(2012) 02 KAR CK 0038

In the Karnataka High Court

Case No : CCC (Criminal) No. 4 of 2011 A/w. Miscellaneous Criminal No. 3168 of 2011

J. Venkatesh APPELLANT

Vs

Smt. J.P. Sujatha RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, 151
Constitution of India, 1950 — Article 136, 226
Contempt of Courts Act, 1971 — Section 2 (c)

Citation : (2012) 3 KarLJ 564

Hon'ble Judges : H.S. Kempanna, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Puttige R. Ramesh and Smt. Lakshmi S. Holla, for the Appellant; S Nagaraj, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—The complainant in this contempt petition, who claims to be the Court auction purchaser of an immovable property purchased on 11.12.2008 (according to the counsel for the accused he is a bidder and not a Court auction purchaser) having purchased an immovable property namely, a residential accommodation in an auction conducted by the Recovery Officer attached to the Debt. Recovery Tribunal, Bangalore in Application No. 1162/1998 has sought for implementation of the order dated 29.2.2000 passed by the Tribunal on the application, that had been filed by the lender -Corporation Bank, a Nationalized public sector Bank. O.A. No. 1162/1995 itself has its origin in O.S. No. 1391/1993, a suit that had been instituted by the Corporation Bank, Shantinagar Branch for recovery of certain amount said to have been due from its borrower (present accused person) in the name of her proprietary concern by the name and style ''Sujatha Handlooms''. The suit was contested by the sole defendant, but the suit came to be transferred to the Debt Recovery Tribunal, Bangalore under the provisions of The Recovery of Debts due to Banks and

Financial Institutions Act, 1993 (hereinafter to referred to as RDDBFI Act, 1993) and after the creation of such Tribunal u/s 31 of the RDDBFI Act, 1993.

2. From the facts as narrated in the contempt petition and as submitted at the bar, what one can gather is that the complainant has underwent the agony of facing continuous litigation ever since he participated in the auction on 11.12.2008. The complainant was able to secure possession of the subject property, for which he had bid, only on 19.2.2011, that too, according to Sri. P.R. Ramesh, learned counsel for the complainant, after the existing structure itself had been demolished and the house property had become a vacant land etc.

3. The complaint is that there are innumerable number of applications, writ petitions, review petitions, even writ appeals etc., filed by the accused person in between 11.12.2008 and 19.2.2011; that the ordeal of the complainant is still not over, it is continuing as the accused person has kept the matter alive by filing appeal against the order of the Debt Recovery Tribunal not passed on the main application but on an order passed on an application filed for either reviewing/ recalling the earlier order is the submission of Sri. Puttige R Ramesh, learned counsel for the complaint which again is sought to be countered by Sri. Nagaraja, learned counsel for the accused person, but such incessant legal proceedings by the accused person is an abuse and misuse of court proceedings by the accused person amounting to ''criminal contempt'' within the meaning of this expression as defined in section 2[c] of the Contempt of Courts Act. 1971.

4. Be that as it may, while one of the grounds urged in this contempt petition on behalf of the complainant is that the proceedings have been misused rather abused by the accused person to thwart the orders passed not only by the Debt Recovery Tribunal, but also orders passed by this court in a good number of writ petitions that had come to be filed by the accused person before this court. One another grave allegation made in the contempt petition is that the accused person has virtually misrepresented before the trial court in the pending suit in OS No. 1539/2010 wherein the accused person figures as the first defendant and the complainant figures as fourth defendant in a suit that has been filed by the sister of the accused in this petition; that it is a suit for partition of the property of the family including the subject property etc., by filing an application u/s 151 of Civil Procedure Code, 1908 dated 12.8.2010, wherein it is indicated that the High Court while disposing of the writ petition No. 17586/2010 filed by the accused person, as per order dated 11.8.2010 had restrained defendants 2, 3 and 4 in the suit and had directed them to keep on hold their actions pending giving effect to certain directions given by the High Court in terms of the order dated 11.8.2010; that there was no such direction issued in the order passed by this court; that it is a misrepresentation made by the accused person, to prolong the proceedings in OS No. 1539/2010 and to keep alive litigation etc., and the ultimate object of all such frivolous and cantankerous litigation by the accused person is to prevent the complainant from reaping the benefit of court auction sale.

