

12.03.2021

Court No.28
rpan /05-06

CPAN 156 of 2019
Sujit Singhanian
Vs.
Md. Enaur Rahman
in
W.P.A. No. 13749 of 2018

Mr. Kushal Chatterjee,
Mr. Sunil Singhanian
For the petitioner

Mr. Srijan Nayak,
Ms. Rituparna Maitra,
Mr. Arindam Mitra
For the alleged contemnor

The present application has been preferred alleging violation of an order dated 7th September, 2018 passed by this Court in W. P. No.13749 (W) of 2018 [New No.: WPA 13749 of 2018].

Mr. Chatterjee, learned advocate appearing for the petitioner submits that as the alleged contemnor did not comply with the directions contained in the order dated 7th September, 2018, the petitioner was constrained to prefer the present contempt application on 7th February, 2019. After the contempt application was served on the basis of an order dated 21st November, 2019, the alleged contemnor passed an order on 6th December, 2019.

Drawing the attention of this Court to the contents of the order dated 6th December, 2019, Mr. Chatterjee submits that no decision was taken and the

alleged contemnor only observed that the petitioners may take action against the Greenwood Elements Apartment Owners' Association (in short, the said Association) in accordance with clauses 4(5) and 11(3) of the West Bengal Apartment Ownership Bye-laws, 1974.

According to Mr. Chatterjee, the grievance of the petitioner was neither considered by the said Association nor by the competent authority. The order passed by the alleged contemnor, thus being violative of this Court's order, is *non est* in the eye of law.

Mr. Nayak, learned advocate appearing for the alleged contemnor submits that pursuant to the order passed by this Court, the petitioner was called for a hearing on 30th October, 2018 but he did not appear. However, the President of the said Association was directed to resolve the matter by discussing the issues with the petitioner as per the West Bengal Apartment Ownership Act, 1972.

Mr. Nayak further submits that it would be evident from the records that neither did the petitioner appear before the competent authority for hearing on 30th October, 2018 nor did he participate in the meetings scheduled by the said Association, though two notices were issued to the petitioner on 6th January, 2019 and 13th January, 2019.

I have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the petitioner did not appear before the competent authority on the date fixed for hearing. From the order dated 6th December, 2019 it appears that in compliance of the direction issued by the competent authority, the authorities of the said Association issued two notices on 6th January, 2019 and 13th January, 2019 but the petitioner did not respond.

It appears that the alleged contemnor did make an endeavour to resolve the dispute. However, the petitioner himself did not appear before the competent authority nor did he appear before the authorities of the said Association.

In the said conspectus, it does not appear that there had been any willful or deliberate violation of the order of this Court, on the part of the alleged contemnor.

Accordingly, the contempt application is dismissed.

There shall, however, be no order as to costs.

(Tapabrata Chakraborty, J.)

