

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Cont.P.No.2039 of 2018

M/s.Kotak Mahindra Bank Limited,
Rep. By its Manager -Legal/Authorised Signatory
Mr.S.Karthikeyan

...Petitioner

Vs

1.Tt. Sarath Kumar
2.Tt.Sukumaran

...Respondents

PRAYER: CONTEMPT PETITION filed under Section 11 of the Contempt of Courts Act, 1971 praying to punish the respondents for their willful disobedience of order dated 09.03.2018 passed by this Court in A.No.1269 of 2018 in A.No.4363 of 2017.

For Petitioner : Mr.K.K.Murralitharan

For Respondents : No Appearance

ORDER

Heard Mr.Murralitharan, learned counsel for the petitioner. An application under Section 9 of the Arbitration and Conciliation Act, 1996 in A.No.1269 of 2018 had been filed by the petitioner Bank that came to be ordered on 09.03.2018 in the following terms:

A.No.4363 of 2017 has been filed seeking appointment of a Receiver to seize the subject vehicle subsequent to the defaults arisen in respect of the payment of instalments pursuant to a loan cum guarantee agreement bearing No. LCV 280989 dated 29.04.2015.

2. Proceedings for arbitration that had been initiated by the applicant have also culminated into an award dated 09.11.2017 that is adverse to the borrower.

3. The Receiver has filed a report dated 25.01.2018 to the effect that he has not been able to make any headway in the seizure of the vehicle. The Receiver states that he had visited the premises of the respondents in compliance with the order of appointment, but his request to the respondents to handover the subject vehicle were not heeded to. The Receiver states that the vehicle appears to have been handed over to a third party and the whereabouts of the same could not be ascertained by him despite his efforts. In the aforesaid circumstance, he is not in a position to execute the warrant issued by this Court.

4. A.No.1269 of 2018 is thus filed seeking a direction to the respondents to surrender the vehicle.

5. Notice was issued to the respondents in A.No.4363 of 2017 has been served and name of the respondents is also printed in the cause list despite which none appears on their behalf.

6. *In the aforesaid circumstances, taking into consideration the fact that the respondents has not chosen to cause appearance as well as the fact that the award in this matter has been passed on 09.11.2017, which, according to the applicant, remains unchallenged till date, I am inclined to order surrender of the vehicle.*

7. *Accordingly, the respondents are directed to surrender the subject vehicle within a period of four (4) weeks from today.*

8. *List on 09.04.2018 to report progress in the matter.*

2. Since, according to the petitioner there was no compliance with the aforesaid order despite notice, the present Contempt Petition came to be filed.

3. Notice was ordered on the Contempt Petition on 04.04.2019. The matter came up thereafter on 15.11.2019. On account of non-service of notice, fresh statutory notice was issued on 15.11.2019, returnable 17.12.2019. The report of the Registry is as follows:

'Notice sent to the respondents – R1, R2 and R3 on 15.11.2019. Notice returned unserved. Unserved notice received on 03.12.2019.'

4. Efforts were again repeated on 18.12.2019 when notice was directed to be issued afresh, returnable 31.01.2020. The report of the Registry is as follows:

'Notice sent to R1 and R2 on 20.12.2019. Notice served to R1 & R2'

5. Since there was no move on the part of the contemnors to comply with the order dated 09.03.2018, on 13.02.2020, bailable warrant was issued. On 13.03.2020, the warrant issued has been returned by the Station House Officer, Elathur Police Station, Kozhikode City stating that the warrantee could not be arrested, since he could not locate him.

6. On 13.08.2020, a memo dated nil has been filed by the petitioner to the following effect:

'The above Contempt Petition came up on 13.3.2020 and since the warrant order passed by the Hon'ble Court could not be executed, the Petitioner Counsel was asked to get instructions from the bank in this regard. On enquiry by the legal department of the bank from Chennai with the branch of this, the information regarding the non availability of the respondents at the address given by them was non and the same was communicated by the Legal Representatives to be Counsel for Petitioners. In this regard an E-mail was received from the Bank, a soft copy of which is enclosed herewith. Hence the respondents are not able to trace by the petitioner to execute the warrant of the Hon'ble Court. The petitioner is praying for permission whom with the above Contempt Petition. It is submitted that the above Contempt Petition has been filed for the willful disobedience of the order passed by this Hon'ble court by the Contemnor/Respondents. Originally the Contemnor/Respondents were residing at the address mentioned in the above cause title as reflected in the agreement between the parties. The Petitioner is reliably given to understand that subsequent to the above filing of the Contempt Petition, the Respondents have shifted their

place of residence. This information could be collected through the branch office of the Petitioner for effecting publication as ordered by this Hon'ble Court'.

7. Recording the memo, this Contempt Petition is closed. No costs

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

sl

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/18.09.2020

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