

AD-10&11
Ct No.09
18.08.2023
TN

CPAN 558 of 2023
in
WPA No. 8790 of 2022

Smt. Dipali Dey
Vs.
Mr. Biswajit Kundu, the Assistant Registrar of
Cooperative Societies and another

Mr. P.C. Das,
Mr. S.K. Ganguly,
Ms. Soma Chowdhury (Bandhu)
.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra
.... for the alleged contemnor no. 1

Mr. Pabitra Charan Bhattacharya,
Ms. Soumita Ghosh
.... for the alleged contemnor no. 2

Learned counsel for the petitioner alleges that despite the specific direction of this court vide order dated May 20, 2022 passed in WPA No. 8790 of 2022, directing the respondent no. 2-Bank to immediately inform the petitioner about the details of the provident fund account and in respect of the gratuity and back wages during suspension with effect from April 02, 1997 to October 19, 2001, of the petitioner's deceased husband late Sagar Chand Dey, and to take urgent steps to disburse all amounts due to the petitioner in lieu of the retiral benefits of her deceased husband as

expeditiously as possible, positively within one month from the date of communication, the alleged contemnor did not comply with the said order deliberately, thereby being guilty of contempt.

Learned counsel appearing for the alleged contemnors places reliance on a letter given by the petitioner herself on February 27, 2023, annexed at page-92 of the affidavit-in-opposition to the contempt application, where the petitioner clearly admitted that her husband was suspended on and from April 01, 1997 and that it is also a fact that her husband had been dismissed from service on and from August 28, 1998. In the said letter, the petitioner also admitted that the husband had not been reinstated till his date of normal retirement, that is, October 31, 2001.

It is argued that the said fact of a departmental proceeding having been initiated against the petitioner's deceased husband and as a result, the husband being dismissed from service does not find any mention in the order under contempt. The said fact having been deliberately suppressed, it is argued, the petitioner is not entitled to have the favour of the court by way of a direction on the contempt application.

It is submitted that it is the well-settled position of law that fraud vitiates all and if an order is obtained

from a court by suppressing the material facts, the same tantamounts to practising fraud on the court and does not entitle the petitioner to any benefit of such order.

It transpires, upon hearing learned counsel, that the alleged contemnors are justified in placing reliance on the said letter dated February 27, 2023 by the petitioner, where she admitted that her husband had been suspended first and then dismissed from service on August 28, 1998. Thereafter, the petitioner's husband was never reinstated till his date of normal retirement, that is, on October 31, 2001. As such, the said fact furnished further ground for the alleged contemnors not to disburse any further amounts to the petitioner's husband, irrespective and independent of the petitioner's husband having been acquitted in a criminal proceeding, which was the sole premise of the order under contempt.

A perusal of the averments made in the original writ petition and the annexures thereto indicates that the letter now relied on by the alleged contemnors was never annexed to the said writ petition, nor did the petitioner whisper anything about the disciplinary proceeding against her husband and/or, more importantly, the husband having been dismissed from service and never being reinstated.

The premise of the order under contempt was only the acquittal of the petitioner's husband from the criminal case.

Since the dismissal from service of the husband of the petitioner and subsequent non-reinstatement furnish an entirely different justification for not disbursing further amounts, not dealt with in the said writ petition, it cannot be said that the alleged contemnors are guilty of deliberate and willful violation of the order of the court.

A question may arise here, as to why the respondent no.4, the alleged contemnor, chose not to appear despite service at the time of hearing of the writ petition and to point out the fact of the disciplinary proceeding and dismissal from service of the petitioner's husband.

However, even if it is taken that the alleged contemnors were negligent in not appearing and pointing out the said facts to the court, since the writ court is a court of equity and the petitioner is supposed to come with clean hands, a person who sought to obtain an order from the court ought to have herself disclosed the relevant factors which might have weighed with the court while passing the said order. Having not done so, it cannot be said that the favour of the order is required to be extended to

the petitioner. Hence, the contempt application does not lie at the behest of the petitioner.

Accordingly, CPAN 558 of 2023 is dismissed, without any order as to costs.

Nothing in this order shall prevent the alleged contemnors from ensuring that whatever amounts are possible to be disbursed in lieu of service benefits of the petitioner's deceased husband be given to the petitioner, taking a sympathetic view of the financial condition of the petitioner.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)