

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2022

DELIVERED ON : 09.06.2022

Coram:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Cont.P.No.86 of 2011

B.Ramaiya,
10, Roja Nagar,
Madhavaram,
Chennai-600 060.

... Petitioner

vs

1.T.M.Muthuselvam
4, Mettu Street,
Thiruchengodu – 617213
Namakkal District.

2. Nagaraj,
M/s. Andhra Bank Represented
By its Manager (Branch Manager),
17, Mills Road,
Coimbatore – 641 001.

3.K.Kaliaperumal
Sub Registrar Office,
Trichengode,
Namakkal District

... Respondents

Contempt petition filed under section 11 of Contempt of Court Act, 1971 seeking to punish the respondents for disobeying the order of this court dated 07.02.2003 made in A.No.5371 of 2002.

For Petitioner : Mr.V.Raghavachari

For 1st Respondent : Mr.R.Ezhilarasan

ORDER

This petition has been filed to punish the respondents for disobeying the order of this court dated 07.02.2003 made in A.No.5371 of 2002.

2. The case of the petitioner is that the first respondent herein had obtained financial assistance from the petitioner and the total outstanding amount was Rs.70,00,000/-. On request and demand made by the petitioner, the first respondent failed to repay the same and hence, a criminal case was registered against him on 16.03.2001 in Crime No.187 of 2001 wherein the first respondent had entered into an agreement with the petitioner on 11.08.2002 by way of a compromise and had agreed to repay the outstanding amount, failing which, it was agreed between both the parties that the matter shall be referred to arbitration and in the same agreement, he had also secured the money with his property described therein. Even after the agreement, the first respondent failed to keep up with his promise and as per the terms of the agreement, the petitioner proceeded with the arbitration proceedings against the first respondent and a sole arbitrator was appointed and a claim statement was filed before the said arbitrator on 07.12.2022 in Arbitration case No.1/2002. During the pendency of the said arbitral proceedings, the petitioner approached this court by way of an application

in A.No.5371 of 2002 under section 9 of Arbitration and Conciliation Act, 1996 seeking direction against the first respondent to furnish security to the tune of Rs.70,00,000/- failing which attachment of the schedule mentioned property. Initially this Court by its order dated 20.12.2002 was directed the first respondent to furnish security within a period of four weeks. Since the first respondent failed to furnish security within the stipulated time, this court ordered for attachment of schedule mentioned property on 07.02.2003. The said order was transmitted through the District Munsif Court, Thiruchengodu and the attachment was given effect to and the same reflects before the SRO, Thiruchengodu towards the said property. Pending the said attachment, the criminal proceedings in Crime No.187/2001 is in progress before the learned Judicial Magistrate, Thiruvottiyur in C.C.No.401 of 2002 and the arbitration proceedings were also in progress before the learned Arbitrator. In the meantime, the Arbitrator came to be changed and Sri Veerasamy, a retired District and Sessions Judge came to be appointed as arbitrator.

3. It is also the case of the petitioner that pending the above proceedings, the first respondent had issued a cheque to the petitioner to the tune of Rs.70,00,000/- on 25.09.2006 but the same was dishonored and

proceedings under section 138 of Negotiable Instrument Act has been initiated against the first respondent herein and the same is pending on the file of the learned Judicial Magistrate, Ambattur in C.C.No.48/2007. This fact was also brought to the notice of the learned Arbitrator and finds a place in the proceedings. The learned Arbitrator has come to a finality and an arbitral award has been passed on 27.01.2010 as per which the first respondent is liable to pay a sum of Rs.1,32,89,890/- towards principal and interest. During the pendency of all these above proceedings and more particularly, while the order of attachment by this court is in force, the petitioner has come to understand that the first respondent has encumbered the schedule mentioned property by creating a mortgage for a sum of Rs.3,00,00,000/- in favour of Andhra Bank, vide document No.6834 /2009 dated 01.10.2009. The above said act of the first and second respondents would clearly prove that they are willfully disobeyed the order of this Court with malafide intention and they are trying to defraud the petitioner. The above said transaction are in gross violation of the order of this Court which amounts to blatant disobedience.

4. The petitioner has been made to run from pillar to post for recovery of his lawful entitlement and the first respondent despite the order of this

court and the order of the learned Arbitrator, has encumbered the schedule mentioned property by mortgaging the same. Therefore, the petitioner has filed this present petition for contempt.

5. Learned counsel for the petitioner would submit that this court passed an order of attachment dated 07.02.2003 and the same was also entered in the encumbrance certificate on the file of the SRO, Thiruchengodu. Despite the order of attachment is in force which also reflects in the Encumbrance Certificate, the first respondent had willfully disobeyed the order of this Court by creating a mortgage deed which amount to contempt of this court.

6. The learned counsel for the respondents would submit that the respondents have not committed any contempt and the aforesaid act was done neither willful nor wanton.

7. Heard the learned counsel and perused the materials available on record.

8. Admittedly, the first respondent obtained financial assistance from the petitioner and failed to repay the same. This court by its order dated 20.12.2002 in application No.5371 of 2002 directed the first respondent to furnish security for a sum of Rs.70,00,000/- within a period of four weeks i.e., on or before 17.01.2003. Subsequently, by its order dated 07.02.2003,

attachment of the schedule mentioned property was ordered, since the first respondent did not furnish security within the stipulated time and the same was also communicated through District Munsif court, Thiruchengode. The said attachment was given effect to and the same was also reflected in the records of the SRO, Thiruchengode. The Encumbrance Certificate produced by the petitioner in the typed set of papers also clearly shows that the order of attachment was given effect to. Subsequently, the arbitral proceedings was also completed and the arbitrator also passed an award .Even during the pendency of the arbitration, the first respondent gave a cheque for a sum of Rs.70,00,000/- to the petitioner which was also dishonored and hence, the petitioner filed a complaint under section 138 of Negotiable Instrument Act and the same is pending on the file of the Judicial Magistrate, Ambattur in C.C.No.48 of 2007. Subsequently, the first respondent though the order of attachment is in force, created encumbrance and mortgaged the schedule mentioned property in Andhra Bank vide document No.6834/2009 dated 01.10.2009. When the order of attachment is in force, creation of mortgage against the said property is not valid and it shows that the first and second respondents have wilfully disobeyed the order of this Court and therefore, they committed contempt and hence, the same is not binding on the petitioner. The second respondent bank also without noting down the entry

made in the encumbrance certificate, entered into mortgage with the first respondent and hence, the same is not binding on the petitioner.

9. In view of the above, this court is of the considered view that the first and second respondents have willfully committed contempt of court. Hence, the first respondent is directed to pay the said amount mentioned in the arbitral award together with interest as per the said arbitral award within a period of two months from the date of receipt of a copy of this order failing which the petitioner can take steps to detain the first respondent in prison and the petitioner is also at liberty to proceed with the criminal case in C.C.No.401 of 2001 and also in C.C.No.48 of 2007.

10. With the above directions, this contempt petition is allowed. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

nl

//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/20/06/2022

To
The Sub Registrar Office,
Thiruchengode,
Namakkal District.