

(2014) 07 MAD CK 0079

In the Madras High Court

Case No : Contempt Petition (MD) No. 128 of 2012 in W.P. (MD) No. 2208 of 2007

M. Kannan

APPELLANT

Vs

Nandha Balan

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0079

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The second respondent herein has filed a writ petition in W.P. (MD)No. 2208 of 2007 seeking a Writ of Mandamus to direct the first respondent herein to pay the pensionary benefits and other monetary benefits payable by the first respondent on account of the demise of the husband of the second respondent herein. When the said writ petition came up for hearing before this Court on 12.04.2007, it was reported that the parties had come to a settlement. In view of the same, the writ petition was disposed of by the learned Judge by issuing the following direction:

In view of the statement made by the learned counsels, the first respondent is directed to disburse the terminal benefits and family pensions in accordance with the rule to the petitioner as well as to the second respondent within a period of four weeks from the date of receipt of a copy of this order and the second respondent is directed to withdraw the suit filed by her in O.S.No. 1769 of 2005 pending on the file of the learned District Munsif, Madurai within a period of one week from today.

2. Mrs. M.Muthammal, who is the second respondent in the writ petition filed the present contempt petition alleging that as per the order made in the writ petition, the entire terminal benefits were settled in favour of her, but no amount was paid to her. This according to Mrs. M.Muthammal amounts to contempt of Court.

3. During the pendency of this contempt petition, Mrs. M.Muthammal passed away and in her place, her son Mr.M.Kannan has been substituted.
4. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the first respondent.
5. Mr.F.Deepak, learned counsel on record for the second respondent states that he has already withdrawn his appearance for the second respondent, and therefore, I am not in a position to hear the second respondent.
6. It is stated by the learned counsel for the petitioner that though the direction by this Court in the writ petition was to pay the terminal benefits to the petitioner Mrs. M.Muthammal / second respondent therein as per the Rules, no amount was paid to her.
7. The learned Additional Government Pleader, referring to the counter, would submit that the direction given by this Court was not to share the amount between Mrs. M.Muthammal and Mrs. Jeyanthi Mala, instead the direction was to settle the amount as per the Rules in favour of these two persons. The learned Additional Government Pleader would further submit that as per the Rules, the amount was settled to the wife, ie., Mrs. Jeyanthi Mala, who was the nominee.
8. I have considered the above submissions.
9. From the facts narrated above, I find that there is no deliberate violation of the order passed by this Court, amounting to contempt. The order is to settle the amount to the second respondent herein and Mrs. M.Muthammal in accordance with the Rules and accordingly, the amount has to be paid only to the nominee, as nominated by the deceased. That is what has been done by the first respondent. Further, the contempt is a matter between the contemnor and the Court. Since in this case, this Court finds that there is no deliberate violation amounting to contempt, I am inclined only to close this contempt petition. But at the same time, I make it very clear that if the petitioner has got any right over the amount which has been already paid to the second respondent, it is for him to work out his remedy through the Civil Court. When this was pointed out, the learned counsel for the petitioner submitted that prior to the writ petition, Mrs. M.Muthammal had filed a Civil Suit in O.S.No. 1769 of 2005 on the file of the learned District Munsif, Madurai and the same was withdrawn, and accordingly it was dismissed, as per the order of this Court in the writ petition.
10. In my considered opinion, the dismissal of the said suit will not be a res judicata, if the petitioner files a fresh suit, because the said suit was withdrawn as per the direction of this Court and there was no final adjudication of the issue between the parties. Therefore, de hors the withdrawal of the said suit, the petitioner is at liberty to file a fresh suit and the respondent shall not take a stand that the suit is barred by principles of res judicata.
11. In view of all the above, with the above liberty to the petitioner, this contempt petition is closed.