

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 08.07.2024

Pronounced on:29.07.2024

**CPLPA No.4/2006
IA Nos.15/2007, 6/2008,
14/2006, 8/2006, 2/2018
CM Nos.36/2021, 4883/2019
c/w
CPLPA No.7/2019
[CCP(D) 7/2019]
CM Nos.8250/2020,
6043/2021, 5837/2022
CM (2289/2019[1/2019])**

**MCC No.147/2019
[CM 263/2019] in CPLPA
21/2018 (in LPAOW
No.9900007/1999)**

M/s. R.B. Jodha Mal Bishan Lal & others Appellants/Petitioner(s)

Through: Mr. Z.A. Shah, Sr. Advocate, with Mr.
J.I. Balwan, Advocate.

versus

Madho Lal and others Respondent(s)

Through: Mr. R.S. Thakur, Sr. Advocate, with Mr.
Vasharan Thakur, Advocate.

**Coram Hon'ble Mr. Justice Tashi Rabstan, Chief Justice (Acting)
 Hon'ble Mr. Justice Puneet Gupta, Judge**

ORDER

Tashi Rabstan – CJ(A)

MCC No.147/2019 [CM 263/2019]

1. The facts-in-brief are that certain bills were raised against the petitioners/non-applicants (ex-lessees) in terms of Government Order No.61-FST of 1982 dated 30.04.1982 for HB dry trees. The petitioners/non-applicants challenged the said bills before the High Court in OWP No.664/1984. The

learned Single Judge vide interim order dated 15.09.1984 directed the petitioners/non-applicants herein to deposit the disputed amount in the form of FDRs. The petitioners/non-applicants, accordingly, deposited the disputed amount by way of 29 Fixed Deposit Receipts. In addition to the above, the petitioners/non-applicants also deposited an amount of Rs.50.00 lacs in the shape of three FDRs in the State Bank of India, Purani Mandi and ADB, Jammu. The said writ petition came to be dismissed on 02.02.1999. The petitioners/non-applicants filed LPA No.637-A/1999 against the order of learned Single Bench. The said LPA was decided on 29.12.2015 quashing Government Order No.61-FST of 1982 dated 30.04.1982 with a direction to the writ respondents to consider all aspects with regard to grant of rebate or not to the HB dry trees which were allowed to be removed by the non-applicants by way of supplementary lease agreement without any rebate. The respondent-department, pursuant to the above judgment, considered the matter afresh with regard to the issue of rebate on HB dry trees, but rejected the claim of petitioners/non-applicants vide Order No.326 of 2017 dated 04.08.2017.

2. Thereafter, the petitioners/non-applicants filed APLPA No.39/2017 in LPAOW No.9900007/1999 seeking a direction to the Registrar Judicial to release the Fixed Deposit Receipts in favour of writ petitioners 1 to 4 which were in custody of Conservator of Forests, Chenab Circle, Jammu. The petitioners/non-applicants also made a statement that they were ready to pay a sum of Rs.50.00 lacs by way of Fixed Deposit Receipts. The Court vide order dated 08.05.2018, while accepting the statement of petitioners/non-applicants, directed that subject to petitioners' furnishing the amount of Rs.50.00 lacs before the Registrar Judicial which had been deposited, the Fixed Deposit Receipts would be released in favour of the petitioners.

3. The writ respondents filed Special Leave Petition (Civil), Diary No.33024/2018 before the Apex Court, however, the same too came to be dismissed vide order dated 26.10.2018.

4. Since the writ respondents failed to release the Fixed Deposit Receipts in favour of petitioners/non-applicants, the petitioners/non-applicants filed contempt petition being CPLPA 21/2018 in LPAOW No.9900007/1999.

5. In the said contempt petition, the writ respondents made a statement that the amount deposited by the petitioners would not meet their liability in case the same is credited as it far exceeds the liability of the petitioners which has been calculated upto September 2018 as Rs.2,89,19,290/-. In case all the FDRs are released, it will be difficult for the State to realize the amount subsequently and even by crediting Rs.50.00 lacs deposited by the petitioners in terms of order dated 08.05.2018 passed in APLPA No.39/2017 in LPAOW No.9900007/1999, the liability shall not be met.

6. In the said contempt petition, a statement was made by the learned senior counsel on behalf of petitioners that in order to prevent any further loss to the petitioners, they were willing to accept withholding of the amount of Rs.2.90 crores from the FDRs deposited in this Court without prejudice to the rights of the parties, pending settlement of the accounts as directed by the Court in the previous orders. Accordingly, the Court vide order dated 29.01.2019 disposed of the contempt petition in the following terms:

- “I) Respondents shall ensure that the 27 FDRs physically held by the respondents are handed over to the Registrar Judicial of this Court within a period of ten days from today.
- II) The Registrar Judicial shall ensure that the Fixed Deposit Receipts which have been drawn by the Central Bank of India, Pathankot; the Central Bank of India, Jammu; the

State Bank of India, Purani Mandi, Jammu and the ADB Jammu, held by the respondent and in the Registry of this Court are discharged and the amount with full accruals thereon, released in favour of the person/persons concerned who has/have deposited the FDRs.

- III) So far as the FDRs which are drawn on the State Bank of India, Purani Mandi, Jammu are concerned, the same shall be discharged and a consolidated fixed deposit receipt to the tune of Rs.2.90 Crores would be prepared by the Manager of the Bank in favour of the Registrar Judicial of this Court, initially for a period of six months to be kept renewed till further orders of this Court.

