

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2012

CORAM

THE HONOURABLE MR.JUSTICE V.PERIYA KARUPPIAH

Contempt Petition No.1418 of 2011

N.Narayan Reddy .. Petitioner

..Vs..

K.Perumal .. Respondent

Contempt Petition filed under Section 11 r/w. Section 16 of Contempt of Courts Act, 1971, praying to punish the respondent for contempt of Court for wilful and deliberate disobedience of the Order dated 11.11.2010 passed by this Court in CRP.NPD.No.3740 of 2010.

For Petitioner : M/s.B.K.Sreenivasan

For Respondent : Mr.A.L.Somayajee
senior counsel
for M/s.V.Perumal

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ORDER

This petition has been filed by the petitioner, who has filed a revision in CRP.NPD.No.3740 of 2010 on the file of this Court seeking to punish the respondent for the alleged commission of contempt of Court for wilful and deliberate disobedience of the order dated 11.11.2010

passed by this Court in CRP.NPD.No.3740 of 2010.

2. On filing the petition, this Court had ordered notice of admission to be served upon the respondent and take up the matter for considering the admissibility of the petition.

3. At the preliminary stage, heard Mr.B.K.Sreenivasan, learned counsel for the petitioner and Mr.A.L.Somayajee, learned senior counsel appearing on behalf of M/s.V.Perumal, learned counsel for the respondent.

4. The learned counsel for the petitioner would submit in his argument that the petitioner's father had filed a suit in O.S.No.390 of 1977 on the file of the Sub Court, Krishnagiri, for partition and separate possession of his 1/5th share in respect of the suit properties and a preliminary decree for partition was passed in respect of certain properties and the suit was dismissed in respect of remaining items of the suit properties. He would further submit that the petitioner's father preferred an appeal in A.S.No.159 of 1988 on the file of the Principal District Judge, Krishnagiri, against the said judgment and decree passed on 30.06.1987. There were also other appeals in A.S.No.159 of 1987, A.S.No.160 of 1988, A.S.No.22 of 1989 and A.S.No.55 of 1989 filed by the other aggrieved

defendants in the said suit in O.S.No.390 of 1977. He would further submit that after the death of the father of the petitioner, he and the other legal representatives were brought on record as appellants 2 to 5 and the appeals were taken up for the arguments.

5. The learned counsel for the petitioner would also submit that the petitioner was advised to file an application seeking amendment of the grounds of appeal in order to present his case properly, but the said amendment application was directed by the learned Principal District Judge, Krishnagiri, to be posted along with the appeal. He would also submit that the request of the petitioner for posting the said application separately and to decide the same before hearing the appeal was of no avail and therefore, he preferred a revision in CRP.NPD.No.3740 of 2010 against the order passed on 19.10.2009 and in the said CRP.NPD.No.3740 of 2010, on 11.11.2010, this Court had issued directions to the respondent, viz., the Principal District Judge, Krishnagiri, to dispose the I.A.No.71 of 2009 in A.S.No.159 of 1988 first and thereafter, to proceed with the appeal depending upon the orders passed in the amendment application. He would also submit that the said order copy was received by the petitioner on 12.11.2010 and was filed before the respondent on 19.11.2010 through the Bench Clerk of the Principal District Court, Krishnagiri.

But on 25.11.2010, the case was called in open Court and after going through the order passed by this Court on 11.11.2010, he allowed the application in I.A.No.71 of 2009. However, no time was granted for carrying out amendment in the grounds of appeal and thereafter, the appeal in A.S.No.159 of 1988 and other connected appeals were passed over. He would also submit that the petitioner was waiting to know the next hearing date, however, the appeals in A.S.No.159 of 1988 and the connected appeals were said to have been disposed of by 3.30 p.m. on the same day. He would also submit that he was terribly shocked to know the order of the disposal of the said appeals against the tenor of the order passed by this Court in CRP.NPD.No.3740 of 2010 dated 11.11.2010 which would be a total violation and disobedience of the direction issued as aforesaid. He would, therefore, request the Court that the respondent may be issued with contempt notice and suitable action may be taken against the respondent for committing deliberate and wilful contempt of the order of this Court.

