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Nirmala Devadoss Vs. Rt.Rev.V.Devasagayam

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Court : Chennai

Decided On : Nov-27-2013

Judge : S.Tamilvanan

Appellant : Nirmala Devadoss

Respondent : Rt.Rev.V.Devasagayam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

27. 11.2013 CORAM THE HONOURABLE MR.JUSTICE S.TAMILVANAN Cont.P.No.1580 of 2013 in M.P.No.1 of 2011 in Tr.C.M.P.No.836 of 2011 and Tr.C.M.P.No.836 of 2011 and M.P.No.1 of 2011 and M.P.No.1 of 2013 Cont.P.No.1580 of 2013 Nirmala Devadoss ... Petitioner versus 1. Rt. Rev.V.Devasagayam Bishop of CSI, Diocese of Chennai, 226, Cathedral Road, Chennai 600 089.

2. Mercy David ... Respondents The Contempt Petition is filed under Section 11 of the Contempt of Courts Act, to punish the respondents for committing contempt, on the ground that there is willful disobedience of the order, dated 23.12.2011 passed by this Court in M.P.No.1 of 2011 in Tr.C.M.P.No.836 of 2011, on the file of this Court. For Petitioner : Mr.Su.Srinivasan For Respondents : Mr.B.Rabu Manohar for R1 Mr.R.Amizhdhan for R2 Tr.C.M.P.No.836 of 2011 Nirmala Devadoss ... Petitioner versus 1. Rt. Rev.V.Devasagayam Bishop of CSI, Diocese

of Chennai, 226, Cathedral Road, Chennai 600 089.

2. T.Pauline Victoria Teacher Gnanodaya Teachers Training Institute, No.1/60, Polwells Road, St.Thomas Mount, Chennai 600 016.

3. Rev.D.Samuel Jacob Secretary CSI Madras Diocesan Council, 226, Cathedral Road, Chennai 600 089. For self on behalf of the members of the CSI Diocese of Madras.

4. Dr (Ms.) Premila Chandrasekar Correspondent, Gnanodaya Teachers Training Institute, No.1/60, Polwells Road, St.Thomas Mount, Chennai 600 016.

5. Rev.R.John Giridharan 6. Rev.Dr.Jeans Jayachandran 7. Prof.P.Nelson Samuel 8. Dr.B.J.Dare 9. Dr.David Ebenezar 10. Miss Rose Viswasam 11. The Registrar of Societies South Chennai 600 016.

12. The Correspondent Gnanodaya Teachers Training Institute, No.1/60, Polwells Road, St.Thomas Mount, Chennai 600 016. ... Respondents (Name of R1 substituted, vide order of the Court, dated 15.03.2013 made in M.P.No.1/12 in Tr.C.M.P.No.836/11) Tr.C.M.P filed under Section 24 of the Code of Civil Procedure, seeking an order to transfer the suit in O.S.No.460 of 2010 on the file of the Additional District Munsif Court, Alandur, to be heard along with O.S.No.8559 of 1998 renumbered as Tr.C.S.No.966 of 2001 and C.S.No.553 of 1998, to be renumbered and tried by the City Civil Court at Chennai. For Petitioner : Mr.Su.Srinivasan For Respondents : Mr.B.Rabu Manohar for R1 Mr.S.Wilson Paul for R2 M/s. Paul & Paul for R12 No appearance for R3 to R11 COMMON

ORDER

The Contempt Petition has been filed by the petitioner herein, seeking an order to punish the respondents for committing contempt, on the ground that there was willful disobedience of the order, dated 23.12.2011 passed by this Court in M.P.No.1 of 2011 in Tr.C.M.P.No.836 of 2011 on the file of this Court.

2. It is seen that the Tr.C.M.P was filed by the petitioner herein, seeking an order to transfer the suit in O.S.No.460 of 2011 pending on the file of the Additional District Munsif Court, Alandur to be heard along with the suit in O.S.No.8559 of

1998, subsequently that was renumbered and pending on the file of the City Civil Court, Chennai.

3. In the said Tr.C.M.P, the petitioner herein filed M.P.No.1 of 2011, seeking interim stay of all further proceedings in the suit in O.S.No.460 of 2010 pending on the file of the District Munsif Court, Alandur. Notice was ordered for three weeks and interim stay was granted till then by this Court (K.Venkataraman,J).

4. It is seen that the scope of the contempt petition is directly related to the grounds raised in the Tr.C.M.P. As the scope of the contempt petition and the Tr.C.M.P.No.836 of 2011 are the same, to meet the ends of justice, both these petitions have been disposed of together on merits.

