IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.59 OF 2016
IN
APPEAL NO.249 OF 2016
IN
ARBITRATION PETITION NO.1873 OF 2015

Tata Capital Financial Services Limited. .. Petitioner
Vs
Madhucon Infra Limited and Others. .. Respondents
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Shri S.U. Kamdar, Senior Counsel along with Shri Tushar Kadam i/b MDP & Partners for the Petitioner.
Shri Rajiv Kumar, Senior Counsel along with Shri Devendra Avhad i/b Thodur Law Associates for the Respondent Nos.1 and 2.
Shri Ravi Kadam, Senior Counsel along with Shri Gaurav Joshi, Senior Counsel and Shri Kunal Kataria and Shri Vivek Shetty i/b AZB & Partners for the Respondent Nos.3, 4, 12 and 13.
Shri Rajendra Desai along with Shri Devendra Avhad i/b Thodur Law Associates for the Respondent Nos.5 to 11.
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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 23RD DECEMBER 2016

ORAL JUDGMENT : (PER A.S. OKA, J)

1. On the earlier date, the Petition was heard finally. The breach alleged in this Contempt Petition is of the undertaking dated 1st March 2016 given by the Respondent No.5 (who is also the Respondent No.8) on behalf of the Respondent Nos.1 and 2 who were the Appellants in Appeal (L) No.57 of 2016. The said Appeal was preferred

by the Respondent Nos.1 and 2 for challenging the order made by the learned Single Judge on a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”). By an order passed by the learned Single Judge, the Arbitration Petition filed by the present Petitioner was allowed.

2. In Appeal (L) No.57 of 2016, the consent minutes of the order were tendered on 18th February 2016. By an order passed on the very day, the Division Bench of this Court disposed of the said Appeal in terms of the consent minutes of the order. The clauses 1 to 3 of the said order dated 18th February 2016 read thus:-

> “1. That the Order dated 10/02/2016 passed by the Ld. Single Judge in Petition No.1873 of 2015 under Section 9 of the Act is set aside.
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> 2. The said Petition No.1873 of 2015 under Section 9 of the Act is remanded to the learned Single Judge who shall hear it afresh. All contentions of the parties are kept open. The said Petition No.1873 of 2015 shall be requested to be disposed of within 4 weeks from today. The appellants and Respondent 3 and 4 shall if they so desire file their replies within 2 weeks from today and rejoinder if any within a week thereafter.
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> 3. Pending the hearing and disposal of the said Petition by the Ld. Single Judge, **the Appellants no.1 and 2 through at least one of their respective Directors without prejudice to the rights and contentions of the Appellants, shall furnish an undertaking to this Hon'ble Court within one week from today that on receipt of**

the sale proceeds of the sale of shares to the Respondent nos.2 and 3 an amount of Rs.24 Crores shall be kept aside Forthwith in a separate Bank account as security for the Claim of the Respondent No 1 only without any encumbrances till the disposal of the said Petition no.1873 of 2015. Once such amount is deposited, the Appellants will inform the Advocates for Respondent No.1 and Respondent No.1 about such deposit with requisite bank account details certificate of Pe within one week from such deposit."

(emphasis added)

3. Accordingly, on behalf of the Appellants in the said Appeal who are the Respondent Nos.1 and 2 in the present Contempt Petition, the Respondent No.5 submitted an undertaking dated 1st March 2016. Relevant part of the said undertaking reads thus:-

"That pursuant to the order dated 18th February 2016 passed by this Hon'ble Court in the above matter thereby disposing the above appeal in terms of the Minutes of the order duly filed by Advocates for all parties to the above proceedings on 18th February 2016, before this Hon'ble Court, **I on behalf of the Appellants 1 and 2, without prejudice to the claims and contentions of the Appellants, agree and undertake, to keep an amount of Rs.25 crores forthwith on receipt thereof, out of the total sale proceeds of subject shares to Respondents no.2 and 3 to be kept in a separate Bank account as security for the claim of the Respondent no.1, without any encumbrance to that extent until the disposal of the Arbitration Petition No.1873 of 2015 under Section 9 of the Act by the Ld. Single Judge."**

(emphasis added)

4. As of today, the order dated 18th February 2016 has attained finality. Factual controversy in brief will have to be set out. The Petitioner which is a non-banking finance company agreed to grant Term Loan Facility for a sum of Rs.50 crores to the Respondent No.1. Various documents were executed pursuant to grant of facility in favour of the Petitioner by the Respondent Nos.1 and 2. According to the case of the Petitioner, there are defaults committed by the Respondent Nos.1 and 2. In the Petition filed under Section 9 of the Arbitration Act, the parties agreed to appoint a member of the bar as the sole arbitrator.

