IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PRACHI PRANESH NANDIWADEKAR Digitally signed by PRACHI PRANESH NANDIWADEKAR Date: 2023.07.31 17:17:23 +0530

CONTEMPT PETITION NO.446 OF 2021

Shailesh K. Bothra & Ors. .. Petitioners
Versus
Smt.Sarika S.Dudhanikar & Ors. .. Respondents

Mr.Parag M.Tilak for the Petitioners.
Mr.V.A. Sonpal, Special Counsel a/w Ms.Shruti D.Vyas, 'B' Panel Counsel for State.

CORAM : G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 26th July 2023

_P.C.:-_

. Heard learned counsel for the petitioners on this contempt petition. The prayer of the petitioners is that contempt action be initiated against the respondents for having committed a breach of the order dated 10th January 2020 passed by a Co-ordinate Bench of this Court. The said order reads thus:-

> "1] The Petitioner is the secured creditor and has received a letter dated 14.03.2018 issued by the Deputy Commissioner of Sales Tax informing that on account of sales tax dues there is a lien on the property in favour of the State Government.
>
> 2] This Bench has resolved the issue as per the Judgment dated 13th December 2019 passed in Writ Petition 1039 of 2017 pari passu. It was held that the dues of a secured debtor rank above the dues of the

> State Government under the Maharashtra Sales Tax or a Value Added Tax.
>
> 3] Thus, the Petition is disposed of quashing the letter dated 14.03.2018.
>
> 4] Needless to state that if there is any surplus amount available after the sale of the secured asset, the same shall be transmitted by the Petitioner to Sales Tax Department, State of Maharashtra."

2. The petitioner has alleged that despite the above order passed by this Court, a notice dated 16th March 2021 and thereafter a notice dated 9th April 2021 came to be issued by the Sales Tax Department to Petitioner No.3 inter alia demanding the sales tax dues which were due and payable by the registered dealer namely M/s.Taurus Autodeal Pvt. Ltd., who were borrowers of financial facilities extended to them by petitioner no.3-Cholamandalam Investment and Finance Company.

3. It is urged by the petitioners that by the said order dated 10th January 2020 passed by this Court, it was held in paragraph 2 that the dues of the secured creditor (petitioner no.3) rank above the dues of the State Government under the Maharashtra Sales Tax or a Value Added Tax., hence the sales tax dues payable by the registered dealer M/s.Taurus Autodeal Pvt. Ltd. to the Sales Tax Department would not carry first charge on the property, and the first charge on the assests of the dealer

would be that of Cholamandalam Investment and Finance Company under a mortgage as created by the dealer in favour of Cholamandalam Investment and Finance Company in obtaining financial borrowings. Thus, the petitioner no.3 Cholamandalam Investment and Finance Company was a secured creditor having first charge on the mortgaged immovable property of the dealer and not of the Sales Tax Department.

4. We find from the letter/notice dated 16th March 2021 as addressed by the Sales Tax Department that merely a request was made by the Sales Tax Department to the Cholamandalam Investment and Finance Company to pay money to Sales Tax Department, Maharashtra State, Mumbai which may become due, by disposal of assets/property of the dealer. A copy of the said letter/notice was also forwarded to the petitioner nos.1 and 2. The second such letter was also in the nature of Garnishee notice dated 9th April 2021 which inter alia recorded as under :-

> *" WHEREAS, a sum of 1489862/- is due from M/s.TAURUSAUTO DEAL PVT. LTD. who is/are a dealer/s liable to pay tax under the Maharashtra Value Added Tax Act, 2002, tax identification No. (TIN):27080000389V on account of tax/penalty or interest under the Act.*
>
> *And I do also require you to pay any money which may become due from you to him/them or which you may subsequently hold for or on account of 03598210000010 him/them upto the amount of arrears still remaining unpaid, forthwith on the money become due or being held by you as aforesaid as such payment is required to meet the amount due by the said dealer in respect of*

Please note that payment made by you in compliance with this Notice is in law deemed to have been made under the authority of the seaid dealer and my receipt will constitute a good and sufficient discharge of your liability to the said dealer to the extent of the amount referred to in the receipt.

