

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO.2 OF 2015
IN
COMPANY APPLICATION (L) No.70 of 201
IN
COMPANY APPEAL NO.15 OF 2013
IN
CLB/COMPANY PETITION NO.13 OF 2012**

Mr. Rajinder Kumar Malhotra	)	
15/A, Manek Building,	)	
L.D. Ruparel Marg,	)	
Napeansea Road,	)	
Mumbai – 400 006.	)	 Petitioner

Vs.

1. Mr. Paresh Biharilal Vyas,	)	
Adult, Indian Inhabitant residing at	)	
703, Raheja Estate, A-Wing,	)	
Park Land 2, Kulupwad Road,	)	
Borivali (E), Mumbai – 400 006.	)	
	)	
2. Mr. Subhash D. Chaudhari,	)	
Adult, Indian Inhabitant residing at	)	
Flat No.201, Morning Star,	)	
Sherly Rajan Road, Bandra (W),	)	
Mumbai – 400 050.	)	
	)	
3. Mr. Rakesh Malhotra,	)	
Having his office at Supermax	)	
Personal Care Pvt. Ltd, A Wing	)	
Hamilton, 6 th Floor, Patilpada,	)	
Ghodbunder Road, Thane (W).	)	
	)	
4. Mr. Abhishek Kumar,	)	
Adult, Indian Inhabitant, having his	)	
office at Supermax Personal Care	)	
Pvt. Ltd., A Wing Hamilton, 6 th	)	
Floor, Patilpada, Ghodbunder	)	
Road, Thane (W).	)	 Respondents

Mr.Mustafa Doctor, Sr.Advocate with Mr.Rohan Cama, Mr.Rohan Dakshini & Ms.Shweta Jaydev i/by M/s.Federal & Rashmikant for the petitioner.

Mr.Pradeep Sancheti, Sr.Advocate with Mr.Gautam Ankhad, Mr.Amol Barve, Mr.Yogesh Chawak, Mr.Abhishek Adke, Mr.Vaibhav Charalwar & Mr.Palkit Sharma i/by M/s.Legasis Partners for for respondent nos.1 to 3.

Mr.Ankit Lohia with Mr.Ranjit Shetty i/by Argus Partners for respondent no.4.

CORAM : K.R.SHRIRAM,J
ORDER RESERVED ON : 1.12.2015.
PRONOUNCED ON : 9.2.2016.

JUDGMENT:-

1 The petitioner has approached this court with an allegation against the respondents that the respondents are guilty of having willfully disobeyed a direction contained in an order dated 21.10.2013 (copy whereof is at Exhibit-A to the petition), passed in Company Application (L) No.70 of 2013 in Company Appeal No.15 of 2013 (the said order). The portion of the order which the respondents are alleged to have willfully disobeyed is in paragraph-18 and it reads as under :-

“.....Furthermore the amount of 12% on Rs.67.5 crores under the agreement needs to be paid. The same shall be paid within three weeks from today.....”

2 Admittedly this direction has not been complied with. Moreover, it is not the case of any of the respondents that they could not comply with despite efforts. It is the case of the respondents that they were not bound to comply with the said order.

3 The respondent nos.1 to 3 have been represented by Shri

Sancheti i/by M/s.Legasis partners and respondent no.4 was represented by Shri Ankit Lohia i/by Argus Partners.

4 At the outset it should be mentioned that no formal order of admitting the petition or court notice to the alleged Contemnors was issued. I asked a specific question to the counsel appearing for the respondents and they stated that they have instructions to waive such a notice and they would proceed on the basis that they have been served and the petition can be disposed of at the admission stage itself. I also said then in that case they should not later raise the defence that they were not given a formal notice or contempt petition was not served personally on the respondent. I was told such a defence will not be taken.

5 The angle of attack of the petitioner was primarily directed against respondent no.3.

6 The stand of the respondent nos.1 to 3 are in 5 parts, as under :-

A(i) - Interim Order dated 21st October, 2013 has not been continued in the final Order dated 12th / 20th August, 2014;

A(ii) - It is well settled that once a final order is passed, the Interim Order merges into the final Order and the Interim Order (including all directions thereunder) automatically cease to operate;

A(iii) - Contempt Petition for an interim order is not maintainable once the interim order has ceased to exist / have any force in law;

A(iv) - Ratio in Bagasarwalla has no application to the facts of the present case. It applies to a case where contempt petition was filed when, "order is in force" had been breached;

A(v) - The Petitioners contention that Order dated 21st October, 2013 did not merge into the final Order dated 12th / 20th August, 2014 is contrary to settled law, as well as plain language of orders dated 12th / 20th August 2014;

B(i) - Direction in paragraph 18 of the order dated October 21, 2013 is at best against Supermax Personal Care Private Limited ("SPCPL") and not against Respondent Nos. 1 to 3;

B(ii) - In the absence of SPCPL, no finding of breach of order (much less contempt) can be rendered. Hence, contempt proceedings not maintainable;

B(iii) - The Petitioners have failed to prove the contempt under provisions of Contempt of Courts Act, 1971 including Section 12(4) and 12 (5);

B(iv) - The allegation / charge of contempt cannot be framed on the basis of the order dated October 21, 2013; moreover though the order dated December 9, 2013 is annexed to the petition, the charge for contempt as set out in Prayer A makes no reference to the said order;

B(v) - Paragraph 21 of the Order dated October 21, 2013 does not give any direction to Respondent No. 3;

C(i) - In a Contempt Petition a specific charge must be framed and the Contemnors must be given notice of that charge;

C(ii) - It is settled law that if interpretation of the Order (in relation to which contempt is alleged) is an issue, Contempt Petition is not maintainable;

D - The Petitioner cannot rely on the documents, not annexed to the Contempt Petition to support its submission;

E - Contempt proceedings cannot be invoked and is not intended to be used for enforcement of money decree or directions / orders for payment of money.

7 The additional defence that respondent nos.1 & 2 have taken is that they, any way ceased to be the directors of VMPL w.e.f. November, 2014 and therefore, there cannot be any contempt against them.

8 As regards respondent no.4, the counsel adopted the

submissions made by Shri Sancheti and also made the following submissions :-

(i) The order dated 21st October, 2013 did not require any compliance by Respondent No.4 ;

(ii) The direction, if any, was to the learned Observer appointed by this Hon'ble Court to ensure that appropriate steps for recovery of money are taken ;

(iii) The order dated 21st October, 2013 had ceased to operate at the time when the petition was filed ;

(iv) The fact that the order dated 21st October, 2013 did not contain any direction against Respondent No.4 is also clear from the Order dated 9th December, 2013 which holds Respondent Nos.1 and 2 liable for non-compliance of the directions contained in the Order dated 21st October, 2013 ;

(v) SPCPL is not a party either to the proceedings which led to the Order dated 21st October, 2013 being passed or to the present proceedings ;

(vi) The petitioner has failed to make out any case for holding Respondent No.4 responsible for any purported non-compliance by SPCPL.

8A Section 2(b) of the Contempt of courts Act defines civil contempt which means willful disobedience to any judgment, decree, Direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. Neglect to do the act required to be done under the order of the Court within the time specified in the order can be said to be a civil contempt. In Halsbury's Laws of England IV edn., Vol.9, it is stated thus :

52. Disobedience to process – It is civil contempt of Court to refuse or neglect to do an act required by a judgment or order of the Court within the time specified in the judgment or order, or to disobey

a judgment or order requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the Court by a person, on the faith of which the Court sanctions a particular course of action or inaction.

In such a case, a judgment or order against an individual or an undertaking given by an individual may, subject to certain exceptions, be enforced by an order of committal or by a writ of sequestration against the individual's property.

9 Before we proceed further and deal with the submissions made by the respective counsel, it is necessary to present the background of this matter.

This is another unfortunate case of a family fight, between the father and one son on one side and the other son on the other side.

As could be seen from the order dated 21.10.2013, there were 4 company appeals and in each of these appeals, there was company application. The contest in the appeals primarily was between Rakesh Malhotra (R3) on one side and on the other side his father Rajender Kumar Malhotra (petitioner), mother of respondent no.3 and wife of petitioner Mrs.Veena Rajender Malhotra, and brother of respondent no.3 and son of petitioner Rajeev Malhotra and Rajeev's wife Kunika R.Malhotra. In short, respondent no.3-Rakesh Malhotra against rest of the family. The fight was for control over the various entities under the Supermax group which is supposedly the 2nd

largest manufacturer of razor blades and allied products in the world. The entities are spread over India and Overseas.

There was a family restructure in 2010 and before that all the Indian companies were entirely held by the petitioner and his wife Veena Malhotra with Rajiv and his wife Kunika holding some small equity. In 2008 restructuring was proposed whereby the Indian companies' assets, businesses and balances were to be transferred to a newly incorporated company under the control of respondent no.3. The Indian companies were to receive substantial funds in consideration. Various business restructuring agreements were entered into including some supplementary agreements. Respondent no.3 was given sole authority to represent the entire family in all the transactions. The principal object of the proposed restructuring was to allow the petitioner and his younger son an exit from full time involvement in the affairs of the Supermax group while respondent no.3 was to take control of the businesses. Respondent no.3 also had sole bank account operation authority. It appears that the other son Rajeev Malhotra also had similar authority but jointly with respondent no.3. Clearly the family had faith and trust in respondent no.3, which he betrayed as it appears from the various orders and judgments passed in matters involving the inter se disputes.

10 Following the restructuring and transfer agreement, the directors of the petitioner held Indian companies became employees of the entities controlled and held by respondent no.3. These directors

of the petitioner's companies were not giving any information to the petitioner though he controlled over 99% shares because those directors were employed by the entities controlled and held by respondent no.3. They refused to divulge any information. This, in short, was the cause for the petitioner to file petition before the Company Law Board alleging oppression and mismanagement. There were applications filed by respondent no.3 also before the CLB. The CLB appointed an independent observer-cum-facilitator on the board of directors of the companies controlled by the petitioner and the 4 appeals in which the said order dated 21.10.2013 was passed, viz., Company Appeal No.15 of 2013, Company Appeal No.16 of 2013, Company Appeal No.17 of 2013 and Company Appeal No.18 of 2013 (the said for appeals) were filed assailing the CLB's order to the extent that it appointed an observer-cum-facilitator. Certain findings in the company applications filed by respondent no.3 for reference to arbitration were also challenged. This is how the matters came before this court.

11 While hearing the company application taken out in each of the said 4 company appeals viz. Company Appeal No.15 of 2013, 16 of 2013, 17 of 2013 and 18 of 2013, the said order dated 21.10.2013 came to be passed in which this court had directed SPCPL to pay an amount of 12% on Rs.67.5 crores within 3 weeks to Vidyut Metalics Pvt. Ltd. (VMPL), controlled by the petitioner in which petitioner held 99.99% shares. Though the petitioner held 99.99%

shares the de-facto control was with respondent no.3 because the loyalty of the directors in VMPL were to respondent no.3. Though the dispute between the parties is about oppression and mismanagement involving various aspects in company law, the core of the matter is the dispute between the father and his son. During the hearing of those appeals the consistent stand that the respondent no.3 took was that he was in control of SPCPL. Even in the affidavits in reply filed by respondent no.3 in those appeals the stand of the respondent no.3 was that he was incharge and management of SPCPL. There were matters pending even in London between the parties where the stand of the respondent no.3 was he was given complete control of SPCPL. In the 4 appeals in which the said order was passed, SPCPL was not a respondent but the respondents herein were respondents. In the said order in paragraph-11, it is stated as under :-

“.....The Company Law Board while passing the impugned order has rightly taken note of this fact. The Company Law Board has observed in attempting to harm each other, the dispute between the father and sons will destroy the company. The applicant-father owns 99.99% shares in the concerned company. The directors are not acting as per the will of the applicant-father who owns the company. It appears that the directors are acting against the applicant at the behest of respondent no.6.....”

