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Cont.P.No.494 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 30.03.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Cont.P.No.494 of 2019

1.S.Thiagarajan

2.Shanthi Thiagarajan

3.T.L.Prashanth

4.T.Preethi

5.M/s.Prashanthi Entertainers Pvt. Ltd.

Rep. by its Director, Mrs.Shanthi Thiagarajan,
No.40, North Usman Road,
T.Nagar, Chennai – 17.

... Petitioners

Vs

Mr.V.S.Suresh, Managing Director,
M/s.Real Value Promoters Pvt. Ltd.,
Ambojini, No.17, Poes Road Second Street,
Teynampet, Chennai – 18.

... Respondent

PRAYER: Petition is filed under Section 11 of the Contempt of Courts Act to punish the respondent for the wilful disobedience of the order dated 17.05.2012 passed in O.A.No.428 of 2012 and A.No.2311 of 2012.



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For petitioners : Mr.K.Suresh Babu
For Respondent : Mr.V.Lakshmi Narayanan
for Mr.Avinash Krishnan Ravi

ORDER

This Contempt petition has been filed by the applicants contending that the respondent has committed an act of contempt by disobeying the orders of this Court dated 17.05.2012 in O.A.No.428 of 2012. Considering the fact that the application is one for contempt, I do not wish to delve too much into the facts set out in the Section 9 application and shall narrate the facts relevant for disposing the contempt petition.

2. The petitioners and the respondent had entered into an agreement for developing the property. The agreement had contained an arbitration clause in and by which parties had resolved to settle their disputes through arbitration. Since disputes arose between the parties the petitioners had filed O.A.No.428 of 2012 seeking an order of an interim injunction restraining the respondent, their men or agents, servants, representatives or any person claiming through the respondent, from alienating, selling, encumbering, mortgaging or otherwise dealing with the property described as the A - Schedule in the arbitral proceedings.



3. The A-Schedule property was described as follows:

“2800 Sq.ft. UDS to-gether with 781 Sq.ft. in the 8th floor and 5684 Sq.ft. in 9th floor of the building “Prashanth Real Gold Tower”, No.39, North Usman Road, T.Nagar, Chennai – 17.”

4. When the matter had come for the first time, the respondent had appeared through counsel and submitted an undertaking that the respondent shall not alienate 781 Sq.ft. in the 9th floor owned by him so as to avoid multiplicity of proceedings. The Court had recorded the said undertaking and had proceeded to close the application since parties had already agreed to appear before the arbitrators in the arbitration proceedings that had been initiated and they had agreed to abide by the award to be passed by the arbitrators.

5. While so, the petitioners have come forward with the contempt petition stating that in the course of the collateral proceedings, when the petitioners had collected information about the status of the property in respect of which the undertaking was given, they came to learn that in wilful breach of the undertaking given, the respondent had alienated the property. The petitioners came to know that the respondent on 01.10.2014 had created a mortgage by deposit of title deeds in favour of the IDBI Bank and thereafter since the respondent had failed to repay the loan, proceedings under the



SARFAESI Act had been undertaken by the Bank. Therefore, it is the contention of the petitioners that there has been a wilful disobedience of the undertaking given to this Court.

6. A statutory notice was issued to the respondent and the respondent had appeared in person before the Court. A counter has been filed, in which apart from tendering an unconditional apology the respondent would submit that the undertaking which was given has not been violated. The respondent would seek to put in perspective the dispute between the parties and the conduct of the petitioners after the initiation of the arbitral proceedings and how orders of this court has not been disobeyed. The respondent would contend that they have not alienated the property as undertaken by them. The respondent would submit that as per agreement between him and the petitioners 50% of the construction of the property has been completed and handed over to the applicants. Completion Certificate has also been issued and the petitioners have also leased out their share in the property to a Jewellery chain, Joy Allukas.

7. However, when the respondent attempted to work in the 8th floor for his purchaser, which fell to their share, the petitioners started interfering in the said work. That apart, they had also canceled the



Power of Attorney dated 27.04.2012, which caused a great deal of hardship to the respondent and a complaint was filed against the petitioners on 01.05.2012. Since the Police Authorities were not taking any action, the respondent was constrained to file an application under Section 9 in O.A.No.417 of 2012 for an injunction restraining the petitioners from interfering with his possession and an interim order was also granted on 04.05.2012. As a counter blast, the petitioners have come forward with the Section 9 petition, the order in which is the subject matter of the contempt petition.