5. It is on such premise, the present contempt petition has been filed.

6. Contempt petition itself has been lingering on for some time and accused person has been put on notice and is represented by counsel Sri. Nagaraja.

7. Several developments have taken place even in the contempt petition after issue of notice and it is submitted on behalf of the complainant by Sri. P R Ramesh, learned counsel that the accused person has continued to file writ petitions before this court in respect of actions that are sequel to implementation of the order passed by the Debt Recovery Tribunal on original application.

8. The matter is listed today for orders on two applications in Misc. Crl. 3168/2011 and IA No. 4/2011, Sri. P R Ramesh, learned counsel for the complainant submits that it is essentially listed for hearing before charge as indicated in the earlier orders passed by this court in this very petition: that the applications are frivolous in nature and essentially to be dismissed as it touches upon the merits of the matter itself and that objections have been filed to the two applications.

9. We do not propose to examine the contents of the applications nor the objections at this stage, but would rather examine/hear on the need and necessity of framing charge.

10. We have heard Sri. P R Ramesh, learned counsel for the complainant and intermittently Sri. Nagaraja, learned counsel for the accused only for eliciting some factual clarifications and nothing more.

11. As noticed above, we find that the proceedings are mainly between the Bank and its borrower and in fact has its origin in the loan raised by the accused person from the Bank way back in the year 1985 and according to the accused person it was a loan of Rs. 2,36,000/- for purchase of handlooms and which according to the accused person has been overpaid because of some fraud, collusion etc., but the Bank has insisted that amounts much more than what was actually borrowed are still due to the Bank and had filed a false suit for recovery of the amount etc.

12. It is not necessary to go into these aspects, as it is noticed that the first step was the accused person borrowing money from a Nationalized Bank - M/s. Corporation Bank.

13. The complainant entered on the scene only in the year 2008 and as the bidder in a court auction conducted by the Recovery Officer attached to the Debt Recovery Tribunal.

14. Sri. Puttige R Ramesh, learned counsel for the complainant has very vehemently urged that the manner in which the court proceedings are misused by the accused person is a clear case of the accused person misusing or abusing the court and judicial proceedings to ensure that court auction conducted by the Recovery Officer attached to the Tribunal does not reach its logical culmination;

that it is sought to be prevented or avoided and this conduct amounts to contumacious act, belittling the proceedings of the Tribunal and even further proceedings which had arisen before this court in writ petitions questioning the actions before the Debt Recovery Tribunal.

15. In support of this submission, strong reliance is placed by Sri. P R Ramesh, learned counsel for the complainant on the Judgment of the Supreme Court in the case of Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, .

16. Reliance is also placed on another decision of the Supreme Court in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, Wherein the Supreme Court had an occasion to refer to and follow its earlier decision in Madhya Pradesh Khair Industries case [supra].

17. Mr. P R Ramesh, learned counsel for the complainant submits that misuse or abuse of court proceedings by indulging in frivolous and cantankerous litigation as indicated by the Supreme Court in the decisions referred to above clearly comes within the scope of criminal contempt as defined u/s 2[c] of the Contempt of Courts Act, 1971; that if it has a tendency to either lower the efficacy of the court''s system or prejudices or amounts to interfere with the judicial proceedings; that it is definitely criminal contempt;

18. We find that the Supreme Court was very much satisfied with the conduct of the respondent in that case clearly amounted to an abuse of judicial proceedings, particularly, by filing the application dated 14.12.1972 and also having noticed that the respondent in the appeal before the Supreme Court had filed applications and writ petitions one after another before the High Court seeking for extension of time to pay some installment amounts for felling of trees in various land etc., and the Supreme Court on the facts opined that in the facts of that case, clearly amounted to conduct contumacious for actions u/s 12 of the Contempt of Courts Act, 1971.

19. In the other decision, we find that the Supreme Court in terms of its observation made in paragraph-10 of this Judgment, found that the appellant before the Supreme Court was a cantankerous litigant, in fact, who had misused or abused the process even before the High Court under Article 226 of the Constitution of India and invoking the facility of Article 136 of the Constitution of India was only further abuse in the same line of misusing or abusing the court proceedings and therefore dismissed the appeal levying exemplary costs of Rs. 50,000/-, but this case has no application on the facts of the present contempt petition nor was a case arising out of contempt of court Act.