12 It is also necessary to reproduce paragraphs 14 to 17 along with paragraphs 18 and 21 of the said order in order to comprehend as to how the directions in paragraphs 18 and 21 came to be passed. They read as under :-

“14. Both the learned counsel for the parties have advanced detailed arguments as regards the amount of Rs.67.5 crores which according to the applicant comes to respondent no.1 Vidyut, but has not been paid. During the course of hearing, the learned counsel for the respondent, on instructions, made a

statement that the said amount of Rs.67.5 crores is not utilised by the respondent but it has been kept in a Fixed Deposit and the interest thereof is being paid to respondent no.1. The matter was kept in the afternoon session for respondent to give details of the Fixed Deposit accounts. In the afternoon session when the matter was called out, the learned counsel for the applicant stated that there has been a mistake and the amount of Rs.67.5 crores has not been kept aside in Fixed Deposit but in view of supplementary BTA was entered into on 18 March 2011 which modified the earlier BTA dated 30 December 2010, there was no responsibility to pay the amount of Rs.67.5 crores to the respondent no.1. The supplementary agreement dated 18 March 2011 was sought to be produced by way of an affidavit. The learned counsel for the applicant vehemently opposed to take the document on record as the said document was never part of the proceedings before the Company Law Board and also not in the appeals.

15. Be that as it may, even assuming the supplementary BTA is to be looked into, the same has been signed by one Abhishek Kumar on behalf of respondent no.1. Abhishek Kumar is presently the director of SPCPL and that relevant time, he was a director of Vidyut Metallica Private Limited. It has been submitted by the learned counsel for the applicant that it is the hostile directors who have signed an agreement which takes away the benefit which was supposed to accrue to respondent no.1. Whatever may be the merit of the amended BTA and its admissibility at this stage, it appears that the directors who are not under control of the applicant, who is owner of almost 100% shares of the company, have been signed certain documents, which record that the dues which were to be received by the respondent company are now not needed to be paid. The apprehension raised by the applicants that the directors hostile to the applicants are attempting to reduce the companies into a shell companies gets compounded. Especially when the respondent act in such an evasive manner during the Court proceedings, as they have done.

16. As that was not enough, a specific statement was made by the learned counsel for the respondent on instructions that the interest of 12% on the amount of Rs.67.50 crores as per the agreement is being paid to respondent no.1-company which is reflected in the bank accounts. The matter was adjourned for respondent to produce such record. On the next date, the learned counsel for the respondent conceded that the statement made on instructions was incorrect and no such interest is paid.

17. As per the agreement, the Supermax Personal Care Private Limited is liable to pay 12% interest to Vidyut Metallica Private Limited on the amount of 67.5 crores. This fact as stated above, has also been acknowledged by the respondent and admittedly the amount is not paid. The conduct of the respondent is not only evasive but leads an inference, that the respondents are not candid and forthcoming in disclosing true state of affairs in the companies. The money due to the company is not being paid. The owner of 99.99% shares cannot be treated in such manner. More the reason now that the companies need to be safeguarded till the disposal of the appeals. In addition to the injunction not to create third party right in respect of assets, there is a need to provide

further safeguard to ensure that companies retain their substratum till the appeals are heard.

18. However, in view of the injunction granted, at this stage I am not inclined to appoint an administrator to take away the complete control from the respondent. I am however of the opinion that an independent observer is necessary to ensure the smooth functioning of the company till disposal of the appeals. Furthermore the amount of 12% on Rs.67.5 crores under the agreement needs to be paid. The same shall be paid within three weeks from today. The observer will keep in mind the interest of the company. The matter was adjourned from time to time to enable the parties to work out modalities as regards functioning of the observer however, the parties have failed to arrive at a consenses at the modalities.

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21. The learned observer will in particular ensure as under :-

(a) That the applicants will have full and complete access to all documents and records of the companies, with copies, as required ;

(b) That the statutory liabilities of the respondent no.1 Companies are duly discharged and any proceedings in respect thereof are duly defended/prosecuted ;

(c) The litigations involving the companies or its properties or assets are duly defended and/or appropriate steps are taken for protection of the properties or assets of the companies. Legitimate fees of the advocate are paid for that purpose. The observer will disburse the said amounts jointly with any of directors authorised for that purpose ;

(d) That the income received by respondent no.1 Companies is properly accounted for ;

(e) To ensure that interest @ 12% p.a. as directed has been paid by Supermax Personal Care Private Limited (SPCPL) from March 2011 to Vidyur Metalics Private Limited (VMPL) on the amount of Rs.67.50 crores, and is continued to be paid ;

(f) Ascertain the status of the Job Work Agreement dated 18 March 2011 and amounts paid/liable to be paid thereunder by SPCPL to VMPL. If no job work activities are being conducted make a report to the Court for consideration of further directions to be passed in respect of Rs.67.50 crores ;

(g) That the other liabilities of the Companies are disclosed to the observer for ascertaining the correctness thereof ;

(h) The respondents shall pay a sum of Rs.1.36 crores or such other amount as required as the pre-deposit amount in regard to the Income Tax Appeal filed by VMPL for A.Y.2010-2011, as undertaken by them to be done within four weeks."

In paragraph-14 the court has observed “during the course of hearing, the learned counsel for the respondents on instructions, made a statement that the said amount of Rs.67.5 crores is not utilized by the respondents but it has been kept in a fixed deposit and interest thereof has been paid to respondent no.1.” In paragraph-16 of the said order it is recorded that “ a specific statement was made by the learned counsel for the respondent on instructions that the interest of 12% on the amount of Rs.67.50 crores as per the agreement is being paid to respondent no.1 company which is reflected in the bank accounts.....”; On the next date, the learned counsel for the respondents conceded that the statement made on instructions was incorrect and no such interest is paid.” In paragraph-15 it is recorded as “.....Abhishek Kumar is presently the director of SPCPL and at that relevant time, he was a director of Vidyut Metalics Private Limited. It has been submitted by the learned counsel for the applicant that it is the hostile directors who have signed an agreement which takes away the benefit which was supposed to accrue to respondent no.1.....”; Especially when the respondents act in such an evasive manner during the court proceedings, as they have done”.

Therefore, the respondents projected themselves to the court as some one who had knowledge about and who controlled the payment to be made of Rs.67.50 crores and the interest thereon. It is for that reason the court directed SPCPL to pay the amount of 12% on Rs.67.5 crores under the agreement even though SPCPL was not a

party. The respondents have represented to the court that they are in control of SPCPL. It is also necessary to record that SPCPL did not challenge this direction of the single Judge.

13 Coming to deal with defences of Respondent no.1 to Respondent No.3 :

A (i) : Interim order dated 21.10.2013 has not been continued in the final order dated 12-20/8/2014 :-

According to the respondents, in paragraph 139 of the final order dated 12-20/8/2014 it is clarified that except for the pending interim orders of 9.2.2012 and 7.11.2012 passed by the CLB, there will be no interim order as regards any of the 4 respondents-companies and hence this court consciously decided not to continue the said order dated 21.10.2013 read with order dated 9.12.2013. Hence, the interim orders dated 21.10.2013 and 9.10.2013 ceased to exist upon passing the final order dated 12-20/8/2014. I am afraid, I cannot accept this position because in paragraph-139, it is stated "it is clarified that except for those 2 orders, there will be no interim order in place as regards any of the 4 respondents-companies". SPCPL was not a respondent to the company appeals and the respondents herein also are not companies. Therefore, this submission of the respondent nos.1 to 3 is of no value.

14 A(ii) : It is well settled that an interim order merges into the final order and all directions (thereunder) automatically ceased to

operate :-

It was submitted that the said order was an interim order and the final order was passed on 12-20/8/2014 disposing of all the appeals under Section 10F of the Companies Act 1956 and therefore, the said order dated 21.10.2013 of which contempt is alleged ceased to have any force in law. It was submitted that once a final order is passed, all interim orders merged into the final order and the interim orders ceased to exist. Therefore, on the date of the initiation of the contempt proceedings against the said interim order dated 21.10.2013, all interim orders including the said order and the order dated 9.12.2013 and all directions thereunder have ceased to exist since the same have merged into the final order dated 12-20/8/2014. As such contempt proceedings against such interim order does not lie. The counsel relied on ¹***Prem Chandra Agarwal Vs. Uttar Pradesh Financial Corporation***, ²***Kunhayammed & Ors Vs. State of Kerala***, ³***Kanwar Singh Saini Vs. High Court of Delhi***, ⁴***Union of India & Ors Vs. West Coast Paper Mills Ltd.***, ⁵***Ramesh Akre & Ors. Vs. Smt.Mangalabai Pralhad Akre & Ors.***, to submit that the logic that underlined the doctrine of merger is that there cannot be more than one decree or operative order governing the same subject matter at a given point of time. Once the matter is finally disposed, it is that decree or order of final disposal that is final, binding and operative and all other interim order merges into that final order passed by the court.

1. (2009) 11 Supreme Court Cases 479
 2. (2000) 6 Supreme Court Cases 359
 3. (2012) 4 Supreme Court Cases 307
 4. (2004) 2 Supreme Court Cases 747
 5. (2002) SCC Online Bom.376

15 The respondents also submitted that the contempt petition for an interim order is not maintainable once the interim order has merged with the final order [point A (iii)] and the only remedy if at all the petitioner had, was to have filed the contempt petition when the interim order was in force or to sue for contempt of the final order if there was a breach of the final order and admittedly the respondents are not in breach of the order dated 12-20/8/2014. Therefore, this petition is not maintainable. In support of this submission, the respondents relied on the judgment of High Court of Chhattisgarh at Bilaspur in ⁶***M/s.Mile Stone Soft. Tech. Pvt. Ltd. Vs. Nidhi Chhibber*** and the judgment of Supreme Court of Minnesota, USA delivered on June 30, 1944, ⁷***Richardson Vs. Richardson***.

16 It is very difficult to accept the proposition of the respondents in as much as it would give rise to a very unacceptable situation. At interim stage the court would direct the party to deposit certain amounts in court. The party does not deposit the amount and after many years the main matter comes up for hearing and is disposed and the party who had to deposit the amount as per the directions of the court not having deposited without any valid reason has in fact, disobeyed the orders of the court and to state that you cannot do anything now because the main matter is already disposed is disgraceful. In the present case the direction contained in the said

6. Contempt Case (C) No.02 of 2015 decided on 8.5.2015

7. 15 North Western Reporter, 2nd Series 127

order dated 21.10.2013 to deposit 12% interest on Rs.67.5 crores, was required to be complied with within 3 weeks from the date of the order. The moment 3 weeks period was over, the breach has occurred. It is for the respondents to come forth and request for an extension of time or make an application to be relieved from their obligations to comply with the order. In a situation like the present case, the question of the direction of deposit getting merged with the final order does not arise. In the final order the court has disposed of the appeals wherein the petitioner had raised allegations of oppression and mismanagement in respondent companies in the appeals. The court while disposing has not stated anywhere that the respondents need not comply with the directions contained in paragraph-18 of the said order. It was for the respondents to get the clarification. Moreover, paragraph-139 of the final order, on which respondents have placed very strong reliance, only states that there will be no interim order other than the 2 orders mentioned therein as regards any of the 4 respondent-companies. SPCPL is not one of the 4 respondent-companies and the respondents herein are not companies. That conclusion on para 139 had no bearing to the respondents herein or SPCPL. Moreover, even if there is a merger, that would not absolve the respondents from their consequences of failure to comply with the order while it was in force. Contempt is between the court and the alleged contempnor. When the court asked the respondents as to why they had not complied with the directions contained in the order dated 21.10.2013, the respondents cannot cock

a snook and tell the court now that the appeal itself is disposed of, you cannot question us.