5. On 23rd October 2015, the Respondent No.2 informed the Stock Exchange that it has entered into a Share Purchase Agreement dated 21st October 2015 with the Contemnor No.3 Company for the sale of Madhucon Agra Jaipur Expressways Limited (a subsidiary to the Respondent No.1- Madhucon Infra Limited) BOT Road Project for the consideration of Rs.248 crores. The transfer was to be effected by sale of 100% equity shares of the said Madhucon Agra Jaipur Expressways Limited (for short "MAJEL").

6. The Petitioner filed Arbitration Petition No.1873 of 2015 under Section 9 of the Arbitration Act. By the order dated 10th February 2016, the Petition was disposed of by restraining the Respondent Nos.1

and 2 from taking any steps for transferring the shares of MAJEL. Liberty was granted to the Petitioner to move the learned Arbitrator for interim directions. It is against this order that the Appeal (L) No.505 of 2016 was preferred by the Respondent Nos.1 and 2 in which the aforesaid order has been made and undertaking has been furnished.

7. Paragraphs 2 and 3 of this Contempt Petition read thus:-

> "2. The Petitioner further submits that pursuant to the said Order, said Appeal was disposed off in terms of the said Minutes of the Order duly signed and filed by the parties attorneys therein. It is pertinent to note that these Contemnors (the Appellants therein) have also given an Undertaking to keep an amount of Rs.25/- Crores from the sale of the stake (74%) in Madhucon Agra-Jaipur Expressways Limited ('MAJEL') to Cube Highways and Infrastructure Pvt. Ltd. i.e. Contemnor Nos.3 and 4 for Rs.248/- crores only (Rupees Two Hundred Forty Eight Crores only) in a separate bank account as a security without any encumbrance towards the Petitioner's admitted liability.
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> 3. **The Petitioner further submits that these Contemnors by its Press Release dated 12th April, 2016 addressed to the Stock Exchange, Mumbai addressed that they have successfully completed the sale of the stake of the said MAJEL to Cube Highways and Infrastructure Pvt. Ltd. i.e. Contemnor Nos.3 and 4 for Res.248/- Crores only (Rupees Two Hundred Forth Eight Crores only)".**
>
> (emphasis added)

8. A reference is made the this Contempt Petition to the correspondence made between the parties. It is contended that notwithstanding the fact that the consideration has been received by the Respondent Nos.1 and 2 on account of sale transaction of shares, compliance has not been made with the undertaking given to the Court. We may note here that the undertaking was to keep an amount of Rs.25 crores in a separate bank account as security for the claim of the present Petitioner without any encumbrances till the disposal of the Arbitration Petition No.1873 of 2015 which was remanded under the order dated 18th February 2016 to the learned Single Judge. As the said undertaking was admittedly not complied with, the present Contempt Petition was moved by the Petitioner. On 24th August 2016, the following order was passed by a Division Bench of this Court.

> "Issue notice to the respondents under the Contempts of Court Act, 1971 as to why action should not be taken against them for non compliance of the undertaking dated 1st March, 2016 given by respondent No.1, returnable after four weeks."

