done with the permission of the Rathinavelu Chettiar. In paragraph 16, it is stated that after receipt of the contempt notice dated 14.08.2017,

respondents 2 and 3 had sent a reply dated 14.08.2017 denying the ownership of the petitioner and contended that Sri Gangadheeswarar Temple is the owner. It is further stated that the Joint Commissioner of Hindu Religious and Charitable Endowment had issued a show cause notice to respondents 1 to 3 on 16.03.2017 for eviction on the ground of wilful default. It is also stated that the temple is only the owner as per the notice issued by the HR and CE. In paragraph 21, it is specifically stated by the respondents that they have not vacated and handed over the vacant possession of the land measuring 1200 sq. ft. or thereabouts situated at Old No.1/59, New No.96/97, Gangadheeswarar Koil street, Purasawalkam, Chennai. In paragraph 23, the respondents stated that the HR & CE had filed a petition in M.P.No.58 of 2017 against the petitioner/landlord that the petitioner itself is an encroacher of the suit property and the same only belonged to the temple. It is further stated that they have filed a petition before the Rent Controller in RCOP No.1488 of 2017 for depositing the rent for the demised premises from August 2017. Hence, it is pleaded by them that they have not wilfully committed breach of the undertaking and they have not disobeyed the orders of this Court.

6. The first objection raised by the respondents is

that the contempt petition itself is not maintainable as it is against the consent decree. Whether wilful disobedience

or non-compliance with the consent decree would amount to civil contempt is no more *res integra*. The civil contempt has two categories, firstly, wilful disobedience to a process of the Court; and, secondly, wilful breach of an undertaking given to a Court. In **Rama Narang V. Ramesh Narang**, (2006) 11 SCC 114, it has been held as follows :

"24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.

25. In such circumstances it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the willful violation of the terms of a consent decree and willful violation of a decree which is passed on adjudication. The decision in **Baburam Gupta's case** must, therefore, be limited to its own peculiar facts.

26. **Rita Markandeya Vs. Surjit Singh Arora (1996) 6 SCC 14**, which was also been relied upon by the respondents to urge that the present application for contempt was not maintainable, related to proceedings for eviction. The respondent, who was the tenant had been directed to vacate the tenanted premises. His appeal before this Court was dismissed. While dismissing the appeal the Court recorded:-

"However, as agreed to by both the learned counsel, time to hand over vacant possession to Smt. Rita Markandey is granted till 31.3.1995. This shall be subject to the usual undertaking to be filed by the appellant-tenant within four weeks from today."

7. From the above it is very clear that the law is well-settled that if any parties gives an undertaking to the Court to vacate the premises, from which, he is liable to be vacated, any breach of the same would amount to contempt. Hence, the objection raised by the respondents is overruled holding that the contempt petition is maintainable.

8. Now the question that has to be determined is whether the respondents had wilfully disobeyed the orders of the Court resulting in contempt of Court.

9. As per the MOC, the first condition itself is that the defendants/lessees agreed and undertook to handover vacant possession of the demised land on or before 31.07.2017. The compromise was entered on 27.07.2015 and a decree in terms of the same was passed on the same date. Despite granting two years time for the defendants to relocate themselves, they have been squatting over the property and wilfully disobeying the orders of this Court. In paragraph 21 of the counter affidavit, it is admitted that they had not vacated and handed over the vacant land, as agreed by them, to the petitioner. Despite the order of this Court, which is passed based on the respondents own commitment, the respondents are wilfully disobeying the orders by placing reliance on the notice issued by the Joint Commissioner, HR & CE, on 16.03.2017, which is subsequent to the proceedings. When it is categorically admitted that the respondents were inducted by Rathinavelu Chettiar, in whose name the very trust is created, the respondents cannot fix the ownership in the HR & CE Department contending that this property belongs to the temple. The respondents have not even tendered unconditional apology in the counter affidavit. Once it is admitted that the petitioner trust is the owner and the respondents were inducted as tenants only by the trustees, merely because there is a subsequent notice, which has been sent by the HR & CE, which is also subject to challenge, the respondents cannot disobey the orders of this Court in

violation of the undertaking given by them to the Court. Even assuming that the temple is the owner, as claimed by the HR & CE Department, till such time, the same is determined by a Court of law, it is not a choice of the respondents to refuse to comply with the undertaking given to the Court.

