

6th September,
2024
(AK)
03

WPCRC 113 of 2024
In
WPA 6209 of 2024

Manasi Mondal and another
Vs.
Mr. S. Srinivasan Sridhar, Chaiman and Independent
Director Home Loan and others

Ms. Parna Roy Choudhury
Ms. Payel Ghosh
...for the petitioners.

Mr. Biswabrata Basu Mallick,
Mr. K.M. Hossain
...for the alleged contemnor no.3.

Mr. Sirsanya Bandopadhyay
Mr. K.M. Hossain
Md. Ziaur Rahaman
...for the alleged contemnor no.4.

Mr. Siddhartha Banerjee
Mrs. Soni Ojha
...for the alleged contemnor no.5.

1. Heard learned counsel for the parties.
2. Although a specious facade has been put up by the alleged contemnors to mask their recalcitrant action, the court can see through the facts of the case, as will be reflected from the following narration of events.

3. On March 6, 2024, at about 2.50 p.m.(which is evident from the live-streaming of court proceedings), the writ petition was moved before this court on the ground of extreme urgency, despite there being a resolution of the Incorporated Law Society to the effect that no adverse orders may be passed by the courts.
4. The learned Advocates for the alleged contemnors appearing at the relevant point of time have submitted that the said Advocates were diligent and followed the matter till before recess, that is, 1.15 p.m. However, after recess, the learned Advocates did not attend the matter as they were allegedly of the impression that no matter would be taken up/ no adverse orders would be passed in view of the resolution of the Incorporated Law Society.
5. It is made clear, though, that no such impression was given by the court itself at any point of time, either before or after recess.
6. What happened thereafter was a gross flouting of the order of court. At around 2.50 p.m. (as evident from the live streaming available on record) the order was passed by this court, *inter alia* restraining the respondents in the writ petition, including the authorized officer of the concerned Financial Institution, from dispossessing the

petitioners from the subject property for a period of seven days.

7. Yet, the process of dispossession took place and the property was sealed at around 2.52 p.m. on the same day.
8. The above timing is borne out, as per arguments of the learned counsel for the contemnor, by the photographs sought to be produced by the contemnor as well as from the inventory and Panchnama signed by the petitioners.
9. However, the plea that has been taken by the contemnors cannot find favour with the court.
10. It is unthinkable that the advocate appearing for the contemnor, despite knowing that the matter was appearing in the list and attending the matter up to recess, would choose not to appear further before the court after recess just because of a resolution of the Incorporated Law Society, without even ascertaining whether the court would be sitting or actually taking up the matter.
11. The normal and prudent course of action for any learned Advocate ought to have been to just ascertain as to whether the court was taking up matters even after recess, in particular since the matter was appearing in the list and had been

watched by the advocates for the contemnors till before recess.

12. The rest, which followed, obviously was in favour of the contemnors. Due to a minor clerical error, on the part of the functionaries in the office of the learned Advocate for the petitioners, the fate of the petitioners were sealed.
13. The communication sent by email to the concerned police officer had an “n” instead of “m” at the end of the e-mail address, which ended with “gmail.com”, of the concerned contemnor/police officer.
14. Taking advantage of the same, it has been pleaded that no communication was made on the relevant date of the order to the said contemnor/police officer.
15. The physical communication to the police officer, unfortunately, came much after.
16. Insofar as the other contemnors are concerned, they are also justified on the face of it in submitting that the communication of the order reached them on the next date, when the dispossession had already occurred on the fateful day.
17. Thus, the drama took place which was entirely unnecessary and avoidable, only if the learned advocates for the alleged contemnors were diligent

enough to follow the court proceedings even after recess.

18. However, if the court shuts its eyes in those cases where there has been apparent absence of evidence of deliberate and willful violation but in effect violation has been carried out deliberately, putting up a semblance of compliance of the order of court, then in no case would any order of any court of law be complied with by recalcitrant litigants.
19. The moment a matter was in the cause list and was watched by counsel for the contemnors up to recess, it was the bounden duty of the contemnors as well as the contemnors' counsel, knowing fully well the the matter was appearing in the list, to be present and attend at least the live streaming of the court proceedings to ascertain whether any injunction order is passed on the prayer of the petitioners, prior to taking hasty action on previous orders passed by the District Magistrate.
20. Having not done so, the contemnors are definitely guilty of contempt, although not in a technical sense but substantially. Hence, it is a big and resounding "Yes" to the question whether contempt was committed by the contemnors.
21. The disability of the court in penalizing the contemnors directly is only based on a thin line of

non-communication in the strictest sense of the term to the contemnors at the relevant point of time whereas fact remains that the order of this court was blatantly flouted.

22. Anyway, in order to set the wrong right, the contempt court has ample power to pass appropriate orders, even if no fine or imprisonment is directed.
23. Hence, to set right the wrong committed, the contemnors shall hand over physical possession of the subject property in favour of the petitioners within 24 hours from now in the same condition in which the subject property was taken possession of in the first place.
24. A compliance report shall be filed on September 13, 2024, when the matter shall be fixed for being taken up under the heading 'To be Mentioned' at 10.30 a.m.
25. The petitioners shall be at liberty to approach the concerned Debts Recovery Tribunal afresh, without being fettered in any manner by any previous approach, or any order passed thereon, since such previous approach was in a different factual premise and under different circumstances, when the petitioners had already lost possession.

26. If so approached, the Debts Recovery Tribunal shall consider on merits the prayer of the petitioners in order to ascertain whether the order of injunction granted by this court should be extended till disposal of the proceeding before the Debts Recovery Tribunal.
27. For such purpose, the petitioners' possession shall not be disturbed for a fortnight from the possession being given.
28. It will be open to the petitioners to approach the concerned Debts Recovery Tribunal afresh on the strength of this order and, if so approached, the tribunal shall consider the prayer of the petitioners afresh, by treating the previous refusals and applications, if any, from the date of dispossession till date, to be a nullity in view of the violation of the order of this court by the contemnors.
29. Upon such fresh assessment, which shall be made positively within 48 hours from the petitioners so approaching the tribunal, the tribunal will come to its own opinion, without being influenced in any manner by any of the observations made above, as to whether the interim order granted by this court should be extended till disposal of the matter before the tribunal and/or otherwise.

30. It is made clear that this court has not entered into the merits of the rival contentions of the parties with regard to the main subject matter of the dispute.

(Sabyasachi Bhattacharyya, J.)