17 The Apex court's judgment in *Prem Chandra Agarwal* (supra) is of no help to the respondents in as much as it is not in context of contempt proceedings. It was a case where an appeal had been filed against an interim order and when that was pending, subsequently a final judgment came to be passed by the High Court. It also relates to a writ petition.

18 As regards the judgment of the Apex court in *Kunhayammed* (supra) and the other judgments with regards to the doctrine of merger, the same have been considered by the Apex court in ⁸***Commissioner of Central Excise, Delhi Vs. Pearl Drinks Limited***. The Apex Court has held that the doctrine of merger is not a doctrine of rigid and universal application. Paragraphs-11, 12, 16 & 17 read as under :-

"11. Appearing for the appellant Mr. Gourab Banerjee, learned Additional Solicitor General argued that the Tribunal had fallen in a palpable error in applying the doctrine of merger and dismissing the appeal filed by the Revenue. It was submitted that the doctrine of merger had no application to a case like the one at hand where the content and the subject-matter of challenge in the two proceedings, namely, the appeal filed by the assessee and that filed by the Revenue were totally different. Reliance in support was placed by the learned counsel upon the decision of this court in Kunhayammed v. State of Kerala. Reliance was also placed upon the decision of this court in Mauria Udyog Ltd. v. CCE to contend that the doctrine of merger is not a doctrine of universal application and that the difference in the subject-matter or the content of the proceedings could take a decision inter se parties out of the purview of the said doctrine.

⁸ (2010) 11 SCC 153

12. On behalf of the respondent company it was per contra argued that the order passed by the adjudicating authority could not be split into two and that the doctrine of merger applied no matter the issues which arose for determination in the two appeals were distinctly different.

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16. No reference to the pronouncement of this Court on the subject can be complete without a reference to the decision of this court in Kunhayammed case and Mauria case. In Kunhayammed case a three-Judge Bench of this Court reviewed the decisions rendered on the subject and summed up its conclusions in para 44 of this decision. One of the said conclusions apposite to the case at hand is in the following words : (SCC p.384)

“44. To sum up, our conclusions are :

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

17. There is, in the light of the above pronouncements, no gainsaying that the doctrine of merger will depend largely on the nature of the jurisdiction exercised by the superior court and the content or the subject-matter of challenge laid or capable of being laid before it.”

19 Therefore, it will depend on the nature of jurisdiction exercised and the content and subject matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. On the facts and circumstances of the present case the direction in the interim order to make payment of 12% interest on Rs.65.7 crores to be made within a stipulated time, i.e., 3 weeks,

cannot be said to have merged with the final order. By the said order the respondents were directed to pay the amount within 3 weeks. On the expiry of 3 weeks period, the breach has occurred. Once a breach has occurred or once a party has committed a breach of an order, the party cannot come back and say the offence is undone only because the final order has been passed in the matter. It will be useful to quote paragraphs-9 & 15 of a judgment of the Karnataka High Court in ⁹**New Hope Granites V.s. Shri Lokanath, The Deputy Conservator of Forest.**

"9. Courts passing final or interim orders do some times specify the time frame within which the order is to be carried out. Where the Court indicates that it was conscientiously directed expedition or forthwith execution, that direction shall be implemented in letter and spirit. Conversely, where no such time limit is prescribed, it shall be obligatory on the part of the authority to implement the order with the least possible delay within a reasonable period of time. Since these two expressions particularly in bureaucratic circles are misunderstood to confer a license to disobey the order for anything up to several months or a year, we need to lay down that a period of one month would be reasonable outer limit in all such cases.

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15. What is being completely overlooked in all these contempt proceedings is the fact that the offence of contempt is complete immediately when the breach has occurred and this being the position, by merely reporting compliance, the offence cannot be undone. Where a contemnor drags on the proceedings before the Court even after a contempt petition has been filed, and complies with the order much later, the contempt is aggravated. We need in passing, to refer to the plea that is often adopted namely that the order that has been breached has subsequently been vacated or that the main proceeding has subsequently been disposed of. This is absolutely no defence because the requirement of law is that the order has to be obeyed, respected and implemented while it is in force. The subsequent modification of the order can never therefore be pleaded as either a justification or a defence in contempt proceedings."

9 ILR 1994 KAR 2936

(emphasis supplied)

20 As regards *Kanwar Singh Saini* (supra) and *Ramesh Akre* (supra) both are not really applicable to the facts and circumstances of the present matter. They were both in the context of proceedings filed under Order 39 Rule 2(A) of the Code of Civil Procedure and the interim order was in the nature of an order for injunction. Even in the case of *Union of India Vs. West Coast Paper Mills Limited* (supra) the facts are different in as much as that relates to a case where the court came to a conclusion that once an appeal is filed before the Apex Court and the same is entertained the judgment of the High Court or the Tribunal court and the subject matter of the lis unless determined by the last court, cannot be said to have attained finality. Though the Apex Court has dealt with the meaning of “merge”, the court has placed reliance on the judgment of *Kunhayammed* (supra) which as stated above has held that the doctrine of merger cannot be held to be a doctrine of rigid and universal application. Therefore, this judgment is also of no help.

21 The counsel for the respondents relied heavily on the judgment of the High Court of Chatisgarh in the matter of *M/s.Milestone Soft. Tech Pvt. Ltd.* (supra) to contend that the contempt petition could not be filed after the main proceeding was disposed of. With due respect, there is no reason given to support the court's finding in paragraph-21 which reads as under :-

"21. Thus contempt proceedings for disobedience of order dated 23.09.2014 at this stage, cannot be initiated as there is no enforceable order for maintaining and initiating contempt petition against the respondent/contemnor."

22 The learned Judge with due respect has accepted that settled legal position is as under :-

"19At this point, it is appropriate to note this Court is alive to the legal position that disobedience of the interim order passed by the Court is punishable even if interim order is subsequently vacated or relief is refused to the party in the main proceedings and dismissal cannot justify disobedience of such order by the other party [Kindly see Prithawi Nath Ram v. State of Jharkhand and others]. But the facts of the present case are quite distinguishable as in the instant case no contempt petition praying for initiation of contempt proceeding was filed by the contemnor during the period that is 23.09.2014 to 21.11.2014, when the interim order was in operation and enforceable."

But has nonetheless proceeded to hold, without giving any reason, that contempt proceedings for disobedience of an order cannot be initiated as it was not filed when the interim order was in operation and enforceable. I would also differ with this conclusion of the learned Judge (even though it is not a binding authority on this court) because once the breach is committed of an order or a direction is disobeyed, how can it be accepted that when the main proceedings are disposed, parties need not obey the earlier orders of the court.

23 As regards the judgment of the Supreme Court of Minnesota (USA) in *Richardson vs. Richardson* (supra) it was a case where the wife had commenced contempt proceedings against the husband for failing to make payments of alimony, pendente lite. The court held that an order granting wife temporary alimony during

pendency of her divorce suit was merged in judgment and decree granting her divorce and no longer effective or enforceable and contempt proceedings against husband could not be based thereon. In other words, the court held that the outstanding amount payable by way of interim alimony was subsumed into the final decree. The facts in the matter is totally in variance with the facts in our case.

24 As regards ¹⁰**Mittman vs. Mittman** of Supreme Court, Appellate Division, New York (USA) relied upon by respondents, the court has come to its conclusion in that matter based upon the applicable local Civil Practice Act. Therefore, we cannot accept it as a proposition of law applicable to the present case.

25 In ¹¹**Tayabbhai M.Bagasarwalla Vs. Hind Rubber Industries Pvt. Ltd.**, ¹²**Prithawi Nath Ram Vs. State of Jharkhand and New Hope Granites**, the courts support the proposition that a party is liable to be punished for contempt that is committed of an interim order when it is in force.

26 In *Tayabbhai Bagasarwalla* (supra) the Apex court has gone to the extent of even holding that even if it is ultimately held that the proceedings in which the order was passed was without jurisdiction, the breach of such an order would nonetheless amount to contempt. Paragraphs-14, 15 & 16 read as under :-

10. 263 A.D. 384 (1942)

11. (1997) 3 Supreme Court Cases 443

12. (2004) 3 BLJR 1802

"14. The first and foremost question in this appeal is whether the High Court was right in holding that since it has been found ultimately that the Civil Court had no jurisdiction to entertain the suit, the interim orders made therein are non-est and hence Defendants 1 and 2 cannot be punished for their violation even if they had flouted and disobeyed the said interim orders when they were in force. We are of the considered opinion that the High Court was not right in saying so....."

15..... Would it be right to say that violation of and disobedience to the said orders of injunction is no punishable because it has been found later that the Civil Court had no jurisdiction to entertain the suit. Mr.Sorabjee suggests that saying so would be subversive of the Rule of Law and would seriously erode the majesty and dignity of the court. It would mean, suggests learned counsel, that it would be open to the defendants-respondents to decide for themselves whether the order was with or without jurisdiction and act upon that belief. This can never be, says the learned counsel. He further suggests that if any party thinks that an order made by the Civil Court is without jurisdiction or is contrary to law, the appropriate course open to him is to approach that court with the plea and ask for vacating the order. But it is no open to him to flout the said order. But it is no open to him to flout the said order assuming that the order is without jurisdiction. It is this principle which has been recognised and incorporation in Section 9-A of Civil Procedure Code (inserted by Maharashtra Amendment Act No. 65 of 1977), says Mr.Sorabjee. Section 9-A reads as follows:

"9-A. Where by an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at hearing of the application.

(1) If, at the hearing of any application of granting or setting aside an order granted any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of the court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting the interim relief. Any such application shall be heard any disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue to the jurisdiction."

16.....The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court. Ultimately, no doubt, High Court has found that the Civil Court had no jurisdiction of entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High court during this period of six years were all non-est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the

question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court [on the question of jurisdiction], no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of rule of law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bonafide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

Therefore, the submissions of respondents cannot be accepted.

27 As regards A(iv) : Shri Sancheti submitted that the ratio in *Tayabbhai Bagasarwalla* (supra) has no application because it would apply in a case where contempt petition was filed when orders in force had been breached and as the final order in our case has been passed :-

It was submitted that the contempt petition in *Bagasarwalla* (supra) was filed when the interim order was in force and the final order had not been passed, whereas in our case the contempt petition had been initiated only after the final order had been passed in the matter.

