



A.No.5823 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	28.02.2023
Order pronounced on	31.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

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in

C.S.No.435 of 2018

1.Mrs.Swarna Krishnaswamy

2.K.Subramanian
Rep. by his Power Agent,
Mrs.Indira Ramakrishnan

3.Mrs.Lakshmi Natarajan

4.Mrs.Indira Ramakrishnan

5.Hemamalini

... Applicants/Applicants/Plaintiffs

Vs.

Guru Dhananjay ... Contemnor/1st Respondent/ 2nd Defendant

PRAYER: This Contempt Application is filed praying:-

(a) This Hon'ble Court should not be pleased to treat this



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application as urgent?

(b) This Hon'ble Court should not punish the Contemnor for violation and disobedience of the orders of injunction granted in O.A.No.613 of 2018 in C.S.No.435 of 2018 of the order dated 02.07.2018 by detaining him in a civil prison for a period of three months or such period as this Hon'ble Court may deem fit and proper to meet the ends of justice;

(c) This Hon'ble Court should not be pleased to pass such further or other orders as it may deem fit and proper in the circumstances of the case and thus render justice?

For Applicants : R.Thiagarajan

For Defendant : H.Karthik Seshadri

ORDER

This application was filed by the applicants in O.A.Nos.613 and 615 of 2018 to punish the respondent/alleged contemnor for wilful disobedience of the order dated 02.07.2018 in O.A.No.615 of 2018 in C.S.No.435 of 2018.



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2. By order dated 02.07.2018, an *ex-parte* order of ad-interim injunction was granted. The operative portion of the order is as follows:-

“.... Considering all the these aspects ad-interim injunction is granted restraining the 2nd defendant his men agents, servants or anyone claiming under or through him from in any manner interfering with the 1st plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property till 27.07.2018. Applicants shall comply with Order 39 Rule 3a C.P.C. by 27.07.2018. Private Notice is also permitted.”

3. The applicants alleged that the respondent/alleged contemnor refused to allow the first applicant/first plaintiff to enter the suit schedule premises on 03.07.2018 when the advocate commissioner visited the premises for inspection. The applicants also assert that the respondent threatened plaintiffs 4 and 5 with bodily injury and, therefore, they withdrew from the premises. In the counter filed by the respondent, this allegation is



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denied. The respondent relies upon the advocate commissioner's report to corroborate such denial.

4. The advocate commissioner filed a report dated 24.07.2018. In the said report, the advocate commissioner does not state that the respondent/alleged contemnor prevented the first plaintiff from entering the premises or that he threatened plaintiffs 4 and 5. Instead, he stated as follows in paragraph 5 of the report:-

“5. I was accompanied by the 1st, 4th, 5th Plaintiff and the 2nd Defendant along with their respective Counsels for the inspection. There were two videographers who accompanied me.”

5. The next allegation of the applicants is that the respondent/alleged contemnor and his counsel threatened the first plaintiff when she had visited the suit schedule premises on 04.07.2018 at about 03.00 p.m. along with a locksmith and his assistant for the purpose of changing the entire locking system of the first floor. In the counter of the



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respondent, the respondent stated that he was informed by his stenographer at about 03.00 p.m. on 04.07.2018 that his grandmother and aunt visited the suit schedule premises along with a few persons and that the fourth applicant broke open the locks leading to the first and second floors of the suit schedule property and changed the locks without giving a spare key to the respondent. The respondent further stated that he requested and pleaded with his grandmother and aunt to give him a spare key.

6. The applicants also alleged that the respondent came down from the second floor of the house and banged the grill door leading to the first floor at about 11.30 a.m. on 18.07.2018, when the first plaintiff had entered the first floor of the suit schedule property along with Mr.Kishore, Advocate. At about 4.45 to 5.00 p.m. on the said date, the applicants assert that the contemnor rang the calling bell continuously and forced open the grill door. They further alleged that he used filthy and unparliamentary words against the applicants and threatened that he would break their legs and jaw and kill them. The respondent has denied these allegations in his counter. In fact, the respondent states that the very fact that the first plaintiff/his grandmother



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could enter the suit schedule property on 18.07.2018 to perform poojas shows that she had unhindered access to the property. The respondent further stated that he was not present at the suit schedule property on 18.07.2018 when his grandmother and aunt entered the premises. Therefore, he denies the allegation that he banged on the grill door leading to the first floor of the property.

7. The applicants assert that they were constrained to lodge a complaint to the Inspector of Police, Abiramapuram, Chennai – 600 018, in view of the threats of violence from the respondent. Therefore, the applicants request that the respondent be punished for contempt.

