

Dilshad Vs. S. Munawar

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Court : Karnataka

Decided On : Feb-21-2012

Judge : K. Bhakthavatsala; H.S. Kempanna, JJ.

Acts : State Financial Corporations Act, - Sections 29, 31; Code of Civil Procedure (CPC) - Order 39, Rules 1, 2, Section 35A; [Contempt of Courts Act, 1971](#) - Section 15(1)(b)

Appeal No. : Criminal C.C.C. No. 11 of 2011

Appellant : Dilshad

Respondent : S. Munawar

Advocate for Pet/Ap. : G.S. Bajaj, Adv.

Judgement :

1. Question that arises for our consideration in this contempt petition is:

“Whether filing a suit with regard to the same subject matter, without mentioning the final order made in a Writ Petitioner is amounting to Contempt of Court?

2. It is stated, by Order dated 09.03.2009. Writ Petition No. 3302/2006 was allowed and the Order has become final, but when the accused filed a suit in O.S. No. 4/2011 on the file of Civil Judge, Chickballapur, he has not mentioned about the Order dated 09.03.2009 and therefore, the accused has committed offence of

contempt of Court.

3. In spite of service of notice on the accused, he has not entered appearance.

4. As per Order dated 09.03.2009 made in Writ Petition No.3302w/2006(GM-KSFC), filed by the present complainant and other against KSFC, the accused and two others, was allowed and the Sale deed dated 26.10.2005 relating to property bearing No. 347 situate at 8th Block, 'D' Division, Bagepalli, measuring 20' x 31' and consequential changes were set aside, with liberty to the KSFC to proceed against the properties of the Principal Borrower (i.e. M/s Arsia Poultry Farm) under Section 29 of SFC Act, if the same belongs to him, by invoking Section 31 of the SFC Act and release the entire amount deposited to the 3rd Respondent (the present accused) on surrendering the title deeds of the suit schedule properties to the KSFC and producing an acknowledgement to that effect. The Order dated 09.03.2009 made in Writ Petition No. 3302/2006 is at Annexure 'a'. It is pleaded that as per Annexure 'B', suit in O.S. No. 4/2011 was filed on 04.01.2011 on the file of Civil Judge (Sr.Dn) at Chickballapur, against the present complainant and one Smt. Usha, along with an application (Annexure'C') under Order XXXIX Rules 1 and 2 of CPC for ad-interim exparte T.I against the defendants, for declaration that he is the absolute owner in possession and enjoyment of the suit schedule property bearing No. 347 situated at 8th Block, 'D' Division, Bagepalli and for consequential relief of permanent injunction, restraining the defendant from interfering or dispossessing him from the plaint schedule property. The bone of contention of the complainant is that though the accused suffered an Order on 09.03.2009 in Writ Petition No. 3302/2006 and the Sale deed dated 26.10.2005 was set aside, he has not stated about the said Order in the suit. Therefore, it is contended that the accused has played fraud on the Court and abused judicial process and therefore, he has committed contempt of Court. As per Annexure 'D', the complainant has obtained consent of the Advocate General to initiate criminal proceeding against the accused under Section 15(1)(b) of the [Contempt of Courts Act, 1971](#).

5. On the sole ground that the accused has not mentioned about the Order dated 09.03.2009 made in Writ Petition No. 3302/2006 in the plaint (O.S. No. 4/2011),

cannot be a ground to contend that the accused has abused judicial process and played fraud on the Court. In this regard, it is useful to refer to Section 35-A of CPC. According to that if false or vexatious claim is made, after recording its reasons for holding such claim to be false or vexatious, the Court can make an Order for payment of cost by way of compensation. In our view, omission to mention the Order made in the writ petition, while filing a suit, would not constitute a contempt of Court. There is no good ground made out to initiate criminal contempt proceedings against the accused under the [Contempt of Courts Act, 1971](#). Hence, we answer the question formulated for our consideration, in the negative.

6. In the result, Complaint fails and the same is hereby rejected.

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