(2005) 08 MAD CK 0155

Madras High Court

Case No: Contempt Petition No. 66 of 2005 and Sub. Application No. 33 of 2005

Sameer Kumar Sharma and Others		APPELLANT
	Vs	
R. Mohan and Another		RESPONDENT

Date of Decision: Aug. 10, 2005

Citation: (2006) 3 CivCC 338

Hon'ble Judges: S. Sardarzackria Hussain, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: R. Parthasarathy, for the Appellant; S. Krishnasay for Mr. C. Ramesh for Respondent-1 and Mr. Vijay Narayanan for Mr. R. Ramesh for Respondent-2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, J.
Sameer Kumar Sharma and two others seeking for punishment for the contempt of the orders passed by the Division Bench of this Court dated 21.1.2004 by virtue of the breach of undertaking, have filed this contempt petition.

2. The case of the petitioners is as follows:

(a) A suit was filed by the petitioners in C.S. No. 41 of 1997 questioning the validity of the sale deeds executed by the first petitioner in favour of R. Mohan, the first respondent herein, his wife and his mother-in-law.

(b) Along with the suit, an application was filed in O.A. No. 48 of 1997 praying for grant of an ad interim injunction restraining the defendants from alienating or dealing with or encumbering the suit schedule property. The first respondent herein as well as his wife and mother-in-law, the other defendants filed counter-affidavits giving an undertaking that they would not sell the property. The said undertaking was recorded and the application was closed.

(c) Not satisfied with that, the petitioners filed an appeal in O.S.A. No. 202 of 1998 mainly on the ground that the undertaking was restricted only to selling the property and not with respect to dealing with or encumbering or alienating the property.

(d) The appeal came up for hearing on 21.1.2004 before the Division Bench. The counsel for the respondents therein on behalf of the first respondent gave an undertaking that he has no intention to encumber or deal with the property. The said oral undertaking given on behalf of the first respondent was recorded by the Division Bench and consequently, the appeal was dismissed.

(e) Contrary to the undertaking, the first respondent, the first defendant in the suit has dealt with the property by leasing out the same to an entity known as M/s M.P.L. Spares and Services Limited, Chennai.

(f) On coming to know of the same, on 18.10.2004, the petitioners issued a legal notice to the first respondent as well as to the said Company who is the second respondent herein, bringing to their notice the undertaking given by the first respondent before this Court and calling upon the said concern to cease and desist from carrying on any construction activities in the building.

(g) On receipt of the same, the second respondent, the Company sent a reply on 3.11.2004 informing the petitioners that the property in question was given on lease to them by the first respondent on 1.10.2004 and further stating that they were not aware of the pending litigation between the petitioners and the first respondent.

(h) Similarly, the first respondent also by the reply dated 4.11.2004 informed the petitioners admitting the let out of the property to the second respondent and that the was constrained to let out to the second respondent, who had undertaking maintenance of the building.

(i) Thus, the act of the first respondent in letting out the property to the second respondent is clearly in breach of and in violation of the undertaking given before this Court on 21.1.2004 and the second respondent also is a party to the encumbrance and therefore, both are liable to be punished for contempt.

3. Through the counter dated 3.3.2005 filed by the first respondent, he has stated that the lease of the property to third party would not amount to breach of undertaking. The following is the gist of his contentions:

The petitioners'' contention is only attempting to misinterpreting the order of the Division Bench. The term ''deal with'' referred to in the order meant only dealing with the property by way of alienation, creating encumbrance of the property. The Division Bench has not put any embargo on letting out the property. With a view to protect the property during the pendency of the suit, he has let out the property on 1.10.2004 in pursuance of the lease agreement dated 16.9.2004 entered into between the first respondent and the second respondent. As such, there is no

contempt.

4. The stand of the second respondent through the counter dated 26.6.2005 is as follows:

The second respondent was not a party to the proceedings in O.S.A.No. 202 of 1998. He was not aware that there was litigation in respect of the property. Without being aware of the proceedings, a lease agreement was entered into on 16.9.2004 between the first respondent and the second respondent by which the second respondent has taken on lease the land. He has paid Rs. 4 lakhs as advance. The rent fixed through the lease deed is Rs. 40,000 - and Rs. 20,000/- for amenities totaling Rs. 60,000/- per month. The second respondent is a bona fide lessee who has taken the property on lease for consideration without notice or knowledge of the proceedings. However, the second respondent would abide by any order passed by this Court.

In any event, he undertakes to keep the premises in good and tenantable condition. As such, the second respondent has not violated any order of this Court.

5. Mr. R. Parthasarathy, the learned counsel for the petitioners, would submit that the order was passed on 21.1.2004 recording the undertaking given by the first respondent that he would not deal with or encumber the property pending suit and in violation of the same, he has admittedly leased out the property to third party, the second respondent on 1.10.2004, thereby transferring the interest in the property and consequently, the first respondent is liable to be punished. It is also contended that despite the notice having been received on 18.10.2004 by the second respondent, after having known about the pending proceedings, he has not chosen to hand over the property to the first respondent nor approached this Court seeking for appropriate orders. Therefore, the second respondent also is liable to be punished.