8. As regards the police complaint, the respondent denies that he threatened violence. The respondent states that he was not called by the police for inquiry. He further states that he has always welcomed his grandmother to stay with him in the suit schedule property and that he has not done anything to threaten or prevent his grandmother from staying in the suit schedule property.



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9. Evidence was recorded by the parties in the contempt applications. The applicants adduced evidence by examining the first, fourth and fifth applicants and the respondent adduced evidence by examining himself.

10.1 In course of the cross-examination of the first plaintiff (P.W.1), on 30.01.2019, she was asked whether she had filed objections to the advocate commissioner's report (Ex.P-2). She replied that no objections were filed because there was no necessity to do so. During her cross-examination on 11.02.2019, the following material questions and answers were recorded:-

“ Q: After 18.07.2018 how many times did you go to your house at No.5, Srinivasa Avenue Road, R.A.Puram, Chennai ?

A: Not less than four times I had gone there.”

Q: Is it correct that did you stayed in the above



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said address from 12.10.2018 to 30.10.2018 ?

A: Yes.

Q: I put it to you that even on 08.02.2019 morning you had gone to the house and the respondent requested you to come inside and stay there.

A: Yes I did go. Witness Adds: When I was standing near the gate of the house the respondent spoke with me and asked me to come inside but I declined due to fear over him.

Q: On 08.02.2019 did you go alone or along with somebody ?

A: I had gone myself without anybody.

10.2 During the cross-examination of Indira Ramakrishnan (P.W.2), on 13.02.2019, the following material questions and answers were recorded:-

“Q: See Ex.P9 medical records pertaining to you.

On what basis the doctor has noted in Ex.P9 as case report



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dated 18.06.2018 that it is assault?

A: When the doctor asked me the reasons for the injuries, I said it was an assault. Witness Adds: The doctor also felt the injury could only be caused by an assault by heavy object on my forehead.

Q: Did you take scan or X-ray for said injury?

A: Yes.

Q: D you admit that Ex.P9 case report dated 18.06.2018 was issued prior to filing of the suit?

A: Yes.

Q: So also the photos annexed with Ex.P9 series were also taken prior to filing of the suit?

A: Except one which is marked as 18.07.2018 (date is noted by me), the other photos were taken prior to the filing of the suit.

Q: Are you aware of Ex.P2 Advocate Commissioner's report?

A: Yes. I am aware of it.



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Q: Is it correct that you have not filed any objections to Ex.P2 Advocate Commissioner's report?

A: I did not know objections had to be filed for Advocate Commissioner's report."

10.3 During the cross-examination of Hemamalini (P.W.3), on 20.02.2019, the following material questions and answers were recorded:-

"Q: See para-8 of your proof affidavit, wherein you have mentioned about an incident on 04.07.2018 at about 3.00 p.m. and elaborated therein. Were you personally present at that time?

A: I was not present at that time. Witness Adds: I came there only around 4.30 p.m."

10.4 During the cross-examination of Guru Dhananjay (R.W.1), on 04.03.2019, the following material questions and answers were recorded:-

"Q: Is it correct to state that your grandmother is



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in occupation of ground floor, 1st floor and the 2nd floor (entire building) in the suit premises, except a portion in the ground floor which is occupied by Advocate Mr.Balachander?

A: It is not correct. Witness Adds: My grandmother (1st applicant) used to reside along with me in the 1st floor. The entire ground floor is my office of which one room is occupied by Advocate Mr.Balachander. The 2nd floor always has been kept under lock and key until I occupied the 2nd floor after my marriage.”

10.5 During the cross-examination of Guru Dhananjay (R.W.1), on 11.03.2019, the following material evidence was recorded:-

“Q: See the photographs D and E at page No.7 of Ex.P2 annexures of Ex.P2. See the photographs appended to this report? I put it to you that it is visible from the photographs that you have violently tried to hit your grandmother on her head by throwing the dining table chair



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and when Mrs. Indira Ramakrishnan intervened to prevent the incident and to her protect her mother, her right palm was broken by you?

A: I deny. The photograph A is broken glass of the door. Photograph D is the glass broken when Mrs. Indira Ramakrishnan hurled a vessel towards me with intention of causing bodily injury to me. Photographs B,C&E show the broken latch of the bed room door, it was broken much prior to the suit when my grandmother had accidentally locked the door without knowing the pet dog was inside and she was not to return for quite some time. So, to rescue the pet dog, that particular latch was broken by me. Photograph F is the photo of a dysfunctional internet router. Photograph G is the picture of the main door.”

