

**A.F.R.**

**Court No. - 19**

**Case :-** CONTEMPT No. - 106 of 2021

**Applicant :-** Mohammad Asif Naseer

**Opposite Party :-** West Watch Co. Thru. Prop. Mohammad Ishaq Khan & Anr.

**Counsel for Applicant :-** Anurag Srivastava, Kabir Ahmad Khan

**Hon'ble Abdul Moin, J.**

1. Heard Sri Navneet Kumar Awasthi holding brief of Sri Anurag Srivastava, learned counsel for the applicant.
2. Present contempt petition has been filed alleging non-compliance of the judgment dated 05.02.2016 passed in Rent Appeal No.45 of 2011 in re: West Watch Company vs. Mohd. Asif Naseer, a copy of which has been filed as Annexure-3 to the contempt petition.
3. Learned counsel for the applicant contends that the applicant who is a landlord had filed a suit before the Judge, Small Causes Court which was numbered as P.A. Case No.10 of 2008 in re: Mohd. Asif Naseer vs. West Watch Company, against the tenant West Watch Company. The said case was decided vide order dated 04.10.2011, a copy of which is Annexure-2 to the contempt petition, whereby the tenant was directed to vacate the premises within thirty days and certain other orders were also passed. The tenant being aggrieved with the said judgment filed Rent Appeal No.45 of 2011 in re: West Watch Company vs. Mohd. Asif Naseer, before the Additional

District Judge, Lucknow, which was dismissed vide judgment and order dated 05.02.2016, a copy of which is Annexure-3 to the contempt petition.

4. The tenant still being aggrieved filed Writ Petition No.3457 (R/C) of 2016 in re: West Watch Company vs. Addl. District Judge before this Court, which was allowed vide judgment and order dated 04.03.2016, a copy of which is Annexure-4 to the contempt petition, and the orders of the Prescribed Authority dated 04.10.2011 and Additional District Judge dated 05.02.2016 were set-aside.

5. The applicant/landlord being aggrieved with the order dated 04.03.2016 filed a S.L.P. which was registered as Civil Appeal No.2375 of 2020 and the Apex Court vide judgment and order dated 24.04.2020 allowed the civil appeal and set-aside the judgment of the writ Court and affirmed the order passed by the Prescribed Authority as affirmed by the appellate authority. However, the tenant was given six months' time to vacate the premises.

6. When the premises were not vacated despite the order passed by the Apex Court as well as the Prescribed Authority, present petition has been filed under Section 10 of the Contempt of Courts Act, 1971 (For short, 'Act of 1971') alleging contempt of the judgment and order dated 05.02.2016 passed in Rent Appeal No.45 of 2011.

7. Learned counsel for the applicant contends that he has already filed an Execution Case No.62 of 2020 against the tenant for execution of the order dated 04.10.2011 passed by the Prescribed Authority. He also contends that

despite having filed the execution case, present contempt petition would also be maintainable under Section 10 of the Act of 1971.

8. Having heard learned counsel for the applicant and having perused the records, what is apparent is that the present contempt petition filed under Section 10 of the Act of 1971 despite admittedly an execution case having been filed by the applicant would not be maintainable as per law laid down by the Apex Court in the case of **E. Bapanaiah vs. K.S. Raju** reported in **(2015) 1 SCC 451** wherein it has been held as under:-

*"25. Powers of the High Courts to punish for contempt including the powers to punish for contempt of itself flow from Article 215 of the Constitution of India. Section 10 of the Contempt of Courts Act, 1971 empowers the High Courts to punish contempts of its subordinate courts which reads as under: -*

*"10. Power of High Court to punish contempts of subordinate courts. – Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:*

*Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).*

*27. The present case relates to a civil contempt wherein an undertaking given to Company Law Board is breached. Normally, the general provisions made under the Contempt of Courts Act are not invoked by the High Courts for forcing a party to obey orders passed by its subordinate courts for the simple reason that there are provisions contained in Code of Civil Procedure, 1908 to get executed its orders and decrees. It is settled principle of law that where there are special law and general law, the provisions of special law would prevail over general law. As such, in normal circumstances a decree holder cannot take recourse of Contempt of Courts Act else it is sure to throw open a floodgate of litigation under contempt*

*jurisdiction. It is not the object of the Contempt of Courts Act to make decree holders rush to the High Courts simply for the reason that the decree passed by the subordinate court is not obeyed."*

(Emphasis by this Court)

9. From perusal of the aforesaid judgment in the case of **K.S. Raju (supra)**, it is apparent that the power exercised by the High Court under Section 10 of the Act of 1971 can be exercised where there is no provision under the Criminal Procedure Code or the Code of Civil Procedure for execution of the orders or for compliance of such orders meaning thereby that where there is an effective remedy for enforcing the order then the High Court would be justified in declining to entertain the contempt petition.

10. In the instant case, it is admitted by learned counsel for the applicant that an execution case has already been filed by him. The Apex Court in the case of **K.S. Raju (supra)** has already held that a civil contempt can be filed under the provisions of Section 10 of the Act of 1971 where there is no remedy for having an order executed. As in the instant case it is admitted that an execution case has already been filed and the applicant has already got a remedy of having the order passed by the Prescribed Authority executed consequently the present contempt petition would not be maintainable.

11. Taking into consideration the aforesaid facts and circumstances of the case, present contempt petition is **dismissed**.

**Order Date :-** 18.1.2021

A. Katiyar