

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
AND  
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Contempt Petition No.2077 of 2018

T.M.Oosman Haji & Co.,  
Rep. by its Managing Partner,  
T.M.Nowshadh,  
No.237, Lingi Chetty Street,  
Chennai-600 001.

.. Petitioner

Vs.

1. N.M.Dave  
C/o Dave Roadways,  
No.146, Sydenhams Road,  
Periamet, Chennai-600 003.
2. Paramesh Babu P.G.,  
Advocate, No.29, Ramanan Road,  
Sowcarpet, Chennai-600 079.
3. Mr.S.Balakrishnan, S/o C.Swamikannan,  
Sole Proprietor, C.S.Riches Transports,  
New No.215, Old No.146 L,  
New No.58 Lm Sydenhams Road,  
Periamet, Chennai-600 003.

(Respondents 2 and 3 are impleaded  
as per Order dated 11.06.2019 of  
this Court in Cont.P.No.2077 of 2018)

.. Respondents

Contempt Petition filed under Section 11 of the Contempt  
of Courts Act to punish the respondents for the wilful and  
deliberate disobedience and non-compliance of the order and  
for committing the gross criminal contempt of orders of XIVth  
Small Causes Court, Chennai in R.C.O.P.No.1801 of 2008 and  
E.P.No.105 of 2012, order dated 20.02.2018.

For petitioner : M/s.M.Hynul Fathima for

M/s.K.S.Natarajan

For respondent : Mr.Ashok Menon for RR-2 and 3

ORDER

(The Order of the Court was made by R.Subbiah, J)

The present Contempt Petition has been filed to punish the respondents for the wilful and deliberate disobedience and non-compliance of the order and for committing the gross criminal contempt of order dated 20.02.2018 passed by XIVth Small Causes Court, Chennai in R.C.O.P.No.1801 of 2008 and E.P.No.105 of 2012.

2. The case of the petitioner is as follows:

(a) The first respondent is a tenant under the petitioner. He committed wilful default in payment of rent. The petitioner also required the property for their own occupation and as such, the petitioner filed R.C.O.P.No.1801 of 2008 before the XIV Small Causes Court, Chennai. In the said petition, the first respondent did not let in any evidence. The Rent Controller ordered eviction on 10.11.2011 granting two months time to the first respondent for vacating and handing over the possession of the tenanted premises, which was being used as a go-down by the first respondent. Pursuant to the same, the petitioner filed E.P.No.105 of 2012 for executing the order of

eviction. In the said Execution Proceedings, the Executing Court directed delivery on 02.03.2012.

(b) Since there was obstruction to the Bailiff by the first respondent herein when he went for taking possession in pursuant to the Court's order, the petitioner filed E.A.Nos.50 and 51 of 2012 for grant of Police aid and for breaking open the locks, if any. Both the said E.As. were ordered by the Executing Court, pursuant to which, the Senior Bailiff of the Small Causes Court went to the tenanted premises along with authorised person of the petitioner for executing the Court's order. The Senior Bailiff had got the Police aid after meeting the Assistant Commissioner of Police, Vepery and took the help of the Police Inspector and Constable from G.2 Periamet Police Station.

(c) When they went to the tenanted premises, there were certain employees of the first respondent in the premises, to whom the Senior Bailiff showed the Court order and demanded them to vacate the premises. Since they refused to vacate, the Senior Bailiff directed the persons employed by the petitioner to take inventory of the articles kept inside the premises and also demanded the employees of the tenant to go out of the premises. At that juncture, about 15 persons with white shirt and black pant, representing to be Advocates, came to the spot and took the warrant from the Senior Bailiff and told that it is not a true warrant and that the tenant would not vacate.

They used abusive language on the Senior Bailiff and the petitioner's representative. When the Inspector of Police attempted to interfere and told those persons that the Senior Bailiff from the Court should not be prevented from carrying out the work, they threatened that they would block the road and that more number of Advocates would also come to the spot for conducting Road Roko.

(d) Those persons employed by the first respondent directly interfered with and obstructed the execution of the order passed by the Court and saw to it that the Court order was not executed and implemented on that date, inspite of the fact that there was no appeal pending as against the eviction order as on that date.

(e) In the presence of those persons calling themselves as Advocates, the first respondent also instructed their employees to change the name board kept in the premises from that of the first respondent's Dave Roadways to one C.S.Richards Transports and this happened in broad day light right in the presence of the Court Officer and Police officials. The Assistant Commissioner of Police, who came to the spot, was also gheraoed by the said persons who had assembled there at the instance of the first respondent and in view of this situation, the Assistant Commissioner of Police left the spot stating that additional Police force is required and for want of adequate Police force, they could not extend

the necessary Police assistance to the petitioner for executing the order of the Court on that day. The Senior Bailiff was not able to execute the warrant issued by the Court for taking delivery of possession from the first respondent and to hand over the petitioner and filed a report on 23.04.2012 before the XIV Small Causes Court to that effect.

