

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CONTEMPT PETITION NO.171 OF 2018
IN WRIT PETITION NO.5933 OF 2015

(Shri Arvind s/o Krushnarao Waghmare vs. Shri R.S. Salgaonkar, Joint Civil Judge, Senior Division, Nagpur and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri A.M. Deshpande, Additional Government Pleader for
respondent no.1.

Shri A.A. Naik, Advocate for respondent no.2.

Shri S. Khedkar, Advocate for respondent no.3.

CORAM : R.K. DESHPANDE AND
S.M. MODAK, JJ.

DATED : APRIL 5, 2019

This contempt petition complains about willful disobedience of the order dated 30/10/2015 passed by this Court in Writ Petition No. 5933/2015 filed by the petitioner. According to the petitioner, in terms of Clause 4 of the said order passed by this Court, Civil Court was not competent to decide Special Civil Suit No.725/2015 filed by the petitioner, on the preliminary issue, i.e. bar under Section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, but the trial Court was supposed to proceed further in the matter to decide the controversy on merits.

Initially on 7/12/2018 this Court passed an order issuing notice before admission to the respondents, which was made returnable after three weeks. Subsequently, matter was listed before this Court on 22/3/2019 when this Court passed an order as under :

“Neither the petitioner appears in person nor anyone represents him.

Shri Khedkar, the learned Counsel appearing for the respondent nos.2 and 3, seeks time in this matter to file the reply.

We have perused the pursis stamp No.40 of 2019, dated 3/1/2018, filed by the petitioner, stating that one of us (R.K. Deshpande, J.) maintains bias against the petitioner and, therefore, the matter may not be listed before the Bench headed by him. The petitioner is in the habit of making such allegations without basis. This is a device adopted to avoid the Bench. The petitioner makes allegations against the Judges of this Court as well as of lower Court. The pursis is rejected being frivolous and vexatious, without making out a definite case.

Put up this matter on 5/4/2019, at the instance of Shri Khedkar, the learned Counsel for the respondent nos.2 and 3.”

The petitioner has filed an application for modification of the order being Civil Application No.32/2019, but in spite of fact that the matter is called out, petitioner, who is a practising Lawyer, is not present before this Court.

The complaint in the contempt petition is about willful disobedience of the order passed by this Court on 30/10/2015 in Writ Petition No.5933/2015, which is reproduced below :

“Heard.

The writ petition is disposed of with the consent of the learned Counsel for the parties on the following terms :

(1) Without prejudice to the rights and contentions of the petitioner in the suit filed by the petitioner against the respondents, the petitioner would pay a sum of Rs.6.47 lakhs to the respondent no.6 Bank towards full and final settlement of all the dues, that are liable to be paid as per the say of the Bank.

(2) Since the petitioner has deposited a sum of Rs.3.50 lakhs in this Court by a Demand Draft, the respondent no.6 Bank is permitted to withdraw the said amount. The petitioner would pay an additional sum of Rs.2.97 lakhs to the respondent no.6 Bank by a Demand Draft, within a period of seven days.

(3) As soon as the amount of Rs.2.97 lakhs is paid by the petitioner to the respondent no.6 Bank by a Demand Draft, the respondent no.6 Bank should deliver the possession of Flat No.304, “Saujanya Apartment”, Plot No.3, Kinkhede Layout, Nagpur to the petitioner.

(4) It is agreed by the parties that the payment of the aforesaid amount by the petitioner to the respondent no.6 Bank towards full and final settlement of the dues as per the say of the Bank, would be subject to the rights of the parties, as decided in the civil suit filed by the petitioner.

(5) There would be no order as to costs.”

This contempt petition complains about willful

disobedience or breach of Clause (4) of the aforesaid order and there does not seem to be any other complaint. After going through the said Clause, we do not find that the trial Court was restrained from deciding the suit on the basis of preliminary objection as to bar of Section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to entertain and decide the suit. The trial Court has not gone into the merits of the matter and direction cannot be construed to decide the matter on merits without having regard to preliminary objection raised to entertain, try and decide the suit.

The petitioner has got remedy of filing an appeal challenging such order if he is aggrieved by it. We are informed that the petitioner has filed review petition also. Hence, we do not propose to record anything on merits. The contempt petition is dismissed.

JUDGE

JUDGE

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