Please also note that if your discharge any liability to the after receipt of this notice, you will be personally, liable to the Commissioner of Sales Tax, Maharashtra State, Mumbai to the extent of the liability discharged or to the extent of the liability of the said dealer for tax and penalty and interest under the said Act. Whichever is less.

Please note further that if you fail to make payment to me, in pursuance further proceeding shall be taken for recovery of the amount from you as an arrears of Land revenue under sub-section (6) of Section 33 of the Maharashtra Value Added Tax Act, 2002."

5. In so far as the petitioners' case that a letter dated 16 March 2021 issued by the respondent to petitioner No.3 would amount to breach of the order dated 10 January 2020 (supra) passed by the Division Bench, is totally untenable. This for the reason that such a communication did not in any manner obstruct the sale of the property by the petitioners to realise its dues by exercising its first charge as per the orders dated 10 January 2020 passed by the Division Bench. Secondly, the petitioners in alleging breach have totally overlooked that petitioner No.3 taking the benefit of the order dated 10 January 2020 had already proceeded to issue an auction proclamation on 11 February 2021 under which petitioner Nos. 1 and 2 had submitted their bids which came to be considered by petitioner no.3.

Petitioner Nos.1 and 2 were declared to be successful bidders by issuance of a communication by petitioner No.3 titled as “Successful Bid Confirmation Letter”. Thereafter, on 5 March 2020 petitioner Nos.1 and 2 had made part payment/consideration in purchasing the auctioned property, from petitioner No.3. All this has happened prior to the respondent issuing letter dated 16 March 2021. Thus, to infer any intentional disobedience to defeat an order dated 10 January 2020, is unacceptable.

6. Insofar as the respondent issuing a notice dated 9 April 2021 is concerned, on the basis of which the petitioners contend that issuance of such notice would amount to breach of the order passed by this Court is also totally untenable. Reading of the notice clearly indicate that it was in the nature of a garnishee notice and the same cannot be construed to be any intentional disobedience of the order passed by this Court which merely recognizes the rights of petitioner No.3 to have first charge on the property and to take action thereunder.

7. It may be observed that once the Court recognizes the first charge of petitioner No.3 and in pursuance thereto actions were taken by petitioner No.3 to auction the mortgaged property, it cannot be said that

the issuance of the letter / Notice dated 16 March 2021and 9 April 2021 respectively by the respondents alleged to be issued in breach of the orders, would even remotely amount to any intentional disobedience of the orders passed by this Court.

8. This apart, the petitioners in pursuing the present contempt petition are completely oblivious to the consideration of all these materials in the judgment rendered by this Court on Writ Petition No.4365 of 2023 dated 12 July 2023 filed by the petitioners, on all issues in regard to implications of the order dated 10 January 2020 being considered by this Court. The Court considering the position in law has held that apart from recognizing the first charge of petitioner No.3, the charge of the Sales Tax Department on the mortgage property had continued to operate even on transfer of the said property in the hands of petitioner Nos.1 and 2 as auction purchasers, as it was on the very terms and conditions of "as is where is basis", "as is what is basis" and "whatever is there is basis", the petitioner Nos.1 and 2 had purchased the property.

9. It is further most astonishing as to how petitioner nos.1 and 2 can maintain the present contempt petition when the alleged breach of the

order dated 10 January 2020 is on a writ petition which was filed by the petitioner No.3, in which petitioner Nos.1 and 2 were not even remotely in picture when order dated 10 January 2020 was passed by this Court on the petition filed by petitioner No.3. Thus, it appears that the intention of filing this contempt petition was mischievous and/or extraneous. The present contempt petition appears to be not bonafide.

10. Looked from any angle, the Contempt Petition is thoroughly misconceived. It is accordingly dismissed. No costs.

JITENDRA JAIN, J. ***G.S. KULKARNI, J.***