9. In terms of the said order of this Court, a notice was issued by the Registry to the Respondents Contemnors. Considering the contentions raised by the Cotemnor, we are incorporating the contents of the notice issued by the Registry as under:-

> "Whereas the abovenamed petitioners have presented the Contempt Petition through their Advocates MDP & Partners, praying for taking action under Contempt of Courts Act against you.
>
> And whereas this Court on 24th day of August, 2016 has inter-alia passed the following order-
>
> > Issue notice to the respondents under the Contempt of Court Act, 1971 as to why action should not be taken against them for non compliance of the undertaking dated 01st March, 2016 given by respondent No.1, returnable after four weeks."
>
> Take therefore notice that the aforesaid Show Cause Notice alongwith Contempt Petition has been fixed for hearing on the 21st day of September, 2016 at 11.00 O'Clock in the forenoon before the Hon'ble Division Bench consisting of Hon'ble Shri Justice V.M. Kanade and Hon'ble Smt. Justice Swapna Joshi in Court Room No.43, 2nd floor, High Court Main Building OR before any other Hon'ble Court hearing such matter on which date you shall appear in person before this Court and shall continue to remain present during hearing on all subsequent dates to which this Court may deem convenient to fix the matter, till the proceeding is finally disposed off by the Order of the Court; and
>
> **To Show Cause as to why the action should not be taken against you under the provisions of the Contempt of Courts Act, 1971 for non compliance of the undertaking dated 1st March, 2016 given by Respondent No.1.**
>
> In case of your failure to appear as directed above and to show cause, this Court shall proceed to pass such orders as may deem fit and proper."

The service report dated 19th September 2016 forwarded by the learned Principal Judge at Khammam shows that the notice of the Respondent No.5 was personally served. There is a similar report of 16th September 2016 of the service of notice to the Respondent No. 1.

10. The affidavits-in-reply have been filed after service of the notice of contempt in terms of the aforesaid order of this Court. An affidavit has been filed by the Respondent No.5 who had given the undertaking on behalf of the Respondent Nos.1 and 2. There is a separate affidavit filed by the same Respondent on behalf of the Respondent Nos.5, 6 and 7. There are affidavits filed by the Respondent Nos.3 and 4. The Respondent No.3 has adopted the contentions in the affidavit of the Respondent No.4. There is a separate affidavit filed by the Respondent No.12 as well as the Respondent No.13.

11. The basic submissions have been canvassed in support of the Petition against the Respondent Nos.1 and 2 and the Respondent No.5 who had given undertaking on behalf of the Respondent Nos.1 and 2. The submission is that even going by the stand taken in the affidavits, this is a case of willful disobedience and breach of the undertaking given by the Respondent No.5 to this Court. On behalf of the Respondent Nos.5 to 11, a preliminary objection was raised by contending that there is no order passed by this Court of issuing notice in terms of either Rule 8 or Rule 9 of the Contempt of Courts (Bombay

High Court) Rules, 1994 (for short “the Contempt of Court Rules”). Reliance is placed on the decision of the learned Single Judge of this Court in the case of ***Saurashtra Vanza Gnyati Yuvak Mandal and Another v. Municipal Corporation of Greater Bombay and Others***[1] in support of the contention that unless a notice in the requisite format under the Contempt of Court Rules is issued, this Court cannot proceed further in the matter. In fact it was urged that a notice of this Contempt Petition was never served to the Respondent No.5 (who is also impleaded as the Respondent No.8).

12. The learned senior counsel appearing for the Respondent Nos.1 and 2 has taken us through the undertaking and the order of the Court. He submitted that the entire sale transaction is not yet complete as indicated from the affidavits filed by the Respondent No.5. His submission is that the consideration so far received was required to be utilized as set out in Paragraph 9 of the affidavit filed on behalf of the Respondent Nos.1 and 2. He submitted that the Respondent Nos.1 and 2 have undertaken a public Project of National Highway Authority of India (for short “NHAI”) and, therefore, there was no option but to make payments as indicated in Paragraph 9 of the said affidavit. He submitted that the transaction in support of the balance equity shares is not complete and the Respondent Nos.1 and 2 are under an obligation to comply with the undertakings as and when the sale transaction is