5. The petitioner in the contempt petition is the petitioner in the Tr.C.M.P and the defendant in the suit. As per the averments of the contempt petition, the respondents locked the suit premises from inside on 08.02.2013 illegally in an unauthorised manner. It is further stated that when the petitioner had gone to Sankara Nethralaya for treatment, the residential quarters was found locked on her return from the hospital, she noticed that the main gate of the entire premises was lock and key from outside. The petitioner was also prevented from entering into the first floor, apart from her residence was found locked. The petitioner has further stated that her belongings, such as jewels, documents and records were all inside the house. She was in occupation of the premises since 1982 onwards and she was told orally by the watchman that on the instructions of the second respondent, he prevented the petitioner from entering into the premises and as per her instructions, he had also locked the premises. Learned counsel appearing for the petitioner submitted that the aforesaid unauthorised acts of the respondents, would amount to contempt of Court, hence, the petition was filed.

6. Per contra, learned counsel appearing for the respondent 1 and 2 submitted that there was no contempt committed by the respondents and the learned counsel for the respondents further submitted that the petitioner, Mrs.Nirmala Devadoss was the Principal of the Teacher Training Institute run by the respondents, who retired in the year 2006 itself, on attaining her superannuation. As she was the Principal of the said Teacher Training Institute, the official

residential quarters had been allotted to her, however, in spite of her retirement, she had not vacated and handed over the premises, without having any right, hence, the second respondent filed the suit in O.S.No.460 of 2010 before the the Additional District Munsif Court, Alandur, seeking Judgment and Decree, directing the petitioner herein, who is the defendant in the suit to quit and deliver vacant possession of the suit schedule property and also for costs.

7. Learned counsel for the respondents further contended that, it being an official quarters, allotted for the Principal of the Teacher Training Institute, after the retirement on attaining superannuation, the petitioner herein has no right to be in possession and enjoyment of the property, the residential quarters of the Principal of the Teacher Training Institute. However, she had not vacated and hand over the official quarters, even after her retirement. Hence, in order to evict her under due process of law, the suit was filed by the second respondent before the District Munsif Court, Alandur. It is an admitted fact that no suit was filed by the petitioner herein, seeking any specific right over the property to be in possession of the same, however, she filed various Interlocutory Applications and Tr.C.M.P, against law and was protracting the legal proceeding, initiated by the respondents, seeking an order to evict her from the official quarters. Without having any legal right to continue her possession and enjoyment of the official quarters, after her retirement, the petitioner herein filed the said Tr.C.M.P and also filed subsequently, the contempt petition, based on a disputed question on fact.

8. In this contempt petition, this Court has to consider whether there was violation of any order passed by this Court by the respondents, as stated by the petitioner to take appropriate action for contempt or not.

9. It cannot be disputed that contempt proceeding is a weapon towards enforcing Rule of Law. Similar power has been exercised as contempt of legislature, by Parliament and the State Legislatures, so far as conducting the proceedings of the Legislature, without any interference, as the same is exercising legislative function by Parliament and the State Legislatures. Any party aggrieved by an Order or Judgment is entitled to prefer appeal or revision, but shall not violate or disobey the Order or Judgment, as it amounts to contempt of court.

10. In the instant case, the petitioner has alleged that the order, dated 23.12.2011 passed by this Court in Tr.C.M.P.No.836 of 2011 and M.P.No.1 of 2011 by this Court (K.Venkataraman, J), was violated by the respondents 1 and 2.

11. It is an admitted fact that the petitioner Mrs.Nirmala Devadoss was the Principal of Gnanodaya Teacher Training Institute, who retired from service in the year 2006, on attaining her superannuation. She had been allotted official quarters as Principal of the said Teacher Training Institute, however, she did not vacate and hand over the official quarters to the respondents. Hence, the suit in O.S.No.460 of 2011 was filed by the second respondent, seeking a Judgment and Decree in the nature of mandatory injunction, directing the petitioner herein, who is the defendant in the suit to quit and deliver vacant possession of the suit schedule property. The petitioner herein has not filed any such suit, seeking declaration of her right, if any and consequential injunction.

12. In view of the suit being filed, the petitioner has not chosen to vacate the official quarters but filed Tr.C.M.P.No.836 of 2011, seeking an order to transfer the suit in O.S.No.460 of 2010 on the file of the Additional District Munsif Court, Alandur, to be heard along with the suit in O.S.No.8559 of 1998, that was renumbered as Tr.C.S.No.966 of 2001 and the suit in C.S.No.553 of 1998, to be tried by the City Civil Court at Chennai.

13. It is seen from the typed set of papers filed by the petitioner herein that the petitioner has not filed a copy of the plaint relating to the suit in O.S.No.8559 of 1998, renumbered as Tr.C.S.No.966 of 2001 and also the copy of the plaint in C.S.No.553 of 1998 to be renumbered, for the reasons best known to the revision petitioner.

14. Mr.Su.Srinivasan, learned counsel appearing for the petitioner submits that in M.P.No.1 of 2011 in Tr.C.M.P.No.836 of 2011, this Court granted interim stay. In spite of the interim stay, the respondents have wilfully disobeyed the order, therefore, they should be punished for contempt.

15. On a perusal of the aforesaid order, dated 23.12.2011, it is clear that this Court (K.Venkataraman, J), on the date of first hearing of the Tr.C.M.P.No.836 of 2011,

ordered notice by three weeks from the date of the order, 23.12.2011 and interim stay was granted till then. The relief sought for in M.P.No.1 of 2011 is to stay all further proceedings in the suit in O.S.No.460 of 2010 pending on the file of the Additional District Munsif Court, Alandur, pending disposal of the Tr.C.M.P.No.836 of 2011.

16. Admittedly, interim stay was granted for three weeks only from 23.12.2011, which is not to proceed with the suit and admittedly the suit was not proceeded, in view of the interim stay granted, in the Tr.C.M.P. However, no injunction was in force in favour of the petitioner. Even status quo was not ordered to be maintained by this Court.

17. Mr.Su.Srinivasan, learned counsel appearing for the petitioner submitted that when the petitioner / defendant was away from the official quarters, allotted to her, as the Principal of the Training Institute, the same was locked by the respondents and the watchman prevented the petitioner from entering into the premises, saying that he was given such instruction by the second respondent. Admittedly, the petitioner has not filed any suit, seeking relief under Section 6 of Specific Relief Act for the reasons best known to her or, seeking restoration of her possession.

18. Learned counsel appearing for the respondents submitted that the petitioner was not evicted forcibly but on her own accord, she vacated the quarters after filing of the suit by the respondent, as she had no right to be in possession and enjoyment of the official quarters, after her retirement in the year 2006. The counsel for the respondents further submitted that without any subsisting right to be in possession and enjoyment of the official quarters, meant for the Principal, Gnanodaya Training Institute, the petitioner / defendant had refused to vacate and hand over the possession of the official quarters, hence, the second respondent filed the suit only to evict the petitioner only under due process of law and there was no necessity for the respondents to evict the petitioner forcibly against law. However, the petitioner herein is filing petitions one after another, without any subsisting right, which has to be construed only an abuse of process of Law and Court.

19. Learned counsel for the petitioner has not stated anything as to how the petitioner herein claims right to be in possession and enjoyment of the official quarters, that was allotted while she was working as Principal of the Training Institute, even after her retirement in the year 2006.

20. The respondent / plaintiff had filed the suit, seeking a Judgment and decree against the revision petitioner / defendant, to vacate and hand over the possession of the official quarters. However, without vacating the quarters, she filed the Tr.C.M.P. Learned counsel for the respondents submitted that in the Tr.C.M.P, there is no legal grounds raised by the revision petitioner to show that the petitioner is entitled to be in possession and enjoyment of the official quarters, even after her retirement in the year 2006. According to the respondents, the petitioner voluntarily had vacated the official quarters and it is false to state that the same was locked by the second respondent, through a watchman, while the petitioner was away from the quarters. It is well settled that based on a disputed question of fact, contempt petition cannot be filed.

21. Learned counsel appearing for the petitioner further submitted that as the petitioner has disputed that the second respondent is not the Correspondent of the Training Institute, after her retirement, she could have vacated the premises and handed over the key at least to the first respondent or before the Court below, since the suit was filed by the respondents pending with a request to hand over the same to the righteous person.

22. Without any subsisting right, the petitioner after her retirement in the year 2006 is protracting the matter against law for about 7 years, without handing over the possession of the official quarters, though she has no legal right, after her retirement to be in possession and enjoyment of the official quarters. In the aforesaid circumstances, filing Tr.C.M.P by the petitioner itself is an abuse of process.

23. It has been well settled by the Hon'ble Apex Court, that if it is established from the available records, that there is abuse of process of law and court by the person claiming the relief, this Court, by invoking Article 227 of the Constitution of India, can pass appropriate orders, to meet the ends of justice.

24. In Seeni alias Sundarammal v. Ramasamy Poosari, reported in 2000 (III) CTC74 this Court (A.RAMAN,J), has held that process of Court should not be misused or abused but shall be used bonafidely and properly. The Court should prevent improper use of litigative process. The question whether litigation is frivolous or abuse of process has to be judged from the angle of interest of justice and public policy. As the litigation had abused process of Court, it was held that High Court, while exercising its power of superintendence can step in, where there is blatant violation of process of Court.

