

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

CONTEMPT CASE NO.1814 OF 2018

O R D E R

This contempt case was instituted alleging wilful disobedience to the final order dated 09.06.2017 passed in C.R.P.No.2429 of 2017. The said revision petition was preferred by the claim petitioners in E.A.No.3 of 2017 in E.P.No.4 of 2017 on the file of the learned XII Additional District and Sessions Judge, Vikarabad, Ranga Reddy District. E.A.No.3 of 2017 was filed by them under Order 21 Rule 99 r/w Rule 101 CPC. They also filed E.A.No.4 of 2017 in E.A.No.3 of 2017 in E.P.No.4 of 2017 seeking stay of all further proceedings in the execution petition. However, on 28.04.2017, the executing Court, on the one hand, issued notice in E.A.No.4 of 2017 in E.A.No.3 of 2017 in E.P.No.4 of 2017 and on the other, passed a Docket Order directing re-issuance of the delivery warrant. Aggrieved thereby, the claim petitioners filed the C.R.P.

An interim order was passed in the C.R.P. on 30.04.2017. Thereby, the common High Court for the States of Telangana and Andhra Pradesh took note of the fact that the claim petition would stand defeated if the E.P. schedule property was delivered to the respondents at that stage and accordingly granted stay of all further proceedings in the E.P.

While so, on 09.06.2017, Sri Mohammed Shujauddin, learned counsel appearing for the contesting respondents in the C.R.P., fairly stated before the Court that as notice had been ordered in the claim petition and the stay petition filed therein, his clients would enter appearance before the executing Court and contest the same. He further stated that pending disposal of the stay petition in the claim petition, his clients would not seek delivery of the E.P. schedule property.

Having recorded the aforestated undertaking, the Court observed as under in the final order dated 09.06.2017:

‘Apart from this fair submission made by Sri Mohd. Shujauddin, learned counsel, this Court finds that the executing Court ought not to have directed re-issuance of the delivery warrant while ordering notice in the stay petition in the claim petition filed by the petitioners as the same would result in rendering the claim petition itself infructuous. That part of the order is accordingly set aside. The executing Court shall proceed with the hearing of the claim petition and dispose of the same in accordance with law expeditiously.’

In the affidavit filed in support of the contempt petition, the revision petitioners in C.R.P.No.2429 of 2017 alleged that instead of contesting the stay petition as ordered in the C.R.P., the respondents herein along with 50 to 60 unsocial elements criminally trespassed into the property and dispossessed their watchman on 27.10.2017. They stated that they already lodged a police complaint which was taken on file as Crime No.467 of 2017 on the file of Moinabad Police Station and that a charge-sheet was also filed before the competent criminal Court. The petitioners asserted that the respondents herein violated their own representation before the Court and also the order in C.R.P.No.2429 of 2017 by trespassing into and taking possession of the subject property. They further stated that the respondents had taken the plea that they obtained possession of the property under a ‘declaration-cum-handing over of possession’ dated 16.10.2017 executed by the judgment-debtor, the third respondent in the C.R.P., and pursuant thereto, they filed a Memo before the executing Court stating that the parties had amicably settled the matter out of Court. The petitioners asserted that they filed a reply Memo in the claim petition and that the same is pending consideration. They stated that the respondents in the contempt case wilfully and intentionally violated the order of the Court and unlawfully

took possession of the property. It is in the context of this alleged contempt that the petitioners seek exercise of jurisdiction by this Court under the Contempt of Courts Act, 1971 (*for brevity*, 'the Act of 1971').

Heard Sri D.Prakash Reddy, learned senior counsel representing Sri Damodar Mundra, learned counsel for the petitioners, and Sri M.V.S.Suresh Kumar, learned senior counsel representing Sri Mohammed Shujauddin, learned counsel for the respondents.

As already pointed out *supra*, the foundation for this contempt case is the act of taking possession attributed to the respondents. However, Sri M.V.S.Suresh Kumar, learned senior counsel, would contend that there is no clarity on the part of the petitioners as to the possession of the subject property. He would place reliance on the writ affidavit dated 31.10.2017 in W.P.No.36787 of 2017 filed by the petitioners, which was deposed to by the first petitioner herein, wherein she stated that on 27.10.2017, the first and second respondents along with 40 to 50 unsocial elements came to the property and threatened the watchman with dire consequences and tried to trespass into the property. She stated that upon coming to know of this fact, the petitioners filed a complaint before the Station House Officer, Moinabad Police Station, on 28.10.2017. She further stated that instead of taking action on their complaint, the Station House Officer, Moinabad Police Station, took possession of the property from them under Section 145 CrPC.

Significantly, in the said writ petition, the petitioners sought an interim direction to the Station House Officer, Moinabad Police Station, to hand over possession of the subject property which was obtained from them under Section 145 CrPC.

