

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

COCP-1103-2018 (O&M)

Date of Decision: 15.3.2019

Jaimal Kumar Vartia

...Appellant

Versus

Manoj Kumar

...Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.**

PRESENT: Mr. Jaswinder Singh, Advocate for the appellant.

Ms. Madhu Dayal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This contempt petition has been filed against the respondent for violating the order dated 14.3.2018 passed by this Court in CWP-6118-2018.

2. A few facts necessary for adjudication of the present contempt petition are that the respondent sold the property of the petitioner for an amount of ₹ 11.49 lakhs against the outstanding liability of ₹ 6 lakhs vide auction dated 28.12.2017. The petitioner challenged the said action of the respondent before the Debts Recovery Tribunal-II, Chandigarh (in short “the Tribunal”) by filing Securitization Application (SA) under Section 17 (1) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Tribunal vide order dated 1.3.2018 dismissed the said application being time barred. Against the

order dated 1.3.2018, the petitioner filed CWP-6118-2018 on 14.3.2018 (Annexure P-1). This Court vide order dated 14.3.2018 while issuing notice of motion ordered that sale shall not be confirmed. The said stay order was communicated to the respondent by the petitioner on 14.3.2018 itself through whatsapp message as is clear from whatsapp messages dated 14.3.2018 (Annexure P-2 Colly). As per the note dated 15.3.2018 (Annexure P-3), the respondent on 15.3.2018 presented the documents for confirmation of sale to the Sub Registrar, Pathankot. The petitioner vide letter dated 15.3.2018 (Annexure P-4) handed over the copy of the order dated 14.3.2018 passed by this Court to the respondent. In this way, the respondent had violated the order passed by this Court. Hence, the present contempt petition.

3. The said contempt petition was contested by the respondent by filing reply by way of affidavit. It was pleaded therein that the petitioner fraudulently and by misleading this Court obtained the order dated 14.3.2018 by concealing that the sale already stood confirmed on 15.2.2018. The property in question was auctioned in favour of Smt. Mohini Sharma on 28.12.2017 and after receiving the sale consideration, the possession was handed over to Smt. Mohini Sharma on 15.2.2018 (Annexure R-1). The Sale Certificate confirming the sale was also issued on 15.2.2018 (Annexure R-2). The other averments made in the contempt petition were denied and a prayer for dismissal the petition was made.

4. We have heard learned counsel for the parties.

5. The property in question was auctioned on 28.12.2017 in favour of Smt. Mohini Sharma. After receiving the entire sale consideration, the possession thereof was handed over to her on 15.2.2018

(Annexure R-1). The sale was confirmed on 15.2.2018 and the sale certificate dated 15.2.2018 (Annexure R-2) was issued. Against the said auction, the petitioner filed SA and the Tribunal vide order dated 1.3.2018 dismissed the said SA being time barred. Thereafter, the petitioner filed CWP-6118-2018 against the order dated 1.3.2018. This Court vide order dated 14.3.2018 while issuing notice of motion had ordered that the sale be not confirmed. The petitioner had pleaded that the certified copy was applied on 15.3.2018 and the same was supplied to the respondent on 16.3.2018. However, there is no official communication to show that the certified copy of the order dated 14.3.2018 was produced before the respondent. In this way, it cannot be held that there has been any wilful disobedience of the order dated 14.3.2018 of this Court by the respondent.

6. In view of the above, respondent is not liable for any action under the Contempt of Courts Act, 1971. Accordingly, the contempt petition is dismissed.

7. Rule discharged.

(AJAY KUMAR MITTAL)
JUDGE

March 15, 2019
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No