10. The petitioner had already granted two years time from the date of MOC to the respondents to vacate and handover possession. Instead of honouring the undertaking given to the Court, the respondents have produced the subsequent notice issued by the HR & CE, which is nothing but a subterfuge. Thus, the respondents are clearly, guilty of committing contempt of Court by deliberately and wilfully disobeying of undertaking given by them to the Court. Therefore, it becomes imperative that in order to maintain sanctity of the orders of this Court, the respondents must receive appropriate punishment for deliberately floating the orders of this Court, based on their undertaking.

11. Now going back to the MOC filed by the respondents dated 27.07.2015, in clause (iii), the defendants had undertook to pay monthly rent at the rate of Rs.10,000/- for the period from 01.08.2015 to 31.07.2017. In clause

(x) of the MOC, it is specifically agreed that in the event of default or breach of the MOC, the respondents shall

jointly and severally pay a liquidated sum of Rs.5,000/- for everyday's breach. It is agreed in clause (xi) of the MOC that in the event of default of breach by the respondent (defendants/lessees), the above said liquidated damages of Rs.5,000/- per day, execution and other remedies shall be without prejudice to one another. Having provided for default clause also in the MOC, it is not open to the respondents to take shelter under the subsequent notice issued by the HR & CE without basis.

12. The wilful disobedience or breach of the undertaking given to the Court, therefore, amounts to civil contempt within the meaning of Section 2(b) of the Contempt of Court Act, 1971. The respondents, having committed breach of undertaking given to the Court as per the MOC dated 27.07.2015, are clearly liable for committing the contempt of Court. The undertaking given by the respondents are not only expresses, but provide for punishment in the event of default. Therefore, the breach of clear undertaking given to the Court amounts to contempt of court, as the contemnors by giving a false undertaking both to the Court as well as to the petitioner, obtained the benefit for themselves (at least two years time in the present case) and failed to honour the undertaking, which amount to a serious fraud on the Court itself, and thereby obstructs the course of justice and bring disrepute to the institution.

13. As pointed out earlier, the contemnors have not even cared to tender unconditional apology for the disobedience of the order dated 27.07.2015 in the counter filed by them. This would also go to prove the conduct of the contemnors for having abused the process of the Court by flouting and disobeying the orders. In such circumstances, if the act of the contemnors are not viewed strictly and allowed to go without punishment, it will set a bad precedent.

14. In the light of the above discussions, this Court is of the firm opinion that the contemnors are guilty of contempt for having disobeyed the orders of this Court and committed breach of undertaking given to this Court by them as per the MOC dated 27.07.2015. Thus, it is a fit case for imposing punishment as contemplated under Section 12 of the Contempt of Court Act, 1971. Hence, the contemnors are liable for punishment for wilful disobedience of the order dated 27.07.2015. In the above circumstances, the following orders are passed :

(i) The respondents/contemnors 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 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 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 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 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.

15. With the above observations and directions, this contempt petition is disposed of.

16. After the order is pronounced, learned counsel for the respondents/contemnors requested for suspension of the order, in particular, the sentence imposed, for a period of four weeks.

17. Accordingly, sentence of imprisonment imposed in the order is suspended for a period of two weeks from today

to enable the respondents/contemnors to file a contempt appeal, if they are so advised.

SD/-
JOINT REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

kr/CO/13/03/2018
To

1. The II Additional Judge,
City Civil Court, Chennai.
2. The XIII Assistant Judge,
City Civil Court, Chennai.
3. The Section officer,
Contempt (Sheriff) Section,
High Court, Madras.

सत्यमेव जयते

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