8. The respondent would submit that on the date when the undertaking was recorded, the property was already under a mortgage and the respondent has till date not alienated the same. The respondent would further submit that they had given the undertaking since the arbitral proceedings were already underway and they had hoped that it would reach finality quickly. The respondent would submit that the arbitrators appointed by both of them appointed the Hon'ble Mr. Justice Duraisamy Raju (Retd), Hon'ble Supreme Court as umpire. Thereafter, the applicants started sending vexatious letters as a result of which the learned counsel appearing for the petitioners had withdrawn from the arbitration and later the umpire also withdrawn from the proceedings.



It was only then that they had realised that the petitioner would not permit an early closure of the Arbitral proceedings.

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9. Subsequently, Hon'ble Mr.Justice V.Kanakaraj (Retd) was appointed as an umpire and the proceedings were slated to be heard on 12.10.2012. All of a sudden, the petitioners informed that their nominee arbitrator Mr.Justice N.V.Balasubramaniam (Retd) was acting to their detriment and immediately the learned Judge had withdrawn from the proceedings. By reason of this the whole process came to be grinding halt. The arbitral proceedings have not progressed much.

10. In view of this dead lock the respondent had filed O.P.No.254 of 2013 for appointment of an arbitrator. Thereafter, on consent of both the parties the Hon'ble Mr.Justice Yusuf Ali (Retd) was appointed as an arbitrator. Once the proceedings had started in 2016, the petitioners started filing applications which after contest was dismissed on 23.05.2018 and these orders were taken up on appeal. In fact one of the reliefs that was claimed as the interim prayer was the prayer made in the counter claim itself. This Court allowed the appeals and the same is now pending in appeal before the Hon'ble Supreme Court. The respondent would contend that they have not violated the orders of the Court and would pray that they be discharged from the



allegations of contempt.

11. The learned counsel appearing for the petitioners would submit both by oral arguments and by way of written arguments that by mortgaging the property on 01.10.2014 with M/s.IDBI Bank, the respondent had committed an act of contempt and therefore was liable to be punished for the violation. He would submit that the word alienation would also cover transaction by mortgage. He would submit that the petitioners have approached the Court well within the period of limitation. The IDBI Bank had initiated proceedings under Section 14 of the SARFAESI Act and taken physical possession of the property on 07.01.2021 and the contempt petition has been filed immediately.

12. Mr.V.Lakshmi Narayanan, learned counsel appearing on behalf of the respondent / contemnor would contend that when the undertaking was given the property was already subject to mortgage. The respondent had very consciously given the undertaking that they will not alienate the property. Even the petitioners were conscious of the fact that alienation does not include mortgage. This is evident from a reading of the relief sought for by the petitioners. The petitioners have themselves listed alienation, in contradistinction from sale, encumbrance, mortgage etc. The respondent has therefore in right



earnest given an undertaking that they would not alienate the property and to date the alienation has not taken place.

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13. The learned counsel would further submit that, apart from this submission on merits the contempt petition is not maintainable since;

(i) It is filed beyond the period of 1 year as contemplated under Section 20 of the Contempt of Courts Act.

(ii) The proceedings under Section 9 of the Arbitration and Conciliation Act is akin to the provisions of Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and therefore the remedy available to the petitioners is only by way of petition under Order XXXIX Rule 2 A of the CPC and not by way of contempt proceedings; and

(iii) This Court should consider the conduct of the petitioner in stalling the arbitral proceedings.

14. He would contend that the mortgage in favour of IDBI had been created by deposit of title deed in the year 2014. The petitioners therefore ought to have filed the petition for contempt within a period of 1 year from the date of the mortgage that is by 2015. However, the instant petition has been filed in the year 2019. He would rely on the Judgement of the Hon'ble Supreme Court reported in *AIR 2001 SC*



2763 – Pallav Sheth Vs. Custodian and others in support of his contention. The Court's attention has been drawn to paragraph Nos.32, 33 and 34 of the said Judgement.

15. He would contend that Section 9 is the power granted to the Court for granting an interim measure before, during or after the award has been passed till its enforcement. A similar power is also conferred on the arbitral tribunal under Section 17 of the Act. These provisions are akin to the powers conferred on a Civil Court under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

16. A reading of Section 17 (2) would clearly show that the interim order can be enforced only as per the provisions of the Code of Civil Procedure. No doubt, Section 9 is silent in this regard. Therefore, it is his contention that the remedy available to the petitioners is only by way of an execution proceedings or by the procedure contemplated under Order XXXIX Rule 2 A.

17. He would further submit that when two interpretations are possible and an order passed is ambiguous then no proceedings for contempt would lie. He would submit that the petitioners themselves were conscious of the fact that alienation and mortgage are two distinct acts. He would rely on the Judgement reported in **2008 15 SCC 529 –**



Tamilnad Mercantile Bank Shareholders Welfare Association (1) Vs.

