



Cont. Ptn. Nos. 1104-1165/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
30.11.2022	21.12.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CONTEMPT PETITION NOS.1104 & 1165 OF 2021

1. Kothandan
 2. K.Balasundar
- .. Petitioners in both petitions

- Vs -

1. M.Sumathi
 2. IDFC First Bank Ltd.
KRM Tower, 7th Floor
No.1, Harrington Road
Chetpet, Chennai 600 031
- .. Respondents in both petitions

Contempt Petitions filed u/s 11 of the Contempt of Courts Act, 1971, to punish the respondent for having committed willful disobedience of the interim order dated 27.08.2019 in WMP No.24736 of 2019 in W.P. No.25162 of 2019.

For Petitioners : Mr. K.Ashok Kumar



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For Respondents : Mr. K.N.Natraj for R-1
Mr. T.K.M.Sai Krishna for R-2

COMMON ORDER

Alleging that the 1st respondent/contemnor had willfully disobeyed the orders of this Court, which had directed the petitioners and 1st respondent to desist themselves from making any alteration of the physical features of the property and also refrain from causing third party encumbrance on the said property, the present contempt petitions have been filed.

2. The writ petition was filed by the petitioners on the premise that the 1st respondent herein had filed a suit in O.S. No.14 of 2012 before the District Munsif Court, Ambattur, claiming relief of injunction, which was dismissed holding that the 1st respondent herein is not in possession of the suit property. In spite of the aforesaid order, application was filed by the petitioners as also the 1st respondent herein for grant of patta before the Tahsildar. The Tahsildar conducted enquiry by affording opportunity of hearing to the parties and, thereafter, submitted report to the District Revenue Officer holding that the subject property to the extent of 0.25 cents belonged to the 1st respondent herein and based on the said



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report, the District Revenue Officer had granted patta to the 1st respondent herein vide order dated 1.7.2019. Challenging the said order, the writ petition in W.P. No.25162/2019 was filed along with a petition in W.M.P. No.24736/2019 seeking an order of stay of the aforesaid order.

3. When the matter came up for hearing on 27.08.2019, this Court passed the following order :-

“4. As required by this Court during morning session today, the first and second respondents have appeared in person before this Court. It is informed by Mr.Kalidoss, District Revenue Officer, Collectorate, Chennai, that he took over that post on 02.07.2019 and that the impugned order has been passed on 01.07.2019 by the previous incumbent, viz., Mr.Karunagaran. It is also brought to the notice of this Court from the Distribution Register maintained in office of the District Revenue Office, which has been produced, that the file number stated in the impugned order does not relate to the matter which is the subject of this writ petition.

5. In the aforesaid circumstances, there shall be an order of interim stay of the impugned order, and any form of alienation or creation of encumbrance or third party interest or alteration of the physical features or parting with possession of the property shall not be made either by the petitioner or the third respondent without the prior permission of this Court, until further orders.”



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4. Alleging that the aforesaid order of stay has been violated and in utter defiance of the same, not only alteration of the property, but also creation of encumbrance has been made by the 1st respondent herein, by mortgaging the property with the 2nd respondent herein, the present contempt petitions have been filed.

5. In support of the aforesaid plea, the petitioners have placed before this Court the alterations that have been caused to the physical features of the property and towards encumbrance, the mortgage entered into by the 1st respondent, which has been registered by means of memorandum of deposit of title deeds before the Sub Registrar, Ambattur, has been placed before this Court in and by which the subject property has been mortgaged for a sum of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakhs only) with the 2nd respondent Bank.

6. Upon issuance of statutory notice, the 1st respondent/contemnor appeared before this Court and her appearance was dispensed with. Thereafter,



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the matter was listed on various dates. The contemnor has filed an affidavit before this Court in the present contempt petition in which she has accepted the act of non-compliance with the order passed by this Court and had pleaded unconditional apology for causing inconvenience to the Court by disobeying the orders passed by this Court.

7. The aforesaid affidavit has been filed by the contemnor on 25.11.2021. In the said affidavit, the contemnor has averred that she approached the 2nd respondent for substitution of security, which has been declined by the 2nd respondent. Further to the same, the contemnor had taken steps to get a settlement deed executed in respect of the property of her mother for the purpose of mortgaging the same to raise the funds for redeeming the mortgaged property, which is the subject matter of the present *lis*.

8. As stated above, the aforesaid affidavit has been filed on 25.11.2021 and, thereafter, the matter stood adjourned to various dates to enable the contemnor to show her bona fide by redeeming the mortgaged property. When the matter was listed before this Court on 15.6.2022, upon the submissions made



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by the learned counsel appearing for the respective parties, the following order was passed :-

“3. On the earlier occasions, the 3rd respondent/contemnor appeared before this Court and admitted her guilt and she ensured that she will rectify her mistake and sought time. Therefore, the case was posted on 16.06.2022.

