IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2022

Pronounced on : 04**.11.2022**

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Cont.P.No. 2268 of 2017

1. R.Jayaveerapandian

2. N.Tamizharasan ... Petitioners/Applicants/Plaintiffs

Vs.

1. L.M.Krishnawami Nadar

... Respondent/1st Respondent/1st Defendant

2. Mr.B.Muthuarasu ... Defendants

PRAYER: Contempt Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for his willful disobedience of this Hon'ble Court's order dated 16.08.2017 in Application No. 587/2013 in C.S.No. 673 of 2012.

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For Petitioners : Ms. R.Poornima

For Respondents : Mr G.Radhakrishnan

ORDER

The plaintiff in C.S.No. 673 of 2012, who had filed A.No. 587 of 2013 is the petitioner herein.

2. The first defendant was originally impleaded as the contemnor. Subsequently by an order dated 05.04.2022 in Sub. Application No. 346 /2021, the second respondent was also impleaded as a party.

3. The present application has been filed under Section 11 of the Contempt of Courts Act to punish the respondents for willful disobedience of the order dated 16.08.2017 in A.No. 587 of 2013 in C.S.No. 673 of 2012.

4. The petitioners herein had filed C.S.No. 673 of 2012 seeking to frame a scheme for the smooth functioning of Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, registered with registration No. 45/1984 and also to administer the property at the Sangam purchased on 29.01.1987.

5. The first respondent L.M.Krishnaswami Nadar was the President for several years and it is alleged that he started a new Sangam with an identical name bearing Registration No. 61 of 2006 with intention to misappropriate the income of the Sangam. It was claimed that he informed the members that the original Sangam had erged with the new Sangam.

6. He had entered into an agreement of sale to sell the only property of the Sangam situated at Adayar and it is alleged that he had received an advance of Rs.1/- crore and it is further alleged that he had also misappropriated the said sum. It was further stated that the agreement of sale had been entered into with Cars India Ltd., the tenant in that premises. They had been inducted as tenant in the year 1999 at a monthly rent of Rs.54,000/-. That rent was periodically increased and it was finally determined at Rs.2,01,000/- from August 2011. It was stated that the first contemnor, being the President had not tendered the accounts relating to the rental receipts. The second respondent was the Advocate of the first respondent and had signed as a witness in the agreement of sale. I

7. It was further stated that originally A.Nos. 587 of 2013 and 3302, 3303 and 4824 of 2016 and 1728 of 2017 had been filed and though by an order dated 09.02.2018 a direction was issued to handover possession of the property and to produce the books of accounts, since possession was not handed over and the documents also were not handed over, Contempt Petition No. 592 of 2018 had been filed against the first petitioner herein. The second petitioner was also impleaded as 5th respondent in Sub. Application No. 383 of 2020 by order dated 23.08.2021. By an order dated 03.08.2022, a learned Single Judge of this Court *(R.Subramanian J.,)* had imposed a punishment of simple imprisonment for a period of one month on the first respondent and further directed the first respondent to pay fine of Rs.2,000/-.

8. Independently, the plaintiffs had also given a complaint before the Bar Council against the second respondent. That complaint was taken on record as DCC No. 266 of 2018 and by an order dated 13.06.2019 by the Disciplinary Committee No. XIV of the Bar Council of Tamil Nadu and Puducherry at Chennai, final orders were passed imposing punishment on the second respondent by suspending him from the roles of the Bar Council for three years and with costs of Rs.25,000/- to be paid to the Bar Council of Tamil Nadu and Puducherry.

9. In the instant case in A.No. 587 of 2013, by an order dated 16.08.2017, very specifically the first respondent was directed to deposit the amounts which was available in Allahabad Bank, Washermenpet Branch and IDBI Bank, Washermenpet Branch, in the name of Chennai Vaz Kovilpatti Nadar Uravin Murai Sangam with registration No. 45/1984 to the credit of C.S.No. 673 of 2012 and on such deposit, the Registrar General of this Court was directed to transfer the amounts to the Manager, Reserve Bank of India, Madras and invest the said amount in fixed deposit with any Nationalised Bank. The first respondent was also directed to give statement of accounts with respect to Canara Bank, Tamilnadu Mercantile Bank, Royapettah Branch, Tamil Nadu Mercantile Bank, Thiruvanmiyur Branch, Tamil Nadu Mercantile Bank, T.Nagar Branch, State Bank of India, Sasthri Nagar Bracnh and IDBI Bank, Parrys Corner Branch, as on the date of the order, namely, 16.08.2018 and if the accounts had been closed to disclose the amount as on the date of closure of the accounts and also the account numbers. The first respondent was also directed to deposit the rental accounts which had been collected month after month till the date of the order to the credit of C.S.No. 673 of 2012. Till this date, the first respondent had not complied with the directions. He had deposited only a sum of Rs.5/- lakhs.