28 In *Bagasarwalla* (supra) case it is correct that the contempt petition was passed before the matter was finally disposed unlike in

our case. But nowhere it has been held that such a petition is not maintainable. The Apex Court has gone to the extent of saying that even if finally the court has no jurisdiction, still a party cannot escape consequences of disobedience and violation of the interim order committed by them prior to the court's decision on the question of jurisdiction. If we accept the statement of Shri Sancheti, it would mean that the said order passed on 21.10.2013 was non est and the respondents despite having flouted the said order can merrily live without fear of any consequence just because the petitioner had not filed the petition earlier. The issue for consideration is whether the respondents could be punished for flouting or disobeying the said order dated 21.10.2013 when it was in force prior to the disposal of the appeal. Answer is yes. If the parties are allowed to flout or disobey such interim orders, it would seriously affect the dignity and the authority of the courts. In fact, paragraphs-22, 23 & 27 of *Tayabhai Bagasarwalla* (supra) read as under :-

"22. In D.M. Samyulla v. Commissioner, Corporation of the City of Bangalore & Ors. [1991 Karnataka Law Journal 352], the Karnataka High Court stated the law in the following terms, with reference to the decision of the Court of Appeal in Hadkinson v. Hadkinson: "the principle laid down in the said decision is, a party who knows an order, whether it is null or valid, regular or irregular, cannot be permitted to disobey it and it would be dangerous to allow the party to decide as to whether an order was null or valid or whether it was regular or irregular".

23. In Hadkinson v. Hadkinson [1952 All. E.R.567] the Court of Appeal held:

"It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C. said in Chuck v. Cremer: (1) (1 Coop. Temp. Cott.342). A party, who knows of an order, whether null or valid, regular or

irregular, cannot be permitted to disobey it....It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. that they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.'

Such being the nature of this obligation, two consequences will in general follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt."

24.

25.

26.

27. *The learned counsel for the Defendants 1 and 2 submitted that this is not a proceeding for contempt but a proceeding under Rule 2-A of Order 39 of the Civil Procedure Code. Learned counsel submitted that proceedings under Order 39 Rule 2-A are a part of the coercive process to secure obedience to its injunction and that once it is found that the Court has no jurisdiction, question of securing obedience to its orders any further does not arise. Learned counsel also submitted that enforcing the interim order after it is found that the Court had no jurisdiction to try the said suit would not only be unjust and illegal but would also reflect adversely upon the dignity and authority of the Court. It is also suggested that the plaintiff had instituted the present suit in the Civil Court knowing full well that it had no jurisdiction to try it. It is not possible to agree with any of these submission not only on principle but also in the light of the specific provision contained in Section 9-A of Code of Civil Procedure (Maharashtra Amendment). In the light of the said provision, it would not be right to say that the Civil Court had no jurisdiction to pass interim order or interim injunction, as the case may be, pending decision on the question of jurisdiction. The orders made were within the jurisdiction of the Court and once this is so, they have to be obeyed and implemented. It is not as if the defendants are being sought to be punished for violations committed after the decision of the High Court on the question of jurisdiction of the Civil Court. Here the defendants are sought to be punished for the disobedience and violation of the order of injunction committed before the decision of the High Court in Vishanji Virji Mepani. According to Section 9-A, the Civil Court- and the High Court - did have the power to pass interim orders until that decision. If they had that power they must also have the power to enforce them. In the light of the said provision, it cannot also be held that those orders could be enforced only till the said decision but not thereafter. The said decision does not render*

them (the interim orders passed meanwhile) either non-est or without jurisdiction. Punishing the defendants for violation of the said order committed before the said decision (Vishanji Virji Mepani) does not amount, in any event, to enforcing them after the said decision. Only the orders are being passed now. The violations are those committed before the said decision.

29 Here is not a case where the respondents are being accused of contempt for violation committed after the appeal was finally disposed but for disobedience and violation of the said order of deposit committed before the judgment dated 12-20.8.2014. This court had power to pass interim order which it did. The court also has powers to enforce the orders. I cannot accept the submission of the counsel for the respondents that the order of 21.10.2013 could be enforced only till 12-20.8.2014 and not thereafter. It was open to the respondents to apply to the court for modifying the interim order dated 21.10.2013. It was also open to the respondents to apply to the court on 12-20.8.2014 that they be relieved of their responsibility under the interim order. In my view, the proposition that emanates from *Tayabbhai* (supra) is that the interim order has to be obeyed and their violation can be punished even after the matter is finally disposed provided the violation is committed before the final disposal of the matter.

30 In *Prithawi Nath Ram* (supra) the court held in paragraph-9 as under :-

"9. In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other

side cannot take that as a ground for disobedience of any interim order passed by the court."

In fact the court also held that the rightness or wrongness of the order cannot be urged in contempt proceedings.

31 Therefore, a party has no ground for disobedience of any interim order even if ultimately the interim order is vacated or relief in the main proceedings is not granted to the party or it is held that the court did not have jurisdiction to hear that matter. Right or wrong the order has to be obeyed even if the matter is ultimately disposed. This takes care of the 4th ground of defence.

32 The conclusion above would also take care of the 5th defence i.e., A-(v) : The Petitioners contention that Order dated 21st October, 2013 did not merge into the final Order dated 12th/20th August, 2014 is contrary to settled law, as well as plain language of orders dated 12th / 20th August 2014.

33 The next defence B(i) - direction in paragraph-18 of the order dated 21.10.2013 is against SPCPL and not against respondent nos.1 to 3.

34 At the outset learned counsel Shri Sancheti submitted that the direction to pay is against SPCPL as could be seen from paragraph-17 read with paragraphs 18 & 21 of the said order dated

21.10.2013, minutes of the meeting held on 31.10.2013, the letter dated 4.1.2015 exchanged between VMPL and SPCPL and also as alleged in the petition. There is no doubt that the amount had to come from the pockets of SPCPL. The order is very clear that SPCPL should pay.

35 As could be seen from paragraphs reproduced above, from the said order dated 21.10.2013, SPCPL was not a party to the 4 appeals in which the said order was passed. Though it has been raised for the first time across the bar that the direction is not binding on respondent nos.1 to 3 but only against SPCPL, the respondents and in particular respondent no.3, always represented to the court that they were in control of SPCPL and the payment of interest was a matter within their knowledge and control. This could be seen from the paragraphs of the said order quoted above. Moreover, respondent no.3 through his Constituted Attorney respondent no.2, during the meeting held on 31.10.2013 before the court appointed observer Mr. Justice Suresh (retired) sought some additional time to make the payment which has been recorded in paragraph-4 of the minutes of the meeting. The same reads as under :-

"4. One of the items in the order says that the Observer should ensure due payments of interest by SPCPL on the amount of Rs.67.50 crores. However, Mr. Chaudhari for the Respondents states that according to him, the interest amount comes to about Rs.20 crores and the Company has some difficulty in paying the amounts, immediately, and that they would be able to pay by installments. However, on seeing para 18 of the said order which says that the same shall be paid within 3 weeks from the date of the Order (i.e. 21.10.13), the Observer pointed out that he will not be able to give any direction as requested by the Respondents."

This clearly shows that the respondents, particularly respondent no.3 and respondent no.2 had accepted two things. Firstly, the fact that the obligation to comply with the order was cast upon them and secondly it was within their power to comply with the said order. None of the respondents have even attempted to contend that they took any steps to comply with the order. They have also not contended that they did not have it within their power and ability to comply with the order. All the respondents have in their respective affidavits in reply only purported to restrict their defence to contend that they are not liable to be punished for the breach of the said order and/or it is legally impermissible to the court in its contempt jurisdiction to punish them for disobedience of the said order.

It is the case of the petitioner that the said order dated 21.10.2013 was an order that was issued against the respondents present before the court. It was issued on the basis that the respondents were acting together and respondent no.3 in particular controlled SPCPL and would therefore, be in a position along with respondent nos.1, 2 & 4 to comply with the order by ensuring that the amount was paid by SPCPL to VMPL. It is necessary to note that the learned single Judge proceeded to issue the said order even though SPCPL was not a party to the said proceedings. It is also necessary to note that SPCPL has not even contested the said order. The court issued the direction on the basis of the then undisputed position that respondent no.3 controlled SPCPL on the basis of the statement/

representation made in court by respondent no.3 at the time of the hearing. Of course, respondent no.3 is now attempting to distance himself from SPCPL as an after thought. We shall deal with that subsequently.

36 Therefore, the respondents were admittedly in a position to comply with the directions referred in the order dated 21.10.2013 but consciously chose not to do so. In fact to a specific question put by the court to counsel Shri Sancheti, he replied that it is not the case of any of the respondents that they were not in a position to ensure compliance with the order. The approach was they are not liable to be punished for a breach or disobedience and/or it is legally impermissible for the court to punish them in its contempt jurisdiction. Respondent nos.1 & 2 have also contended that they have ceased to act as directors of VMPL since 20.11.2014. The stand of respondent no.3 is that he did not control SPCPL and just because he was the main beneficiary of the trust that controlled SPCPL, he cannot be held to be guilty of any breach of any order. This also is a false stand as could be seen later.

37 It appears from the affidavit filed by respondent nos.1 to 4 in reply to the contempt petition and from the oral arguments made on their behalf is that :-

(i) None of the four respondents have contended that they were not in a position to comply with the order ;

(ii) None of the respondents have contended that they did not, at

the relevant time, (when the order was passed and thereafter at the meetings before the court appointed Observer) believe that the order was not directed against them and/or that the order in question was intended to be an order against SPCPL ;

(iii) No explanation was forthcoming from any of the respondents either for their failure to comply with the order or for their actions pursuant thereto including the fact that they requested the Court appointed observer for some additional time to comply with the order;

(iv) No submissions whatsoever were made, and nor was any attempt at all made to explain the contradiction between the numerous statements made on oath with regard to respondent no.3's control over SPCPL ;

(v) No explanation whatsoever was forthcoming with regard to the basis on which various statements pertaining to the sum of Rs.67.50 crores was made by the respondent to the Court, all of which are recorded in the said order dated 21st October 2013.

38 Why I have observed above that the stand of respondent no.3 that he had no control over SPCPL is false could be seen from the following facts. Respondent no.3, under the terms of an agreement entered into with the petitioner had the power to appoint the board of directors of SPCPL. The fact that respondent no.3 was at the relevant time being in control of SPCPL is clear from various affidavits and orders passed in matters between the petitioner - father and respondent no.3 - son.

39 In the affidavit in rejoinder filed by the petitioner it is alleged in paragraphs 5, 6 & 7 as under :-

"5. Respondent No.3 has in his affidavit contended that he is not the Chairman of SPCPL and therefore cannot be held liable for having committed contempt of this Hon'ble Court on account of the failure of SPCPL to pay the company i.e. Vidyut Metalics Pvt. Ltd. (VMPL) the interest on the sum of Rs.67.50 crores. In this respect it is submitted that while Respondent No.3 may have been inadvertently described as the Chairman of SPCPL, it is admitted position that Respondent No.3 is the chairman of the Supermax Group of Companies, and that SPCPL is a part of the Supermax Group of Companies, and as such is under his control.

Reproduced below are Respondent No.3's own admissions in this regard which are made by him in various legal proceedings between members of the Malhotra family and /or entities controlled by them.

