

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Cont.P.No.2120 of 2018

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

Vs

1.N.Muthu Ganesan
2.N.Elangovan
3.M.Velan ...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.1348 of 2018 in A.No.4365 of 2017.

For Petitioner : Mr.K.K.Muralitharan

For Respondents : No Appearance

ORDER

Heard Mr.Muralitharan, learned counsel for the petitioner. An application under Section 9 of the Arbitration and Conciliation Act, 1996 in A.No.1348 of 2018 had been filed by the petitioner Bank that came to be ordered on 09.03.2018 in the following terms:

'A.No.4365 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 agreement bearing No.SA 577609 dated 29.09.2014.

2. Proceedings for arbitration that had been initiated by the applicant have also culminated into an award dated 24.04.2017 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 requests 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.1348 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.4365 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 24.04.2017, 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. Service awaited.'

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 to R3 on 20.12.2019. Notice returned - unserved for R1 & R2 (out of station). R3 – Notice served'

5. On 13.02.2020, the petitioner sought leave and was permitted to effect paper publication in any local daily both in Regional language and in English with significant circulation in Salem, stating the date of hearing as 13.03.2020.

6. On 13.03.2020, the matter was adjourned at the instance of the learned counsel for the petitioner to 16.03.2020 and thereafter to 19.03.2020, on which date, the petitioner, instead of reporting compliance with the order for effecting publication, sought to withdraw the Contempt Petition and filed a memo dated 16.03.2020 to the following effect:

'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. Since, the whereabouts of the Contemnor/Respondents are not able to be traced, the Petitioner could not effect

publication and their mail dated 13.03.2020 requested us to withdraw/not press the above Contempt Petition before this Hon'ble Court. A copy of such mail is produced herewith for appropriate order from this Hon'ble Court.'

7. In the course of the submissions, it is clearly ascertained that the petitioner has not carried out the necessary due diligence to verify the proper address of the respondents to enable service of notice.

8. It was incumbent upon the petitioner to have ascertained the proper address of the respondents prior to filing this Contempt Petition and much time, effort and resources have been utilised in issuance of notices and deployment of court machinery, as may be seen from the narration above.

9. For the aforesaid reasons, while closing this Contempt Petition, costs of Rs.5,000/- (Rupees five thousand only) is imposed upon the petitioner, payable in favour of The Registrar General, High Court, Madras within eight (8) weeks from date of receipt of a copy of this order.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

ska/sl

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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

SMI/02.09.2020

To

1.The Registrar General,
High Court,
Madras.

2. M/s.Kotak Mahindra Bank Limited
Manager – Legal Authorised Signatory
Mr.S.Karthikeyan,
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Old Mahalingapuram Road,
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