IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 11TH DAY OF DECEMBER 2020/20TH AGRAHAYANA, 1942

Con.APP(C).No.3 OF 2020

AGAINST THE JUDGMENT IN Con.Case(C) 1411/2020 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

1 THE SOUTH INDIAN BANK,
REGIONAL OFFICE, 1ST FLOOR, KAVIKUNNEL CHAMBERS,
T.B. JUNCTION, MUVATTUPUZHA – 686 661
REPRESENTED BY THE CHIEF MANAGER, DRT CELL,
PRAMOD KUMAR MENON K.N.

2 AUTHORISED OFFICER,
THE SOUTH INDIAN BANK,
REGIONAL OFFICE, 1ST FLOOR, KAVIKUNNEL CHAMBERS,
T.B. JUNCTION, MUVATTUPUZHA – 686 661
REPRESENTED BY THE CHIEF MANAGER, DRT CELL,
PRAMOD KUMAR MENON K.N.

BY ADVS. SRI.K.N.SIVASANKARAN
SRI.SUNIL SHANKAR

RESPONDENTS/RESPONDENTS:

1 P.G.SUBRAMANIAM,
AGED 61 YEARS, S/O.GANGADHARAN,
PUTHUSSERIKUNNEL HOUSE, EAST MARADY PO,
MAVATTUPUZHA, ERNAKULAM – 686 673.

2 INDIRA SUBRAMANIAM,
AGED 60 YEARS, W/O.P.G.SUBRAMANIAM
PUTHUSSERIKUNNEL HOUSE, EAST MARADY PO,
MAVATTUPUZHA, ERNAKULAM – 686 673.

ADV.SRI.PRAVEEN H.

THIS CONTEMPT APPEAL (CIVIL) HAVING COME UP FOR ADMISSION ON 11.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of December, 2020

S. Manikumar, C.J.

Being aggrieved by the judgment in Cont. Case (C) No. 1411 of 2020 dated 28.10.2020, instant contempt appeal is filed.

2. Short facts leading to the filing of the contempt petition are that the respondents herein has filed S.A. No.318 of 2018 before the Debt Recovery Tribunal-I, Ernakulam, challenging the notice dated 21.05.2018, issued by the Advocate Commissioner in M.C. No.233 of 2018 on the files of the Chief Judicial Magistrate Court, Ernakulam, which was a proceeding for taking physical possession of the secured asset/mortgaged property under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002, for short).

3. The said S.A. was disposed of by the Debt Recovery Tribunal, by order dated 22.10.2018, recording the submission of learned counsel for the applicants/respondents herein, that they would vacate and handover possession of the secured asset/mortgaged property, on the day, on which the property was scheduled to be auctioned.

4. For payment of the amounts due to him from the Irrigation Department, in order to close the loan account, the 1st respondent herein, along with 2nd respondent, filed W.P.(C) No.7597 of 2019 before

the writ court and by judgment dated 27.03.2019, a learned single Judge issued the following directions:

> "In the afore circumstances and taking note of the submissions made before me by the learned Senior Counsel as well as the counsel for the parties, I order this writ petition and direct that if the first petitioner receives the first tranche of Rs.50,19,457/- from respondents 1 to 4, he will immediately transfer this amount into the loan account and approach the Bank for an apposite One Time Settlement. If, on the contrary, this amount is credited directly into the loan account by respondents 1 to 4, based on the Power of Attorney of the petitioners held by the Bank, they will intimate the petitioners appropriately and invite them for a discussion so as to arrive at a One Time Settlement. Needless to say, the 2nd tranche of about Rs.39 lakhs will also be paid by the petitioners or credited by the Bank in the same manner as above and that this will also be taken note of while arriving at the One Time Settlement figures.
>
> In order to ensure that these directions are expeditiously complied with, I direct that once the payment is credited to the loan account, either by the petitioners or directly to the Bank, the Competent Authority of the Bank, after affording an opportunity of being heard to the petitioners, will decide upon the One Time Settlement Offer within a further period of one month thereafter; and until such time as the afore exercise is completed, all further action being pursued by the Bank under the SARFAESI Act will stand deferred.
>
> I further clarify that in the event the One Time Settlement does not fructify or if any of the afore directions are not complied with, Ext.P2 order of the Debts Recovery

Tribunal of Kerala will thereupon become fully executable at the instance of the Bank."

5. Alleging that the abovesaid directions have not been complied with, the appellants herein filed Cont. Case (C) No.1411 of 2020, and the writ court, by judgment delivered on 28.10.2020, closed the contempt petition, without any further orders. Being aggrieved, instant contempt appeal is filed, *inter alia*, raising the following grounds:

A. The respondents have deliberately and willfully violated the undertaking given before the Debt Recovery Tribunal-I, Ernakulam in S.A.No.318 of 2018 and the directions thereon, as recorded in the final order dated 22.10.2018.

B. The respondents have not surrendered possession of the secured asset/mortgaged property, as undertaken in the final order of the Tribunal dated 22.10.2018.

C. The respondents have violated the undertaking endorsed on the file of S.A.No.318 of 2018, on the basis of which, final order (Annexure A in the contempt case) was pronounced.

D. The respondents cannot ignore the directions in the order in S.A.No.318 of 2018 and the undertaking given by them before the Debt Recovery Tribunal. They are fully bound to comply with their undertaking. Their non-compliance of the same is, therefore, deliberate and hence, action is to be taken against the respondents.

E. Learned single Judge ought to have held that the Contempt Case is maintainable under Section 10 read with Section 12 of the Contempt of Courts Act, 1971.

F. The reasoning of the learned single Judge that the order of the Debt Recovery Tribunal was never tested before

this Court, is not valid, since the contempt pleaded is of the undertaking given by the respondents before the Debt Recovery Tribunal in S.A.No.318 of 2018, and the consequent order of the Debt Recovery Tribunal dated 22.10.2018 recording the said undertaking and disposing the SA directing compliance with the said undertaking.

G. The learned single Judge ought to have held that the SARFAESI Act, 2002, does not provide any mechanism for enforcement of orders of the Tribunal in an application filed under Section 17 of the Act.

H. It is the admitted case of the appellants that the contempt pleaded is not disobedience of the orders of the writ court, but in violation of the undertaking given before the Tribunal.

6. The issue as regards the maintainability of contempt appeal against the order passed by a learned single Judge was considered by this Court in Cont. Appeal (C) No. 1 of 2020 dated 03.07.2020 (**Bar Council of India, represented by its Secretary v. Lokanath Behera IPS and Others**), taking into account the judgments rendered by the Hon'ble Supreme Court in that regard, and held that a contempt appeal is not maintainable under law, from the dismissal of a contempt petition by a learned single Judge.

7. In fact, the issue was considered by the Hon'ble Apex Court in **State of Maharashtra v. Mahboob S. Allibhoy and Ors.** reported in (1996) 4 SCC 411, and clearly held that unless there is a statutory provision in order to file an appeal against the dropping of proceedings in

contempt, no appeal is maintainable under law.

8. The circumstances pointed out by the learned counsel for the appellants for filing this contempt appeal are not different from the pleadings put forth in ***Bar Council of India*** (cited supra).

9. Analysing the fact situation and since, we have already held that contempt appeal is not maintainable from the dismissal of contempt petition, instant contempt appeal has no legal sustenance.

Instant appeal fails and accordingly, it is dismissed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

S.Manikumar
Chief Justice

Sd/-

Shaji P.Chaly
Judge

vpv

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P.A. TO JUDGE