1 2006(6) ALL MR 101

complete. He would urge that several steps have been taken by the Respondent Nos.1 and 2 by approaching the NHAI for seeking necessary clearance so that they can comply with the undertaking given to the Court. He submitted that the amount of Rs.25 crores was to be set apart only after the entire sale transaction was completed and, therefore, today, it cannot be said that there is any breach committed of the undertaking. In any case, he submits that this is not a case of a willful and deliberate breach of the undertaking at all. Learned counsel appearing for the Respondent No.5 to 11 apart from the preliminary objection which is noted earlier and apart from adopting the submissions made by the Respondent Nos.1 and 2, submitted that all the factual aspects were placed before the Court about the nature of sale transaction entered into by the Respondent Nos.1 and 2 and only thereafter, the order has been passed on 18th February 2018 and an undertaking has been given. He reiterated that as the entire consideration is not received, there is no question of any breach of the undertaking as the amount was to be set apart only after the entire consideration is received. He invited our attention to the correspondence exchanged between the Respondent Nos.1 and 2 and NHAI. He urged that as there is no breach of the undertaking, no action is warranted. In any event, he submitted that there is no willful and deliberate breach of the undertaking.

13. The learned senior counsel appearing for the Respondent Nos.3, 4, 12 and 13 submitted that considering the adjustments which are required to be made, there is a possibility that in respect of the balance 26% of the shares, no further amount will be payable by the Respondent No.3- Purchaser to the Respondent Nos.1 and 2.

14. We have given careful consideration to the submissions. Firstly, we may advert to the order dated 18th February 2016 and in particular Paragraph 3 thereof which is quoted above. The direction of the Court issued by consent of the parties was that the Respondent Nos.1 and 2 shall furnish an undertaking within a period of one week from the date of the said order that on receipt of the sale proceeds of the sale of shares to the Respondent Nos.2 and 3 therein (present Respondent Nos.3 and 4), an amount of Rs.25 crores shall be kept aside forthwith in a separate bank account as security for the claim of the present Petitioner without any encumbrances till the disposal of the Petition under Section 9 of the Arbitration Act. While filing the undertaking, the Respondent No.5 has made a departure from the directions issued in Clause 3 of the said order dated 18th February 2016. Though the Clause 3 of the said order of the Court does not make any reference to the total sale proceeds, in the undertaking he has purported to state that an amount of Rs.25 crores shall be kept aside forthwith after receipt thereof, out of the total sale proceeds of the

subject shares to the Respondent Nos.2 and 3 in Appeal in the separate bank account. The undertaking given by the Respondent No.5 has to be read in terms of the Clause 3 of the said order dated 18th February 2016. If it is not so read, the Respondent No.5 will be exposed to another serious violation of the Clause 3 of the order dated 18th February 2016.

15. We have already reproduced the averments made in Paragraphs 2 and 3 of the Contempt Petitions. The averment in Paragraph 2 is very specific to the effect that the undertaking is given by the Contemnors to keep aside an amount of Rs.25 crores from the sale proceeds of Rs.248 crores of the shares MAJEL received from the Respondent Nos.3 and 4. The Paragraph 3 asserts that the sale transaction has been completed as per the Press Release relied upon. We may note here that the factual aspects in the aforesaid Paragraphs 2 and 3 have not been denied or disputed in the affidavits filed by the Respondent Nos.1 and 2 as well as the affidavit of the Respondent No.5. It is, therefore, necessary to advert to the said affidavits. As stated earlier, the affidavits are more or less similar and therefore, we referring to the affidavit of the Respondent No.5 filed on behalf of the Respondent Nos.1 and 2. For testing the said affidavit, we must make a reference to the affidavit in support of the Notice of Motion (L) No.1450 of 2016 filed in the disposed of Appeal by the Respondent

Nos.1 and 2. The said Notice of Motion was filed by the Respondent Nos.1 and 2 praying for the recall of the aforesaid order dated 18th February 2016 in the Appeal on the basis of which the undertaking was filed by the Respondent No.5. In Paragraph 8 of the affidavit in support dated 21st April 2016, it is stated that the sale of first part of 74% of the shares is since successfully completed and the moneys so received i.e. Rs.248 crores have been appropriated. Paragraph 8 of the said affidavit reads thus:-