(a) Witness Statements dated 23.03.2012, 30.05.2012, 14.06.2012, 19.09.2012, 27.09.2012 and 01.10.2012 filed by Respondent No.3 before the Queens Bench Commercial Court, London in Case no.2012 Folio 463 :

"I Rakesh Malhotra, do state I am a Chairman of the SuperMax group of companies." (@ pg.1 of the witness statements)

(b) 7th Witness statement dated 4th December, 2014 filed by Respondent No.3 before the Queens Bench Commercial Court, London in Case no.2012 Folio 463 :

"16 One of the aims of the restructuring exercise was to allow RKM and RJM to exit from the day to day involvement in the running of the SuperMax group. It was intended that I would take over the management of the business. Accordingly the parties to the SSD (including RKM and RJM) chose to grant me very wide-ranging powers under the SSD to take all necessary actions in that behalf. I was given complete control over the SuperMax group companies, including the newly created company, SPCPL." (@ pg.4-5 of the witness statement)

(c) Points of claim filed by Respondent No.3 on 15th June, 2012 in proceedings before the Queens Bench Commercial court, London in Case no.2012 Folio 463 :

"6 Pursuant to the terms of the SSD, RM was given complete control over the running of the Business and, in particular SPCPL." (@ page 3 of the Points of Claim)

(d) SLP No.24572-24579 of 2014 filed by Respondent No.3 to impugn the order dated 12th /20th August 2014, passed in inter alia Company Appeal Nos.15 to 18 of 2013

"6 GROUNDS FOR INTERIM RELIEF :

A. Because the petitioner is in control of the newly formed Indian Company called Supreme Personal Care Pvt. Ltd. and that if the present order is allowed to continue the Respondent shall take control of the other Indian Companies and cancel all Agreements mandated to be entered into by the SSD and the business of the Petitioner company will come to a standstill." (@ pg.223 of the SLP)

I crave leave to refer to and rely upon the aforesaid documents when produced.

6. In addition to the various admissions by Respondent No.3, it is also pertinent to note that this Hon'ble Court has by its orders dated 12th /20th August 2014 passed in inter alia Company Appeal Nos.15 to 18 of 2013 and its order 12th August 2015 passed in Company Appeal (L) No.52 of 2015 taken judicial notice of the fact that Respondent No.3 controls both the Supermax Group as also the actions Respondent Nos.1 and 2.

7. In the aforesaid circumstances it is abundantly clear that Respondent No.3 was at all material times in a position to ensure compliance with the Order dated 21st October 2013 and to ensure that interest was paid by SPCPL on the amount of Rs.67.5 crores to VMPL and that Respondent No.3's attempt to now contend that he does not control SPCPL is a false case, which ought not to be

countenanced by this Hon'ble Court."

The respondent no.3 has not controverted or denied these allegations.

40 This court in its order dated 12-20.8.2014, while disposing the Appeals, has observed as under :-

*"5.the Indian companies assets, businesses and plants were to be transferred to **a newly incorporated company under Rakesh's control**the principal object of the proposed restructuring was to allow RKM and Rajiv an exit from full – time involvement in the affairs of the Supermax group, while Rakesh was to assume control of the business..."(Emphasis Supplied)*

"134. Rakesh, then a young man his family trusted implicitly, appears prima facie to have betrayed that confidence, and to have done so in a most egregious manner. He is primarily responsible for the fractures in the family relationships and business. RKM and Rajiv acted in good faith; Rakesh was, as agreed, given full control of the SuperMax companies. The funds that were, in exchange, to come to the RKM-controlled Indian companies (the Transauto companies) were wrested — perhaps hijacked might be a more apposite term —and deployed to further the interests of the entities Rakesh controls. In effect, Rakesh engineered a coup d'état and assumed control of the entire group. Keeping the directors of the Transauto companies under his thumb, he not only created significant liabilities in the Indian companies but did so without notice or intimation to their owners, RKM, Transauto and the other family members. When these owners sought information, it was denied. Rakesh went so far as to threaten the directors should they make any disclosure. With orders from the CLB, these directors, all beholden to Rakesh, continued on the RKM Indian companies. This is the very "status quo" of which Mr. Madon now seeks a continuance."

41 This court in its order dated 12.8.2015 passed in Company Appeal (L) No.52 of 2015 has taken judicial notice of the fact that respondent no.3 controls both Supermax group. Paragraph-4 reads as under :-

"4. In March 2011, pursuant to an investment made by Actis Consumer Grooming Products Ltd. ("Actis"), a private equity firm,

in one of the holding companies of Supermax Personal Care Pvt. Ltd. ("Supermax"), the business of some of the RKM group companies was transferred to Supermax. The transfer was effected on 18th March 2011. Pursuant to this transfer, Rao and Goyal, who were employees of RKM group, resigned from their existing employment and were absorbed by Supermax as employees or consultants. Rao and Goyal, however, continued to work as directors of Unique, having worked with the RKM group for last several years. **The Appellant herein, Rakesh Malhotra, who is the elder son of RKM ("Rakesh"), was incharge of the management of Supermax"** (Emphasis Supplied)

42 This court in its judgment pronounced on 30.11.2015 in Company Appeal (L) No.10 of 2015 has in paragraphs 3, 4, 4.5 4.6, 4.7, 5.6, 5.8, 5.11, 5.15, 5.32, 20, 21, 22, 22.1 & 23 noted as under :-

"3.....Rakesh Malhotra ("Rakesh") who in fact has admitted in the proceedings filed before the Hon'ble Supreme Court of India that he is in charge and control of SPCPL.....In view of Rakesh admittedly being in charge and control of SPCPL, the said statement/ explanation by SPCPL, to put it very mildly, is preposterous and unacceptable."

4.....Rakesh therefore arranged for SPCPL to make a false claim for the first time that it is in possession and control....."

4.5In view of the above stand on the part of RKM on the one hand that Rakesh has put up SPCPL to make a false claim of being in possession and control of Plant No.2 from the year December 2010/March, 2011, and SPCPL on the other hand contending that SPCPL is in no way concerned with the disputes between RKM and Rakesh, and that Rakesh is neither on the Board of Directors of SPCPL or concerned with the day to day affairs of SPCPL, one of the queries put to the Advocate for SPCPL by this court was whether SPCPL had financed Rakesh qua any of the litigations that were fought against RKM before the CLB and/or before this Court or before the Hon'ble Supreme Court, and in the event of SPCPL having financed Rakesh to pursue the litigation against his father, whether the Board of Directors of SPCPL has passed any Resolution approving the same. This Court had also clarified that if any such litigation of SPCPL is financed by SPCPL, the same would amount to SPCPL having made a false representation to the Court in their Appeal/affidavits as set out hereinabove."

4.6 After seeking time from this Court on two occasions, the Court was informed by the Counsel appearing for SPCPL that the entire litigation fought by Rakesh against RKM (i.e., since the year 2012) has been financed throughout by SPCPL and there is no Board Resolution on record of SPCPL qua the litigation costs having been borne by SPCPL on behalf of Rakesh.

4.7 It is therefore clear that the entire cost incurred throughout by

Rakesh in the fight between RKM and Rakesh is borne by SPCPL and shown by SPCPL in its accounts as legal expenses of SPCPL. This fact therefore clearly demonstrates that incorrect statements have been made by SPCPL in the Appeal, in the affidavits filed on behalf of SPCPL therein and in the Arbitration Petition relied upon by SPCPL in the Appeal, to give an incorrect impression to the Court that SPCPL has not approached the Court at the instance of Rakesh, after Rakesh failed to succeed in preventing the removal of Vyas and Chauhdhari as Directors of VMPL ; that SPCPL is not controlled by Rakesh (though Rakesh has himself admitted this fact in his SLP before the Hon'ble Supreme Court) ; that SPCPL is not concerned with the family disputes between Rakesh and RKM and had no alternative but to approach the Court only because, since December 2014 RKM/VMPL started interfering with the business of the Appellant; and that SPCPL is a professionally led and managed Company where Rakesh is not a member of the Board of Directors of the SPCPL and is also not concerned with the day to day affairs of SPCPL.

5.6Through these pliant Directors, Rakesh also sought to utilize the funds, assets and properties of the five Companies (including VMPL) for the benefit of SPCPL/himself.

5.8.....Interestingly, neither Vyas nor Chaudhari (employees/consultants of SPCPL) who continued to be the Directors of VMPL, nor Rakesh who admittedly was managing the affairs of SPCPL took a stand similar to the stand now taken through SPCPL.....

5.11 Even at that time Vyas and Chaudhari, ex-Directors of VMPL and Rakesh who admittedly is in control of SPCPL did not take a stand.....

5.15 Against the said Judgment and Order dated 12th/20th August, 2014, Rakesh preferred a Special Leave Petition before the Hon'ble Supreme Court of India. Rakesh applied for a stay of the said Judgment and Order dated 20th August, 2014, inter alia on the grounds set out below :

A. Because the petitioner is in control of the newly formed Indian Company called Supermax Personal Care Pvt. Ltd. And that if the present order is allowed to continue, the respondent shall take control of the other Indian Companies and cancel all Agreements mandated to be entered into by the SSD and the business of the petitioners' company will come to a standstill.

D. Because removing the interim protection would result in irreversible situation inasmuch as permitting an immediate change in the Constitution of the Board of Directors of the Respondent Companies. Since these Companies have contractual obligations with or to the SuperMax Companies, should any of the existing contracts be terminated, the consequences to the SuperMax group would be crippling. Thus Rakesh, as petitioner in the SLP, has categorically admitted that he is in control of SPCPL and if RKM shall take control of the Indian Companies (including VMPL) and cancel all agreements mandated to be entered into by the Share Subscription Deed (SSD) the business of SPCPL will come to a standstill. It will again not be out of place to mention here that Rakesh who

admitted before the Hon'ble Supreme Court to be in control of SPCPL.....

5.32 However, the said erstwhile Directors for the first time now orally alleged that SPCPL (which is admittedly controlled by Rakesh).....

20.....Rakesh who admittedly controls SPCPL started prevailing upon Vyas and Chaudhari and through them was dealing with the finance and assets of VMPL as per his wishes..... Since Vyas and Chaudhari have during the interregnum throughout denied access to RKM qua the working and affairs of VMPL and have acted as per the directions of Rakesh who admittedly controlled SPCPL and allowed Rakesh to deal with the finances and assets of VMPL as per his wishes..... All these happenings were only because Rakesh, who controlled SPCPL, also controlled Vyas and Chaudhari, who were employees/consultants of SPCPL and also the ex-directors of VMPL and through them acted completely against the interest of VMPL and RKM..... Rakesh who admittedly controls SPCPL started prevailing upon Vyas and Chaudhari and through them was dealing with the finance and assets of VMPL as per his wishes....."

22..... or is an act of SPCPL at the instance of Rakesh who admittedly controls SPCPL."..... but Rakesh, who admittedly controlled SPCPL....."

22.1 In the SLP grounds, Rakesh categorically affirmed that he controlled SPCPL and stated that he was apprehensive that if the stay order was vacated and RKM was allowed to take control of the 5 Companies including VMPL, he would jeopardize arrangements between them and SPCPL....."