(f) Taking advantage of the above situation, the first respondent subsequently moved an application to condone the delay in filing appeal before the appellate authority. Thereafter, the first respondent got an order of stay in R.C.A.No.246 of 2012, inspite of the fact being that he had arrears of more than Rs.2,55,000/- towards the rent. Even in the appeal, the petitioner has filed an application to direct the first respondent to pay the monthly rent for the period from March 2011 to July 2012 in M.P.No.395 of 2012 in R.C.A.No.246 of 2012 for a total rental arrears of Rs.2,55,000/-.

(g) The act committed by the first respondent on 20.04.2012 in obstructing the Senior Bailiff of the Executing Court is an act directly interfering with the course of justice and the Court can take cognizance of the same under Section 10 of the Contempt of Courts Act. The petitioner-firm moved an application under Section 10 of the Contempt of Courts Act and placed the entire materials before the

Advocate General for consideration and the respondents filed their counter and had been taking time repeatedly before the Advocate General without even appearing for the proceedings. By order dated 20.02.2018, the learned Advocate General passed orders stating that the action of the respondents with the aid and support of certain persons alleging themselves to be Advocates squarely falls within the definition of Criminal Contempt. The said order is relied upon by the petitioner for the purpose of moving the Contempt Petition under Section 15 read with Section 12 of the Contempt of Courts Act, since the entire conduct of the first respondent scandalises the authority of the judicial forums and interferes with the due course of judicial proceedings which were initiated by the petitioner in 2008 and continues to disrupt and interferes every time when the Execution Proceedings are initiated to take possession of the property which is now in the hands of the third party, who has nothing to do with the property or with the owner.

(h) Various proceedings once again resulted in culmination of orders in M.P.No.945 of 2013 in R.C.A.No.246 of 2012, wherein eviction was ordered and time for eviction was granted by two months from 03.04.2014. On 16.06.2015, the petitioner filed a Memo to order delivery of possession to hand over the vacant possession of premises to the petitioner/decreed-holder and accordingly, orders were passed

on 08.07.2015 when the bailiff accompanied by the petitioner went to the premises and the Bailiff was obstructed by few individuals claiming them to be Advocates in black pant and white shirt and affixed the name board containing various Advocates names on the premises, by stating that they are in occupation of the said premises and no eviction can be carried out as against them.

(i) The Police personnel who had accompanied the Bailiff, vide their request to them, refused to remove the Advocates or persons claiming themselves to be the Advocates, fearing unwanted issues between the Police officials and alleged Advocates. The petitioner had to retreat from the eviction process and report has been filed by the Bailiff explaining inability to execute the eviction warrant. At the instance of the mischievous third party elements, a false and vexatious suit came to be filed before the City Civil Court, Chennai in O.S.No.1697 of 2015, which was dismissed for default on 13.02.2017 and application filed for restoration, had been kept deliberately on hold for more than a year by various illegal steps. They prevented the execution of the warrant by committing various acts of criminal contempt which requires action by this Court.

(j) This Court may appoint an Advocate Commissioner who is authorised by this Court to take possession under his custody so that the petitioner can prove and demonstrate that unless

and otherwise stern action is initiated by this Court, the petitioner would be in logger heads with one set of persons or others without realising the benefit of decretal order and/or realising the arrears of rent which as on date is amounting to Rs.1,58,42,600/-.

(k) Taking advantage of the interim order obtained in R.C.A.No.464 of 2018 as against E.A.No.135 of 2015 in E.P.No.105 of 2012, the contemnors have taken recourse to demolishing the structure extensively and/or removing valuable Burma teak wooden reapers and pillars which the petitioner had used for covering the rear side of the petitioner's go-down and major damage is occurring on day-to-day basis in reckless manner endangering the very structure itself. The same team had been indulging in damaging and altering the property which belongs to the petitioner's relatives on the basis of a fabricated suit which had been filed as against the petitioner as well as other relatives in C.S.No.320 of 2017. Unless this Court appoints an Advocate Commissioner for inspection of properties, the petitioner's entire property which is a subject matter of various proceedings, would be subject to perilous endangerment. Hence, for the above reasons, the present Contempt Petition is filed for the relief stated supra.

3. The learned counsel for the impleaded respondents 2 and 3 submitted that only the third respondent was a tenant under the subject premises and not any other person, and the

learned counsel denied all the allegations made by the petitioner in the Contempt Petition. It is further stated that when the Senior Bailiff tried to vacate them, they have filed objection petition in E.A. proceedings. Hence, the petitioner has filed petition for removal of obstructors, in E.A.No.135 of 2015 in E.P.No.105 of 2012 in R.C.O.P.No.1801 of 2008. Removal of obstructors was ordered on 11.06.2018 in the said E.A., against which R.C.A. was filed, which was dismissed, against which, Civil Revision Petition was filed before this Court and the same also was dismissed. The respondents have filed affidavit in the Civil Revision Petition to the effect that they would vacate the premises within one year i.e. on or before 31.12.2019 and the same was also recorded. Therefore, having taken one year time to vacate the premises, nothing further survives for adjudication in this Contempt Petition, which is accordingly closed.

सत्यमेव जयते

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

CS

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

from 25<sup>th</sup> day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

SMT/27/01/2020

<https://hcservices.ecourts.gov.in/hcservices/>