> "8. **I say that the sale of first part of 74% of the shares is since successfully completed and the moneys so received i.e. Rs.248 crores has been appropriated by the Banks against the lien** and the consideration of Rs.40.95 crores towards the balance of 26% of shares is yet to be received in view whereof the undertaking dated 1st March, 2016 filed by the Director of the Applicant is pending compliance."
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> (emphasis added)

16. Now, coming to the affidavit-in reply of the Respondent No.5 in the Contempt Petition, it will be necessary to make a reference to the statements made in Paragraphs 7 and 9, which read thus:-

> "7. I say that subsequent to the filing of the undertaking before this Honourable Court and **pursuant to the approval of NHAI dated 4.1.2016 for sale of 74% shares held in MAJEL, the contemnor No.1 and 2 received an amount of Rs.72 crores from Cube Highways who released an amount of Rs.72.00 crores (against the issue of debentures) over a period of time from February, 2016 till date at various dates to meet Major Maintenance works as set out in the letter dated 3.11.2015 as stated above and there is no surplus available from out of this**

Amount. Effectively, the Respondent No.1 and 2 have not received any amount due to them out of the sale proceed which is unencumbered because NHAI had put conditions as reflected in their letter dated 04/01/2016.

9. **I say that thereafter a sum of Rs.111.78 crores was received from Cube Highways and Infrastructure Pvt. Ltd. Towards the sale of 74% stake sale in MAJEL on 30/03/2016 forming the first tranche of the sale consideration by these contemnors and that the said sums had to be deployed to the extent of Rs.111.00 crores as follows:**

Utilization of funds:	
Investment in Ranchi Expressways Limited which is under construction	50.00
Investment in Chhapra – Hajipur Expressways Limited which is under construction	26.00
Payment of overdues to IFCI	8.00
Payment of overdues to ICICI	3.00
Payment of Income Tax dues	7.00
Payment to Machucon Projects Limited to service interest to bankers who have given loan to Madhucon Projects Limited having bankers' lien.	17.00
TOTAL	111.00

I crave leave to refer to and rely upon the records of expenditure as and when produced.”

17. Thus the affidavit-in-reply contains a stand which is totally contrary to the stand taken on oath in the affidavit dated 21st April 2016 in which the Respondent Nos. 1 and 2 admitted to have received full amount of Rs.248 crores. In fact, the stand taken in the said affidavit is that the said amount has been appropriated by the bank. It is further claimed that the consideration of Rs.40.95 crores towards the balance

of 26% of shares is yet to be received. Though, a copy of the affidavit in support of the Notice of Motion has been annexed to the Contempt Petition, there is absolutely no explanation offered as to why a stand is now taken that only a sum of Rs.183.78 crores (Rs. 72 crores +Rs.111.78 crores) was received. The Paragraph 9 of the said affidavit-in-reply dated 21st September 2016 shows that out of the said amount received, a sum of Rs.17 crores has gone to none other than the Respondent No.2 Contemnor. In Paragraph 10 of the affidavit, it is contended as follows:

> “10. I say that the NHAI has by way of a letter dated 1st April 2016, a copy whereof is annexed hereto and marked Exhibit-”E” accorded its approval for the sale of the Balance 26% Equity shares held by these contemnors in MAJEL in favour of Cube Highways amounting to Rs.40 crores and I say further that even though NHAI has accorded permission to sell balance 26% stake the same are subject to the following contractual conditions between these Contemnors and cube Highways contemnor 3 and 4, and the sale can therefore be concluded only after fulfilling the following contractual conditions and the amount of consideration could pass only thereafter:
>
> 1. NHAI has levied penalties of about Rs.40 crores and these contemnors have to obtain a waiver of the same from NHAI.
>
> 2. These contemnors have to obtain a certificate from NHAI for completion of Major Maintenance works.
>
> 3. And that NHAI has to release grants of about Rs.18 crores.

