

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Contempt Case No.1315 of 2018

ORDER:

The petitioner, who is the respondent in Second Appeal No.5 of 2017 on the file of this Court, filed the instant Contempt Case under Sections 10 and 12 of Contempt of Courts Act, 1971 seeking to punish the respondent, who is the appellant in S.A.No.5 of 2017 for his wilful and deliberate disobeying of the undertaking given before this Court on 06.10.2017 to vacate the premises bearing No.Q.No.2-B/Spl/APHB, Door No.7-1-621/12, admeasuring 453 sq.yards, Sanjeev Reddy Nagar, Hyderabad, on or before 31.03.2018.

2) The factual matrix of the case is thus:

a) The respondent herein filed S.A.No.5 of 2017 aggrieved by the judgment and decree in A.S.No.286 of 2013 dated 23.08.2016 passed by III Additional Chief Judge, City Civil Court, Hyderabad. When the matter came up for hearing on 06.10.2017, learned Senior Counsel Sri Vedula Venkataramana, appearing on behalf of respondent herein/ appellant filed memo. Basing on which, this Court passed the following judgment:

“1) When the matter came up for hearing on admission, learned Senior Counsel Sri Vedula Venkataramana filed a memo and submitted that the instant appeal is filed against the dismissal of A.S.No.286 of 2013 dated 23.08.2016 passed by III Additional Chief Judge, City Civil Court, Hyderabad and that there are no substantial questions of law involved in the Second Appeal and in

that view, the appellant requires six months time for vacating the suit premises and the respondent also agreed to accommodate the said time on the condition of appellant paying admitted rent of Rs.9,000/- from December, 2016 to 31.03.2018 (16 months) totalling Rs.1,44,000/-. He stated that the said amount is paid by way of demand draft No.081921 dated 13.09.2017 drawn on Axis Bank Limited in the name of respondent. To vacate the suit premises time is granted upto 31.03.2018 on which date the appellant would deliver vacant possession of the suit schedule premises to the respondent. Learned counsel thus requested to record the memo and close the appeal.

2) *Learned counsel for respondent Sri P.Ramachandran is present and perused the memo and agreed for the same.*

3) *Recording the contents of the memo, Second Appeal is accordingly disposed of. No costs."*

b) While-so, the grievance of the petitioner/respondent is that subsequently, the respondent/appellant filed I.A.No.1 of 2018 seeking extension of time to vacate the premises till 30.06.2018 but this Court dismissed the said application on 29.03.2018 and thus the respondent/appellant was legally obliged to honour his commitment to vacate the premises by 31.03.2018 but he deliberately and wilfully violated the orders of this Court dated 06.10.2017. He continued in possession of the premises and created obstacles to the petitioner, who is age old lady of 88 years in getting possession of her premises. It is the further case of petitioner that the respondent created some sub-tenancies in respect of the suit schedule property and through them got filed suits— O.S.Nos.621/2018 and 622/2018 on the file of XXI Junior Civil Judge, City Civil Court, Hyderabad and obtained *status-quo* orders on

27.03.2018. Thus the respondent intentionally violated the undertaking given by him before this Court and inducted some third parties with a *mala fide* intention to deprive the petitioner from enjoying the fruits of the decree. Not only that, the respondent locked the premises without handing over the possession to the petitioner besides creating some sham tenancies. Hence the contempt petition.

3) This Court on 19.06.2018 heard the petitioner on the aspect of existence of *prima facie* case to initiate contempt proceedings against the respondent. At the time of hearing, learned counsel for petitioner relied upon the judgments of the Apex Court reported in *Noorali Babul Thanewala v. K.M.M.Shetty*¹ and *Suresh Bhikaji Bhuvad and others v. Ramji Dalip (deceased) through LRs and others*² to buttress his argument that deliberate violation of the Court order basing on the undertaking given by the respondent would amount to civil contempt.

4) Upon hearing the petitioner and perusing the cited judgments, this Court satisfied with the existence of *prima facie* case to proceed with the contempt petition and directed the Registry to issue Form-I notice to the contemnor. Since the notice returned with the endorsement “unclaimed” and having found that the respondent was deliberately avoiding the service of notice, on the request of the petitioner, petitioner was permitted to take out substitute service on respondent by way of publication in Eenadu Telugu Daily Newspaper, Hyderabad edition. The

¹ AIR 1990 SC 464

² MANU/SCOR/15182/2018

publication was filed and there was no representation on behalf of respondent. Hence heard learned counsel for petitioner.

5) The point for determination is:

“Whether the respondent is liable for contempt?”

6) **POINT**: As can be seen, this Court on the memo filed by the parties, wherein the respondent/appellant undertook to vacate the suit premises and deliver vacant possession to the petitioner by 31.03.2018, passed the judgment in S.A.No.5 of 2017 on 06.10.2017 in terms of the memo. Subsequently, the respondent filed I.A.No.1/2018 and sought for extension of time till 30.06.2018 to vacate the premises but this Court dismissed the said application on 29.03.2018. Therefore, the respondent was legally obligated to vacate the premises by honouring his commitment given at the time of delivering judgment in S.A.No.5/2017. However, the respondent had given a deliberate go-by and did not vacate the premises. It appears, to interdict the execution proceedings taken up by the petitioner before the lower Court, the respondent created sub-tenancies in favour of third parties and got filed O.S.No.621/2018 and O.S.No.622/2018 on the file of XXI Junior Civil Judge, CCC, Hyderabad and obtained *status quo* orders. It is pertinent to note that the respondent in his memo filed before this Court in S.A.No.5/2017 did not make a whisper about the existence of the alleged sub-tenancies. Therefore, what is germane for consideration at present is the prevaricative stand taken by the respondent before this Court. Hence,

from his conduct it is writ-large that he deliberately, wilfully and wantonly flouted the order of this Court rendering himself liable for punishment under the law of Contempt of Court. In *Noorali Babul Thanewala*'s case (1 supra) and *Suresh Bhikaji Bhuvad*'s case (2 supra) under similar circumstances, Hon'ble Apex Court held that breach of undertaking given by the contemnor before the Supreme Court would attract the provisions of the Contempt of Courts Act, 1971.

7) Having regard to the above jurisprudence and the fact that the respondent hoodwinked an aged lady of 88 years and deprived her of the fruits of the hard earned decree, this Court is of the considered view that the respondent deserves stringent punishment under law.

8) In the result, the C.C is ordered and the respondent is found guilty of committing contempt by wilful disobedience of the undertaking given by him in this Court. Accordingly, he is sentenced to undergo Civil Imprisonment for a period of six(6) months and he shall pay a fine of Rs.2,000/-(Rupees two thousand only). The subsistence allowance is fixed at Rs.200/- per day. The Registry shall issue NBW against the respondent for securing his presence to commit him to the prison.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.09.2018

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