A.Nos.5289 to 5293 of 2014
in O.A.Nos.536 to 540 of 2014

Date of Reserving the Order: 16.12.2016
Date of Pronouncing the Order:

T.S.SIVAGNANAM, J.

These applications have been filed under Order 39 Rule 2A of the Code of Civil Procedure to punish the respondents 1 and 2 for disobeying the order of interim injunction granted by the Court in O.A.Nos.536 to 540 of 2014 dated 11.07.2014.

2.The applicant had filed O.A.Nos.536 to 540 of 2014 for grant of interim injunction to restrain the first respondent from in any manner invoking or encashing the Bank Guarantees dated 24.05.012 as extended and issued by the second respondent bank. The applications were heard and by order dated 11.07.2014, the Court restrained the first respondent from in any manner seeking to invoke and/or encash the Bank Guarantees with the direction to the applicants to keep the Bank Guarantees alive.

3.The learned senior counsel for the applicant submitted that all necessary steps of serving the respondents the notice of the order of injunction under the Code of Civil Procedure was taken by the applicant and an affidavit of service was filed on 14.07.2014 and when the matter was taken up before the learned Master of this Court on 04.08.2014, the same was noted. Further, on 11.07.2014 the applicant sent a email as well as a letter to the first respondent intimating about the order of injunction and the scanned copy of the order was attached to the email. The second respondent bank informed the applicant by a letter dated 10.08.2014 that the demand drafts have been encashed on 05.08.2014. Therefore, it is submitted that the order of injunction having been granted on 11.07.2014, the first respondent had encashed the demand drafts after the order of injunction and therefore, they are liable to be punished for having committed contempt. The learned senior counsel referred to the P.Ramanatha Aiyar's Advanced Law Lexicon for the meaning of the word "encashment", which has been defined to mean the action of encashing or converting into cash. Therefore, it is submitted that the first respondent having encashed the demand drafts after the order of injunction was granted is a clear case of contempt. The learned senior counsel referred to the decision of the High Court of Delhi in the case of ***Lloyd Insulation (India) Ltd., vs. National Thermal Power Corporation (NTPC) and another*** reported in ***2006 (89) DRJ 36 1 CTC 514*** and in the case of ***Radhakrishnan Raghavan Nair vs. Consul Consolidated Pvt. Ltd.*** reported in ***2016 (1) CTC 514.***

4.Mr.T.R.Rajagopalan, learned senior counsel for the respondents 1 and 3 submitted that the petitioner had invoked the Bank Guarantees on 09.07.2014 and on 10.07.2014 demand drafts were given by the bank to the first respondent and the encashment of those demand drafts is of no relevance. In support of his contentions, the learned senior counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***K.Saraswathy alias K.Kalpana (Dead) by LRs. vs. P.S.S.Somasundaram Chettiar*** reported in ***1989 4 SCC 527***.

5.Mr.G.Balasubramanian, learned counsel appearing for the respondent bank submitted that there is no intention on the part of the bank to disobey the order of injunction and the following facts would clearly establish that the bank has acted in a bonafide manner. It is submitted that the first respondent gave a letter on 09.07.2014 requesting for invoking the Bank Guarantees. Since the Bank Guarantees were unconditional Bank Guarantees, the same were invoked and the applicant was informed by the bank by their letter dated 10.07.2014. On the same day, five demand drafts for a total value of Rs.11,77,46,673/- had been given to the first respondent. In support of such contentions, the copies of the relevant letters were produced. In the light of the above factual position, it is submitted that the bank was bound to honour an unconditional Bank Guarantee and there was no injunction operating against the bank and the injunction was only as against the first respondent that too, on 11.07.2014 after the Bank guarantees were moved and encashed. The Hon'ble Supreme Court has come down heavily on banks which have failed to honour Bank Guarantees and one such judment in the case of ***Bank of India vs. Nangia Constructions (I) Private Limited and others*** reported in ***2008 7 SCC 290*** was referred to.

6.Heard Mr.S.Parthasarathy, learned senior counsel assisted by Mr.Suhrith Parathasarathy, learned counsel for the applicant and Mr.T.R.Rajagopalan, learned senior counsel for Mr.D.Ravichander, learned counsel for the respondents 1 and 3 and Mr.G.Balasubrmanian, learned counsel for M/s.Poovayya & Co., learned counsel for the respondents 2 and 4.

7.After elaborately hearing the learned counsels for the parties, the following factual position has to be noted to examine as to whether there has been a willful disobedience of the order of interim injunction. The undisputed facts are that the first respondent gave a letter to the bank on 09.07.2014 for invoking the Bank Guarantees. The request made by the first respondent was accepted by the bank as they were bound to accept the same as the Bank Guarantees were unconditional Bank Guarantees. Such acceptance resulted in issuing a letter to the applicant on 10.07.2014 invoking the Bank Guarantees.