25. In Maria Soosai and another v. Esakkiammal, reported in 1999-1-LW727 this Court (S.S.SUBRAMANI, J), relying on the decision rendered by the Hon'ble Apex Court in K.K.Modi v. K.N.Modi, (1982 (2) AIR SCW116, has held thus: ".Frivolous or vexatious proceedings may also amount to an abuse of the process of Court, especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of Courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. ".

26. In the light of the aforesaid decisions, it is crystal clear that without claiming any legal right, the revision petitioner filing the Tr.C.M.P itself is undoubtedly an abuse of process of Court and to meet the ends of justice, it is a fit case to invoke Article 227 of the Constitution of India, so as to dismiss the Tr.C.M.P, which is an abuse of process of Court and Law, along with the contempt petition, which is not legally sustainable.

27. In N.G.Dastane vs. Shrikant S.Shivde reported in 2001 (6) SCC135 the Hon'ble Supreme Court has held that under Section 35 (1) of Advocates Act, 1961, misconduct covers any misdemeanour or misdeed or misbehaviour which obstructs administration of justice such as seeking repeated adjournments on flimsy or frivolous grounds, so as to abuse the process of court is misconduct. Similarly, tactics of filibuster are also found professional misconduct.

28. It is seen from the averments made by the petitioner, which is crystal clear that there was no violation of any order of this Court by the respondents. Only interim stay of all further proceedings in the suit pending on the file of the Additional District Munsif Court, Alandur in O.S.No.460 of 2010 was granted at the admission stage and admittedly, the suit was not proceeded further. Without any subsisting right or sufficient reason or legal grounds, the petitioner herein filed the Tr.C.M.P and got interim stay only for three weeks, without notice being served on the respondents. Subsequently, the petitioner filed the contempt petition, though there was no injunction or any other order in favour of the petitioner and as against the respondents and therefore, it is also crystal clear that there was no contempt committed by the respondents.

29. While deciding M.P.No.1 of 2011, the Court should also consider that it is a fit case to invoke Article 227 of the Constitution of India. Even filing the Tr.C.M.P is an abuse of process of Court, as the same was filed without any subsisting right in favour of the revision petitioner, to be in possession and enjoyment of the official quarters. Without filing any suit, seeking declaration of title and consequential other relief and even without filing any petition under Section 6 of Specific Relief Act, seeking restoration of possession, the petitioner is filing various petitions and refuses to vacate and hand over the possession of the official quarters, without any legal right in the property, though she had retired in the year 2006.

30. The allegation of the petitioner, questioning the authority of the second respondent, as Correspondent, can neither be decided in the contempt petition nor in the Tr.C.M.P. Learned counsel for the respondent / plaintiff argued that only to protract the matter, such an allegation came to be raised by the petitioner herein. The petitioner admittedly a retired Principal, has no subsisting right to be in occupation of the official quarters, after attaining her superannuation in the year 2006. She has not even filed any suit, seeking declaration of her right if any or claiming any other right in the property. Having gone through the additional typed set 1 to 3 and the grounds raised and the arguments advanced by both the learned counsel, this Court is of the view that it is a clear case of abuse of process of Court and law, being committed by the petitioner, who was the then Principal of Gnanodaya Teacher Training Institute, having retired in the year 2006. Without

vacating and handing over the official quarters, meant for the Principal of the Training Institute, she has simply filed Tr.C.M.P, M.P and the contempt petition, which are only an abuse of process of law and court, that should not be encouraged by this Court.

31. As categorically ruled by the Hon'ble Apex Court in various decisions, to meet the ends of justice and to prevent abuse of process of the Court, this Court is of the firm view to dismiss both the Contempt Petition and also the Tr.C.M.P filed by the petitioner, as per Article 227 of the Constitution of India. S.TAMILVANAN, J tsvn 32. In the result, both the Contempt Petition in Cont.P.No.1580 of 2013 and Tr.C.M.P.No.836 of 2011 are dismissed. The Court below is directed to dispose the suit in O.S.No.460 of 2011, solely on merits, uninfluenced by the finding of this Court, if any in this order, within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are also dismissed. It is a fit case to impose heavy cost on the petitioner, however, considering the submission made by the counsel for the petitioner and also the fact that the petitioner is a retired Teacher, lenient view is taken by this Court, whereby cost is not imposed. 27-11-2013 Index : Yes Internet : Yes tsvn To The Additional District Munsif Court Alandur. Pre-Delivery common order in Cont.P.No.1580 of 2013 and Tr.C.M.P.No.836 of 2011

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