IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No. 3140 of 2019

Date of Decision: 09.09.2019

Pranesh Trikha and another

.......Petitioners

Versus

Randeep Latawa

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gaurav Tyagi, Advocate
for the petitioners.

AVNEESH JHINGAN, J.(oral)

Contempt petition has been filed pleading wilful disobedience of order dated 26.4.2018 passed in CWP No. 2314 of 2018.

Necessary facts in brief are that the petitioners availed a loan facility of ₹4.71 crores on 29.3.2016 from State Bank of India, Kalandri Gate Branch, Karnal. The cash credit limit was of ₹2.75 crores and term loan was of ₹1.96 crores. To secure loan, residential house and a factory in the area of 3 kanal 16 marlas was mortgaged. The petitioners were not able to maintain the financial discipline and the accounts were declared as Non Performing Asset (NPA) in 2017. Notice under Section 13 (2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'the Act') was issued on 15.9.2017, there was due amount of ₹3.6 crores. Notice dated 30.12.2017 under Section 13(4) of the Act was issued. As no payments were made, the bank proceeded under Section 14 of the Act to have physical possession of mortgaged properties. An order was passed on 24.1.2018 by District Magistrate, Karnal to provide police help to take possession of the properties mortgaged.

Aggrieved of proceedings under the Act, the petitioners filed CWP No. 2314 of 2018. Notice of motion was issued and status-quo only with regard to residential house was granted. In the meantime, the petitioners were given liberty to approach the Bank with a prospective buyer, if the bank so agreed tripartite agreement was to be executed and the prospective buyer was obliged to pay amount directly to Bank. The writ was finally disposed of on 26.4.2018. The operational part is reproduced below:

> "*(3) In this view of the matter and as rightly contended by learned counsel for the respondent-Bank, the writ petition is disposed of giving a last opportunity to the petitioners to bring a buyer before the Bank within two weeks. The buyer will enter into tripartite agreement and pay sale consideration directly to the Bank. In the event of petitioner's failing to comply with this order, the Bank may proceed against them in accordance with law.*
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> *(4) Disposed of accordingly.*"

The petitioner was to bring a prospective buyer within two weeks before the Bank, in case of failure the Bank was given liberty to proceed in accordance with law.

It is pleaded that after disposal of the writ petition, a tripartite agreement was entered and the residential house of the petitioners was sold for ₹2.00 crores, the payment was made to the Bank. There is no dispute that as per notice issued under Section 13(2) of the Act, there was a due amount of ₹3.96 crores as on 15.9.2017. After the payment of ₹2.00 crores, there was still a balance of ₹1.96 crores plus interest thereon. There is nothing on record to show that any amount was paid for clearing the balance liability.

The grievance raised is that the Bank has filed OA No. 407 of 2019 before the Debts Recovery Tribunal for recovery of the outstanding dues.

Learned counsel for the petitioners submits that in contempt proceedings Court should look into the intent of the order passed in CWP No. 2314 of 2018 dated 26.4.2018 and in pursuance to the order, the Bank should have re-structured the repayment of loan.

The contention raised is not well founded. In the contempt proceedings, the respondents are to be proceeded against for wilful disobedience of order. The onus to prove that there is wilful disobedience is on the petitioner.

The Supreme Court in ***Chhotu Ram Vs. Urvashi Gulati and Another, (2001) 7 SCC 530,*** has held that contempt of court proceeding being quasi-criminal in nature, the burden to prove would be upon the person who made such an allegation. A person cannot be sentenced on mere probability. Wilful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on conjectures and surmises, it must be arrived at on the materials brought on record by the parties.

From perusal of order dated 26.4.2018, it is not even forthcoming that the issue of re-structuring of loan was being considered by the Court while finally deciding the writ.

From order dated 26.4.2018 it is evident that last opportunity was provided to the petitioners to enter into tripartite agreement with the Bank for sale of the residential house. There is no discussion, much less directions to the Bank for re-structuring of the loan.

In the contempt proceedings the directions given in writ cannot be enlarged. Moreover, this Court cannot go beyond the order alleged to have not been complied with.

The Supreme Court in ***Er. K. Arumugam Vs. V. Balakrishnan & Ors. 2019 AIR(SC) 818*** held as under:-

> "*17. In the contempt jurisdiction, the court has to confine itself to the four corners of the order alleged to have been disobeyed. Observing that in the contempt jurisdiction, the court cannot travel beyond the four corners of the order which is alleged to have been floated, in* ***Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others 2014(2) S.C.T. 163 : (2014) 3 SCC 373****, speaking for the Bench, Justice Ranjan Gogoi held as under:-*
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> > *"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience*

is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. <u>Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same.</u> Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. <u>No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law;</u> such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, ***Jhareswar Prasad Paul v. Tarak Nath Ganguly 2002(2) R.C.R.(Criminal) 835 : (2002) 5 SCC 352, V.M. Manohar Prasad v. N. Ratnam Raju (2004) 13 SCC 610****,* ***Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami 2008(3) R.C.R.(Civil) 177 : (2008) 5 SCC 339*** *and* ***Union of India v. Subedar Devassy PV 2006(1) R.C.R. (Criminal) 702 : (2006) 1 SCC 613****."*

.......(emphasis supplied)

Contempt jurisdiction has been invoked that the bank instead of restructuring the loan has filed the original application before the Debt Recovery Tribunal. No case was made out for wilful disobedience of orders of this Court. At the costs of repetition, it is mentioned that there was no directions to the bank for restructuring the loan. The issue was neither pressed nor decided at the time of disposal of the writ. The bank has availed the statutory remedy provided under the Act. The repayment of loan was defaulted prior to the year 2017. The account was declared NPA in the year 2017. The only endeavour appears to delay the recovery proceedings. After auction of the residential house there is no evidence on record to show that any measure was taken for repayment of the loan.

The contempt petition is dismissed, with costs of ₹10,000/- to be deposited with the Poor Patients Welfare Fund, PGIMER, Chandigarh. The Registry of this Court shall ensure the compliance of recovery of costs.

(AVNEESH JHINGAN)
JUDGE

09.09.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes