

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH
AT GULBARGA

DATED THIS THE 15th DAY OF SEPTEMBER 2010

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE SUBHASH E.ADI

CCC NO.1310 OF 2008 (civil)

BETWEEN:

PROF.C.R.BOUDH
(CHATRAPPA S/O RAJAPPA BOUDH)
AGE: 61 YEARS,
OCC: ADVOCATE/JOURNALIST
R/O H.NO.11-862/2/E ASHOKNAGAR
GULBARGA - 585 103

... COMPLAINANT

(BY PROF.C.R.BOUDH, PARTY IN PERSON)

AND:

1. SRI.ADEAPPA
S/O SHIVLINGAPPA MOLKERI
AGE: 65 YEARS
OCC: AGRICULTURE
R/O HALLIKHED (B) TALUK
HUMNABAD, BIDAR DISTRICT

2. SRI.ARJUN BAILAFF
PROCESS BRANCH
DISTRICT COURT, BIDAR

(SRI.SACHIN MAHAJAN, ADV. FOR R1
SRI.AMEET KUMAR DESHPANDE, ADV. FOR R2)

...RESPONDENTS

... Accused.

corrected vide
chamber order
dt. 16/11/2012

This CCC is filed under Sections 11 and 12 of the Contempt of Court Act praying that contemnors-accused be dealt with in accordance with law in the light of S.C. recent rulings reported in AIR 2008 SCC 309.

This CCC coming on for orders today, **Mr.N.KUMAR, J.** made the following:

ORDER

This contempt petition is filed to deal with the accused in the light of the Supreme Court recent rulings reported in AIR 2008 SCC 309. The grievance of the complainant is that, he has obtained a decree against the respondents and to execute the said money decree, he has filed an Execution Petition No.11/2002 on the file of the Prl. Civil Judge (Jr. Dn.) at Humnabad. An order of attachment was issued by the Executing Court. Thereafter, the judgment debtor / respondent entered appearance before the Executing Court and filed a petition for advancement of the case from 3.11.2003. The said advancement petition reads as under which is marked as Annexure-A:

"Your Honour,

The Judgement debtor, submits as under:

1. That, the Respondent / J.Dr. appearing before this Hon'ble Court, and filing the Vakalat.

2. That, the above case is posted on 3.11.2003. The Hon'ble Court has issued the order of attachment, which is still un-executed.

3. That, the J.Dr. is ready to pay the sum of Rs.500/- out of decretal amount, and he will pay the balance amount on the next date. Therefore, the Hon'ble Court be pleased to permit the J.Dr. to deposit the said sum of Rs.500/- today, and the attachment warrant be kindly re-called, to meet the ends of justice.

Hence it is prayed that,

The Hon'ble Court be pleased to take up the case on Board, today, and suitable orders for re-calling the attachment orders be kindly passed to meet the ends of justice."

2. In terms of what is stated in the said petition, he has paid Rs.500/-. The balance amount is not paid. It is

in those circumstances, this petition is filed complaining that there is disobedience of an undertaking given by the judgment debtor before the Executing Court. According to the complainant, it amounts to contempt of Court.

3. In support of his contention, the complainant relies on a judgment of the Apex Court in the case of 'M/s. MARUTI UDYOG LTD. v. MAHINDER C. MEHTA & ORS.' reported in AIR 2008 SC 309. In the aforesaid judgment, the Hon'ble Supreme Court has held as under:

"Undertakings given before Supreme Court - Breach of - Contemnors did not furnish bank guarantee before arbitrator despite undertaking given before Supreme Court - Not only, they went back from said undertaking they also sold away only property which was in their possession - Contemnors even did not disclose that said property was an encumbered one - Thus contemnors insisted Court and committed gross contempt of Supreme Court."

He also relied on a judgment of the Apex Court in the case of 'DHANANJAY SHARMA v. STATE OF HARYANA AND OTHERS' reported in AIR 1995 SC 1795.

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That was a case of criminal contempt and the Apex Court held as under:

“Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a

blow at the Rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put as stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statement and fabricating false evidence in a court of law.”

4. Both the judgments relied on are not applicable to the facts of the case. This is a case where the complainant has obtained a money decree. Law provides for recovering the money decree under the decree by invoking the provisions contained under Order XXI of the Code of Civil Procedure. Infact, the complainant has filed an execution proceeding to get an order of attachment. It is in those proceedings that the judgment debtor appeared and filed the application for advancement, wherein he agreed to pay Rs.500/- and pay the balance amount. This is not a case of the judgment debtor making any false statement. This is not a case of judgment debtor obstructing the Court of justice. All

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that the judgment debtor has done, is a request to the Executing Court to withdraw the attachment order passed, so that he would pay the amount. If he has not paid the amount, the execution proceeds and the judgment debtor is at liberty to execute the decree. This is not a case where the judgment debtor is trying to challenge or impeach the majesty of law.

5. Under those circumstances, when the petitioner has already invoked the provisions of Code of Civil Procedure to recover the money, it is not permissible for him to invoke the contempt proceedings as has been done. Therefore, there is no merit in this petition. Accordingly, this petition is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE