

Asit Kumar Saha Vs. Arnab Roy

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Court : Kolkata

Decided On : May-11-2012

Judge : Tapan Kumar Dutt

Appellant : Asit Kumar Saha

Respondent : Arnab Roy

Judgement :

ORDER

SHEET CC NO.201 OF 201.WP NO.1761 OF 200.IN THE HIGH COURT AT CALCUTTA Special Jurisdiction(contempt) ORIGINAL SIDE ASIT KUMAR SAHA Versus ARNAB ROY BEFORE: The Hon'ble JUSTICE TAPAN KUMAR DUTT
Date :

11. h May, 2012.

Mr.R.Ghosh, Adv.AppeaRs.Mr.S.K.Dey, Adv.AppeaRs.The Court : This court, by an order dated 10.11.2008, had disposed of a writ petition by setting aside certain bills shown as Annexure P-17 series to the writ petition (WP no.1761 of 2005) and by directing the respondent municipal authorities to raise bills on account of rates and taxes in respect of the purchased property of the writ petitioner in the name of the said writ petitioner indicating the rates and taxes payable by the writ petitioner in respect of the said purchased property only for the period in question and the writ petitioner was directed to pay such bill in accordance with law.

It further appears that in the said order dated 10.11.2008 it was recorded that the learned Advocate for the respondent municipal authorities submitted that if the writ petitioner visits the office of the respondent municipal authorities, then in that event a copy of the mutation certificate shall be handed over to the writ petitioner.

The present contempt application has been filed by the said writ petitioner alleging that the alleged contemner/opposite parties have not complied with the said order dated 10.11.2008.

The learned advocates for the respective parties have stated before this court that there is no dispute with regard to the fact that the mutation certificate concerned has already been handed over to the writ petitioner by the respondent municipal authorities.

The learned advocate for the petitioner submits that even though the mutation certificate has been handed over to the petitioner by the municipal authorities, the alleged contemnors have not made a fresh assessment of the rates and taxes to be paid by the writ petitioner but the bill which has been served upon the petitioner bears the name of the petitioner only.

The said learned Advocate not for the petitioner submits that right the act of contempt which the petitioner is complaining of against the alleged contemnors is the fact that the alleged contemnors have not made a fresh assessment of the rates and taxes payable by the petitioner.

The said learned advocate cited a decision reported at 2005(6) SCC 9. and referred to paragraph 7 of the said judgment.

The said paragraph 7 is quoted below: 7.

While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not.

It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view decision.

different than what was taken in the earlier A similar view was taken in K.G.Derasari v.

Union of India, reported in (2001) 10 SCC 496.2002 SCC (L&S) 756.

The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order.

If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable.

Such a question has necessarily to be agitated before the higher court.

The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order.

to be obeyed.

liable for Right or wrong the order has Flouting an order of the court would render the party contempt.

While dealing with an application for contempt, the court cannot traveRs.beyond the order, non-compliance of which is alleged.

In other words, it cannot say what should not have been done or what should have been done.

beyond the order.

It cannot traveRs.It cannot test correctness or otherwise of the order or give additional directions or delete any direction.

would be exercising review jurisdiction while dealing application for initiation of contempt proceedings.

be impermissible and indefensible.

That with an The same would In that view of the matter, the order of the High Court is set aside.

The learned advocate appearing on behalf of the alleged contemnor/opposite parties submits by referring to paragraph 3(b) of the affidavit in opposition that the dues payable by the petitioner were ascertained in compliance of the said order dated 10.11.2008 and accordingly the bill has been raised in the name of the petitioner being Annexure B to the said affidavit in opposition.

The said learned advocate referred to the said order dated 10.11.2008 and submitted that the alleged contemnors have complied with the said order by raising a fresh bill after ascertaining the dues payable by the petitioner.

The said learned advocate cited a decision reported in 1999 (9) SCC 5.and referred to paragraph 6 of the said judgment.

6.

The said paragraph 6 is quoted below: After hearing counsel on both sides, we make it clear that the respondents are liable to restore not only the pension as ordered by this Court in the said judgment but also all the attendant benefits as given to the Central Government pensioners. We hold that there was some genuine doubt on the part of the respondents in construing and giving effect to the judgment of this Court and, therefore, there is no contempt.

We not direct the respondents to comply with the judgment of this Court as explained hereinbefore within three months from this date.

Having heard the learned advocates for the respective parties and having considered the facts of the instant case, this court is of the view that contemnor/opposite it parties cannot have be in said any that way the alleged deliberately willfully violated the said order dated 10.11.2008.

and In the said order dated 10.11.2008, the respondent municipal authorities were directed to raise bills on account of rates and taxes in respect of the purchased

petitioner for property the of period the in petitioner question.

in the name It appears of the that the respondent municipal authorities have done so; but it may be that the petitioner is not satisfied with the amounts claimed in the said bill.

If the petitioner is not satisfied with the amounts claimed in the said bill, the petitioner may have to take appropriate steps before the appropriate authority.

alleged contemnors are in any But it cannot be said that the way guilty willfully violating the courts order.

of deliberately and The decision reported at 2005(6) SCC 9.cannot be of any assistance to the petitioner in the facts and circumstances of the case since the question of travelling beyond the aforesaid order dated 10.11.2008 does not arise.

In the aforesaid circumstances, this court does not find any merit in the instant application accordingly it is dismissed.

for contempt of court and However, this will not prevent the petitioner from challenging the bill on its merit being Annexure B to the affidavit in opposition before the appropriate authority in accordance with law.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(TAPAN KUMAR DUTT, J.) tk

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