6. The learned senior counsel Mr.A.L.Somayajee, appearing on behalf of the respondent would submit in his argument that the respondent has no intention to commit any contempt of the order of this Court by disobeying the orders passed by this Court in CRP.NPD.No.3740 of 2010 dated 11.11.2010. He would further submit that however,

the respondent submits his unconditional apology through his counter affidavit filed by him in paragraph No.2 in the event this Court has come to a conclusion that the respondent has disobeyed the order of this Court. He would further submit that even as per the version of the petitioner, the order copy was handed over to the Bench Clerk of the Principal District Court, Krishnagiri, on 19.11.2010 and the said order was not placed before the Principal District Judge, Krishnagiri, by the Bench Clerk of the said Court and therefore, the respondent has taken suitable action against the Bench Clerk of the said Court by issuing a memorandum on 23.09.2011, when the matter was discovered on receipt of the notice in Contempt Petition filed before this Court. He would also submit that the respondent had reserved for judgment both in the appeals and the amendment application on 12.11.2010 without the knowledge of the orders passed by this Court on 11.11.2010 and posted the appeals and the application for orders on 25.11.2010.

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7. The learned senior counsel would further submit that the order copy issued by this Court was received by the Additional District Judge, who was in charge of the post of the Principal District Judge, Krishnagiri, when the respondent was on leave, on 18.11.2010 and the officials as well as the Bench Clerk of the Principal District Court

failed to put up the said order to the knowledge of the respondent, since the matter was already reserved for orders. He would further submit that the order dated 11.11.2010 was not brought to the knowledge of the respondent till he received the contempt notice on 23.09.2011. He would further submit that the respondent had no intention to disobey the orders passed by this Court and if the orders had been brought to the knowledge of the respondent, the tenor of the order would be implemented and there would not be any circumstances for initiating this contempt proceedings. Therefore, the learned senior counsel would submit in his argument that there is no *prima facie* case for initiating contempt proceedings against the respondent and therefore, the petition may be dismissed at the preliminary stage without issuing contempt notice.

8. I have given anxious consideration to the arguments advanced on either side.

9. The petitioner has initiated the contempt proceedings against the respondent, who is serving as the Principal District Judge of the Krishnagiri District. The alleged contempt against the respondent was that he wilfully disobeyed the orders passed by this Court on 11.11.2010 in CRP.NPD.No.3740 of 2010. The order passed by this Court said to have been violated would run as follows:-

"5. Therefore, it has become necessary for this Court to give a direction to dispose of I.A.No.71 of 2009 in A.S.No.159 of 1988 first and thereafter, to proceed with the appeal depending upon the orders passed in the amendment application. Accordingly, the lower Court is directed to dispose of the application in I.A.No.71 of 2009 in A.S.No.159 of 1988 within a period of one month from the date of receipt of a copy of this order and depending upon the said order passed in the amendment application, to dispose of the appeal within three month's period from the said date of disposal of the amendment application."

10. It is a very clear direction to the Court in which the respondent was presiding, to abide for the purpose of rendering substantial justice to the parties. The said order was not complied with by the respondent. It is evidenced from the orders passed on 12.11.2010 and 25.11.2010 in the notes paper of the relevant papers sent for by this Court. As submitted by the respondent, the appeal in A.S.No.159 of 1988 and other appeals were reserved for orders along with I.A.No.71 of 2009 and were posted to 25.11.2010 for pronouncing judgment. It is

further submitted by the respondent that the order was received by the Additional District Judge on 18.11.2010 when the respondent (as Principal District Judge, Krishnagiri,) was on leave and the officials did not hand over the said order to the respondent thinking that the appeals were reserved for orders on 12.11.2010 for the next date of hearing on 25.11.2010. Similarly, the copy of the order obtained by the petitioner, which was produced before the Bench Clerk on 19.11.2010, was also said to have been not placed before the respondent and it was known to the respondent only on 23.09.2011 when the notice in the petition was received by him. If the reasons put forth by the respondent are found to be correct, even though the non-compliance of the order passed by this Court could be viewed as not a wilful and deliberate disobedience or violation of the order passed by this Court, which is the question to be decided.

11. For that, copies of the proceedings of the Principal District Judge, namely, memo and explanations submitted by the Bench Clerk were produced. On a careful perusal of the memo issued to the Bench Clerk, I could see that the order of this Court with the direction to dispose of I.A.No.71 of 2009 within a month from the date of receipt of a copy of the order, which was said to have been

received by the Bench Clerk on 18.11.2010, was not placed

before the respondent to comply with the directions. The said Bench Clerk, namely, Mrs.D.Neela, has submitted an explanation, which is available at Page Nos.3 and 4 of the typed set. She had deliberately omitted to place it before the respondent, since the said appeal and other records were already placed before the respondent. She had also explained in her reply that due to pressure of work and negligence, the said copy was mixed with other papers and therefore, it could not be brought to the knowledge of the respondent. The said explanation would go to show that the Bench Clerk had owned responsibility for not placing the orders received by the said Court from this Court.

12. However, it was submitted by the learned counsel for the petitioner that yet another copy was presented to the Bench Clerk on 19.11.2010 in person. But, the learned counsel could not place any proof for handing over such a copy to the Bench Clerk by producing any D.No. assigned to the said memo containing the order. In the said circumstances, the Bench Clerk should have reminded the Court on 25.11.2010 regarding the orders passed by this Court. It was also not done by her. In the counter filed by the respondent it has been stated that the officials did not place the said order received from this Court by the Additional District Judge, who was in charge of the respondent on that day, namely, 18.11.2010. Normally the

papers would be signed by the Personal Assistant to the District Judge and it would be handed over to the Bench Clerk concerned for placing it before the Judge concerned. If any direction has been issued in an order of the High Court to lower court, it should be very much cared by the officials, while receiving or handling the said orders for being placed before the court concerned. It is not disclosed in the counter affidavit as to whether any action has been taken against the Personal Assistant to the Principal District Judge or any person, who was in charge of his duty for the said omission committed. The proceedings taken against the Bench Clerk Mrs.D.Neela would disclose that there was no notice or knowledge to the Principal District Judge about the orders passed by this Court dated 11.11.2010. Therefore, the said explanation offered by the respondent is acceptable at this preliminary stage. Moreover, he also unconditionally tendered his apology for the inconvenience caused to this Court in his counter affidavit. Therefore, I am of the view that there is no necessity for issuing a contempt notice against the respondent for the purpose of pursuing any action to be taken against him on the alleged contempt said to have been committed by the respondent. However, the proceedings taken by the District Judge, Krishnagiri, against the Bench Clerk has to be pursued very carefully and the result of the proceedings should have been informed to this Court.

Similarly, the other officials, who were stated to have failed in their duty to place it before the respondent, should also be proceeded for the purpose of maintaining the discipline in complying with the orders of this Court and thereby, to maintain the dignity and decorum of the judiciary.

13. With the aforesaid observation, the contempt petition is disposed of. The Registrar General, High Court, is directed to follow the matter and to place the report of compliance of this Order by the Principal District Judge, Krishnagiri.

Mra

SD/-

DEPUTY REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2012.

COURT OFFICER (O.S.)

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KS (CO) 12/09/2012

One CC to Mr.B.K.Sreenivasan, Advocate, SR.7334

One Cc to Mr.V.Perumal, Advocate, SR.7329

Copy to:

- 1.The Registrar General,
High Court
Madras.
- 2.Principal District Judge,
Krishnagiri.