10.6 During the cross-examination of Guru Dhananjay (R.W.1), on 04.06.2019, the following material evidence was recorded:-

“Q: I put it to you that though you appear to be



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calm and quiet but you used to suddenly get aggressive and become violent and and used to misbehave, and one such incident took place before the mediator by your behaviour and on that day you had assaulted 5th applicant your aunt. Since you behaved violently even before the mediator and assaulted your 5th applicant and interfered with the administration of justice you have committed contempt of court by your contumacious conduct, hence you are liable to be punished to contempt.

A: I strongly deny the allegations. I have not assaulted the 5th applicant nor committed any contempt. As on date the 1st applicant my grandmother is residing in the 1st floor of the suit property premises along with me. The 1st applicant who got the interim order is enjoying the benefit of the order and still residing in the 1st floor of the suit premise.”



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11. Mr.R.Thiagarajan, learned counsel for the applicants, referred to the above evidence and contended that it establishes that the respondent committed wilful disobedience of the order dated 02.07.2018. In particular, he invited my attention to the police complaint, CSR and O.P. Sheet (Ex.P-10 Series). He also referred to the medical records of the fifth applicant (Ex.P6 Series). In support of his contentions, he referred to and relied upon the judgment of the Full Bench of this Court in *Vidya Charan Shukla v. Tamil Nadu Olympic Association and another*, 1991-2-L.W.295, wherein the Full Bench held that the power of a court of record to punish for contempt under Article 215 of the Constitution of India cannot be curtailed.

12. These contentions were refuted by Mr.H.Karthik Seshadri, learned counsel for the respondent. He submitted that the report of the advocate commissioner disproves the allegation of the applicants that they were not allowed to enter the suit schedule property on 03.07.2018. He further submitted that the evidence on record establishes that the respondent did not prevent the first plaintiff from entering the suit schedule premises



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even thereafter. He submitted that the respondent did not commit contempt and that the contempt applications have been foisted on the respondent so as to drive him out of the suit schedule property.

13. The scope of Order 39 Rule 2A CPC is limited to whether the order of this Court was disobeyed and, if so, whether such disobedience was wilful. As set out earlier, by order dated 02.07.2018, the second defendant was restrained from, directly or indirectly, interfering with the first plaintiff's peaceful possession and enjoyment of the suit schedule property. Therefore, the first question to be determined is whether the second defendant/respondent interfered with the first plaintiff's possession or enjoyment of the property. In these applications, the applicants alleged that they were prevented from entering the suit schedule property on 03.07.2018. As discussed earlier, the advocate commissioner stated in paragraph 5 of his report dated 24.07.2018 that he was accompanied by the plaintiffs 1, 4 and 5 and the second defendant during his inspection on 03.07.2018. In course of the cross-examination of P.W.1 and P.W.2, they admitted that they did not file objections to the report of the advocate commissioner. Therefore, the

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allegation that the second defendant/respondent prevented one or more of the applicants from entering the suit schedule property on 03.07.2018 has not been established by them. In fact, the evidence points to the contrary.

14. The next allegation of the applicants is that the second defendant/respondent threatened the first plaintiff when she had gone to the suit schedule property on 04.07.2018. From the statements made in the affidavit in support of these applications, it is clear that the first plaintiff was not prevented from entering the suit schedule property on 04.07.2018. As regards the allegation that she was threatened, the respondent has denied the said allegation and explained that he visited the suit schedule property on 04.07.2018 after being informed by his stenographer that his grandmother and aunt had changed the locks. He has further stated that he requested them for a spare key. From the above narration of events, it cannot be concluded that the second defendant/respondent prevented the first plaintiff from entering the suit schedule property on 04.07.2018.

15. The third allegation is that the second defendant/respondent



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banged on the grill door and forcibly opened it on 18.07.2018. This allegation was also denied in the counter. In fact, the respondent stated that he was not present at the suit premises on 18.07.2018. From the assertions made by the applicants, it is clear that the first applicant/first plaintiff visited the suit schedule property on 18.07.2018 to perform pooja but the applicants have failed to establish that the second defendant/respondent was present on the said date and indulged in the behaviour that he was accused of. It is also pertinent to notice that P.W.1 expressly stated in course of cross-examination on 11.02.2019 that she visited the house not less than four times after 18.07.2018. She also admitted that she resided there from 12.10.2018 to 30.10.2018. She further admitted that she visited the house on 08.02.2019 and that the second defendant/respondent requested her to come inside the house.

16. Based on the pleadings and the evidence, I conclude that the applicants have failed to establish that the second defendant/respondent violated the order dated 02.07.2018. Therefore, no case under Order 39 Rule 2A CPC is made out. Consequently, Application No. 5823 of 2018 is



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dismissed.

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NCC :Yes/No
Internet :Yes/No
Index :Yes/No
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