

ORDER BELOW EXHIBIT- 87 IN R.D.No. 25 of 2010

Present application is filed by the Judgment-debtors to grant leave to them to initiate Contempt of Court Proceeding against the decree-holder and to decide the present application before the decision of the application (Exh.75).

2. It is asserted that the present R.D. has been filed by the decree-holder to execute the decree passed in R.C.S. No.533/1991. Judgment debtors have preferred Regular Civil Appeal No.5/2011 (new No.120/14) against the said decree before the District Court. 28.2.2017 is the next date of hearing of the said appeal.

3. It is further asserted that the handing over of the possession of the suit property was stayed till further order by the appellate court by an order dated 11.3.2011.

4. It is further asserted that the judgment debtors (appellants) in R.C.A.No.120/14 have filed applications (Exhibits- 22 & 24) dated 13.1.2012 after the death of the decree-holder (Respondent) to set aside the abatement and to bring his legal representatives on record. It is further asserted that the stay order dated 11.3.2011 passed by the District Court is still in force. Decree-holder is aware of the said order and filed an application (Exh.75) to issue possession warrant in the present R.D. Decree-holder is pressing again and again for passing order on application (Exh.75). It is nothing but the contempt of the order passed by the District Court. Hence, the application.

5. Decree-holder has filed the say (Exh.88) and opposed

the application contending that the application is not maintainable. There was no cause to file the application. It is not mentioned in the application under which provision of law, it was filed. Wrong submissions have been made in the application. Decree-holder has not committed the contempt of court. According to the decree-holder, application (Exh.75) was heard by the court and the court has reserved the order thereon. Present application is filed with a view to harass the decree-holder and to prolong the hearing of the present R.D. R.C.A.No.120/2014 has been abated and the order passed therein is not having any effect. Stay order is vacated due to abatement of the appeal. Hence, there is no impediment or hurdle to pass the order in the present R.D. Judgment debtors have filed another application (Exh.59) in R.C.A.No.120/2014 for stay. Decree-holder has filed the say (Exh.61). It goes to show that the first order of the stay is not in existence. Application is filed without any reason. Hence, the application be rejected.

6. Perused the record and proceeding. Heard both the sides. Only point which arise for consideration is : Whether Judgment debtors have made out a case to allow the application ?

7. Main contention of the judgment debtors is that the act of the decree-holder of pressing application (Exh.75) is contemptuous. Facts stated in the application are not disputed. Parties differ as to whether R.C.A.No.120/2014 (old No.5/11) is abated or not ? Be that as it may, it is not necessary to decide as to whether R.C.A.No. 120/2014 is abated or not because the present application is not maintainable.

8. It has been rightly pointed out by the decree-holder that the judgment debtors have not mentioned the provision of law under which present application has been filed by them. During the course of hearing of the present application, learned advocate representing the judgment debtors was not in a position to answer the query as to whether the leave of the court is necessary to initiate the contempt of court proceeding. He has simply stated that the court is having ample power under Section 151 of the Code of Civil Procedure (for short, the Code). Section 151 has nothing to do with the application like the present one. Leave of the court was solicited and the applicants (Judgment debtors) must show the provision under which section of which Act, they are soliciting the leave. There are many provisions in the Code(s) and the Act(s) under which a party has to solicit the leave of the court. In this connection, reference can be usefully made to Article-136 of the Constitution of India, Section 378(4) of the Code of Criminal Procedure, 1973 and Section 91(1)(b) of the Code. List is illustrative and not exhaustive. Inability of the learned advocate representing the judgment debtors shows that there is no provision which says that it is necessary to solicit the leave of the court before filing an application for contempt of the court. Thus, the application was filed unnecessarily.

9. Present application can be considered from another angle. It is asserted by the judgment debtors that the conduct of the decree-holder is such which invites an action for the contempt of court. It is pertinent to note that the stay order was passed by the District Court and thus, the contempt, if any, is of the District

Court and not of this Court. Action has to be taken by the Court whose contempt has been committed. Reference in this connection can be made to a recent judgment of the Supreme Court delivered in the case of **Vitusah Oberoi Vs. The Court of its own Motion, in Criminal Appeal No.1299 of 2007, decided on 2.1.2017.** In the said case, the High Court of Delhi has taken suo-moto action against the appellant for the contempt of the Supreme Court and ultimately convicted him. The Supreme Court has held that the Supreme Court as well as the High Courts are the Court(s) of record and held as under while setting aside the order passed by the Delhi High Court.

11. The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court's power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the

Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside.

10. The proposition which emerges from the above is that a subordinate court cannot take action for the contempt of its superior court. It is true that neither the District Court nor this Court is a Court of a record and hence not having authority to punish the contemnor, but, the principle laid down in the said case is squarely applicable to the present case for the reason that the court has to make a reference to the High Court. A party may request the court to make such reference. The reference has to be made by the court whose contempt has been committed and not by its subordinate court. Considered thus, applicants (Judgment debtors) ought to have filed the present application before the District Court in R.C.A.No. 120/2014. Even under Order XXXIX Rule 2-A of the Code, the court which has passed the order has the authority to take action against a person who has breached its order. It also does not provide for an action by the subordinate court for the breach of the order passed by a superior court.

11. Lastly, it may be pointed out that a contempt proceeding cannot be initiated against a party simply because he is pressing for passing the order on an application. A party is having every right to press the application and to get it decided by the

Court. It is for the Court to adjudicate whether it can proceed or not. Insistence of a party to pass the order on application cannot be construed or interpreted to mean that he has committed the contempt of the court.

12. In the light of the discussion made in the foregoing paragraphs, present application is not maintainable. Likewise, applicants (Judgment debtors) on facts of the present case have miserably failed to make out a case to allow the application. In the circumstances, it was absolutely not necessary to file the present application before this court. By filing the present application, judgment debtors have wasted the time of the court. Hence, the costs has to be imposed upon them. In view of the above, application stands rejected with a direction to the judgment debtors to deposit Rs.2,500/- in the Legal Aid Account.

(S.K. Khan)

Jt.Civil Judge (J.D.),
Barshi.

Date : 27.02.2017.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word to word as per original order.

Name of Stenographer	:	Bhaskar G.B.
Court Name	:	S.K.Khan, Jt.C.J.J.D.& J.M.F.C. Barshi.
Date	:	27.02.2017
Judgment signed by the presiding officer on	:	27.02.2017
Judgment uploaded on	:	28.02.2017