

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Contempt Petition No.1196 of 2021

in

C.R.P.No.187 of 2019

D.Vijayalakshmi,
128/91, Ponnurangam Road(west),
R.S.Puram,
Coimbatore 641 002

... Petitioner

Vs.

Mr.P.Chelladurai,
Presently Principal Sub Judge, Coimbatore
Previously 2nd Additional Sub Judge,
Coimbatore District Court Complex,
Coimbatore – 641 018.

... Respondent

PRAYER: This Contempt Petition is filed under Sections 11 and 16 of the Contempt of Courts Act, 1971 r/w Section 6 of Contempt of Courts Rules, High Court, Madras, 1975 to prosecute and punish the respondent for misuse of power and post, wilfully, knowingly and deliberately disobeying the orders of the Single Bench of this Court dated 25.01.2019 made in CRP(PD)No.187 of 2019 even after having the knowledge of Court.

For Petitioner : Mrs.D.Vijayalakshmi
Party-in-person

ORDER

The present contempt petition has been filed alleging that the learned II Additional Sub Judge, Coimbatore had failed to dispose of the suit within a period of three months as ordered by this Court on 25.01.2019 in C.R.P(PD)No.187 of 2019.

2.In order to verify the allegations made by the petitioner in her affidavit filed in support of this contempt petition, this Court had called for a report from the learned II Additional Sub Judge, Coimbatore. Accordingly, a report dated 09.12.2021 has been placed before this Court. The relevant portions of the said report reads as follows:-

“2. I humbly submit that the petitioner (Plaintiff) filed O.S.No.269 of 2010 before this Court in the year of 2010 and she was examined as P.W.1 on 03.03.2018. In the meanwhile, 1st and 2nd Defendants filed an application to set aside the exparte order in I.A.No.316 of 2018, which was allowed on 26.09.2018.

3. I further more submit that the petitioner filed C.R.P.(PD) No.187 / 2019 for speedy disposal of the above suit, which was allowed by the Hon'ble High Court of Madras on 25.01.2019 with a direction to dispose the case within three months from the date of receipt of the order. The above order was received by this Court on 25.03.2019 and the case was posted for cross of P.W.1 on 27.03.2019, 29.03.2019 and 02.04.2019. On 02.04.2019, P.W.1 was cross examined by 2nd defendant partly and it was posted for P.W.1 cross continuation on 05.04.2019. On 05.04.2019, the plaintiff counsel report that he had no instruction. Hence, the case was posted on 08.04.2019 and again, the case was posted on 11.04.2019. The

petitioner engaged a new counsel Mr.C.P.Raghavan on 15.04.2019. On the request of both sides, the case was posted on 15.04.2019. On 29.04.2019, P.W.1 cross examination was completed and it was posted for further plaintiff side evidence on 03.06.2019, since month of May was summer vacation.

4. I submit that when this Court was taking effective steps to complete the trial in view of the direction of the Hon'ble High Court, the petitioner (Plaintiff), who sought for the said direction from the Hon'ble High Court, filed an application for appointment of commission on 03.06.2019 in I.A.No.1 of 2019, which was dismissed on 05.09.2019 on merits. Hence, this Court send a letter on 06.09.2019 in D.No.2859 of 2019 for extension of time.

5. When the I.A.N.1 of 2019 is pending, the plaintiff filed another two I.A.'s in I.A.No.2 of 2019 for production of documents and another one I.A.No.3 of 2019 for examination of Court Commissioner, who was appointed in E.P.No.16 of 2004 in RCOP.No.96/1983.

6. I further more submit that though the plaintiff got the aforesaid direction from the Hon'ble High Court of Madras, filed three I.A.'s one after another with a view to drag on the disposal of the suit.

7. I further more submit that the above said I.A.No.2 of 2019 was allowed on 03.03.2020 for production of documents by the respondent and the I.A.No.3 of 2019 was dismissed on 03.03.2020 on merits. As against the order of dismissal in above I.A.No.1 of 2019, which was dismissed on 05.09.2019, she filed an application for certified copies in C.A.No.12188 of 2019 for preferring a review, which was also granted on 23.10.2019. If really the petitioner wanted to dispose off the case as early as possible, she would not have filed the said interlocutory

applications. Due to the said unnecessary applications, this Court was unable to dispose the case within the time framed by the Hon'ble High Court.

8. When the I.A.No.2 of 2019 and I.A.No.3 of 2019 were pending for enquiry, the 1st and 2nd respondents in I.A.No.2 of 2019 and I.A.No.3 of 2019 filed set aside petition in I.A.No.4 of 2019 and I.A.No.5 of 2019, which were allowed on cost. The said cost was also received by this petitioner without any objection.

9. I further more beg to submit that the II Additional Sub Court is a very heavy Court and it has also to exclusively try Execution Petitions of all the five Subordinate Court. Nearly 3100 Execution Petitions, 1400 Original Suits, 77 Appeals, 14 C.M.A., 403 H.M.O.P and 68 Sessions Cases are pending and totally above 5000 cases are pending. Apart from that nearly 4000 I.A.'s and E.A.'s are pending. In view of the huge pendency, daily nearly 150 cases have been posted for hearing. More over, the then II Additional Subordinate Judge was holding Full Additional Charge of Chief Judicial Magistrate, Principal Subordinate Court, Secretary Legal Services Authority and Deputy Director of Tamil Nadu State Judicial Academy, Coimbatore.

10. I further submit that, whenever this case was posted for hearing, this Court had been insisting both counsels by remembering the direction of the Hon'ble High Court to proceed with the case, but the counsels for plaintiff and defendants filed several I.A.'s one after another thereby adopting all delay tactics. Hence, this Court had to submit an extension letter and the Hon'ble High Court of Madras was also pleased to grant further six months time for disposal of the case, which was received on 11.12.2019. Even after knowing about the extension

order copy, the plaintiff did not co-operate with this Court to dispose the case.

11. I further submit that when the case was posted for cross examination of P.W.1, 3rd and 4th Defendants did not cross examine P.W.1 and as such, this Court set them exparte on 15.02.2021 considering the Hon'ble High Court direction. Subsequently, 3rd and 4th Defendants filed an application to set aside the exparte order and to reopen the case for cross examination of P.W.1, which was allowed on 05.03.2021 on payment of cost in I.A.No.7 of 2021. The petitioner also received the said costs without any objection and did not prefer any revision.

12.I further more submit that the petitioner had frequently change his counsels, namely, Mr.C.Rajasekar, Mr.K.S.Venkatesamurthy, Mr.C.P.Ragavan and Mr.M.Thirumurthy. Whenever she changed her counsel, the new counsel took time to go through the records. During the said period, she appeared as party in person and took time to engage her new counsel.

13. I further more submit that after disposal of the above I.A., the case was posted for cross examination of P.W.1, but due to Covid-19 and National Lock Down from 23.03.2020 to 30.09.2020 the case was adjourned without any progress. Since Coimbatore was one of the most affected area, nobody appeared before this Court and again due to second wave of Covid-19, nobody appeared before before this Court from March, 2021 to July, 2021. In the meanwhile, on 22.04.2021, the then II Additional Sub Judge was transferred as Principal Subordinate Judge, Coimbatore.

14. I further more submit that on 07.04.2021, the written argument was filed by the plaintiff and the case was posted for

defendant side argument as no further adjournment on 26.04.2021. In the meanwhile, the previous Judicial Officer was transferred to Principal Subordinate Court, Coimbatore and I have been transferred to this Court on 22.04.2021 and Court was closed due to summer vacation from 01.05.2021 to 31.05.2021. Due to Covid-19 the case was posted in the special list through video conference on 30.06.2021, but no one was appearing.

