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18/1/09, 22/1/09, 22/1/09, 25/1/09, 25/1/09

IN THE SUPREME COURT OF BANGLADESH.

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

SUO MOTU RULE NO. 07 OF 2008.

(Arising Out of Writ Petition No. 7260 of 2008)

Mr. Fida IM. Kamal with

Mr. Iqbal Kabir, Advocate.

.....For the Petitioner.

Mr. Rokan Uddin Mahmood with

Mr. Abdul Kalam Azad, Advocate.

.....For the Contemnor-respondents No. 17.

Heard and Judgment On 14.01.2009.

Present

Mr. Justice Md. Imman Ali,

And

Mr. Justice Md. Ashfaque Islam,

Md. Imman Ali, J:

By order of this Court dated 18.12.2008 a Suo Motu Rule was issued calling upon the respondents No. 17. Mohammad Jane Alam to show cause as to why contempt proceedings shall not be drawn against him for violating the order of injunction passed by this Court on 30.11.2008, a copy of which was supplied to him.

The Contemnor is present before this Court in person and has filed an affidavit. In his affidavit the contemnor has totally denied any violation of any order of this Court and has prayed for being discharged from the Suo Motu contempt Rule. In reply, the petitioner has filed an affidavit stating that the respondent No. 17 has violated the order of injunction passed by this Court, which fact is apparent from the report of respondent

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No. 5 who had been directed by this Court to inspect the working condition of the Shipbreaking process on the vessel M.T. Enterprise.

Mr. Rokan Uddin Mahmood, learned advocate appearing on behalf of the contemnor submits that subsequent to the issuance of the Rule for contempt this Court directed the Marshal of this Court to inspect the ship and to report as to whether any work is continuing on that vessel. By his report dated 04.01.2009, the Marshal stated that he inspected the vessel on 25.12.2008 and found that no work was continuing on that ship at that time. The Registrar of the Supreme Court of Bangladesh, being the Marshal of the Court, further reported that he spoke to the guard and also one Mahbubur Rahman, a contractor of the shipbreaking yard, who told him that they had stopped work of dismantling on the said vessel from 30/34 days back due to the order of injunction from Hon'ble High Court Bench. Mr. Mahmood submits that, therefore, the report of the Marshal of the Court directly contradicts the report of respondent No. 5, who alleged to have found workers continuing the shipbreaking work on the vessel. He submits that the two reports being contradictory, the explanation from the contemnor that he did not violate any order of this Court should be accepted.

Mr. Fida M. Kamal, the learned advocate appearing on behalf of the petitioner submits that after the order of injunction was passed by this Court, the contemnor moved the Appellate Division against that order and getting no favorable order from that Court still continued with the dismantling of the ship, which is evident from the report of respondent No. 5, who had been directed by this Court to observe and report on the working condition of the shipbreaking on the said vessel. He points out that the Marshal of this Court was required to find out the present position and he reported accordingly. His observation on what might have happened earlier was not asked for and is superfluous. Moreover, the statement as recorded by the Registrar ( Marshal) shows that the works stopped on or about 25.11.2008, which is before the order of injunction was passed by this Court and as such, he submits, the statement as reported by the Marshal is not reliable. On the other hand he points out that the statement of respondent No. 5 is supported by the photographs taken at the time of the inspection of the concerned vessel.

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He submits that the contemnor is, therefore guilty of contempt of Court, having violated the order of injunction passed by this Court.

We have considered the submissions of the learned advocates, perused the reports supplied by respondent No. 5/ and the Marshal of this Court along with the annexures.

The Marshal of this Court was directed to this effect, 'The Marshal of this Court is hereby directed to personally inspect the vessel concerned to see whether any work is continuing on the vessel at present.' It appears that the Marshal reported on this point by saying, 'That, I have found that no ship breaking work or process of breaking is continuing on the vessel' M.T. Enterprise' at present'. Thereafter, the Marshal went on to report that he talked to a number of persons found on the location who told him that they had stopped work of dismantling the said vessel from 30/40 days back due to the order of injunction from the Hon'ble High Court Bench.

This information from the Registrar was uncalled for and cannot be used as evidence in any sense. At best it is hearsay, and it is also vague and indicates the stoppage of work to be on or about 25.11.2008, which is 5(five) days before the order of injunction was passed. On the other hand the report of respondent No. 5 indicates that on the date of their inspection, on 04.12.2008, they found that workers were continuing dismantling the ship for which he suggests that legal action should be taken. It may be pointed out that the inspection was carried out by one Dr. Md. Sohrab Ali, Deputy Director (Enforcement), Dhaka Division, Dhaka and such inspection took place in the presence of the yard owner Haji Md. Hossain, Haji Jashim Uddin and Nur Uddin Jahangir Chairman, Sonachhori Union Parishad. The report also annexed a number of photographs taken at the time of the inspection. It appears to us from observing the photographs that the work of cutting the vessel with oxyacetaline torches was continuing. This was seen from photographs No. 4, 6 and 7.

Although, the contemnor states that having been aware of the order of injunction dated 30.11.2008, he stopped all cutting work connected with M.T. Enterprise on the

same day, he has not denied the finding of the report of respondent No. 5/ to the effect

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that work was continuing, nor has he denied or questioned the veracity of the photographs which were attached to that report.

In view of the above, we are satisfied that the contemnor has indeed continued work of dismantling the ship up to 04.12.2008 in utter violation of the order of injunction passed by this Court on 30.11.2008.

Accordingly, the contemnor is found guilty of contempt of Court. He is hereby sentenced to pay fine of Tk. 1,00,000/- (one lac), within 2(two) weeks, in default to suffer simple imprisonment for 7(seven) days.

The district Collector, Chittagong is hereby directed to take steps for realisation of the fine within 2(two) weeks from receipt of a copy of this order.

The Rule is made absolute, without any order as to costs.

A copy of the judgment along with a warrant to levy a fine by attachment and sale be sent to the District Collector for realisation of the fine in accordance with law with an intimation of this Court.

Md. Imman Ali

Md. Ashfaul Islam, J:

I agree.

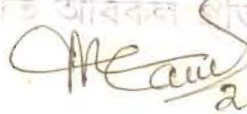
Md. Ashfaul Islam.

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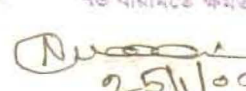
Read by: 

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প্রত্যয়িত অবিকল তিলিপি

 25.1.09

সহকারী রেজিস্ট্রার  
বাংলাদেশ মারitime কোর্ট, হাইকোর্ট বিজয়  
(১৮৭২ ইং সনের ১নং আইনের)  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

 25/1/09 