It appears that the respondents herein independently filed W.P.No.5089 of 2018 seeking a direction to the Station House Officer,

Moinabad Police Station, not to interfere with their peaceful possession and enjoyment over the subject property. The first petitioner herein figured as the third respondent in the said writ petition and she filed a counter-affidavit therein. In the said affidavit, she again stated that on 27.10.2017 the respondents herein along with 40 to 50 unsocial elements came to the property and threatened the watchman with dire consequences and tried to trespass into the property. She reiterated that upon coming to know of this fact, they lodged a complaint with the Station House Officer, Moinabad Police Station, on 28.10.2017, which was registered as Crime No.467 of 2017. She asserted that instead of taking action upon their complaint, the Station House Officer took possession of the property under Section 145 CrPC. She specifically asserted that the claim of the respondents herein, the petitioners in W.P.No.5089 of 2018, that they were handed over possession of the property was false and baseless.

It may also be noted that the petitioners filed W.P.No.17494 of 2017 seeking a declaration that the Lok Adalat Award dated 13.08.2016 passed by the Lok Adalat, Vikarabad District, in O.S.No.45 of 2016 on the file of the learned XII Additional District Judge, Ranga Reddy District at Vikarabad, was unsustainable in law and to quash the same as it was obtained by fraud. Therein, the petitioners filed W.P.M.P.No.53676 of 2017 (I.A.No.2 of 2017) for interim relief. The affidavit filed in support of this application was deposed to on 05.12.2017. Speaking for the petitioners, the first petitioner herein stated in the said affidavit that on 27.10.2017, the respondents herein along with unsocial elements tried to interfere with and trespass into the subject property. However, a complaint was registered against them *vide* Crime No.467 of 2017. She asserted that the police, instead of investigating the complaint, registered FIR No.468 of 2017 under Section 145 CrPC. She

further stated that the respondents herein along with unsocial elements were bent upon trespassing into the property and were claiming that they were in peaceful possession of the property through the judgment debtor. She asserted that the respondents herein could not claim to be in possession of the property. However, in the reply affidavit filed before this Court in the present contempt case, the first petitioner categorically stated that the respondents herein forcibly and unlawfully took possession of the property on 27.10.2017.

Though Sri D.Prakash Reddy, learned senior counsel, would contend that Sri Mohammed Shujauddin, learned counsel, undertook before the common High Court that his clients would not take possession of the E.P. schedule property by any means whatsoever pending disposal of the stay petition in the claim petition, this Court is not persuaded to agree. The relevant paragraph in the order dated 09.06.2017 passed in C.R.P.No.2429 of 2017 reads as under:

‘Sri Mohd. Shujauddin, learned counsel, would fairly state that as notice had been ordered in the claim petition and the stay petition filed therein, his clients would enter appearance before the executing Court and contest the same. Learned counsel would further state that pending disposal of the stay petition in the claim petition, his clients would not seek delivery of the E.P. schedule property.’

The expression that, pending disposal of the stay petition in the claim petition, the respondents would not seek delivery of the E.P. schedule property, only meant that an undertaking was given by the learned counsel in the context of ‘seeking delivery’ in the pending execution petition and not by way of some other means. The learned counsel did not vouch for or give an undertaking in relation to what his clients would do outside the Court.

That being said, it must also be noted that having led the Court to believe that the parties to the C.R.P. would address all issues, including

delivery of possession, in the pending execution petition and the claim petition filed therein, it was not proper on the part of the respondents herein to thereafter come up with an 'out of Court settlement' and a consequential claim of delivery of possession by the judgment debtor, the third respondent in the C.R.P. However, merely because the respondents herein resorted to such questionable practices, it would not be sufficient in itself for this Court to exercise contempt jurisdiction.

Trite to state, contempt proceedings are quasi-criminal in nature and unless the guilt of the contemnor is proved beyond reasonable doubt, the question of subjecting him to punishment under the Act of 1971 would not arise. In the case on hand, the specific complaint of the petitioners is that the respondents herein took possession of the subject property on 27.10.2017. However, the various documents placed before this Court, already referred to *supra*, demonstrate in no uncertain terms that there is no clarity on the issue. The changing stance of the petitioners with regard to this aspect does not help either. On the one hand, the petitioners claimed that the respondents took possession on 27.10.2017 by threatening their watchman but on the other hand, they filed W.P.No.36787 of 2017 asserting that the Station House Officer, Moinabad Police Station, had taken over possession of the subject property from them. Significantly, the affidavit filed in support of this writ petition, stating as above, was dated 31.10.2017, four days after the alleged forcible taking over of possession by the respondents herein.

In the light of the contradictory stands taken by the petitioners with regard to the taking over of possession by the respondents herein, their allegation to that effect cannot be the basis for exercise of contempt jurisdiction, even if the issue of possession stood covered by the order in

C.R.P.No.2429 of 2017. As already pointed out *supra*, the dubious tactic adopted by the respondents herein in coming up with an out of Court settlement coupled with delivery of possession by the judgment debtor, the third respondent in the C.R.P., is not above board or in keeping with the tenets of fairness but even if such an act on their part amounts to abuse of process, it would not constitute disobedience, much less wilful disobedience, to the order passed in C.R.P.No.2429 of 2017, warranting exercise of contempt jurisdiction.

The contempt case therefore fails and is accordingly dismissed. No order as to costs.

SANJAY KUMAR, J

13th FEBRUARY, 2019

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