10. It is the specific case of the petitioners that the amounts collected by way of rent from Cars India Limited were as follows:-

"16.07.1999 to 15.07.2008=month 108x54000	=	58,32,000
16.07.2008 to 15.07.2009=month 12 x 125000	=	15,74,000
15.07.2009 to 15.07.2010=months 12x1,31,200	=	15,70,400
16.07.2010 to 31.07.2011= months 12x1,37,813	=	16,53,756
01.08.2011 to 28.02.2012= months 7 x 2,01,000	=	14,07,000

		1,19,67,156
01.03.2012 to 31.07.2017= months 64x2,01,000	=	1,28,64,000

		2,48,31,156"

11. Quite apart from the above amount of Rs.2,48,31,156/- , it is also stated that the first respondent had received a sum of Rs.1/- crore as advance from Cars India Limited at the time of executing the unauthorised agreement of sale of the only property of the Sangam. It was stated that since there has been no compliance of the directions of this Court, the first respondent must be punished in accordance with law.

12. Pending Application, Sub. Application No. 346 of 2021 had been filed to implead the second respondent and the second respondent was also impleded as a party by order dated 05.04.2022.

13. In the counter affidavit filed, the first respondent had stated that the agreement of sale dated 26.09.2007 was executed only in his capacity as President of the Sangam and that he had no idea about the advance amount received. He stated that only the Treasurer of the Sangam would know about the advance amount and that the Treasurer had also signed the agreement of sale. It was further stated that the brother of the first plaintiff was the Secretary of the Sangam from 1984 to 2005 and he had not submitted any accounts and the registration of the Sangam was not renewed from 1994. It was also stated that the said brother had misappropriated the funds of the Sangam to a sum of Rs.21/- crores and had also sold the lands which belonged to the Sangam in Manavour Village, Tiruvallur District, measuring more than 42 acres for sum of Rs.1.5 crores. The Sangam wanted to lodge a police complaint and since the registration had lapsed, a new registration bearing No. 61/06 had been obtained. On the basis of the police complaint, Crime No. 715 of 2006 has been filed and trial is pending in C.C.No. 1270 of 2007 before the Metropolitan Magistrate Court at Saidapet, Chennai. It was also stated that the said brother Mathivanan was also arrested and remanded to judicial custody. It was stated that since a loan was obtained from Repco Bank, there was no other option except to sell the property and therefore, the agreement of sale was entered into.

14. It was further stated that the fourth defendant in the suit S.Vijayarajan was the Treasurer till 2016 and one Thangathirupati was dealing with the bank transactions of the Sangam. It was stated that the first respondent had also produced all available records. It was stated that the Sangam had filed income tax returns before the IT Department from 1990 till 2017 and the returns would reveal the correct statement of accounts. It was stated that the bank accounts were opened only after due procedure.

15. The second respondent had also filed his counter affidavit and it had been stated that the Sangam is an income tax Assesses and no irregularity had been found by the Income Tax authorities in the returns which had been filed. It had also been stated that a criminal case is pending against R.Mathivanan, the previous Secretary and his son in C.C.No. 1270 of 2017 on the file of XI Metropolitan Magistrate, Saidapet and that the Calendar Case was subsequently transferred to Egmore Court. It had been stated that S.Vijayarajan was the Treasurer of the Sangam from 1984 to 2017 and he had submitted all the accounts to the Income Tax Department. It had been stated that the only source of income for the Sangam was the rent. It had been stated that the Petition should be dismissed.

16. The parties were then directed to tender evidence. On behalf of the petitioner Jayaveerapandian was examined as PW-1 and Thamizharasan was examined as PW-2. The first respondent Krishnaswami Nadar was examined as RW-1. On the side of the petitioners, Exs. P-1 to P-5 were marked. On the side of the respondents, Exs. R-1 to R-9 were marked.