On the same day, the amount realizable therefrom were handed over as five demand drafts to the first respondent. The order of injunction was admittedly passed on 11.07.2014. Therefore, the respondent bank is not guilty of having committed any contempt nor the action of the first respondent in giving a letter for invoking the Bank Guarantees could be stated to be in violation of any order since admittedly the order of interim injunction was passed only on 11.07.2014.

8.The case of the applicant itself is that the bank vide their letter dated 10.08.2014 admitted that the demand drafts were encashed on 05.08.2014. The learned senior counsel had strenuously contended that by virtue of the encashment, which has been defined to mean action of converting into cash, the first respondent is guilty of contempt. The order of interim injunction restrains the first respondent in any manner seeking to invoke and/or encash the Bank Guarantees. Admittedly the invocation of the Bank Guarantees were made much prior to 11.07.2014, i.e. on 09.07.2014. The encashment of the Bank Guarantee cannot be the encashment of the demand drafts but the encashment of the Bank Guarantee done by the bank which had offered the Guarantee. The guarantee is a document between the bank and the secured which in the instant case, the first respondent. Since the Bank Guarantees were unconditional Bank Guarantees, no notice was required to be issued by the bank to the applicant prior to invocation. Thus the Bank Guarantees having been invoked the same was encashed and paid to the first respondent by means of five demand drafts. The encashment of the demand drafts by the first respondent is of no consequence since what was injuncted on 11.07.2014 was only encashment of the Bank Guarantees which had occurred on 10.07.2014 resulting in issuance of demand drafts on the same date. The Hon'ble Supreme Court in the case of ***K.Saraswathy*** (supra) was considering the effect of payment by cheque and what would be the effect of date of encashment of the cheque. After referring to the earlier decision in the case of ***CIT vs. Ogale Glass Works Ltd., Ogale Wadi*** reported in ***AIR 1954 SC 429*** it was held that payment by cheque realised subsequently on the cheque being honoured and encashed relates back to the date of receipt of the cheque and in law the date of payment is the date of delivery of the cheque. This principle supports the case of the first respondent as well as that of the respondent bank.

9.As rightly contended by the learned counsel for the respondent bank if they had not honoured the unconditional Bank Guarantees they would have been put to other civil consequences in the light of the observation made by the Hon'ble Supreme Court in the case of ***Bank of India*** (supra), wherein very strong observations were made against the conduct of a nationalised bank which refused to honour a Bank Guarantee, the Hon'ble Supreme Court observed that the entire trust, faith and confidence of people depends on the conduct and credibility of the nationalised bank and in the present day world, the national and international commercial transactions largely depends on Bank Guarantees and if banks are permitted to dishonour their commitments by adopting subterfuges, the entire commercial and business transactions will come to a grinding halt. These observations would equally apply to Scheduled Bank as that of the respondent bank.

10.The decision in the case of ***Lloyd Insulation (India) Ltd.*** (supra) referred to by the learned senior cousnel for the applicant pertains to a conditional Bank Guarantee and therefore the case is factually distinguishable.

11.In the case of ***Radhakrishnan Raghavan Nair*** (supra), the applicant was engaged in Construction business and it was agreed to between the applicant and the second respondent therein and other shareholders that 51% of the equity share capital and 100% preferential share capital held by the applicant and his wife in the second respondent Company would be sold to the first respondent and first Share Purchase Agreement was entered into. According to the applicant he had fulfilled all the terms and conditions and a Certificate of Completion and the CP Satisfaction Certificate were also coupled with an indemnity. The applicant had provided a Bank Guarantee in favour of the first respondent towards security for any legitimate indemnity claim as per the terms of the agreement. On account of certain disputes there was an attempt to invoke the Bank Guarantee and the applicant approached the Court and sought for injunction against the invocation of Bank Guarantee contending inter alia that Bank Guarantee stood expired. This application was resisted by the respondents 1 and 2 by contending that the Bank Guarantees was invoked on 10.01.2015 and the same was received by the Bank on 12.01.2015. Therefore, it was contended that the application for interim injunction was not maintainable. However, the Court on facts found that the third respondent bank had not disbursed the amount and the order has been communicated to them. Therefore, held that the order of interim injunction cannot be brushed aside.

12.In the case on hand there is no injunction against the bank, the invocation of the Bank Guarantee was done on 09.07.2014, the same was accepted by the Bank, Bank Guarantees were invoked and amount paid to the first respondent by demand drafts on 10.07.2014 prior to the order of injunction. Therefore, the said decision also does not render any assistance to the case of the applicant.

13.For all the above reasons, the applicant has not made out any case for initiating action for contempt against the first respondent. Accordingly, the applications are dismissed.

23.12.2016

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T.S.SIVAGNANAM,J.

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