22.3..... SPCPL filed the present Appeal on 3rd February, 2015 alleging that it has nothing to do with the disputes between Rakesh and RKM and was forced to approach the Court only in view of certain instances of interference on the part of VMPL/RKM commencing from December, 2014. As set out in paragraph 4 hereinabove, SPCPL repeatedly represented to this Court that it was not concerned with the fights between RKM and Rakesh. In answer to the contention of VMPL/RKM that Rakesh admittedly controls SPCPL, SPCPL took a stand on oath that Rakesh is neither on the Board of Directors of SPCPL nor is concerned with the day to day affairs of SPCPL. These false representations on the part of SPCPL stood exposed when this Court enquired from SPCPL whether SPCPL had financed Rakesh qua any of the litigations initiated/defended by Rakesh against RKM before the CLB or before this Court the Hon'ble Supreme Court and in the event of SPCPL having financed Rakesh to pursue the litigation against his father, whether the Board of Directors of SPCPL had passed any Resolution approving the same. After seeking time from the Court on two occasions, the Court was informed by the Counsel appearing for SPCPL that the entire litigation initiated/defended by Rakesh i.e., since the year 2012 has been throughout financed by SPCPL and there is no Board of Resolution on record qua the litigation

expenses having been borne by SPCPL on behalf of Rakesh..... He has therefore put up SPCPL to file the above appeal making statements/submissions which are false and incorrect to the knowledge of SPCPL. SPCPL, which has admittedly financed the entire litigation pursued by Rakesh against his father RKM....."

23..... Also in view of the past conduct on the part of Rakesh (who admittedly controls SPCPL) and the ex-Directors Vyas and Chaudhari of refusing to abide by the Orders passed by the CLB/this Court even after the Hon'ble Supreme Court in the SLP filed by Rakesh had specifically declined to stay the same, the CLB was completely justified in directing police assistance which was required to maintain peace and order at the time of implementation of its Order by VMPL/RKM....."

(emphasis supplied)

43 Notwithstanding the above statements and averments made by him on oath in a number of different legal proceedings and notwithstanding the findings contained in the orders referred to above, the message conveyed by respondent no.3, in his affidavit dated 21.8.2015 filed in response to the present Contempt Petition is to the contrary. This is a false denial by respondent no.3 and it also clearly amounts to an act of perjury. In fact, this stand has been taken before Hon'ble Mr. Justice S.J.Kathawalla and Justice Kathawalla has also not accepted these submissions. Infact Mr. Justice Kathawalla has made strong observations against respondent no.3 and SPCPL (judgment dated 30.11.2015). False denial by respondent no.3 amounts to an act of perjury on his part in view of his previous statements made on oath. The counsel for respondent Shri Sancheti submitted that the petitioner cannot rely on documents not annexed to the contempt petition or any other pleadings to support his submission as Contempt petition is quasi criminal in nature which requires

standard of proof which is beyond reasonable doubt. This defence which is mentioned at point-(D) of paragraph 6 above, was raised because the petitioner had sought to rely on certain affidavits filed by respondent no.3 in the contempt petition and the another one dated 27.9.2013 filed by respondent no.4. Counsel Shri Sancheti submitted that the respondents should have been served with all documents and materials along with the petition and only then the respondents could have made the charge. He relied on the judgment in the case of ¹³***Sahdeo Singh Vs. State of Uttar Pradesh.***

This submission of Shri Sancheti could have been accepted if the respondents were confronted with any documents to which they were not a party. The petitioners have only relied on the affidavits filed by respondent nos.3 & 4 in the company petitions and orders passed by this court. Certainly respondent no.3 would have known the stand that he had taken in the other affidavits filed by him, respondent no.4 in proceedings to which he was a party and orders passed by this court in proceedings to which he was a party. He cannot today file a false affidavit and take a contrary stand and state that the petitioner cannot rely on the earlier affidavits or orders to prove that the respondent no.3 is taking a false stand now. This submission of the counsel Shri Sancheti for the respondent no.3 has to be rejected.

44 It is very clear that respondent no.3 does in fact control

13. 2010 (3) SCC 705

SPCPL as could be seen from the above and therefore, certainly he was in a position to ensure compliance of the direction to pay the interest on the sum of Rs.67.5 crores. More so when SPCPL has spent towards respondent no.3's legal costs in his fight against the petitioner and shown it as legal expenses and that also even without a resolution being passed by SPCPL. It is also not his stand that he could not comply with or he requested/instructed the Board of Directors who refused to comply with his request. Moreover, on 31.10.2013 at a meeting held by the court appointed observer, respondent no.3, through his Constituted Attorney viz. respondent no.2 above named has stated as under :-

"One of the items in the order says that the Observer should ensure due payments of interest by SPCPL on the amount of Rs.67.50 crores. However, Mr.Chaudhari for the Respondents states that according to him, the interest amount comes to about Rs.20 crores and the coo has some difficulty in paying the amounts, immediately, and that they would be able to pay by installments. However, on seeing para 18 of the said Order which says that the same shall be paid within 3 weeks from the date of the Order (i.e., 21.10.13), the Observer pointed out that he will not be able to give any direction as requested by the Respondents.

Mr.Chaudhari then hands over a letter addressed to the Observer stating that they intend to file a Special Leave Petition in the Supreme Court of India against this Order dated 21st October 2013. The said letter is taken on record."

(emphasis supplied)

45 As could be seen from the order dated 9.12.2013, following which there was another meeting before the court appointed observer, it was never contended by respondent no.3 or any other respondents that no obligation was cast on them to comply with the order dated 21.10.2013.

46 In the circumstances, respondent no.3 has been in a position to ensure compliance of the direction contained in the said order dated 21.10.2013 (para 18) and I have no hesitation to conclude that he deliberately and willfully failed to comply with the order.

47 As regards respondent nos.1 and 2, the allegations against them is that they were directors of VMPL when the order of 21st October, 2013 was passed and in any case until 20th November, 2014 and hence were duty bound to ensure that VMPL took steps to receive/recover the interest from SPCPL. The affidavits in reply filed by both the respondents are almost identical. Both basically contain only bare denials. Of course they say that they ceased to be directors of VMPL in November, 2014 and as directors of VMPL they had fulfilled their fiduciary duties and obligations to the best of their abilities including taking steps for recovering the amounts of VMPL from SPCPL. Though they have not elaborated as to what steps they took for recovering the amounts from SPCPL, they have just stated they were following up with the officers of SPCPL and by a letter dated 4th January, 2014 copy whereof is annexed to the petition, they have sought the status of payment of interest from SPCPL to VMPL and therefore, they have complied with the order.

48 One may wonder as to how respondent nos.1 and 2 who were directors of VMPL could be held guilty of contempt and alleged

to have willfully disobeyed orders of the court when in the order dated 21st October, 2013 the direction to pay is only against SPCPL which, was as observed earlier was under the control of respondent no.3. Respondent no.4 is a director of SPCPL.

49 I have mentioned earlier that the dispute primarily is between the petitioner, his wife and another son on one side and the respondent no.3 on the other. It is a family fight. Respondent Nos.1 and 2 were directors of VMPL since 1993 and 2001, respectively. They were continued as directors hoping that they would protect the interest of VMPL. After a huge battle and with great difficulty the petitioner who owned 99.9% of VMPL was able to remove the respondent nos.1 and 2 as directors of VMPL. It is alleged by the petitioner that respondent no.3 controlled respondent nos.1 and 2 and that the letter dated 4th January, 2014 was also written more than two months after the order was passed and after two meetings with the court appointed Observer and pursuant to the directions of the court appointed observer at the meeting held on 3rd January, 2014.

50 Be that as it may, it is difficult for me to hold that respondent nos.1 and 2, who were not even the directors in SPCPL, just because they were under the control of respondent no.3 could have ensured that SPCPL made the payment to VMPL. Even if I take the case a step further and say that they deliberately slept over the matter and deliberately did not take steps to recover the amount from

SPCPL, can the court hold them guilty of willfully disobeying the order of 21st October, 2013? I am afraid not. It is, therefore, difficult for me to hold that respondent nos.1 and 2 are guilty of contempt.

51 Before I go on to discuss the conduct of Respondent no.4, there are other submissions of the respondents generally that requires consideration. Shri Sancheti, learned counsel also submitted that as the order of 21st October, 2013 directed SPCPL to make the payment, in the absence of SPCPL, no finding of breach of order (much less contempt) can be rendered. It was also submitted that the petitioners have failed to prove the contempt under provisions of Contempt of Courts Act, 1971 including section 12(4) and section 12(5). It was submitted that in a contempt petition a specific charge must be framed and the Contemnor must be given notice of that charge and if interpretation of the order is an issue, contempt petition is not maintainable. Shri Sancheti, counsel also submitted that admittedly SPCPL is not a party to the present contempt proceedings and as direction of payment of interest amount in the order dated 21st October, 2013 was only against SPCPL and there were no directions to respondent nos.1 to 3 personally to make the payments, SPCPL not arrayed as an accused, the petition against respondent nos.1,2 and 3 was not maintainable. The counsel relied on the judgments in the matter of ¹⁴***Matrix Cellular Services Pvt. Ltd. vs. Sanjoy Mukherji & Ors.***; ¹⁵***Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd.***; ¹⁶***Sharad Kumar Sanghi vs. Sangita Rane.***

14. 2013 Vol. 196 Delhi Law Times 649

15. (2012) 5 SCC 661

16. Supreme Court, Criminal Appeal No.1584 of 2007

52 The counsel submitted that under section 12(4) and section 12(5) of the Contempt of Courts Act, 1971, when there is a prosecution against any director or officer of a company, it is a mandatory requirement of law that company is impleaded as one of the accused. Section 12(4) and section 12(5) reads as under :-

12. Punishment for contempt of court.—

(1)

(2)

(3)

(4) *Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person: Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.*

(5) *Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer. Explanation.—For the purposes of sub-sections (4) and (5),—*

(a) *“company” means any body corporate and includes a firm or other association of individuals; and*

(b) *“director”, in relation to a firm, means a partner in the firm.*

53 The counsel submitted that therefore, prosecution against the directors, officers, etc., of the company without arraying the company as an accused is not maintainable. The counsel further

submitted that this statutory provision is based on the principle that (a) in the absence of the company, the court cannot render a finding that company has committed a breach (much less contempt) and (b) in the absence of a cogent finding of breach and consequential contempt by the company, the person in-charge, director, officer, etc., cannot be held criminally liable for such an offence. The counsel also submitted that section 12(4) would not be applicable to the present case because it only relates to an undertaking given to the court and it is not the case of anyone that any undertaking was given. The counsel further submitted that under section 12(5) where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent and connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt. The counsel submitted that as respondent no.3 is neither a director or manger or secretary nor an officer of SPCPL or even a chairman of SPCPL, the petition as against respondent no.3 has to fail. The counsel further submitted that for prosecution to lie against any director or manager or secretary or other officer, the company must also be made a party to the said proceedings. The counsel emphasised that the words used in section 12(5) are "shall also be deemed to be guilty" and therefore, in such cases the primary liability is of the company and proceedings against any director of a company cannot be maintained where a company

has not been made a party to the proceedings under section 12(5) of the said act.

