

Saraswathy Vs. Babu

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Court : Chennai

Decided On : Jan-07-2013

Judge : K.Chandru

Appellant : Saraswathy

Respondent : Babu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

07. 01.2013 CORAM THE HONOURABLE MR.JUSTICE K.CHANDRU Contempt Petition No.1807 of 2011 Saraswathy .. Petitioner Vs. Babu .. Respondent This contempt petition is preferred under Section 11 of the Contempt of Court Act, 1971 to punish the respondent for wantonly and repeatedly disobeying the order of this court passed in contempt petition No.958 of 2011 in CrI.M.P.No.1 of 2011 in CrI.M.P.No.1 of 2010 in CrI.R.C.No.1321 of 2010 dated 21.7.2011. For Petitioner : Mr.R.Maniyapparaj For Respondent : Mr.P.Rathinavel - - - - ORDER This contempt petition arose for the alleged disobedience of the order passed by this court in Contempt Petition No.958 of 2011 in CrI.M.P.No.1 of 2011 in CrI.M.P.No.1 of 2010 in CrI.R.C.No.1321 of 2010, dated 21.7.2011. 2.When the contempt petition came up on 25.11.2011, this court directed notice to the respondent. Subsequently, the respondent entered appearance and has filed a counter affidavit, dated 23.11.2012. The petitioner is married to the respondent and there has been a running battle between the petitioner and the respondent in several courts. The Contempt Petition No.958 of 2011 arose out of the criminal M.P.No.1

of 2011 in CrI.M.P.No.1 of 2010 in CrI.R.C.No.1321 of 2010. The petitioner preferred CrI.R.C.No.1321 of 2010 challenging the judgment of the V Additional Sessions Judge made in C.A.No.339 of 2008 insofar as the said judgment related to the findings rendered under the Prevention of Domestic Violence Act and confirming the order passed by the 13th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.2421 of 2008, dated 05.12.2008. The petitioner claiming to be the wife of the respondent filed a petition under Section 18 of the Prevention of Domestic Violence Act before the 13th Metropolitan Magistrate, Egmore and prohibiting the respondent from committing acts of domestic violence and also claiming relief under Section 19 prohibiting the respondent from disturbing the possession of the petitioner from the shared household. The learned Metropolitan Magistrate by an order dated 05.12.2008 in CrI.M.P.No.2421 of 2008 directed the respondent to give maintenance of Rs.2000/- to the petitioner and also the right to shelter in the shared household. 3.It is aggrieved by the said order, an appeal was filed by the respondent. The appeal was heard in Criminal Appeal No.339 of 2008 by the V Additional Sessions Judge. The appeal was partly allowed by a judgment dated 21.10.2010 and that the order directing the respondent not to commit domestic violence and also directing to reside in the house owned by the respondent's mother was set aside. It is as against the said order of the Sessions Judge, the petitioner preferred a Criminal revision in CrI.R.C.No.1321 of 2010. While ordering notice in the criminal revision to the respondent, this court on 23.12.2010 had granted an interim stay of the order of the Sessions Court. Subsequently, the respondent filed a vacate stay application in CrI.M.P.No.1 of 2011. The stay application as well as the the application for vacate stay were disposed of by a common order dated 09.03.2011. The learned Judge by an order dated 09.03.2011 had passed an order as found in paragraphs 8 and 9, which reads as follows : "8.The learned counsel for the respondent/husband of the revision petitioner would submit that the respondent has no objection for the revision petitioner coming and staying along with him in his house at No.80, Karpagambal Nagar, Nandivaram, Guduvancherry, Chennai. The respondent/husband of the revision petitioner has also appeared before this Court in person and stated that he has absolutely no objection for the revision petitioner coming and staying along with him in his residence taken on rent at

Guduvancherry in the above mentioned address. 9. In view of such submissions, it is made clear that there is no impediment for the revision petitioner to go and reside along with her husband in his residence at Guduvancherry in the above said address and in the event of residing in the house of the respondent/husband, neither the respondent/husband nor any of his relatives, shall cause any harassment and humiliation to the revision petitioner." 4. It was thereafter the contempt petition No.958 of 2011 was filed by the petitioner stating that the order has been disobeyed by the respondent. The contempt petition came to be disposed of by recording the statement made by the respondent, vide order dated 21.7.2011 and in paragraph 6 of the order, the court had observed as follows : "6. In view of the categorical submission made by the learned counsel for the respondent as well as the statement made by the respondent herein by appearing before this Court and stating that the respondent undertakes not to prevent the contempt petitioner from entering inside the premises at Door No.80, Karpagambal Nagar, Nandivaram, Guduvancherry, Chennai and the contempt petitioner also agreed to occupy and stay in the above said premises from 01.08.2011, the contempt petition is hereby closed, by recording the above said statements and submissions. It is open to the parties to expedite the other pending proceedings between them." During the pendency of the contempt petition, the criminal revision itself was heard and finally disposed of by an order dated 13.12.2011. This court held that the order passed by the Sessions Court does not call for any interference. 5. It is now brought to the notice of the court that as against the order passed in the criminal revision, the petitioner preferred a SLP before the Supreme Court in SLP (Criminal) No.2190 of 2012 and it is now pending before the Supreme Court. In view of the fact that the interim order passed by this court does not survive any more and the revision was decided against the petitioner and that she has taken the matter to the Supreme Court and the Supreme Court has not granted any interim order till date, it is not clear as to how the contempt petition will lie, that too arose out of the earlier contempt order passed by this court on 21.7.2011. 6. It must be noted that the interim order will only survive till the disposal of the main petition and not beyond that. Even in the criminal revision, the petitioner has not got any direction in her favour. Though it was contended that an undertaking given by the respondent has been disobeyed, it has to be seen

whether there has been any willful disobedience of the order passed by this court. It is the stand of the petitioner that when she went to the address in Door No.80, Karpagambal Nagar, Nandivaram, Guduvancherry, she found one Usha, Wife of D.Loganathan living in that place and she was not allowed to enter into the said premises. She has filed a case against the said Usha, for which a CSR receipt was given by the police. 7.In the affidavit filed in support of the contempt petition, she herself in paragraph 8 has stated as follows : "8.I further submit that except the vacant single room, nothing available in the above said room and my brother was purchased pillows, buckets and other house hold articles. After, showing that house, the respondent did not turned up and did not care of the day to day affairs of the life." 8.In response to this allegation, in the counter affidavit filed by the respondent, in paragraph 14(6), it was averred as follows : "6.Accordingly I have placed her at the said address. However, she had her resentment contrary to the High Court order by stating that the portion is a smaller one and needed a big house. She never considered my meager income which I earn as a Tourist Taxi Driver which is occasional and seasonal. This forced to me to look after an alternative house at the following address at No.51, Karpagambal Nagar, Nandhivaram, Guduvancherry. She hardly stayed there also." 9.In the light of the stand taken by the respondent and in view of the fact that the petitioner's basis for claiming the right to shared household has been negated by the Sessions Court and upheld by this court in the criminal revision case, this court do not think any contempt has been committed by the respondent. Hence the contempt petition will stand dismissed. No costs. 07.01.2013 Index : Yes Internet : Yes vvk K.CHANDRU, J.

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