17. Ex.P-1 was the certified copy of the Bye-Laws of Chennai Vazhkovilpatti Nadar Uravinmurai Sangam bearing Document No. 45/1984 dated 29.02.1984, Ex.P-2 was the certified copy of the purchase of the property dated 29.01.1987, Ex.P-3 was the Bye-Laws of the Sangam having Document No. 61/2006 and Ex.P-4 was the agreement of sale dated 26.09.2007 and Ex.P-5 was the copy of R.C.O.P.No. 2099 of 2013 filed against the tenant.

18. The extract of the General Body meeting along with Form-VI and Auditor's Report submitted to the Registrar of Societies, Chennai-North and the certificates were marked as Exs. R-2 and R-3. Ex.R-4 was the extract of the meetings held on 25.09.1999. During the Course of Chief examination of RW-1, the copy of the bank statements of Tamil Nadu Mercantile Bank was marked as Ex.R-6 to R-8 and the copy of the bank statements of State Bank of India was marked as Ex.R-9.

19. Heard arguments of Ms. R.Poornima, learned counsel appearing on behalf of the petitioner and Mr.G.Radhakrishnan, learned counsel appearing on behalf of the respondent.

20. This is a matter in which the two plaintiffs assert that the first contemnor had not provided proper statements of accounts for the rental amounts received from the tenant for the property of the Sangam at Adayar and had also not disclosed, the correct amounts in the bank accounts. This Court by an order dated 16.08.2017 in A.No. 587 of 2013 had directed the first respondent herein to deposit the entire amounts which were available at Allahabad Bank, Washermenpet Branch and IDBI Bank, Washermenpet Branch, to the credit of C.S.No. 673 of 2012. The first respondent was also directed to give the statements of accounts with respect to the other banks in which the Sangam had an account namely, (i) Allahabad Bank, Washermenpet Branch, (ii) IDBI Bank, Washermenpet Branch, in the name of Chennai Vaz Kovilpatti Nadar Uravin Murai Sangam, (iii) Tamilnadu Mercantile Bank, Royapettah Branch, (iv) Tamil Nadu Mercantile Bank, Thiruvanmiyur Branch, (v) Tamil Nadu Mercantile Bank, T.Nagar Branch, (vi) State Bank of India, Sasthri Nagar Bracnh and (vii) IDBI Bank, Parrys Corner Branch.

21. It is complained that the directions had not been complied with. The present Contempt Petition had therefore been filed.

22. The first respondent for good measure had levelled allegations against the brother of PW-1 stating that he was a Secretary of Sangam during the relevant period and he had also stated that one Vijayarajan, who is also a defendant in the suit was the Treasurer and that they also knew about the transactions.

23. With respect to the amounts available in the aforementioned bank accounts, the petitioners could very well had issued summons to the bank officials to produce the bank statements. But for some reason they had not taken such steps.

24. It is a fact that the first respondent had suffered an adverse order before a learned Single Judge of this Court in an earlier contempt proceedings against him in Contempt Petition No. 592 of 2018 and had been directed to suffer one month civil imprisonment and pay a fine of Rs.2,000/-. The second respondent had also suffered a punichsment in a proceedings before Bar Council and had been suspended from practice for three years and was also directed to pay fine of Rs.25,000/- to the Bar Council. However, those orders should not weigh upon the mind of this Court while examining the facts of this case.

25. During the course of examination of PW-1, the witness denied the signatures in the minutes of the General Body Meeting and in Form-VI in the Auditor's report submitted to the Registrar's Societies. Those documents had been produced. He had further stated that his proof affidavit had been prepared by his advocate. It is also a fact that as against his brother, a Calendar Case is pending for charges of misappropriation of amounts.

26. It is thus clear that the issues relating to the Sangam are not in order and there are allegations and counter allegations of misappropriation of funds.

27. The earlier Contempt Petition No. 592 of 2018 was with respect to possession of property and handing over books and records of the Sangam. Here, the allegations are that though the first respondent was directed to produce accounts and also deposit the monthly rent into Court, the first respondent had not done so. His stand is to disclaim knowledge about the collection of rents.

