

07. 10.04.2023
Court No.6
Tanmoy Ghosh

CRC 3 of 2023

Tapan Banerjee
-Versus-
Baishali @ Vaishali Dalmiya (Sengupta)

Arising out of
FMA 524 of 2005

Mr. Gour Baran Sau, Adv.,
Mr. Arshad Hussain, Adv.

...for the petitioner.

Mr. Sarvapriya Mukherjee, Adv.,
Mr. Soumava Mukherjee, Adv.,
Mr. Moyukh Mukherjee, Adv.

...for the alleged contemnor.

This contempt application has been filed alleging willful violation of an order dated August 1, 2005, whereby FMA 524 of 2005 was disposed of. The petitioner herein was the appellant in that appeal. The relevant portion of the aforesaid order reads as follows:

“We, however, make it clear that the respondents will not interfere with the right of the plaintiff, if any, in the property except by due process of law and only for the purpose of implementation of the said notice, they are free to act in accordance with law.”

On December 6, 2022, upon the contempt application being moved, we had directed service on the alleged contemnor and also directed that affidavit of service be filed in Court on the adjourned date. On January 24, 2023, the matter was taken up for hearing again. From the affidavit of service filed in Court by learned Advocate for the petitioner, it appeared that the respondent had been

served. However, there was no representation on behalf of the respondent. Only on that ground and without going into the merits of the case, we had issued a Rule against the respondent/alleged contemnor.

The Rule was made returnable on February 14, 2023. On February 14, 2023, the respondent/alleged contemnor appeared in-person (since the Lawyers had abstained from work on that date) and filed affidavit in answer to the Rule.

Today, the petitioner has filed his reply to the aforesaid affidavit of the respondent/alleged contemnor.

We have heard learned Counsel for the petitioner. He draws our attention to a letter dated May 21, 2019 written by the petitioner to the Officer-in-Charge, Shakespeare Sarani Police Station, making various allegations against, among others, the present respondent/alleged contemnor. It is, *inter alia*, alleged in the said letter that the present respondent, along with several other persons, came to the concerned premises on May 20, 2019 and demolished the roof and walls of the building. The Officer-in-Charge of the said Police Station was requested to look into the matter and take appropriate steps.

To our query as to whether or not Police took any steps, learned Advocate tells us that Police did nothing. Consequently, the petitioner approached the Criminal Court. The proceedings were dismissed with the finding that the disputes are civil in nature.

Learned Advocate further tells us that the petitioner's suit against, among others, the present respondent/alleged contemnor is pending in the City Civil Court.

We do not find sufficient material on record to come to a conclusion that the respondent herein has willfully violated the order dated August 1, 2005. Only on the basis of a letter addressed by the petitioner to the Officer-in-Charge of the Shakespeare Sarani Police Station, we cannot hold the present respondent guilty of Contempt of Court. The veracity of the contents of the letter dated May 21, 2019, has not been established before us. Hence, the contempt application being CRC 3 of 2023 is dismissed. Rule is discharged. Contempt proceedings are dropped.

However, this will not preclude the petitioner from approaching the civil forum for appropriate relief as he may be entitled to, in accordance with law.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)