4. Today, when the case came up for hearing, the 3rd respondent/contemnor appeared before this Court and again seeks time to settle the entire loan amount and restore the disputed property in the original position on or before 28.06.2022.

5. In order to give one more opportunity, this Court directs the 3rd respondent/contemnor to settle the entire loan amount on 30.06.2022. Post these cases finally on 30.06.2022 “for reporting compliance” and the third respondent is directed to appear before this Court on that day without fail.”

9. The matter was accordingly listed on 30.6.2022 on which date, while the 1st respondent/contemnor, to show her *bona fide*, deposited a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only), once again time was sought for time to pay the balance amount, which was granted and, thereafter, on various occasions, the matter was listed seeking extension of time to pay the amount, which was also granted. Thereafter, the matter was listed on 16.11.2022 under



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the caption “For Pronouncing Orders”, on which date, the contemnor/1st respondent appeared before this Court and submitted that she had drawn a Demand Draft of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) in favour of the 2nd respondent Bank and requested that the matter will be settled and the order of this Court complied with on or before 30.11.2022. On the basis of the undertaking given by the 1st respondent/contemnor, the matter was directed to be listed on 30.11.2022 for compliance of the directions of this Court.

10. When the matter was listed on 30.11.2022, inspite of the undertaking given by the 1st respondent/contemnor to settle the balance amount to the 2nd respondent/bank and to purge herself out of contempt, however, the 1st respondent/contemnor has not paid the balance amount, but merely seeks further adjournment.

11. In the above backdrop, this Court is ordained with the task of finding out whether there has been an act of willful contempt and disobedience of the orders passed by this Court.



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12. It is not in dispute that this Court had passed an order of interim stay on 27.08.2019 in and by which the petitioners as well as the contemnor were directed not to alienate or encumber by creating third party interest or alteration of the physical features or parting with possession of the subject property. From the above, it is clear that the order of stay operated against both the petitioners and the contemnor and both were estopped from doing any acts, that would, in effect, affect the rights of the legitimate owners of the property.

13. The said order, it is not disputed by either of the parties is a wrong order and no challenge has been made to the said order. Even if the order is a wrong order, unless it is vacated in the manner known to law, it is binding on the parties. The aforesaid proposition of law has been propounded by the Hon'ble Supreme Court in ***State of West Bengal – Vs – Hemant Kumar (AIR 1966 SC 1061)***, wherein it has been held that even a wrong decision by a Court is as much binding between the parties as a right one.

14. The 1st respondent/contemnor has neither taken any steps to have the interim order vacated nor approached the appellate forum challenging the said



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order even till the filing of the contempt petition. In the case on hand, as already aforesaid, the decision has been accepted by either parties and has not been put to test before the appellate forum and, thereby, the interim order has attained finality. Further, accepting the said interim order, the 1st respondent/contemnor had also come forward and paid, in all, a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only), one by way of a payment of Rs.45,00,000/- (Rupees Forty Five Lakhs only) on 30.6.2022 by way of bank transfer and another payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on 16.11.2022 by way of demand draft, as part payment to the 2nd respondent/Bank towards the mortgage made on the property with the Bank. Therefore, there is a flagrant and blatant breach of the orders passed by this Court and the 1st respondent/contemnor definitely has to be taken to task for the above violation.

15. In this regard, useful reference can be had to the decision of the Hon'ble Apex Court in the case of **Maninderjit Singh Bitta – Vs – Union of India (2012 (1) SCC 273)**, wherein, it was observed as under :-

“19. Under the Indian law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or



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criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English law, the courts have the power to enforce its judgment and orders against the recalcitrant parties."

16. In ***M/s.Maruti Udyog Ltd. – Vs – Mahinder C.Mehta & Ors. (AIR 2008 SC 309)***, the contemnors therein undertook to furnish bank guarantee before the Arbitrator as per the undertaking given by them before the Hon'ble Supreme Court and since they did not choose to comply with the same and also proceeded to dispose of the property, it has been found that their act amounts to contempt.

17. In ***Sahdeo @ Sahdeo Singh – Vs – State of U.P. & Ors. (2010 (3) SCC 705)***, the scope of contempt jurisdiction came up for consideration and it has been held that unless the act amounts to wilful disobedience and contumacious conduct, no charge of contempt could be brought home.