4. Completion of Major Maintenance Works

5. Income Tax Certificates u/s. 281."

18. In the same the Paragraphs, in the subsequent portion, an assurance is given that the Contemnors are bound to abide by the undertaking given to this Court and it is claimed that they are pursuing the matter with the NHAI. A very important statement is to be found in Paragraph 11 of the affidavit which reads thus:-

> "11. **It is, therefore, most respectfully submitted that the Respondent No.1 and 2 have not received any funds till date which are unencumbered** for being deposited in a separate bank account free of any encumbrance as directed by this Hon'ble Court."
>
> (emphasis added)

19. Thus, a stand taken is that no amount is available for keeping apart in a separate bank account .

20. As stated earlier, admittedly, the sale transaction of 74% of the shares has been completed and the Respondent Nos.1 and 2 have received the amount of Rs.248 crores. Contrary to the said stand taken on oath in the Notice of Motion filed in the Appeal, now, a stand is taken that a total sum of Rs.183.78 crores has been received (see Paragraphs 7 and 9 of the reply quoted earlier). As stated earlier, a sum of Rs.17 crores has been paid out of the said amount to the Respondent

No.2 itself. A sum of Rs.50 crores was invested in Ranchi Expressways Limited. Thus, it is impossible to accept that no amount was available to set it apart in terms of the undertaking.

21. Now, coming back to the order passed in the Appeal on the basis of which an undertaking was given. The said order is crystal clear. The undertaking was to be given to the effect that on receipt of the sale proceeds of the sale of shares to the Respondent Nos.3 and 4 herein, the amount of Rs.25 crores shall be kept aside "forthwith" in a separate bank account that too without any encumbrances. Even going by the new stand of the Contemnors that only a part (Rs.183.78 crores) of the amount of Rs.248 crores was received, they could have set apart the amount of Rs.25 crores. On plain reading of Clause 3 of the Minutes of the order in the Appeal, it is crystal that the action of setting apart the amount of Rs.25 crores was not to wait till the entire sale consideration of 100% shares is received by the Respondent Nos.1 and 2. Even assuming that the undertaking has been correctly furnished, the sale transaction of 74% of the shares was admittedly completed and the consideration was received.

22. We may record here that on 28th November 2016, time was granted to the learned senior counsel appearing for the Respondent Nos.1 and 2 to enable them to take instructions as to whether it is

possible to the said Respondents to give an assurance specifying an outer limit within which the compliance with undertaking will be made. Thereafter, on two occasions, the Contempt Petition has been adjourned. However, on the last date, we are informed that it is not possible for the Contemnors to give any such assurance.

23. Therefore, according to us, this is a clear case of deliberate and willful breach of the undertaking furnished by the Respondent No.5 to this Court as per the order dated 18th February 2016. The stand taken in the reply to the Contempt Petition is completely contrary to the stand in the earlier affidavit to which we have made a reference in which the Respondent Nos.1 and 2 have accepted that they have received the entire consideration of Rs.248 crores. As stated earlier, out of the consideration, a sum of Rs.17 crores is retained by the Respondent No.2. The conduct of the Respondent Nos. 1, 2 and 5 shows that there is a deliberate attempt made by them to avoid compliance with the undertaking.

24. If the stand taken by the concerned Respondents was is really bonafide, they could have always set apart the 74% of the sum of Rs.25 crores. The contempt notice was issued on 24th August 2016. The Contemnors had sufficient time to take appropriate steps for making amends. However, they have not done so.

25. An order of injunction granted by the learned Single Judge in a Petition filed by the Petitioner herein under Section 9 of the Arbitration Act was set aside by the order dated 18th February 2016 in terms of consent minutes of the order in Appeal. The said order under Section 9 restrained the Respondent Nos.1 and 2 from selling shares. The Petitioner agreed for setting aside the order as the Respondent Nos.1 and 2 gave aforesaid undertaking for securing the claim of the Petitioner.

