

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

**Civil Revision Petition Nos.6519 of 2016, 4772 of 2014 &
6557 of 2016**

COMMON ORDER :

Heard both sides.

2. These Civil Revision Petitions arise out of the same suit between the same parties and so they are being disposed of by this Common Order.

3. The petitioner herein is 1st defendant in Original Suit No.32 of 2003 on the file of the IX Additional Chief Judge, City Civil Court, at Hyderabad which was later transferred to the Court of the IX Additional Chief Judge, City Civil Court, at Hyderabad and re-numbered as Original Suit No.24 of 2005.

4. The said suit has been filed by respondent nos.1 to 4 herein against petitioner and others for partition of several plaint schedule properties mentioned in Schedules 'A' to 'F' to the plaint.

5. Pending suit, it is not in dispute that Interlocutory Application No.907 of 2003 was filed by respondent nos.1 to 4 before the I Additional Chief Judge, City Civil Court, Secunderabad seeking inventory of the items in the suit schedule properties, and the said Interlocutory Application No.907 of 2003 was allowed.

6. Challenging the same, Civil Revision Petition No.2117 of 2003 was filed by petitioner and defendant nos.2 and 3 in this Court.

7. There was a compromise between the parties pending suit whereunder the petitioner was directed to make payment of certain amounts monthly to respondent nos.1 to 4 as under :

“Compromise Memo as in followed terms and conditions :

1. Branch of Shantha Bai (i.e., petitioners in I.A. & Respondents herein) shall be paid Rs.3,00,000/- every month and be paid by 2nd of every month to Shantha Bai, till the disposal of O.S.No.32/03 by Sri Mahesh Chand the petitioner in C.R.P.No.2117/2003.

2. An amount of Rs.50,00,000/- tentatively (subject to the rights of them in the suit) towards the marriage expenses of Miss Rajini Chand Miss Padmini Chand shall be paid by DDs. The said DDs are handed over to Miss Rajini and Miss Padmini Chand, drawn on Canara Bank, Ameerpet Branch, bearing Nos.140194; 140195, dt.11.02.2004.

3. The petitioners in I.A.No.907/2003 in O.S.No.32/2003 shall withdraw the said I.A. or I.A. shall be treated as dismissed as not pressed.”

8. The said compromise memo was recorded and Civil Revision Petition No.2117 of 2003 came to be disposed of on 20.02.2004 in terms of the said compromise.

9. The petitioner and defendant nos.2 and 3 then filed Civil Miscellaneous Petition Nos.7866 of 2004 and 11439 of 2004 seeking modification of the said order, and on 30.04.2004 the request for modification was accepted in terms of a revised compromise memo dt.28.04.2004 altering the quantum of payment agreed in Clause No.1

above and a decree was passed by this court in Civil Revision Petition No.2117 of 2003 and Civil Miscellaneous Petition Nos.7866 of 2004 and 11439 of 2004 as under :

“1. That the branch of Shantha Bai (i.e., petitioners in I.A.No.907/2003 in O.S.No.32/2003) shall be paid an amount of Rs.2,60,000/- by 2nd of every month by Sri Mahesh Chand, the Revision Petitioner herein till the disposal of the suit being O.S.No.32/2003 filed by the respondent nos.1 to 4 in the present Civil Revision Petition, Poonam Chand, Prem chand, Rajini, Padmini Chand.

2. That Sri Mahesh Chand the Revision Petitioner herein will pay an amount of Rs.40,000/- every month to the petitioner no.3 namely Mr. Karam Chand, S/o.Mahesh Chand who shall also share the expenditure along with the family members of Smt. Shantha Bai. Further Mr. KaramChand shall not claim an amount of Rs.2,60,000/- being paid every month to the branch of Shantha Bai. The petitioners and respondents herein agree that all the other terms agreed upon between the parties in the earlier compromise memo filed on 13.02.2004 shall remain undisturbed.

