



CONT.P(MD)No.1281 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CONT.P(MD)No.1281 of 2022

S.Thirumalaivelu

... Petitioner

vs.

Krishnan,
Tahsildar,
Madurai West, Madurai.

... Respondent

PRAYER: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 to punish the contemnor for his wilful disobedience in not complying with the order passed by this Court in W.P.(MD)No.14155 of 2022 vide its order dated 12.08.2021.

For Petitioner :Mr.P.Samuel Gunasingh
For Respondent :Mr.K.S.Selva Ganesan
Additional Government Pleader

ORDER

Pursuant to the earlier order passed by this Court, an affidavit has been filed by the respondent. The relevant portion in the affidavit is extracted hereunder:



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“8.It is respectfully submitted that a sum of Rs.10,000/- out of the total amount of Rs.10,00,000/- was collected from the said Nattarayan by way of demand draft vide D.D.No.582201 dated 22.09.2022 and the said amount was sent to the Petitioner herein who received the same on 25.11.2022 and to collect the remaining amount, sincere steps were taken.

9. It is respectfully submitted that the local enquiry revealed that the defaulter Thiru Nattarayan was the owner of a residential house in Ward No. 5 T.S.No. 1202/2, Plot No.44. Hence a detailed request was made to the concerned Sub Registrar vide Roc No. 2318/2022 dated 18.11.2022 not to register any deed with regard to the above property subject to attaching the property. In the meanwhile, the local enquiry disclosed that the said Thiru Natrayan has pledged and mortgaged the above house property with M/s Adithiya Birla Finance and obtained loan. Hence the said Financial Company moved petition before the Learned Chief Judicial Magistrate for attaching the above property under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in Cr.M.P. No. 1121/2022. The Hon'ble Court was pleased to appoint one Asai Thambi, Advocate as the Advocate Commissioner for taking possession of the said property and that he took possession of the property on 14.11.2022 and handed over possession to the M/s Aditya Birla Finance Limited for conducting auction by the authorized person. The Finance Company was duly informed to include the sum of Rs.9,90,000/- while fixing upset price for the property since the amount is the amount covered under the distraint proceedings of the Learned Judicial Magistrate II, Fast Track Magisterial Court Madurai, it has precedence as 1st charge over other charges on the building. However, auction is not yet conducted by the said Financial Institution. Hence in view of the above legal issues, distraint proceedings could not be brought to fruition.

10.I most humbly submit that the Contempt Petitioner herein is attempting to create an impression that there is willful and deliberate disobedience on the part of the Contemnor/ Respondent in complying with the order passed by this Hon'ble Court dated 12.08.2021 in WP (MD) No. 14155 of 2021 is not correct. On receiving the certificate to collect a sum of Rs.10,00,000/- from one Nattarayan as an arrear of land revenue, detailed enquiry was held and a sum of Rs.10,000/- was collected by causing No.1 Notice for initiating distraint proceedings under section 8 of the said Act was issued. The distraint proceedings could not be continued in view of the fact that already the house belonged to the defaulter was mortgaged with M/s Aditya Birla



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Finance Company and on getting order from the Learned Chief Judicial Magistrate, Madurai, the property was attached pending for auction. Hence a letter was sent to the Finance Company to include the amount of Rs. 9,90,000/- in the upset price. I most humbly submit that there is no willful or wanton disrespect to the order passed by this Hon'ble Court by this Respondent as wrongly portrayed by the Petitioner herein. It is respectfully submitted that it has been held by the Hon'ble Supreme Court as well as this Hon'ble Court that the wanton and willful disregard alone is the ingredient to punish the contemnors which is not present in the present case. It is respectfully submitted that it has been held by the Hon'ble Supreme Court as well as this Hon'ble Court in catena of cases, like the case reported in "(2014) 1 SCR 538" that in order to punish a contemnor, it has to be established that the disobedience of the order is willful and that the act was done with a bad purpose or without justifiable excuse or stubbornly, obstinately or perversely which is not the case of the Petitioner herein. I most respectfully submit that the orders and directions of the Hon'ble Court will always be held in high esteem and sincere efforts will always be made to comply with and implement the orders in letter and in spirit within the time frame as fixed by this Hon'ble Court and if this Hon'ble Court still feels that contempt is committed either by myself or by my predecessor or subordinates due to delay in implementing the order, I sincerely regret and tender my unconditional apology for the same and shall guard against recurrences in future."

3. In view of the above development, the respondent cannot proceed further under the revenue recovery proceedings. Hence, this Contempt Petition is closed.

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Internet : Yes / No

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To

Tahsildar, Madurai West, Madurai.

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N.ANAND VENKATESH, J.

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