15. I further submit at this stage, I have been put on notice of the directions of the Hon'ble High Court and due to Covid-19, the case was posted for argument on 05.07.2021 and 20.07.2021, but no representation from both parties or counsels till 2.30 p.m., Hence, again it was posted for argument on 23.07.2021 as last chance and no further adjournment.

16. On 27.07.2021, 3rd and 4th Defendants side arguments was heard in part and posted for further argument on 30.07.2021 and the case was again posted for 3rd and 4th Defendants side further argument on 02.08.2021. On 02.08.2021, on perusal of the case bundle, it is found that Ex.A3 was misplaced. Hence, memo was issued to the concerned Bench Clerk.

17. On 27.08.2021, an application was for reconstruction of Ex.A3 in I.A.No.8 of 2021, which was allowed on 06.10.2021 and it was posted for 1st and 2nd defendants side arguments and finally this case was posted for 1st and 2nd defendants side arguments on 25.10.2021 as no further adjournment. Since, the Judge was O.D. on 25.10.2021, it was posted for argument on 27.10.2021 and after hearing the arguments, it was posted for Judgement on 08.11.2021. Since the Judge was on Casual Leave on 08.11.2021, it was posted for Judgement on 15.11.2021 and the suit was disposed of.

18. I beg to submit that only because of the following reasons, this Court was unable to dispose of the suit within the stipulated time fixed by the Hon'ble High Court:-

- Non co-operation of both side counsels, particularly the petitioner/ plaintiff;
- Filing of unnecessary application by both parties;
- Change of counsels by the petitioner/ plaintiff;
- First and Second waves of Covid-19 during the said period;
- Coimbatore was badly affected by Covid-19;
- Physical hearing was restricted in the Courts at Coimbatore;
- Huge pendency in this Court, which is also an executing Court; and
- Judge was holding full additional charge of various Courts.

The said delay was neither wilful nor wanton, but for the aforesaid reasons. I further submit that I specifically deny all the allegations levelled as against this Court in the affidavit and interpretation of provisions in the Judges Protection Act by the Contempt petitioner, which are not correct, but only false.”

3.An overall perusal of the report reveals that the case could not be completed within the original period of three months since the petitioner, who was the plaintiff in the suit, had filed three applications and the pendency of these applications had consumed some time. Thereafter, the

defendants were also set ex-parte during the course of the proceedings, which was later set aside, and the case was also reopened for cross examination. Apart from this, the plaintiff had changed her counsels on three occasions and the new counsels, who had appeared, had sought for adjournments for perusing the records. Further, during the course of hearings before the Trial Court, the plaintiff had appeared as a party-in-person and sought time to engage new counsel. Moreover, since the Covid-19 pandemic existed at that time and the national lock down was also declared, the lawyers had not appeared before the Court for some time. At the stage of argument and passing of judgment, the learned Presiding Officer was on leave on two occasions. It is in this background, the suit came to be disposed of finally on 15.11.2021.

4.Owing to all these reasons, it appears that the suit could not be disposed in time and none of these reasons can be attributed to the learned Presiding Officer for the delay. On the other hand, it can be said that, the considerable length period of time for such pendency was also attributable to the plaintiff, when she had chosen to file three applications and had frequently changed her counsels. Consequently, Covid-19 pandemic has also attributed to the delay in disposal of the said suit. As such, I do not find

any *bona fide* reasons in the averments made by the petitioner against the Presiding Officer in the affidavit filed in support of the contempt petition.

5.Since this Court is of the view that there was no disobedience, much less a wilful disobedience, the contempt petition does not deserve any consideration. Accordingly, this contempt petition stands dismissed. No costs.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

skn

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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

GS/28/03/2022

To

1.The II Additional Subordinate Judge,
Coimbatore.

2.Mr.P.Chelladurai,
Presently Principal Sub Judge, Coimbatore
Previously 2nd Additional Sub Judge,
Coimbatore District Court Complex,
Coimbatore – 641 018.