3. That there be no order as to costs in this CRP.”

10. It is also not in dispute that Contempt Case No.932 of 2008 was filed alleging non-compliance of this order by 1st respondent. But the said Contempt Case was closed on 20.03.2009 stating that the orders passed by this Court were executable, and it was not a fit case to invoke powers of Contempt of Court. The said order recorded that petitioner had complied with the terms of the Compromise dt.30.04.2004 only up to April, 2008 and did not comply with it thereafter.

11. It is also not in dispute that on 08.08.2008 in Civil Miscellaneous Appeal Nos.53 and 59 of 2008, arising out of the same suit, there was an order of *status quo* passed by this Court with regard to the alienation of the suit schedule properties. The said order, though binding on the petitioner, was admittedly violated by him on 04.03.2016 by selling a plot No.835 at Jubilee Hills Co-operative Housing Society, Jubilee Hills, Hyderabad for a sum of Rs.6,00,30,000/-.

12. When the petitioner was not complying with the directions given in the order dt.30.04.2004 in Civil Revision Petition No.2117 of 2003, the respondent nos.1 to 4 filed three Execution Petitions, viz.: (a) Execution Petition No.1 of 2010 for recovery of a sum of Rs.29,90,500/- by way of arrest and detention of petitioner in Civil Prison; (b) Execution Petition No.10 of 2011 for recovery of sum of Rs.42,90,500/- from the petitioner for the period from 15.02.2010 to 31.05.2011; and (c) Execution Petition No.11 of 2015 for recovery of Rs.62,41,000/- for the period from 01.03.2012 to 28.02.2014, with costs.

13. In all these applications, it is the contention of respondent nos.1 to 4 that petitioner had not complied with the orders passed by this Court in Civil Revision Petition No.2117 of 2003 on 30.04.2004, and also violated the order of *status quo* granted on 08.08.2008 in Civil Miscellaneous Appeal Nos.53 and 59 of 2008, which is subsisting and binding on him.

14. The petitioner filed counters in the Revisions admitting that he was to pay amounts as per the said orders to respondent nos.1 to 4 as per the order dt.08.08.2008 in Civil Miscellaneous Appeal Nos.53 and 59 of 2008, but he contended that Contempt Case No.1232 of 2008 had been dismissed on 20.03.2009 and he had taken a plea of lack of finances / resources and finance difficulties to make payments subsequent to May, 2018; and therefore, the Execution Petitions should be dismissed.

15. The Court below examined the petitioner as R.W.1 and the 1st respondent as P.W.1 and marked Exs.P.1 and P.2.

16. Exs.P.2 is the sale deed dt.04.03.2016 which was executed by the petitioner in respect of the plot in Jubilee Hills referred to above.

17. With reference to the said transaction, in his cross-examination as R.W.1, the petitioner admitted that he alienated the property which is subject matter of Ex.P.2. He also admitted that there was an order of injunction operating against him restraining him from alienating the suit schedule properties. He did not dispute that the plot in Jubilee Hills which is subject matter of Ex.P.2 was one of the suit schedule properties.

18. After taking note of the said transaction, the Court below held that petitioner had sufficient means to satisfy the Execution Petition amounts and he had sold the property under Ex.P.2 to avoid compliance with the order passed by this Court in Civil Revision

Petition No.2117 of 2003. It therefore directed issuance of arrest warrant against the petitioner on deposit of the diet amounts and transportation charges in the three Execution Petitions by way of separate orders, all dt.06.12.2016.

19. Assailing the same, the present Civil Revision Petitions are filed.

20. The counsel for petitioners contended that petitioner is aged 89 years as of date and he is not in a position to comply with the order passed in Civil Revision Petition No.2117 of 2003 on 30.04.2004. He did not dispute the transaction of sale executed by petitioner under Ex.P.2, after the order was granted on 08.08.2008 in Civil Miscellaneous Appeal Nos.53 and 59 of 2008 for maintenance of *status quo* which prohibits the petitioner to alienate any of the suit schedule properties.

