



CONT.P.(MD)No.1956 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

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Authorized Officer,
Fullerton India Home Finance Company Limited,
2nd Floor, No.163, Kamarajar Salai,
Parameswar Complex,
Madurai-625009.

... Petitioner

Vs.

S.Sivaraman

...Respondent

PRAYER: Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the respondents for willful disobedience of the orders passed by this Court dated 03.07.2023 in W.M.P.(MD)No.11442 of 2023 in W.P.(MD)No.10581 of 2022.

For Petitioner : Mr.A.Balaji



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ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

This Contempt Petition has been instituted to punish the respondent for his wilful disobedience of the order of this Court dated 03.07.2023 passed in W.M.P.(MD)No.11442 of 2023 in W.P.(MD)No.10581 of 2022.

2.This Court has passed the following order:-

“3.In view of the above submission, the petitioner is directed to hand over the aforesaid demand draft for Rs.2,00,000/- to the respondent forthwith. We make it clear that the remedy of the petitioner lies only before the Debts Recovery Tribunal. However, since this Court has already passed the order, this Court is extending the time for a period of one month from the date of receipt of a copy of this order, for payment of the balance outstanding amount. It is needless to mention that on receipt of the aforesaid sum of Rs.2,00,000/- and on filing of an affidavit by the petitioner to the effect that he will pay the remaining outstanding amount within a period of thirty days, it is open to the respondent to de-seal the premises and hand over the key of the secured premises of the petitioner. We make it very clear that in case of default in payment of the balance amount within the aforesaid period of one month, it is open to the respondent to initiate contempt proceedings. In the



contempt proceedings in this kind of nature, the arrest of the contemnor should be primary and fine should be secondary.

4.With the above direction, this petition is allowed.”

3.The learned counsel appearing for the petitioner has made a submission that direction issued by this Court has not been complied with by the respondent. Therefore, the present Contempt Petition is filed.

4.This Court in order dated 03.07.2023 made it clear that the remedy of the petitioner lies only before the Debts Recovery Tribunal. However, the Court extended the time for a period of one month, since already an order was passed for payment of balance outstanding amount. It is the conditional order passed by this Court that the respondent shall de-seal the premises on receipt of a sum of Rs.2,00,000/- and on filing of affidavit by the petitioner to that effect. No doubt, the respondent has not paid the amount and committed default. In such circumstances, we are not clear as to whether the respondent is capable of paying the amount or the said amount is to be recovered in the manner known to law by attaching the property or otherwise by invoking the provisions of SARFAESI Act.



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5.Further, the respondent has given an undertaking, but failed to honour the undertaking. Since this Court has made it clear that the remedy of the petitioner lies only before the Debts Recovery Tribunal and conditional order has been passed, invoking the contempt jurisdiction may not be strictly required, because willful disobedience has not been established. For invoking the contempt jurisdiction under the provisions of the Contempt of Courts Act, 1971 willful disobedience is the requirement, which is to be established. Mere non payment cannot be construed as willful disobedience, since there is a possibility of non-availability of required funds for the respondent.

6.Imagine a situation, where a person has no funds in his hands and the direction if any issued by the Court cannot be honoured and such a situation cannot be construed as willful disobedience. Thus, the petitioner herein has to invoke the provisions of SARFAESI Act by initiating appropriate actions to recover the dues by following the procedures.

7.In the present case even the petitioner cannot recover nor the Court can compel the respondent to pay the dues, unless it is established that the respondent



possesses sufficient funds and willfully committed the act of disobedience. These mitigating factors are considered by this Court in a contempt proceedings of the present nature. This exactly is the reason why the Constitutional Courts are imposing self restrained in exercising the power of judicial review to adjudicate the contractual matters. Contractual issues are to be adjudicated in a trial nature proceedings and by conducting an elaborate adjudication. The Writ Court cannot conduct roving enquiry into the contractual obligations between the parties.

8.In the present case, the petitioner has got powers to invoke the provisions under SARFAESI Act and the High Court cannot be utilized as a recovery agent by merely filing contempt proceedings and such a practise would lead to anomalous situation and further, the very spirit of SARFAESI Act would be diluted. When the Financial Institutions are armed with powers to recover the dues by invoking the provisions of SARFAESI Act, the contempt proceedings cannot be a source of recovery of loan dues at the instance of the High Court. Such a practise, if allowed, would lead other complications and more so, recovery cannot be made under the threat of the Contempt of Courts Act, 1971, which is highly unwarranted.



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9. In the present case, admittedly, the respondent has not paid the dues to the petitioner / Finance Institution and therefore, they are well within their powers to initiate all further actions to recover the same in the manner known to law. Even fresh actions under Section 14 of SARFAESI Act may be instituted to recover the dues.

10. With these observations, this Contempt Petition stands dismissed.

(S.M.S., J.) & (V.L.N., J.)

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NCC : Yes / No
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