

N. Selvaraj Vs. E. Mohanraj

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Court : Chennai

Decided On : Jul-09-2008

Reported in : 2008CriLJ4032

Judge : P.R. Shivakumar, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 11

Appeal No. : C.P. No. 638 of 2007

Appellant : N. Selvaraj

Respondent : E. Mohanraj

Advocate for Def. : E.J. Ayyappan, Adv.

Advocate for Pet/Ap. : V. Bhiman, Adv.

Judgement :

ORDER

P.R. Shivakumar, J.

1. Heard both sides and perused the records.

2. This contempt petition has been filed under Section 11 of the [Contempt of Courts Act, 1971](#), praying for an order punishing the respondent herein for the alleged act of Contempt of Court.

3. Admittedly, the respondent herein was the landlord and the petitioner herein was the tenant in respect of building bearing Door No. 30, Jani Basha Street, Pudupakkam, Royapettah, Chennai-14. In fact, the petitioner became a tenant under the predecessor in title of the respondent herein. After having purchased the property from the erstwhile landlord, the respondent filed R.C.O.P. No. 1472/1996 on the file of the XI Judge, Small Causes Court for eviction on the ground of demolition and reconstruction and also for own occupation. The Rent Controller passed an order on 16-2-1997 allowing the eviction petition and directing the petitioner herein to vacate and hand over possession.

4. As against the said order, the petitioner had filed an appeal in R.C.A. No. 1092/1997. The said R.C.A. was dismissed by the Rent Control Appellate Authority (VII Judge, Small Causes Court) on 29-11-2005. Thereafter, the petitioner filed a civil revision petition before the High Court in C.R.P. (NPD). No. 182 of 2006. A compromise order came to be passed by this Court in the said C.R.P. on 10-10-2006. The relevant paragraphs of the order run as follows:

2. Today, a memorandum of compromise, signed by both parties and their respective counsel, has been filed. The said memorandum of compromise is recorded and the same shall form part of the order.

3. Learned Counsel for the petitioner/tenant prays one month's time to vacate the petition premises so that it can be demolished and reconstructed within a period of six months and 130 square feet as agreed to by the parties shall be given in possession of the petitioner/tenant to continue his business. Both the parties agree that the rent for the new premises would be fixed and accordingly, the rent for the new premises is fixed at Rs. 1,600/- per month from the date of occupation by the petitioner/tenant.

4. In view of the memorandum of compromise entered into between the parties, the petitioner/tenant is granted a month's time to vacate the petition premises and accordingly, both the civil revision petition and the C.M.P. are closed.

5. It is quite obvious from the said order that there was a compromise, based on which the said order came to be passed by this Court and one of the terms

incorporated in the compromise memo was that the respondent/landlord after getting possession, should demolish the then existing superstructure and put up a new superstructure within six months and a portion measuring 130 square feet should be let out to the petitioner herein. The monthly rent was also fixed at Rs. 1,600/- in the said order in accordance with the terms of compromise.

6. The present contempt petition has been filed complaining that the respondent/landlord, disregarding the abovesaid terms of compromise and the order of this Court, put up a construction in the entire area for his own use alone without providing any portion for the occupation of the petitioner/tenant for his business. The respondent has come forward with an explanation that before ever the construction was completed, the petitioner was asked by the respondent to come and identify the portion which had to be let out to him in terms of the order of this Court; that the petitioner who visited the newly constructed premises, declined the offer made by the respondent and proclaimed that he would seek remedy in the Court; that the offer made by the respondent, which was declined by the petitioner, was sufficient compliance of the order of this Court and that hence the respondent could not be held liable for any action in the contempt proceedings.

7. On the other hand, the learned Counsel for the petitioner would contend that in the compromise memorandum and the consequential order passed by this Court, there was no clause that the petitioner's consent must be obtained for the portion to be earmarked for the use of the petitioner; that in fact without demarcating any portion in the newly constructed building, which was under construction, the respondent wanted to give him a portion of 4 x 26 feet, which did not answer the space agreed to be allotted for the use of the petitioner and that hence the petitioner was very much justified in refusing to accept such an offer which was not in consonance with the order of this Court. Subsequently, it seems the respondent completed the construction without setting apart any portion in the newly constructed building for the use of the petitioner herein and the entire portion is now in the occupation of the respondent herein. This made the petitioner/the erstwhile tenant to file the present contempt petition seeking an order punishing the respondent for his act of contempt of Court.

8. During the pendency of this contempt petition, in order to ascertain the physical features of the newly constructed building, an Advocate Commissioner was appointed and the report submitted by the Advocate Commissioner is available on record. The same shows that the respondent has constructed the ground floor portion entirely for his occupation without setting apart any portion to be given to the petitioner.

9. Thereafter, the respondent herein gave an undertaking before this Court in this contempt petition itself on 4-9-2007 that he would demarcate a portion measuring 130 square feet in the ground floor of the newly constructed building to be allotted for the use of the petitioner for his business. He had also undertaken to submit a revised plan to the Corporation and make necessary modifications in the building in compliance with the order of this Court passed in C.R.P. (NPD). No. 182 of 2006. Now, the respondent herein has gone back from the said undertaking and come forward with a plea that he need not allot any portion to the use of the petitioner, as the very offer made to him and declined by the petitioner before the completion of the construction was enough to show that the order of this Court was complied with in its letter and spirit. It is the further contention of the respondent herein that as the construction has already completed, it has become quite impossible for him to demarcate any portion to be allotted to the petitioner herein.

10. This Court, is not in a position to accept the abovesaid explanation offered by the respondent. It seems the respondent has deliberately put up the construction without setting apart any portion in the newly constructed building to be allotted for the use of the petitioner in accordance with the order of this Court. From the submissions made by the respondent it is also quite obvious that the petitioner never intended to honour the commitment made by him before this Court in the C.R.P. as well as in the contempt petition at a later point of time. All along, the respondent has taken steps to see that the petitioner is denied of the fruits of the order passed by this Court based on the memorandum of compromise. The very attitude of the respondent is calculated to challenge the authority of the Court. Even during the enquiry in this petition when he was asked to demarcate at least 4 x 26 feet as it was offered, he came forward with an answer that he was not at all

willing to give any portion for the use of the petitioner herein. At the same time, at one point of time the respondent stated that the petitioner could occupy the entire ground floor portion provided he was prepared to pay a rent of Rs. 15,000/- per month. Admittedly, the total extent of the carpet area of the ground floor portion is only 381 square feet. For 130 square feet, the admitted rent as per the order of in the C.R.P. is only Rs. 1,600/-. The very fact that the respondent demanded Rs. 15,000/- as rent for 381 square feet which comes to more than three times the rent agreed, will show the disinclination of the respondent to honour the commitment made by him in this Court.

11-12. For all the reasons stated above, this Court entertains no hesitation in coming to the conclusion that the respondent has committed gross contempt of Court for which he deserves to be punished. The views of the respondent regarding the punishment to be imposed were also ascertained. The respondent simply stated that he need not be given any punishment.

13. Taking into account all these aspects, especially the fact that the respondent persistently refused to comply with the order and honour the commitment made by him before this Court, this Court feels that imposition of fine alone will not be sufficient in this case. Hence this Court deems it fit to award a sentence of simple imprisonment for three months with a fine of Rs. 2,000/-.

It is also made clear that in case of continuation of contempt, the petitioner can move a further petition after the period of sentence is over.