20. Be that as it may, we find both the decisions relied upon by learned counsel for the complainant distinguishable on the facts of the present case and does not advance the case of the complainant in the present contempt petition, but what one can infer and bear in mind while dealing with contempt petitions and examining the scope and necessity for exercising contempt jurisdiction is the

observations made by the Supreme Court in paragraphs 7 and 8 of Madhya Pradesh Khair Industries case [supra]. In paragraph-7 of this Judgment, the Supreme Court noticed the definition of ''criminal contempt'' and has elaborated as to what conduct and in what circumstances can be termed as an act of committing ''criminal contempt'', in paragraph-8 the position and understanding and the development of the law of contempt in England is noticed. It may be useful to extract the same.

7. Section 2(c) of the Contempt of Courts Act defines criminal contempt as follows:

(c) ''Criminal Contempt'' means the publication (whether by words, spoken or written, or any signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which -

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding: or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.

8. In HALSBURY''S LAWS OF ENGLAND (4th Edn., Vol. 9, paragraph 38), there is

a brief discussion of when abuse of the process of the court may be a punishable contempt. It is said:

38. Abuse of process of general - The court has power to punish as contempt any misuse of the court''s process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court or the court''s officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt.

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularly or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt.

21. It is proverbial that the woes of a decree holder in our legal system commences only after obtaining a decree and strives for realizing the fruits of the decree even as observed by the Privy Council quite some time back. In such a situation, the position of the auction purchaser is quite naturally more arduous and risky.

22. An auction purchaser does not purchase the property but buys litigation is an aspect which we can take judicial notice of. But, such developments are not any solace to a successful party in a court proceedings and at any rate does not augur well for judicial proceedings and court systems.

23. The efficacy of any judicial proceedings and court system lies in implementation of the order and realization of the relief given to a litigant by the court order.

24. In the present situation, we find that the complainant is only an auction purchaser who has joined a pending litigation midstream and may be may feel very frustrated and aggrieved as a huge amount has been invested and the complainant is still made to face litigation and his investment had become tenuous and not productive at this stage.

25. But, at the same time, we find that the accused person who bona fide believed that she did not owe as much money as had been claimed by the Bank, was making efforts before one forum or the other and by filing one application under one jurisdiction or the other and even as per the counsel for the complainant, the matter has not reached finality.

26. At this stage, we do not feel enthused or encouraged to initiate contempt proceedings and we are of the specific view that the contempt jurisdiction should

never be allowed to browbeat, terrorize or pressurize any person into a particular course of action and the contempt proceedings cannot be permitted to be used as a mode of execution for realizing the fruits of a decree or the benefit of a court auction sale etc.

27. What is examined is only the conduct and the nature of the conduct which can give an impression to the court that the accused person has really misused or abused the court proceedings qualifying for action within the meaning of section 2[c] of the Contempt of Courts Act, 1971. While exercising contempt jurisdiction, this court does not examine so much on the rights of the complainant, but mainly with regard to the conduct of the accused person as we find in the present case the conduct is not merely to thwart or prevent the court orders or proceedings, but with some hope however desperate may be or hopeless the situation may be, but to get some relief as the accused person was bona fide feeling that there was some injustice meted out or some wrong action taken against her. We feel there is no justification to frame charge against the accused person.

28. In the circumstances, we drop the further proceedings.

29. We have perused the contents of the application said to have been filed before the civil court in pending OS No. 1539/2010. The action on the part of the accused person though cannot be either appreciated or can be termed as a laudable one, it may be one of mere anxiety and may be misunderstanding of the implication of the order dated 11.8.2010 and we are not very enthused that we should initiate contempt action in respect of this matter, more so, when it is not in dispute that the complainant claims to have taken possession of the subject property on 19.2.2011 and therefore we do not propose to initiate action on this term.

30. Accordingly, accused person is discharged, further proceedings dropped and the contempt petition is dismissed. In view of dismissal of the contempt petition itself, Misc. Crl. 3168 of 2011 and IA No. 4/2011 does not survive for consideration, hence dismissed.