Such FDR would be thereafter handed over to the possession and custody of the Registrar Judicial of this Court.

- IV) If required, the Registrar Judicial/Deputy Registrar of this Court in whose favour the aforesaid FDRs are pledged, shall ensure that all formalities for the discharge thereof, are completed to the satisfaction of the bank authorities.
- V) The respondents shall ensure that the determination of the amounts as directed by the Division Bench of this Court by order dated 07th November, 2003, is completed by the Forest Department under the supervision of Principal, Chief Conservator of Forests, within a period of six weeks from today.
- VI) As also already directed by this Court, during the aforesaid exercise, the participation of at least one representative of each lessee shall be permitted so as to resolve the controversy once for all.
- VII) In case, any amount is found by the respondents as due and payable by the petitioners, the petitioners shall ensure that the same are paid within a period of three months of the determination. In case petitioners are entitled to any refund of amount, the same shall be refunded by the respondents likewise.
- VIII) It shall be open for the parties to seek recovery/refund of the amounts from the amount that has been maintained in the FDR created under the present orders.”

7. Now the respondents-applicants have filed the instant application being MCC No.147/2019 [CM 263/2019] in CPLPA 21/2018 seeking modification/clarification of order dated 29.01.2019 on the ground that the original bill pertaining to 27 FDRs, wherein differential amount of royalty has

been kept pledged, was traced very recently with the help of some old retired clerks, and, as per this, the total outstanding against the petitioners/non-applicants as on 01.03.2019 was Rs.13.03 crore, instead of Rs.2,89,19,290/- as claimed by the respondents themselves in the statement of facts filed in CPLPA No.21/2018.

8. Heard learned counsel appearing for the respective parties, perused the file and considered their rival contentions.

9. Admittedly, in contempt petition No.21/2018, which came to be disposed of on 29.01.2019, a statement was made on behalf of respondent-department that after calculation the liability of the petitioners-non-applicants upto September, 2018 was at Rs.2,89,19,290/-. Only after making this statement on behalf of respondent-department, a statement came to be made by the petitioners/non-applicants also that they were willing to accept withholding of the amount of Rs.2.90 crores from the FDRs deposited in this Court without prejudice to the rights of the parties, pending settlement of the accounts as directed by the Court in the previous orders. The said statement of petitioners/non-applicants was not objected to by the respondent-department. Otherwise too, the said statement of petitioners/non-applicants was in consonance with the stand taken by the respondent-department as regards the liability of petitioners at Rs.2,89,19,290/- upto September, 2018. Only after the statements made by the respective parties in the aforesaid terms that the contempt petition came to be disposed of on 29.01.2019. In the said contempt petition it was specifically directed that the respondents would ensure that the determination of the amounts as directed by the Division Bench of this Court by order dated 07th November, 2003 is completed by the Forest Department

under the supervision of Principal, Chief Conservator of Forests within a period of six weeks.

10. After the disposal of said contempt petition on 29.01.2019, the respondents/applicants have filed the present application on 26.03.2019 seeking modification/clarification of order dated 29.01.2019 on the ground that the original bill pertaining to 27 FDRs, wherein differential amount of royalty has been kept pledged, was traced very recently and, as per this, the total outstanding against the petitioners/non-applicants as on 01.03.2019 was Rs.13.03 crore, instead of Rs.2,89,19,290/-.

11. The directions passed in the contempt petition on 29.01.2019 are very clear and need no clarification. Basically, the present application is for modification of order dated 29.01.2019 passed in CPLPA No.21/2018. In paragraph-8 of the application also the respondents/applicants have prayed for modification of order dated 29.01.2019.

12. It is to be seen here that by filing the present application the respondents/applicants wanted this Court to travel beyond the original judgment delivered in the appeal, which has already attained finality after the Special Leave Petition filed by the respondents/applicants against the judgment of the Division Bench came to be dismissed by the Apex Court. It is a well-settled position of law that the contempt court cannot go beyond the scope of contempt by making any addition or alteration to the original direction passed in the writ petition or in the appeal, whereas, in the present case, the contempt petition too came to be disposed of 29.01.2019, then how in the present application this Court can examine the questions which have not been dealt

with or decided in the judgment of which violation was alleged by the petitioners/non-applicants.

13. The Apex Court in Jaipur Vidyut Vitran Nigam Ltd. vs Adani Power Rajasthan Ltd., Miscellaneous Application Diary No.21994/2022 in Civil Appeal Nos.8625-8626 of 2019, decided on 18.03.2024, held that this Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this application does not fit into that description.

14. Otherwise too, the controversy arose when the respondents raised certain bills against the petitioners/non-applicants (ex-lessees) in terms of Government Order No.61-FST of 1982 dated 30.04.1982 for HB dry trees, which were challenged by the petitioners/non-applicants in OWP No.664/1984. Once the original bills were subject matter of controversy in OWP No.664/1984 which came to be filed by the petitioners in the Court in the year 1984, then how the same got missing and traced only in the year 2019 when the controversy has already come to an end.

15. Viewed thus, we do not find any merit in the application and the same is, accordingly, dismissed.

List the main matter on 28th August, 2024.

Jammu
29.07.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Chief Justice (Acting)

Whether the order is reportable ?	Yes/No
Whether the order is speaking ?	Yes/No