28. It is stated that the first respondent had collected more than Rs.3.60 crores. During his cross examination, he states that he does not know the names of the banks and the names of the branches where the 8 bank accounts are maintained. He also stated that amounts can be withdrawn from the account of the Sangam only when atleast two office bearers out of three sign the cheque leaves. The first respondent denied all knowledge about the advance amount received under the agreement of sale. He admitted that he had signed the agreement of sale but claimed that the Treasurer also signed the agreement of sale and that he would know about the advance amount. He placed the blame on the Treasurer.

29. Having considered the materials available on records and the evidence, the following facts emerge:-

(i) The direction was only on the first respondent to deposit the rental amounts into Court;

(ii) The first respondent had entered into an agreement of sale and signed the agreement of sale. He was not the only signatory. The Treasurer had also signed the agreement. Whether the first respondent and authority or not is a question to be decided in the suit filed and pending for specific performance;

(iii) Though accounts have been produced, the petitioners have also not taken any action to summon the particular bank officials to produce the accounts;

(iv) It is clear from the account of the Sangam a sum of Rs.30,000/- to Rs.35,000/- was transferred to a individual trust of the first respondent by name L.M.Krishnaswami Nadar Trust.

30. The evidence of the petitioners is also unsatisfactorily but it is the burden of the first respondent to discharge whether he had complied with the direction of this Court.

31. From the evidence a conclusion cannot be reached that the first respondent had benefited by a sum of more than Rs.3/- crores as alleged by the petitioners. If misappropriation of such a wide amount had been done, then the Sangam and the office bearers would also have to explain whether they had given a criminal complaint against the first respondent for misappropriation. The issues in the suit will have to be examined and determined and unless a proper scheme is framed for the Sangam, these allegations of misappropriation would continue to be raised by one party against the other. However, since the first respondent had admitted about the deposit of sums in L.M.Krishnaswami Nadar towards amounts from the Sangam account, it is clear that he had actually received money but had not deposited the same.

32. The first respondent has already been punished in earlier the Contempt Petition No. 592 of 2018 by a learned Single Judge of this Court by order dated 03.08.2022. It is not clear whether the petitioners have taken any effort to put that order into force. In so far as the second respondent is concerned, he had also been imposed with punishment by the Bar Council of Tamil Nadu and Puducherry.

33. In ***2012 1 SCC 273 [Maninderjit Singh Bitta Vs. Union of India and Others]***, wherein the Hon'ble Supreme Court has held as followS:-

*"**16.** Now, we would examine certain principles of law which would normally guide the exercise of judicial discretion in the realm of contempt jurisdiction. "Contempt" is an extraordinary jurisdiction of the courts. Normally, the courts are reluctant to initiate contempt proceedings under the provisions of the 1971 Act. This jurisdiction, at least suo motu, is invoked by the courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance with its orders. The law relating to contempt is primarily dissected into two main heads of jurisdiction under the Indian law: (a) criminal contempt, and (b) civil contempt. It is now well-settled and explained principle under the Indian contempt jurisdiction that features, ingredients, procedure, attendant circumstances of the case and the quantum of punishment are the relevant and deciphering factors.*

__20.__ In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.

.... But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.

....

__22.__ Another very important aspect even of the civil contempt is, "what is the attribution of the contemnor?" There may be cases of disobedience where the respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the case where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

....

__26.__ It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer ***T.N. Godavarman Thirumulpad case [T.N. Godavarman Thirumulpad (102) v. Ashok Khot, (2006) 5 SCC 1] , SCC p. 6, para 5****). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court*

on a grievance raised by the public at large or public-spirited persons. The State itself *places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority. "*

34. It is thus seen that it has been laid as a dictum that not taking steps to comply with the direction of the Court will also amount to Civil Contempt.

35. Since the direction to deposit the rent had not been complied with, I hold that the first respondent is guilty of deliberate disobedience of this Court and thereby had committed contempt of the order of this Court. Taking into consideration his age, I impose punishment of simple imprisonment for a period of one month and direct the first respondent to pay fine of Rs.5,000/-. The Contempt Petition stands dismissed against the second respondent, since no direction had been issued against him.

04.11.2022

Index :Yes/No
Internet:Yes/No
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C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in
Cont.P.No. 2268 of 2017

IN

A.No. 587 of 2013

IN

C.S.No. 673 of 2012

04.11.2022