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18. In ***Sammahu Nath Jha – Vs - Kedar Prasad Sinha & Ors. (1972 (1) SCC 573)***, it has been reiterated that the Court, while exercising contempt jurisdiction, exercises the said jurisdiction with circumspection and judicial restraint in the matter of taking action for contempt of court. When there is an interference with the administration of justice of disobedience of the directions issued by the judicial pronouncement to which the contemnor is a party, the failure or omission to carry out the direction would amount to obstructing the due course of justice or due administration of law.

19. In the case on hand, this Court had restrained the petitioners as also the 1st respondent/contemnor from alienating and causing third party encumbrance and also from altering the physical appearance of the subject property. However, inspite of the orders passed by this Court, the 1st respondent/contemnor not only has used the property by altering its appearance, which stands substantiated by the various documents placed before this Court by the petitioners, which has, in no way, been countered by the 1st respondent/contemnor. Further, the 1st respondent/contemnor even had the audacity to mortgage the property with the 2nd respondent/bank for a hefty



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mortgaging the property, thereby creating a third party encumbrance, not only affects the interest of the petitioner, pending litigation, but it shows the scant disregard to the orders of this Court by the contemnor/1st respondent, which is nothing but a flagrant and blatant violation and the conduct necessarily would border on invocation of criminal contempt proceedings.

21. Further, inspite of the fact that this Court has granted more than half dozen chances for the contemnor/1st respondent to set right the wrong committed by her in altering the appearance and also creating third party rights over the subject property and inspite of the undertaking given by the contemnor way back in November, 2021, in the form of an affidavit in which she has averred that she is taking earnest steps to redeem the mortgaged property and return it back to its original position, but for paying a paltry sum of Rs.70,00,000/- (Rupees Seventy Lakhs only), no earnest steps seems to have been taken by the contemnor to redeem the mortgaged property and the major chunk of the amount, which was received by the contemnor/1st respondent by way of mortgage, running to a sum of Rs.1,80,00,000/= (Rupees One Crore Eighty Lakhs



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only) has not yet been paid to the 2nd respondent/bank, so as to absolve and purge the contemnor/1st respondent of the act of contempt.

22. The persistent disobedience of the order passed by this Court by the 1st respondent/contemnor cannot be viewed lightly, as otherwise it would send a wrong signal to the litigant public and would portray this Court in a very bad light and, therefore, this Court necessarily has to exercise its contempt jurisdiction to hold that the 1st respondent/contemnor has committed willful disobedience of the orders passed by this Court. Therefore, this is a fit case where not only fine, but also the contemnor should be sentenced to undergo imprisonment.

23. Section 12 of the Contempt of Courts Act deals with punishment that could be awarded for acts of contempt. For better appreciation, the relevant provisions u/s 12 are extracyted hereunder :-

“12. Punishment for contempt of court :- (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. :



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Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.-An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine Will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

* * * * *

24. From the above, it is evident that upon a person being found guilty of contempt, he/she may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Further, it is also provided that where the contempt is determined to be of civil in nature, the Court, if it considers it fit that mere fine



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would not be sufficient, instead of sentencing the individual to simple imprisonment, may direct detention of the said individual in civil prison for a period not exceeding six months.

25. In the case on hand, this Court having found that the 1st respondent/contemnor has disobeyed the orders of this Court and had committed an act of contempt, is of the considered view that fine alone would not suffice and imprisonment is necessarily warranted as the majesty of the Court cannot be compromised by any person and acts undermining majesty of the Courts should not be tolerated as it would otherwise have a tendency of eroding the confidence that the public have on the judiciary. However, equally, this Court is also mindful of the gender of the 1st respondent/contemnor and passing an order of simple imprisonment and confining her behind the bars in prison for an act of white collar contempt would also not be justiciable and, therefore, this Court deems it fit, in the interest of justice, to detain the 1st respondent/contemnor to civil prison.



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26. In such circumstances, this Court holds that the 1st respondent/contemnor has committed an act of contempt of Court and, accordingly, these contempt petitions are allowed by directing detention of the 1st respondent/contemnor for a period of three months in civil prison and further a fine of Rs.25,000/- (Rupees Twenty Five Thousand only) is imposed on the 1st respondent/contemnor to be paid, and in default of payment of the aforesaid fine, the 1st respondent/contemnor shall undergo a further period of detention of one month in civil prison. Registry is directed to take necessary steps to give effect to this order forthwith.

27. These contempt petitions are allowed with the aforesaid directions.

21.12.2022

Index : Yes / No

Internet : Yes / No

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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CONT. PTN. NOS. 1104
& 1165 OF 2021**

**Pronounced on
21.12.2022**