Tamilnad Mercantile Bank Limited in support of his contention. He

would also rely upon the Judgement of the Bombay High Court reported in ***AIR 1972 Bom 43 – Pitambar Govinda Bhavsar Vs. Abdul Gafar Abdul Rajak Deshmukh***, where the learned Judge had interpreted the word alienate. The learned Judge had gone to hold that alienation is a transfer of ownership to another person and applied to absolute conveyances of immovable property where there is actual transfer of title. Therefore, the learned counsel would submit that a mortgage will definitely not fall within the meaning of absolute alienation. Therefore, the undertaking given has not been violated since the contemnor has only created a mortgage.

18. Heard the learned counsels and perused the papers.

19. The entire gamut of the case revolves on the word “*alienate*”. If this Court were to interpret that the word “*alienate*” also includes “*mortgage*” then the petitioners is guilty of contempt. The word alienation in the Black's Law Dictionary has been defined as “*Conveyance or transfer of property to another*”. The Oxford dictionary defines Alienate as “*Transfer of ownership of (property) to another person*”. Mortgage on the other hand is a conveyance of



property given as security and in which case there is no transfer of ownership. From these definitions what emerges is that in the case of alienation there must be a transfer of ownership from one to another.

In the instant case the petitioners have only created a memorandum of deposit of title deeds (equitable mortgage). A reading of the same would indicate that the respondent has deposited the title deeds of the property with an intent to create a security by way of this mortgage in favour of IDBI Bank. There does not appear to be a transfer of ownership under the said deed.

20. In the Judgement reported in ***AIR 1972 Bom 43 - Pitambar Govinda Bhavsar Vs. Abdul Gafar Abdul Rajak Deshmukh***, the learned Judges were considering as to whether lease would amount to alienation. The learned Judges after extracting provisions of Transfer of Property Act observed that transfer is only a right to enjoy the property and there is no transfer of ownership. The learned Judges after extracting the meaning of "alienate", "alienation" and "alienated" have observed as follows in paragraph no.17:

"If the Legislature had intended to include a lease or any other transfer in the word "alienation", nothing would have been simpler than to say so and to use the words "transfer, sale, mortgage or lease"



or whatever the Legislature intended to prohibit. It is reasonable to suppose that the Legislature knew the literary meaning of the word "alienation", as also its meaning in the Bombay Land Revenue Code, 1879, the definitions in which were being made applicable by s. 2 (15) of the B.A.D.R. Act."

21. That apart there is yet another factor in favor of the respondent in the instant case. The petitioners have themselves understood that the word "alienate" and "mortgage" are distinct and different from each other as is evident from their very prayer. Therefore, when the undertaking had been given the petitioners have clearly understood the same to mean only a sale / transfer of ownership absolutely.

22. The alleged act had taken place in the year 2014 and this contempt petition has been filed in the year 2019, 4 years after the alleged act. A reading of Section 20 of the Contempt of Courts Act would indicate that the period of limitation does not start from the date of knowledge but from the date of the alleged occurrence which in the instant case is the year 2014. The argument by the respondent that the Bank had taken possession of the property on 07.02.2021 by exercising the rights under Section 14 of the SARFAESI Act and therefore the



petition is in time is totally misconceived. The contempt petition has been filed in the year 2019 alleging contempt on account of the mortgage created by the respondent in the year 2014. Article 215 of the Constitution of India deals with the contempt of the orders of the High Court. Article 215 reads as follows:

"High Courts to be courts of record Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself"

Therefore it is well open to the High Court to punish for contempt of its orders.

23. However, in the Judgement of the Hon'ble Supreme Court reported in ***AIR 2001 SC 2763 - Pallav Sheth Vs. Custodian and others***, the Hon'ble Supreme Court has held as follows in paragraph 34:

"The question which squarely arises is as to what is the meaning to be given to the expression "no court shall initiate any proceedings for contempt..." occurring in Section 20 of the 1971 Act. Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different."



24. The learned Judges have further emphasised the principle underlying the law of limitation. The learned Judges had held that the reasons for prescribing a time limit is to ensure that the litigant acts diligently and does not sleep over its rights. Ultimately, the learned Judges have held as follows in paragraph no.45:

"Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on [Section 20](#) must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

Therefore, it is clear that the instant contempt petition filed is beyond the period of limitation. The mortgage has been created in the year 2014 whereas the contempt proceedings has been initiated only in the year 2019.

25. Considering the fact that I have held that the Contempt Petition is barred by limitation I am not considering the next argument advanced by the learned counsel for the respondent that the



proceedings under Section 9 is akin to the provisions under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

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26. In fine, the Contempt Petition fails as the proceedings have been initiated beyond the period of one year. The Contempt Petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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GS/19/05/2021