26. Now, we deal with the arguments based on the failure to issue notice in terms of the Contempt of Court Rules. We have quoted the contents of the notice issued by the Registry on the basis of the order dated 24th August 2016. We have compared the said notice with the format of the notice appended to the Contempt of Courts Rules. It is not in dispute that a copy of the Contempt Petition containing the material averments is served upon the Contemnors. We find that the contents of the notice in Format-I annexed to the Conempt of Court Rules are not at all different from the contents of the notice issued by the Registry in this Petition in terms of the order of this Court. Moreover, the affidavit filed by the Contemnors clearly shows that they have correctly understood the order of this Court to mean that a Show Cause Notice has been issued to them calling upon them to show cause

as to why they should not be penalized under the Contempt of Courts Act, 1971 for committing the breach of the undertaking given to the Court. In fact, the affidavit of the Respondent No.5 dated 21st September 2016 and in particular Paragraph 2 thereof contains a statement regarding unconditional apology tendered by him. The Clause 1 of the said affidavit shows that the Contemnors had clearly understood what they have to answer on the basis of the notice issued by this Court. Though there is a service report on record which shows that the notice was served to the Respondent No.5, in his separate affidavit in reply, no contention has been raised that he was not served with the said notice. He filed a separate affidavit-in-reply on behalf of the Respondent No.1 and 2. The said two Respondents were served with the notice addressed to all the contemnors. Hence, the Respondent No.5 was in any event was aware of the contents of the notice. Therefore, the submission based on the decision of the learned Single Judge in the case of ***Saurashtra Vanza Gnyati Yuvak Mandal and Another*** deserves to be rejected.

27. Accordingly, we hold that the Respondent Nos.1, 2, 5 and 8 are guilty of committing willful and deliberate breach of the undertaking given to this Court.

28. Now, the question is what should be the punishment imposed on the Respondent No.8 Shri Srinivasa Rao Kamma (Also Respondent No.5 in the capacity of the Managing Director of the Respondent No.1). Yesterday, an Application was tendered by the learned counsel appearing for the Respondent Nos.5 to 11 for grant of exemption from personal appearance to the Respondent No.5 Shri Srinivasa Rao Kamma. We, therefore, heard his learned counsel on the issue of punishment. The maximum punishment which could be imposed under Sub-section (1) of Section 12 of the Contempt of Courts Act, 1971 is simple imprisonment for six months and fine which may extend upto Rs.2,000/- or both.

29. We have already noted the conduct of the Respondent Nos.1 and 2. We have already held that this is a gross case of willful and deliberate breach of the undertaking given to this Court. It is only on the basis of the undertaking that the Petitioner agreed for setting aside the order impugned in the Appeal preferred by the Respondent Nos.1 and 2 and for passing an order of remand. Inspite of grant of adjournments, the said Respondents have shown no inclination to purge the contempt. They have not given any assurance to purge the contempt within specified time.

30. Taking an overall view of the matter and considering the

gravity of the conduct of the concerned Respondents, we are of the view that this is a fit case where the Respondent No.5-Contemnor (Shri Srinivasa Rao Kamma) who is also the Respondent No.8 should be punished by directing him to undergo sentence for simple imprisonment for a period of two months. We also propose to direct him to pay fine of Rs.2,000/- (Two Thousand).

31. Only with a view to ensure that one more opportunity is given to the Contemnors to purge the contempt by strictly complying with the undertaking, we propose to direct that the substantive sentence shall not take effect for a period of two months from today.

32. We, therefore, sentence Shri Srinivasa Rao Kamma to undergo simple imprisonment for a period of two months and to pay fine of Rs.2,000/- (Two Thousand). The fine shall be paid within a period of one month from today.

33. Only by way of indulgence, we direct that the sentence shall remain suspended for a period of two months from today with a view to enable the Contemnors to strictly comply with the undertaking given to this Court.

34. In case, full compliance is made within the stipulated time,

it will open for the contemnors to apply for revoking the substantive sentence.

35. If within a period of two months from today, compliance is not made to the satisfaction of the Court, immediate action shall be taken by the Registry to issue a warrant to the Respondent No.5 Shri Srinivasa Rao Kamma for implementation of the order of this Court.

36. The Petition is disposed of on above terms.

37. All concerned to act upon an authenticated copy of this order.

38. At this stage, the learned senior counsel appearing for the Respondent Nos.1 and 2 prays for stay. Substantive sentence imposed on the Contemnor has been already suspended for a period of two months from today. Therefore, the prayer for stay to the sentence is rejected.

(SMT.ANUJA PRABHUDESSAI, J) (A.S. OKA, J)