54 It was further submitted by Shri Sancheti that under section 13 of the said act, no court shall impose a sentence for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice. The counsel submitted that contempt of the orders of the court in itself is not sufficient to warrant a punishment. A person can be punished for contempt only if it is shown that his act or omission has substantially interfered with the due course of justice. The counsel submitted that in the present case there has been no interference with the due course of justice and he relied on the judgment of ¹⁷***Rizwan-Ul-Hasan and another vs. The State of Uttar Pradesh.***

55 While deciding any issue, the order has to be read in the context of the factual matrix of the case and has to be read as a whole. It is well settled that an order of a court must be construed having regard to the facts and context in which the same was passed. For that, the order has to be read in its entirety. Observations made should not be read in isolation or out of context (¹⁸***Goan Real Estate and Construction Limited and another vs. Union of India***). When you read the said order dated 21st October, 2013 as a whole, though

17. 1953 SCR 581
18. (2010) 5 SCC 388

the order states SPCPL to pay 12% interest on Rs.67.50 Crores within three weeks, the direction is basically against the persons who could have ensured that the amount is paid. Even the respondents' understanding was the same as could be seen from the court appointed Observer's meeting minutes dated 31st October, 2013 and 3rd January, 2014. Before the affidavits in reply were filed it was not the case of the respondents that the directions were not to them.

56 I also find no ambiguity in the said order. There is no interpretation of the order also required. In any event the order dated 9th December, 2013 passed by the same judge who passed the order dated 21st October, 2013 lays to rest the so called ambiguity because he holds that the respondents were to comply with the same. Paragraphs 1 and 4 of the order dated 9th December, 2013 reads as under :-

"1. On 21 October 2013 in Company application taken out in these appeals, detailed interim directions were issued, including appointment of an observer.

2.

3.

4. The order dated 21 October 2013 has given various directions which are to be implemented by the respondents more particularly directions given in paragraph No.21A, 21E and 21F. The respondents are duty bound to comply with the same. Upon a query from the Court as to who is in charge of the respondent Companies at present, it is informed that Mr.Subhash Choudhary and Mr.Paresh Vyas are directors of the respondent Companies. In case it is found that the respondent Companies have not complied with the order dated 21 October 2013, these two directors shall also be held personally liable apart from the Companies thereof. "

Paragraph 21(e) of the said order dated 21st October, 2013

relates to ensuring payments at 12% p.a. on the amount of Rs.67.50 Crores by SPCPL to VMPL and is continued to be paid.

57 The entire charge or the basis on which the contempt petition is filed is not that the said order dated 21st October, 2013 was against SPCPL. The petitioner's case or the charge leveled in the petition is that the said order was against the respondents herein who were also respondents present before the court. It must be remembered SPCPL was not a party to those proceedings. The charge is that the respondents are all acting together and that respondent no.3 controls SPCPL and would, therefore, be in a position to, alongwith respondent nos.1 and 2 and respondent no.4 to comply with the order by ensuring that the aforesaid amount was paid by SPCPL to VMPL.

58 The learned single Judge proceeded to issue the said order even though SPCPL was not a party to the said proceedings on the basis that respondent no.3 controlled SPCPL and on the basis of the statements/representations made in the court by respondent no.3 and other respondents at the time of hearing.

59 Therefore, the submissions that the petition cannot be proceeded with as SPCPL has not been made a party or section 12(4) and section 12(5) are applicable, is on the basis of misreading the

petition. At all times the petitioner has taken a stand that the obligations was cast on the respondents to comply with the order dated 21st October, 2013. The court would have been conscious of the fact that SPCPL is not a party to those appeals but still passed an order directing SPCPL to make the payment. If SPCPL were aggrieved certainly SPCPL would have challenged that order or brought to the notice of the court that an order has been passed against them without being heard. SPCPL was not a stranger because respondent no.4 who was also the respondent in those appeals was also a director in SPCPL and respondent no.3 has stated on oath and it has been observed by the various orders of the court that he controlled SPCPL. Infact in the order dated 30th November, 2015 passed by this court it has also been observed that it was SPCPL that was funding the litigation cost of respondent no.3 against the petitioner. Therefore, in my view, section 12(4) and section 12(5) of the said Act have no bearing in the facts of the present case. Therefore, none of the judgments relied upon by the counsel for the respondents in this regard have any application in the facts and circumstances of this case.

60 In any event in the matter of *Matrix Cellular Services Pvt. Ltd.* (supra) the court held that only the company was a party to the proceedings and none of the employees were party and hence the facts or factual situation is totally in variance with the present case and *Anita Hada's* case (supra) was rendered in the context of section 138

and 141 of the Negotiable Instrument Act. As regards *Sharad Kumar Sanghi's* case (supra) also it was principally directed against the company and not against the directors.

What will be applicable to the present case is section 12(3) of the Contempt of Courts Act, 1971 which reads as under :

12. Punishment for contempt of court.—

(1)

(2)

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4)

(5)

(a)

(b)

61 Shri Sancheti also submitted that for a person to be held guilty of contempt and to warrant punishment, he must be held to be not only in contempt but his act should interfere with the due course of justice is the settled position. These are general rules pertaining to law of contempt. The counsel for the respondents also relied on the judgments in ¹⁹*Jharieswar Prasad Paul & another vs. Tarak Nath Ganguly and others*; ²⁰*Chhotu Ram vs. Urvashi Gulati and another*; ²¹*Sudhir Vasudeva and M. George Ravishekar and*

19. (2002) 5 SCC 352

20. (2001) 7 SCC 530

21. (2014) 3 SCC 373

others; ²²*Dr. D.K. Attery vs. Mr. Kanwal Singh Mehra;* and ²³*Muthu Karuppan vs. Parithi Ilamyazhuthi and another* in support of general rules pertaining to the law of contempt that in order to arrive at a finding of contempt a strict case must be made out, the court must not go beyond the four corners of the order and disobedience must be willful and deliberate, etc. There can be no argument on these general rules. Every principle of law has to be applied keeping in mind the facts and circumstances of each case. In a given case a person may have violated the directions of the court by not depositing the amount as directed which would mean he has committed a breach of the order. He may, however, explain that all his bank accounts have been attached by some party or he has no money to pay. That is why we have to see whether there was a willful disobedience. If his stand is not that he has not been able to comply with the orders of the court due to various factors, certainly it will amount to interference with due course of justice. The onus, therefore, is on the alleged Contemnor to set-forth these facts. But in this case it is not the case of any of the respondents that they are unable to comply with the said order of the court. None of the respondents have even stated that they took any steps pursuant to the said order to comply with the same. They have not contended that they did not have it within their power and ability to comply with the order. The only stand throughout is that they are not liable to be punished for a breach or disobedience of the said order and it is legally impermissible to the court in its contempt jurisdiction to

22. 159 (2009) DLT 764

23. AIR 2011 SC 1645

punish them for disobedience of the said order.

62 The other submission that was raised on behalf of the respondents, was, i.e., (E) that no contempt proceedings can be invoked and is not intended to be used for enforcement of money decree or directions/orders for payment of money :-

The counsel for the respondents relied on three judgments of the Apex Court, i.e., ²⁴***Food Corporation of India vs. Sukh Deo Prasad***; ²⁵***R.N. Dey and others vs. Bhagyabati Pramanik and others*** and ²⁶***Kanwar Singh Saini vs. High Court of Delhi***. The counsel submitted that if a person is directed to pay any amount, does not pay the amount, the remedy is to execute the decree and an action for contempt for disobedience or breach does not lie. The counsel submitted that no proceedings for execution of said order dated 21st October, 2013 has been filed by the petitioner and the present petition is to only seek direction against SPCPL to make the payment to VMPL which cannot be permitted.

63 It is pertinent to note that the respondents have taken a stand that the said order dated 21st October, 2013 is not enforceable against the respondents but are also contending that no contempt would lie in respect of executable order. As regards the judgments relied upon by the respondents, in my view, none of the judgments lay

24. (2009) 5 SCC 665

25. (2000) 4 SCC 400

26. 2012 (4) SCC 307

down any proposition of law to the effect that no contempt would lie in a case of order which is executable.

64 *R.N. Dey (supra)* has been considered by the Apex Court in the case of ²⁷***Rama Narang vs. Ramesh Narang and another*** and it is held that ultimately, the matter is one of court's discretion having regard to the facts of the case and just because decree is executable does not take away the court's jurisdiction in contempt. Paragraphs 29 to 32 of the said judgment reads as under :-

"29. The next decision relied upon by the respondents is the decision of this Court in Bank of Baroda Vs. Sadruddin Hasan Daya & Anr. 2004(1) SCC 360. The petitioner in that case had filed a suit against the respondents for recovery of money. The suit was disposed of by consent and a decree was passed incorporating the consent terms. The consent terms inter alia, provided for payment of the decretal amount in installments. Pending the clearance of the decretal amount the respondents undertook not to sell, mortgage, alienate, encumber or charge some of its properties. Another creditor also filed the suit against the respondent for recovery of a certain amount. This second suit was also disposed of by consent and a decree passed in terms of the consent order. Like the first decree the decreed amount was to be satisfied in installments and pending satisfaction of the decree, the respondents undertook to the Court not to alienate, encumber, or create third party rights or part with possession of the same properties which had already formed part of the undertaking in the first decree. The respondents defaulted in making payment of the installments under the first decree. The petitioner put the decree into execution. It also filed a contempt petition alleging that the second consent decree violated the undertaking given in the first decree. The Court found that by placing the same property under attachment in the second decree the respondent had intentionally and deliberately acted in breach of the undertaking given to the Court in the first consent decree. The Court approved the statement of the law by the Bombay High Court in Bajranglal Gangadhar Khemka & Anr. Vs. Kapurchand Ltd.(supra). Significantly, the Court also said:

"The violation or breach of the undertaking which become part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree." (Emphasis added)

30. *This decision reinforces our view of the law. It does not in any*

27. (2006) 11 SCC 114

way run contrary to our opinion as expressed earlier on the interpretation to be put on Section 2(b) of the Act. On the other hand the Court repelled the submission of the respondents that the petitioners remedy lay in executing the decree in the following words:-

" The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents."

31. The decision in *R.N. Dey and Anr Vs. Bhagyabati Pramanik & Ors* 2000(4) SCC 400, also relied upon by the respondents, disposed of an appeal filed from an order directing the appellants to deposit certain amounts of money towards compensation money payable in respect of land acquisition proceedings. The directions were given while disposing of contempt proceedings initiated by the respondent after the Court had accepted the unqualified apology tendered by the appellants. The appellants urged that instead of filing a contempt application, the respondent should have proceeded with the execution of the decree or award made in the land acquisition proceedings. The Court said that:-

" the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law."

Furthermore, it has also said that:- *" the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree."*

Having regard to the facts of the case the Court felt that the contempt proceedings should not have been resorted to and that in any case since the unconditional apology has been tendered and accepted by the appellant further proceedings should have been dropped.

32. As we read the decision, its ratio runs counter to the submission of the respondents, namely, that the contempt would not lie if the decree or order is executable. Ultimately, the matter is one of the Court's discretion having regard to the facts of the case. As we have said the fact that a decree is executable does not take away the Court's jurisdiction in contempt."

65 The contempt jurisdiction is primarily to ensure compliance of the court's orders and in case of willful disobedience or willful failure there of to punish the Contemnors whereas execution proceedings are to enable the decree holder to enjoy the fruits of the decree.

