

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Cont.P.No.2042 of 2018

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

...Petitioner

Vs

1.Subair Ibrahimkutty
2.E.Pookunju

...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 05.03.2018 passed by this Court in A.No.1609 of 2018 in A.No.4364 of 2017.

For Petitioner : Mr.K.K.Muralitharan

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.1609 of 2018 had been filed by the petitioner Bank that came to be ordered on 05.03.2018 in the following terms:

A.No.4364 of 2017 was filed praying for the appointment of the Receiver to seize the schedule mentioned vehicle in the light of the defaults in repayment of a loan sanctioned on 5.11.2014 by the applicant/respondent. An order was passed by this Court on 3.8.2017 appointing a Receiver and directing notice to the parties. It is also recorded therein that the proceedings for arbitration have been initiated and pending in Arbitration case No.323 of 2017.

2. An affidavit of service has been filed by the applicant to the effect that both the 1st respondent as well as 2nd respondent have refused the receipt of notice. The names were thus directed to be printed in the cause list, despite which, there is no appearance.

3. A report has been filed by the Receiver appointed who is the Senior Manager –Legal of the Company to the effect that he has complied with the order of this Court by visiting the premises of the respondents and requesting handing over of the vehicle.

4. The report filed by the Receiver dated 25.1.2018 states that the borrower has informed him that the vehicle has been given to a third party and co-operation is not extended either by informing the whereabouts of the vehicle, identity of the third party or any further information that would facilitate the seizure of the vehicle and compliance of the warrant issued by this Court. The Receiver thus, expresses his inability to comply with the warrant issued by this Court, since the vehicle had, according to him, is being secreted by the respondents.

5. Learned counsel appearing for the applicant would also submit that the respondents have entered appearance in the proceedings for

arbitration, but have been seeking adjournment of the proceedings merely with a view to delaying the same. The tenure of the loan runs from November 2014 till October 2017. Nine installments are stated to be outstanding along with accrued interest and other charges as on date of filing of application.

6. The present application i.e., A.No.1609 of 2018 is thus filed seeking a direction to the respondent to surrender the vehicle.

7. In the aforesaid circumstances, I am inclined to order the same. The respondents are directed to surrender the vehicle to the applicant within a period of three weeks from date of receipt of a copy of this order. This order may be communicated privately to the respondents..

8. List the matter for hearing on 2.4.2018.

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 on 15.11.2019. Notice returned unserved. Unserved notice received on 3.12.2019.'

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. R1 & R2- served.'

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, when the matter was listed, the Registry placed on record letter dated 26.08.2020 by District Police Chief, Alappuzha to the Registry stating that the warrant in Cont.P.No.2042 of 2018 has been forwarded to the DYSP, Kayamkalam with direction to execute promptly and report to the Court.

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 regards an E-mail was received from the Bank, a soft copy of which is enclosed herewith. Hence the were about of the Respondent 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/22.09.2020

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