6. As a consequential order, it is claimed that the property must be put back directing the second respondent to hand over the possession of the suit property to the first respondent and restore the status as on 21.1.2004. He would cite the following authorities:

1) Balram Singh Vs. Bhikam Chand Jain and Others,

2) Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another,

3) State of Himachal Pradesh Vs. Tarsem Singh and Others,

4) Mange Ram Vs. Financial Commissioner and Others,

5) In Re: Mafatlal Industries Ltd., 12-07-1996-GUJHC

7. Mr. S. Krishnasamy. the learned senior counsel appearing for the first respondent, in justification of the lease agreement and let out of the property to the second respondent, would submit that the same was done in order to protect the property from the trespassers and as such, there is no willful disobedience. He would cite the following authorities:

1) Kapildeo Prasad Sah v. State of Bihar, 1999 (3) CCC 441 (S.C.) : 1999 ACJ 358 (S.C) : 1999 (III) CTC 189

2) Jhareswar Prasad Paul v. Tarak Nath Ganguly, 2002 (3) CTC 122

8. Mr. Vijay Narayanan, the learned senior counsel appearing for the second respondent would submit that the second respondent is prepared to abide by any orders that could be passed by this Court and he is ready to hand over the possession of the property to the first respondent, if so ordered, or else, this Court can direct the second respondent to continue as tenant and to deposit the rental amount in the Court.

9. At the end of the hearing, the first respondent filed second affidavit dated 26.7.2005 stating that letting out the property is not intentional and his act was only with a bona fide attempt to protect the property from third parties and as such, his apology can be accepted and permit the second respondent to continue as tenant and also permit the first respondent to receive the rent and amenity charges and without prejudice to his rights that he will deposit Rs. 15,000/- every month from and out of the rental income to the credit of the suit until the suit is finally heard and decided.

10. We have heard the counsel for the parties and given our thoughtful consideration to the rival contentions.

11. Let us first see the order of the Division Bench dated 21.1.2004, which is as follows:

6. Learned counsel appearing for the appellants now submitted that the undertaking was given to the effect that they won''t sell the property but no undertaking was given to the effect that they won''t encumber or alter the physical features of the said property.

7. For this submission, learned counsel appearing for the second respondent submitted that the second respondent has no intention to encumber or deal with the property or alter the physical features. In view of the said undertaking given on behalf of the second respondent, the apprehension of the learned counsel appearing for the appellants that the second respondent in future may encumber the property cannot be sustained. He has also submitted that so far they have not encumbered the said property. Hence, recording the submission made by the learned counsel appearing for the second respondent, the appeals are dismissed.

12. The reading of the above paragraphs 6 and 7 in the order of the Division Bench would clearly indicate that Mohan, the first respondent herein has given undertaking through his counsel before the Division Bench on 21.1.2004 giving a statement that so far they have not encumbered the said property and in future also, they have no intention to encumber or deal with the property. This led to the dismissal of the appeal by the Division Bench after recording that undertaking.

13. There is no dispute in the fact that by virtue of the agreement dated 16.9.2004, the property was leased out to the second respondent herein and consequently, the second respondent took possession of the property on 1.10.2004 on payment of making deposit of Rs. 4 lakhs as advance and giving Rs. 60,000 per month towards rent and amenity charges.

14. According to the counsel for the petitioners, this act would amount to deal with or encumber the property. On the other hand, it is the contention of the counsel for the first respondent that leasing out the property would not amount to encumbrance or dealing with the property.

15. The Law Lexicon while defining the word ''deal'' or the expression ''deal with'' would give the meaning as "any transaction of the business of any kind between the inter parties. The term ''dealing with'' has been defined as "to do business with". The word ''deal'' has been defined in the Black''s Law Dictionary as "to transact business with".

16. The Supreme Court in Mange Ram Vs. Financial Commissioner and Others,), while defining the word ''encumbrance'', would observe that the word ''encumbrance'' has to be read in the sense of a legal encumbrance like a lease or a mortgage.

17. In State of Himachal Pradesh Vs. Tarsem Singh and Others, , the Supreme Court would observe that the word ''encumbrance'' means, a burden or charge upon the property or a claim or lien upon an estate or on the land. ''Encumber'' means, burden of legal liability on property, and therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land.

18. In view of the meaning of the words ''deal with'' and ''encumbrance'' in the Dictionary and in the judgments of the Supreme Court, there is no difficulty in holding that the lease would include deal with or encumbrance.

19. Therefore, the contention of Mr. S. Krishnasamy, the learned senior counsel appearing for the first respondent, on the strength of the counter affidavit dated 3.3.2005. that the term ''deal with'' would not mean letting out the property or leasing out the property, has to be rejected.

20. Ultimately, through the second counter affidavit dated 26.7.2005, it is submitted before this Court that though the letting out the property would amount to encumbrance or dealing with, the said act of leasing the property was with a bona

fide attempt to protect the property from third parties.

