



Cont.P.No.3/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cont.P.No.3/2015

The Deputy Commercial Tax officer II
Commercial Taxes Department
Puducherry.

.. Petitioner

Versus

Mr.N.Mohan Kumaramangalam
Chief Manager
City Union Bank Ltd.,
No.119, Bussy Street
Pondicherry, rep.by its
Authorised Officer
City Union Bank Ltd.,
149, TSR [Big] Street,
Kumbakonam 612 001.

.. Respondents

Prayer:- Contempt Petition filed under 11 of the Contempt of Courts Act, 1976, to punish the respondent herein for committing contempt of this Court by wilfully and deliberately disobeying the order dated 28.04.2011 made in MP.No.2/2011 in WP.No.11199/2011.

For Petitioner : Mr.T.P.Manoharan,
Senior counsel for
Mr.A.Tamilvanan
Government Advocate [Pondy]
For Respondent : Mr.T.K.Ramkumar



ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

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- (1) Heard the submissions of Mr.T.P.Manoharan, learned Senior counsel assisted by Mr.A.Tamilvanan, learned Government Advocate [Pondy] appearing for the petitioner and Mr.T.K.Ramkumar, learned counsel appearing for the respondent/contemnor.
- (2) The petitioner, alleging wilful disobedience and non-compliance of the order of ad-interim stay dated 28.04.2011 made in MP.No.2/2011 in WP.No.11199/2011 came forward to file this contempt petition.
- (3) Mr.T.P.Manoharan, learned senior counsel appearing for the petitioner would submit that despite subsistence of the interim order, a third party right has been created in favour of one Mr.L.Periyasamy and therefore, a case for wilful disobedience and deliberate non-compliance of the order has been made out on the part of the respondent and prays for appropriate orders.
- (4) ***Per contra***, Mr.T.K.Ramkumar, learned counsel appearing for the respondent/contemnor has drawn the attention of this Court to the counter affidavit dated 05.02.2021 and would submit that in lieu of the defaults committed by the 3rd respondent in the writ petition, viz., M/s.Vasanthi Automobiles Ltd., action was initiated under the provisions of the



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SARFAESI Act, which led to various litigations before the Debts

Recovery Tribunal and after culmination of the same, a fresh Sale Notice

dated 29.01.2011, fixing the date of sale on 09.03.2011, came to be issued

and in the meanwhile, one Mr.L.Periyasamy, filed WP.No.29450/2010,

praying for issuance of a writ of mandamus, by directing the respondent

herein to receive the sum of Rs.3.55 Crores and execute the Sale

Certificate in respect of Items No.1 to 4 in the "B" Scheduled Properties

mentioned in the Sale Notice dated 29.12.2009 by way of private treaty

and he has also filed a Memorandum of Understanding [the Tripartite

Agreement] dated 20.02.2010 in which, he agreed to take over the

commercial tax dues also which are to be paid by the 3rd respondent in

the writ petition. It is the further submission of the learned counsel for

the respondent/contemnor that M/s.Vasanthi Automobiles Limited/3rd

respondent in the writ petition, also made a challenge to the Sale Notice

dated 29.01.2011 by filing SA.No.68/2011 on the file of the Debts

Recovery Tribunal-1 at Chennai and a conditional interim order was

passed and it was also not complied with and it is followed by a fresh Sale

Notice dated 12.04.2011 for the sale of the property by fixing the date of

sale on 16.05.2011 and once again, miscellaneous petition was taken up

by the 3rd respondent in the writ petition stay all further proceedings of the



said auction and once again, a conditional order came to be passed and it

has not been complied with and the writ petition filed challenging the said order in WP.No.22976/2011 also came to be dismissed on 04.10.2011.

(5) A Joint Meeting was convened to explore the possibility of the settlement and however, the borrower, viz., the 3rd respondent in the writ petition, did not accept the Terms of Settlement and the person who undertook to pay the sum, in the form of Memorandum of Understanding dated 20.02.2010, viz., L.Periyasamy, did not make the payment on or before 30.06.2011. He also filed WP.No.24781/2011 praying for appropriate direction, directing the respondent/Bank to execute the Sale Deed and release the Mortgaged property and it came to be allowed vide order dated 08.11.2011 and vide order dated 23.02.2012, this Court, by taking into consideration the further proceedings that took place, directed the respondent/Bank to hand over the documents to Mr.L.Periyasamy and in the light of the same, it cannot be said that the respondent/contemnor has deliberately disobeyed the orders passed by this Court.

(6) This Court has considered the rival submissions and also perused the materials placed before it.

(7) In the light of the above cited facts which have been narrated in

paragraph No.8 of the counter affidavit dated 05.02.2021, this Court is of



the considered view that the respondent/contemnor did not wilfully violated and not comply with the interim orders passed by this Court, which is the subject matter of contempt. A perusal of paragraph NO.5 of the counter affidavit would disclose among other things that the petitioner in wP.No.24781/2011, viz., Mr.L.Periyasamy, said to have executed a Memorandum of Understanding/Tripartite Agreement dated 20.02.2010 wherein he has agreed to take over the commercial tax dues which are said to be paid by M/s.Vasanthi Automobile Limited/3rd respondent in the writ petition.

(8)In the light of the above facts and circumstances, if the petitioner is so advised and if it is permissible under law, it is always open to the petitioner herein to proceed against the person/property of Mr.L.Periyasamy for recovery of the sales tax services.

(9)In the result, the contempt petition is closed with the above observations.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

ap

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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To

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1.The Deputy Commercial Tax officer II
Commercial Taxes Department
Puducherry.

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