



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 407 OF 2023
IN WP/3006/2018

PORNIMA INDUSTRIES THROUGH ITS PARTNER
ANIL GANGADHAR BHOJRAJ
VERSUS
DHARMENDRA KUMAR AND OTHERS

...

Advocate for Applicant : Mr. V.J. Dixit, Senior Advocate i/b Mr. S.V. Dixit
Advocate for Respondent nos. 3 & 6 : Mr. S.V. Warad

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **03.01.2024**

PER COURT :

We have heard Mr. Dixit, learned Senior Advocate for the petitioner, learned advocate Mr. Warad for the respondent nos. 3 and 6. We have also perused the affidavit in reply, rejoinder and the sur rejoinder.

2. By way of this contempt petition, the original petitioner from Writ Petition No. 3006/2018 is soliciting cognizance of the contempt of the order of this Court passed on 08.02.2023 in that writ petition, by resorting to Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act and the rules framed by the Bombay High Court thereunder.

3. Relevant part of the order of which disobedience is being alleged is as under :

“(b) The impugned communication dated 8.3.2018 is quashed and set aside.

(c) The respondent/bank shall consider the petitioner’s proposal under

the Special OTS scheme 2022-23 as per the terms & conditions of the said scheme as well as applicable guidelines issued by the RBI from time to time and communicate its decision to the petitioner within a period of two weeks from the date of this order.”

4. Mr. Dixit would vehemently submit that in spite of the aforementioned directions, the respondents have deliberately not considered the petitioner's request for grant of benefit of '*one time settlement scheme*' floated by it. He would take us through the papers and would demonstrate that the petitioner had by the communication dated 24.02.2023 offered to make necessary compliance and even forwarded a demand draft for Rs. 5,00,000/- being 5% of the amount to be calculated on the basis of the ledger balance as described in paragraph no. 5 of the affidavit in rejoinder. He would submit that it is only after filing of the contempt petition the respondents have deliberately taken a stand in the affidavit in reply about the petitioner's request having been rejected, vide a communication dated 17.08.2023. In fact, the contempt petition itself was scheduled to be listed on 17.08.2023. The petitioner was served with that communication on 21.08.2023 that too by an employee of the bank on WhatsApp. He would submit that this conduct of the respondents and their stand in the affidavit in reply as well as the sur rejoinder clearly demonstrates their attempt to deliberately disobey the directions of this Court.

5. Mr. Dixit would also point out the observations of the Presiding Officer of the Debt Recovery Tribunal, Aurangabad, in the minutes dated 01.09.2023 particularly paragraph no. 7, wherein it was observed that the employees of the bank were trying to play with the orders of this Court. He would, therefore, pray for taking cognizance of the contempt and issuance of a formal notice as contemplated under Rule 9 of the Rules framed by the Bombay High Court under the Contempt of Courts Act.

6. Per contra, Mr. Warad learned advocate for the respondent nos. 3 and 6 by referring to the affidavit in reply and sur rejoinder would submit that in

spite of soliciting the order of which the petitioner is claiming obedience, its conduct was not befitting a genuine borrower. It was never willing to repay the dues and to settle the loan account. The experience has shown that even at some earlier point of time terms of settlement were arrived at in a Lok-Adalat and still the petitioner had failed to obey its obligation under the terms of settlement. Even after the order was passed by this Court in Writ Petition No. 3006/2018, no steps were taken by the petitioner to submit its proposal in accordance with the scheme in a prescribed manner. It was called upon to do so but to no avail. The respondents took initiative and informed the petitioner to comply with the directions of this Court by submitting necessary application and making some deposit of money as per the guidelines. There was no response and the respondents were left with no alternative but to turn down the petitioner's request. He would submit that there was no deliberate attempt to dodge the order of this Court. The decision has been taken consciously and the petitioner's proposal has been rejected. The order merely directed the respondents to consider the petitioner's proposal for one time settlement. It did not direct to accept that proposal. He would submit that the petitioner may independently resort to the appropriate remedy.

7. We are conscious of the limitations on the powers of this Court which is called upon to consider the allegations regarding wilful disobedience of the order of this Court. Taking into account the order of this Court, the respondents were merely directed to consider the petitioner's proposal/application for one time settlement in accordance with the scheme. Once pursuant to such direction some decision is taken by the respondents, about occurrence of which event there is no dispute, this Court cannot undertake a roving enquiry to examine whether the decision is appropriate and strictly in accordance with the guidelines laid down in the scheme.

8. Precisely for this reason, we cannot undertake any objective scrutiny in respect of the purport of the guidelines and the willingness of the

petitioner to deposit Rs. 5,00,000/-. The issue would be independent and could give rise to a fresh cause of action for the petitioner to avail of the appropriate remedy. Whether the decision of the respondents is in accordance with the guidelines or otherwise cannot be a subject matter of the present enquiry. It would always be open for the petitioner to resort to appropriate remedy as is available to it in law.

9. The upshot, since pursuant to the directions of this Court decision has been taken by the respondents thereby rejecting the petitioner's request for one time settlement of the loan account, it cannot be said that the respondents have deliberately disobeyed the directions of this Court and the action is contumacious.

10. The Contempt Petition is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-