21. The learned senior counsel appearing for the first respondent would cite 2002(3) C.T.C. 122 and 1999 (3) CCC 441 (S.C.): 1999 ACJ 358 (S.C.): 1999 (111) C.T.C. 189 (supra) and submit that unless it has been shown that there is a willful disobedience of the order of the Court, the power to punish for contempt may not be resorted. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious.

22. This Court is unable to countenance the contention of the counsel for the first respondent, especially when the first-respondent took a stand through the. first counter that the word ''encumbrance'' or ''deal with'' would not mean leasing out the property.

23. When a notice was sent by the petitioners to the first respondent on 18.10.2004 intimating that he should not let out the property, the first respondent chose to send a reply on 4.11.2004 after getting legal advice from the lawyer stating that letting out would not amount to deal with the property as per the undertaking. So, from the beginning, the stand taken by the first respondent, a Law Graduate, who ventures to justify the action of leasing Out the property, is that no embargo was put on him by the Division Bench by the order dated 21.1.2004 from leasing out the property. Now, in the last counter affidavit, he chose to give explanation that his action is not intentional. So, we are unable to accept his new stand.

24. It cannot be contended that the first respondent, without understanding the meaning of the undertaking recorded by the Division Bench, has leased out, especially when he chose to send a reply dated 4.11.2004 to the petitioners after getting the legal advice from the lawyer. Therefore, we are of the view that there is a deliberate breach of the undertaking and as such, the said act is liable to be punished for contempt.

25. Mere tendering apology through the belated counter affidavit dated 26.7.2005 cannot be taken as a ground to accept the said apology. Further, it cannot be said that it is an unconditional apology. On the other hand, the condemner/first respondent requests this Court to allow the lease and permit him to receive the rent and he is ready to deposit Rs. 15,000 out of the rental income in the Court. In view of the above circumstance, we cannot accept the apology and as such, he is liable to be punished.

26. The second respondent also through the counter affidavit has stated that he would abide by any orders that could be passed by this Court. Therefore, it would be appropriate to direct the second respondent to vacate and hand over the

possession of the property to the first respondent within a period of three months from today, so as to restore the status as on 21.1.2004. Accordingly, ordered and the second respondent is discharged.

27. The first respondent is directed to pay back the deposit of the second respondent. The first respondent is further directed to deposit the rental amount so far collected from the second respondent after deducting the amount of expenditure incurred so far to the credit of the suit. Time for complying with the direction is one month from today.

28. It is settled law that this Court has power to make appropriate orders in the contempt proceedings to grant relief to the persons aggrieved in order to do complete justice, thereby to restore the original position as on 20.1.2004 and to prevent the first respondent to enjoy the fruits of the contempt.

29. Where an act is done in violation of the order passed by this Court, it is the duty of this Court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of this Court is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. This principle has been laid down in the decision in Century Flour Mills Ltd. v. S Suppiah, AIR 1999 Mad 270 (FB).

30. In Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, the Supreme Court makes the following observation-

The principle that a condemner ought not to be permitted to enjoy the fruits of his contempt is well settled. In Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others, this Court held clearly that undergoing the punishment for contempt does not mean that the court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of the orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month''s imprisonment. In addition thereto, the learned Single judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of court. The argument, was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach (of undertaking).

31. The above observation would, in our view, apply in all fours to the present facts of the case. The appeal filed by the petitioners was dismissed by the Division Bench only on the undertaking given by the first respondent that they would not deal with or encumber the property, but in breach of the said undertaking, the third party has been allowed to enter into the premises through the lease agreement which would definitely amount to dealing with or encumbering the property. By this act, the first respondent obtained the benefit of getting Rs. 4 lakhs as advance and also getting

rental amount and amenity charges of Rs. 60,000/- every month. This is an illegally derived benefit by the first respondent and as such, we deem it fit that the first respondent should not be allowed to retain the fruits of his contempt, by making suitable orders.

32. As indicated above, the first respondent has committed contempt and as such, he is liable to be punished u/s 12 of the Contempt of Courts Act. The punishment for the offence u/s 12 of the Act is simple imprisonment for six months or fine of Rs. 2,000/- or with both.

33. The Supreme Court in Balram Singh Vs. Bhikam Chand Jain and Others, would observe that it would be a travesty of justice if the Court were to allow gross contempt of Court to go unpunished, without an adequate sentence.

34. In the light of the above observation, we originally thought of imposing imprisonment on the first respondent. However, taking into consideration of the fact that we have directed the second respondent to hand over the possession back and directed the first respondent to pay back the deposit amount and deposit the rental amount, the interest of justice would be met by imposing fine alone.

35. In view of the above discussion, the first respondent alone is found guilty of contempt and he is sentenced to pay a fine of Rs. 2,000/-, in default to undergo imprisonment for six months. Time for payment one week.

36. The contempt petition is disposed of accordingly. Sub Application No. 33 of 2005 is closed.