66 Our court in ²⁸***European Investment Limited vs. Triumph International Finance India Limited and others*** has also held that availability of the remedy of the execution proceeding does not bar the contempt proceedings since it is an additional remedy. Such proceedings are between the court and deemed Contemnor and the complainant therein may not receive any relief to his benefit. The discretion given to the court in its contempt jurisdiction is for the maintenance of the court's dignity and majesty of law. Paragraph 39 of the said judgment reads as under :-

“39. Merely because the order is an executable order, it cannot be said that no contempt proceedings would lie against the defaulter in such cases nor it can be said that in case of monetary claim under a order or undertaking, the defaulter cannot be made to face contempt proceedings. The law laid down by the Apex Court and the decisions referred to above clearly reveal that the contempt proceedings are independent of the execution proceedings and are primarily made to ensure the compliance of the Court's order rather than giving a relief to the parties and, therefore, mere availability of the execution proceedings cannot be construed as bar for contempt proceedings as the remedies are not alternative remedies and they can be invoked simultaneously. The purpose behind the execution proceedings is solely to enable the decree holder to enjoy the fruits of the decree in his favour while the contempt proceedings are primarily to ensure the compliance of the Court's order and in case of failure thereof to punish the contemner.”

67 In every case like our present case, the party may simply not take any step to comply with the order and will simply keep quite. It is for the party to take all possible steps to ensure prompt compliance of the courts order and in that regards to disclose what steps have been taken to comply with the order with facts and figures duly supported by materials on record. Failure in that regard would

28. 2004 (6) Bom. C.R. 356

warrant conclusion about the willful default in compliance with the order. When the judgment of the single Judge in the *European Investment Limited* case (supra) was impugned before the Appeal Court, the Appeal Court modified the said order. That was taken to the Apex Court. The Apex Court held that the Appeal Court should not have interfered with the order passed by the single Judge and set aside the order of the Appeal Court. In the matter of ²⁹***Santosh Dattaram Nadkarni and others vs. New India Industries Limited and others*** a single Judge of this court again held that contempt proceedings and execution proceedings, are two separate remedies available and can be invoked simultaneously and that contempt is a matter between the court and the person against contempt of court whereas the purpose behind execution proceedings is to enjoy the fruits of the decree in his favour.

68 The division bench of the Madras High Court in the matter of ³⁰***India Forge and Drop Stampings Ltd., Madras vs. India Forge and Drop Stampings Employee's Union, Madras*** has held that a perusal of section 22 of the 1971 Act would show that the provisions of the Contempt of Courts Act, 1971, “shall be in addition to, and not in derogation of the provisions of any other law.” The court has held that the object of proceedings under the Contempt of Courts Act, 1971, is to punish a party guilty of the disobedience as contemplated by section 2(b) of the said act. The purpose is not to “execute” any order,

29. 2004 (5) Bom. C.R. 341

30. IILLN, High Court, Madras 845

for which purpose the aggrieved party shall have to take recourse to other proceedings known to law. Paragraph 13 of the said judgment reads as under :-

“13. The submission on behalf of the learned senior counsel for the appellant that since the order, disobedience of which is complained of, is capable of being enforced in some other manner known to law, an application for contempt of Court for non-compliance of that order is not maintainable, has no merit. There is no warrant for saying that where an order, the disobedience of which is complied of, can be executed, the jurisdiction of the Court to initiate proceedings under the Contempt of Courts Act, 1971, and to punish the offender, if proved guilty, under S.12 of the said Act, is in any way affected. As a matter of fact, a perusal of S.22 of the 1971, “shall be in addition to, and not in derogation of the provisions of any other law.” The section, unmistakably declares that its provisions are to be taken in addition to and not in derogation of the other laws. In view of this express inhibition in absolute terms against the provisions of the 1971 Act being considered in derogation of any other law, the argument that since the order, disobedience of which is complained of, could have been got executed through a procedure otherwise known to law, recourse to contempt proceedings could not be had falls flat. The object of proceedings under the Contempt of Courts Act, 1971, is to punish a party guilty of the disobedience as contemplated by S.2(b) of the said Act. The purpose is not to “execute” any order, for which purpose the aggrieved party shall have to take recourse to other proceedings known to law.”

69 It should be remembered that when a party in whose favour an order has been made approaches the court to punish the disobedience of its order, he does not use those proceedings to get the order executed but merely brings to the notice of the court the objectionable conduct of the party disobeying the order and seeks action against that party for committing contempt of court. There is a clear distinction taken - having order executed and bringing to notice of the court willful disobedience on the part of the guilty party and seek to have him punished for contempt of court.

70 This has also been reiterated by the Apex Court in the matter of ³¹***Bank of Baroda vs. Sadruddin Hasan Daya and another***. Contempt is a matter between the court and the alleged Contemnor and is not affected in any manner by the rights and obligations of the parties to the litigation inter se. *Rama Narang* (supra) and ³²***Maruti Udyog Limited vs. Mahinder C. Mehta and others***, have confirmed this view. Though the Apex Court in the *Food Corporation India* (supra) has held that one cannot use contempt jurisdiction for enforcement of money decrees, it should be noted that the application in that matter as mentioned in paragraph 13 of the said judgment was for enforcement of the order by attachment of the property by seizing and auctioning the movable and immovable properties of FCI. No such relief in the nature of execution is being sought in the present matter.

71 Coming to Respondent no.4, Respondent no.4 admittedly, at all material times, was a director of SPCPL. It is the petitioner's case that the respondent no.4, therefore, was clearly in a position to ensure that the order dated 21st October, 2013 was complied with and he has not given any reason as to why it was not complied with. The defence of respondent no.4 in addition to adopting the submissions made by counsel on behalf of respondent nos.1 to 3, are as under :-

(i) *The Order dated 21st October, 2013 did not require any*

31. (2004) 1 SCC 360

32. (2007) 13 SCC 220

compliance by Respondent No. 4;

(ii) The direction, if any, was to the Learned Observer appointed by this Hon'ble Court to ensure that appropriate steps for recovery of money are taken;

(iii) The Order dated 21st October, 2013 had ceased to operate at the time when the petition was filed;

(iv) The fact that the Order dated 21st October, 2013 did not contain any direction against Respondent No. 4 is also clear from the Order dated 9th December, 2013 which holds Respondent Nos. 1 and 2 liable for non-compliance of the directions contained in the Order dated 21st October, 2013;

(v) SPCPL is not a party either to the proceedings which led to the Order dated 21st October, 2013 being passed or to the present proceedings;

(vi) The Petitioner has failed to make out any case for holding Respondent No. 4 responsible for any purported non-compliance by SPCPL.

72 As regards the defences in sub paragraphs (i),(iii),(iv) and (v) of paragraph 71 above, Respondent no.1 to 3 have also raised similar defences and those have already been dealt with above while dealing with respondent nos.1 to 3. The same applies to Respondent no.4 as well. So we need not re-enter that arena.

73 As regards point (ii) and (vi) in paragraph 71 above that the direction, if any, was to the Learned Observer to ensure that appropriate steps for recovery of money was taken is absolutely unintelligible. In any event that cannot absolve the respondent no.4 in ensuring that SPCPL, of which he was a director, comply with the directions of the court. The respondent no.4 has not even made an effort to explain what steps he took to ensure that SPCPL, of which he has been a director at all material times, paid VMPL. The conduct of

respondent no.4 is despicable. It is to be noted that the same respondent who was in a position to ensure that the order dated 21st October, 2013 was complied with, during the course of the company application lodging no.70 of 2013 had filed an affidavit dated 27th September, 2013 in his capacity as a director and commercial head of SPCPL stating in paragraph 10 thereto "an amount equivalent to interest of 12% p.a. on Rs.67.5 Crores has been and is being paid to VMPL, as per the terms of the Supplemental BTA." Knowingly and deliberately and willfully he made a false statement in the said affidavit as no amount has been paid. Infact in paragraph 16 of the said order it is also recorded that the counsel for the respondents on instructions made a specific statement that the interest of 12% on the amount of Rs.67.50 Crores is being paid to VMPL and is reflected in the bank accounts. When the respondents were told to produce the relevant accounts in this regards, the counsel for the respondents had to concede that he had made an incorrect statement on instructions and no interest is paid.

74 It is necessary to mention at this point that even respondent no.1 had filed an affidavit dated 27th September, 2013 stating that an amount equivalent to interest of 12% p.a. on 67.50 Crores has been and is being paid to VMPL as per the terms of the Supplemental BTA. The respondents have been making false statements to the court on affidavits thereby interfering with due course of justice. The statements are being made willfully. The

respondent no.4 cannot be trusted at all because he has been exposed and has been lying to the court on affidavits. The statement that the counsel made to the court as recorded in the said order dated 21st October, 2013 could have been made only on instructions from respondent no.3 and respondent no.4 as it was a clear statement made on behalf of SPCPL.

75 The counsel for respondent no.4 also submitted that the petition was filed almost towards the end of expiry of limitation and after the order dated 21st October, 2013 had ceased to operate. As regards the second part that the order had ceased to operate, I have already concluded that it did not cease to operate. Moreover under Article 215 of the Constitution of India every high court shall be a court of record and shall have the powers of such a court including the power to punish for contempt of itself.

76 Therefore, as the direction was against the respondents to the company application which included respondent no.4, the respondent no.4 having not even made an attempt to explain what steps he took to comply with the directions of the court as contained in the said order dated 21st October, 2013, the Respondent no.4 certainly is guilty of willfully disobeying the orders of this court. The conduct of Respondent no.3 and Respondent no.4 actually makes a mockery of the judicial process. Their conduct extends beyond the parties to the action and affects the interest of the public in the administration of

justice. Their conduct is specifically intended to impede and prejudice the administration of justice. Judiciary is the bed rock and hand maid of orderly life and civilized society. If the people could lose faith in justice imparted by this court or disobey orders of this court, woe to be to orderly life. The fragment of civilized society would get broken up and crumble down.

77 In the circumstances, considering the facts and circumstances of the case, I am of the view that no case is made out against respondent nos.1 and 2 and the proceedings against the said respondents are dropped.

Respondent nos.3 and 4 are held to be guilty of contempt of court for willful disobedience of the directions given by the court in its order dated 21st October, 2013. I sentence Respondent no.3 Rakesh Malhotra to undergo simple imprisonment of six months and to pay a fine of Rs.2,000/- (Rupees Two Thousand only). I further sentence Respondent no.4 Abhishek Kumar to undergo simple imprisonment of three months and to pay a fine of Rs.2,000/- (Rupees Two Thousand only). In default of payment of fine the contemnors shall further undergo simple imprisonment for one month. The payment of fine shall be made within one month from today.

78 At the request of Shri Sancheti appearing for Respondent no.3 and Shri Lohia for Respondent no.4 respectively, I defer the sentence of imprisonment imposed on both the contemnors subject to

the condition and till the time stated below :

- (a) Respondent no.3 and respondent no.4 shall ensure that SPCPL paid all dues payable (as on date) to VMPL at 12% p.a. on Rs.67.50 crores in terms of paragraph 18 read with paragraph 21(e) of the said order dated 21st October, 2013 within four weeks from today ;
- (b) The respondent no.3 and respondent no.4 shall ensure that SPCPL files an undertaking in this court within four weeks, undertaking to this court to continue to pay VMPL 12% p.a. interest on Rs.67.50 crores until further orders; In addition they shall also file their personal undertaking to this effect;
- (c) The contemnors shall not leave the territory of India without the express permission of this court until the amounts as mentioned in cl. (a) above are deposited and the undertaking as mentioned in cl. (b) above is given;
- (d) No application for extension of time to pay VMPL or to give the undertaking shall be made (if made shall not be entertained).

79 If the amount is not deposited or undertaking given as aforesaid, the sentence of imprisonment will become enforceable at once.

80 Ordered accordingly. The proceedings stand disposed.

(K.R.SHRIRAM,J)