21. The counsel for respondent contended that the pleas raised by petitioner are without any merit because having had the resources to comply with the compromise order passed in Civil Revision Petition No.2117 of 2003 on 30.04.2004, willfully and deliberately the petitioner failed to comply with it after April, 2008, and the transaction entered into under Ex.P.2 by petitioner shows that he has the means to comply with the said order. He contended that petitioner has no respect for orders of the Court and merely sending him to a civil prison would not solve the problem, since he would not only

drag on the suit which has been pending for already fifteen years but ultimately get away without any penalty. He also contended that it is within the power of this Court to ensure compliance with the orders passed by it and this Court is also empowered to strike off the defence of petitioner for his above conduct in not complying with the order passed in Civil Revision Petition No.2117 of 2003 on 30.04.2004.

22. Since the capacity of petitioner to comply with the order passed in Civil Revision Petition No.2117 of 2003 on 30.04.2004 by virtue of the sale transaction Ex.P.2 made by him is not in dispute, and since that said sale by petitioner is in violation of the order dt.08.08.2008 passed in Civil Miscellaneous Appeal Nos.53 and 59 of 2008 which is binding on him, merely because the petitioner is a Senior Citizen, he cannot be allowed to violate the order passed by this Court with impunity and get away with it.

23. A learned single Judge of this Court in **Atreyapurapu Venkata Subba Rao vs. Atreyapurapu Venkata Shyamala**¹ also held that to secure the ends of justice, and to prevent the abuse of the court's process, striking off the defence can be resorted to under Section 151 of Civil Procedure Code, 1908 for non-payment of maintenance.

24. In **Prithvirajsinhji Mansinghji vs. Bai Shivprabhakumari**², the Bombay High Court held that Court can strike off defence of a defendant by virtue of its inherent power under Section 151 of Civil

¹ 1990 II DMC 486

² AIR 1960 Bom 315

Procedure Code, 1908. In that case, the Court held that defence can be struck off for failure to pay interim maintenance, particularly if the refusal to pay interim maintenance, is contumacious.

25. In **C.S. Mangalam vs. Velayudhan Asari**³, the Kerala High Court also took a similar view and held that non-payment of interim maintenance amount in an O.P. under the Hindu Marriage Act, 1955 empowers the Court even in the absence of a provision in the Hindu Marriage Act, 1955 to see that the orders passed by it are enforced and in the event of non-compliance of the orders passed by the Court, the defence of a party can be struck off, in exercise of inherent powers vested in the Court.

26. Admittedly, in the instant case, the payments in question which were to be made by petitioner to respondent nos.1 to 4 are in the nature of maintenance and the decree passed on 30.04.2004 in Civil Revision Petition No.2117 of 2003 and Civil Miscellaneous Petition No.7866 of 2004 records it.

27. Therefore, the principle in the above decisions would clearly apply to the facts of the instant case.

28. The recalcitrant and contumacious behaviour of petitioner in willfully and deliberately violating the orders passed by this Court on 30.04.2004 in Civil Revision Petition No.2117 of 2003 and Civil Miscellaneous Petition No.7866 of 2004 warrants a more stringent

³ AIR 1993 Kerala Pg.181

punishment than mere arrest in a Civil prison and warrants striking off his defence in the suit Original Suit No.24 of 2005.

29. Accordingly, the Civil Revision Petitions are dismissed. The defence of petitioner in Original Suit No.24 of 2005 on the file of IX Additional Chief Judge, City Civil Court, at Hyderabad is struck off in exercise of the inherent power of this Court under Section 151 of Civil Procedure Code, 1908 read with Article 227 of the Constitution of India to prevent abuse of process of Court by petitioner.

30. The petitioner shall also pay costs of Rs.20,000/- in each of the Civil Revision Petitions to respondent nos.1 to 4.

31. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10.07.2019

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