

Reserved on : 04.12.2017

Delivered on : 13.12.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

Contempt Petition No.1316 of 2017

Franciscan Sisters of St.Joseph
rep by its President FSJ Generalate
St.Louis Convent,
St.Thomas Mount,
Chennai - 600 016.

... Petitioner

Vs.

Mr.Manikandan,
The Chairman,
Child Welfare Committee,
Government Children Home for Boys,
GST Road, Chengalpattu - 603 002.

... Respondent

Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 to punish the respondent for his willful and utter disobedience and contempt to the order dated 07.06.2017 made in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017.

For Petitioner : Fr.Xavier Arulraj, Senior Counsel
for M/s.A.Arulmary

For Respondent : Ms.Shaikh Mehrunisa

ORDER

The petitioner has filed the above Contempt Petition to punish the respondent for his willful disobedience of the orders of this Court dated 07.06.2017 made in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017.

2.Heard the arguments of Fr.Xavier Arulraj, learned Senior Counsel appearing for the petitioner and the arguments of Ms.Shaikh Mehrunisa, learned counsel appearing for the respondent.

3.The petitioner filed the Writ Petition in W.P.No.13856 of 2017 to issue a writ of mandamus directing the 5th respondent to consider and pass orders on the recommendation of the 4th respondent dated 09.05.2017 permitting the petitioner Society to continue the custody of the five children viz., (1)Mary Sylvia, (2)Sophia Christy, (3)George Mark, (4)Jacob John and (5)Jasmine in Assisi Illam, Magazine Road, St. Thomas Mount, Chennai - 600 016.

WEB COPY

4.According to the petitioner, the Society is a totally non-profit organization and it had established so many orphanages/children's home for the welfare of the marginalized children/destitutes and is involved in the said mission for more than 100 years from the foundation of the religious

Congregation of Franciscan Sisters of St. Joseph (FSJ). The Society established a children's home in the year 2005 in Door No.15, Nethaji Nagar, St. Thomas Mount, Chennai and it was called "Assisi Illam" by the petitioner Society.

5. According to the petitioner Society, there are 17 resident children, who were under the care and protection of Assisi Illam. Out of the 17 children, 12 were semi-orphans and rest of the 5 children were total destitutes, as they had been abandoned or handed over to the Director of Assisi Illam while they were just born under various social circumstances by various persons. The 5 children viz., 2 boys and 3 girls are between the age group of 9 to 12 years. From the time of their abandonment as toddlers, the parental guardian care has been fully conferred by the Catholic nuns and other staff in the home, who are totally dedicated for these children. According to the petitioner, these children have become part of the family of Assisi Illam under the love and affection of the nuns, who do not have family of their own. Thus, the said 5 children have enjoyed the love and affection and have developed in a healthy and integrated manner. The children are studying in Montfort Matriculation Higher Secondary School, St. Thomas Mount, Chennai.

6. According to the petitioner, all these years, these 5 children have been given not only care and affection, but also good education in one of the best nearby schools. It is also the case of the petitioner that on and off, the authorities have told the petitioner to up-grade the infrastructure in Assisi Illam to meet the demands of the amended Juvenile Justice Act, 2006. Furthermore, they raised new demands on the staff and other requirements for renewal of registration for Assisi Illam, Nethaji Nagar. Therefore, the Society decided to close the said home from the academic year 2017-18. Regarding the custody of the 5 destitute children, the petitioner requested the 5th respondent authority to permit the petitioner to transfer them to another Assisi Illam under the same petitioner Society located in Magazine Road, St. Thomas Mount, Chennai as they are destitutes from infancy under the care of the petitioner Society.

7. According to the petitioner, the said Assisi Illam is already registered under the Juvenile Justice Act, 2000. Further, there are already 22 children accommodated in the said home. Further, the petitioner has stated that there is sufficient infrastructure for additional intake of the 5 children.

8.The 5th respondent issued a show cause notice dated 06.01.2017 to the petitioner wherein he has raised some questions as to why the petitioner had not informed the Government about accepting the 5 children in 2005 and 2006, after the enactment of the Juvenile Justice Act, 2000 and that they have been brought up as Christians, amounting to conversion and that they have been deprived of enjoying the family life.

9.The petitioner, by letter dated 12.01.2017, explained the background circumstances under which the children came under the care and protection of the Assisi Illam. According to the petitioner Society, various competent authorities, such as, the Under Secretary to the Government, Probation Officers, the members of the CWC and the District Child Protection Officers have inspected the said home periodically and were satisfied with the care and protection of the children. Further, according to the petitioner, the 5th respondent has no reason to raise such questions as if they were kept under dark from 2005 till 2017. By letter dated 12.01.2017, the petitioner requested the 5th respondent to permit the 5th children to be transferred to their own another registered home in the same vicinity without displacing them physically, emotionally and socially. The authorities visited the home on 11.03.2017 and there was no adverse remark in the said inspection.

10.The 4th respondent, considering the interest and welfare of the children, by letter dated 09.05.2017, has recommended to the 5th respondent that the children are studying well and considering their future, it would be better to transfer them to Assisi Illam, Magazine Road, which is under the administration of the petitioner. However, the 5th respondent has not considered the recommendation of the 4th respondent. In these circumstances, the 5th respondent lodged a police complaint on 31.05.2017 stating that the Assisi Illam in Nethaji Nagar is an un-registered home and therefore, the children are under illegal custody.

11.Further, it was contended on behalf of the petitioner that the 4th respondent forcibly removed the children from the Assisi Illam in Nethaji Nagar with the assistance of the Police on 01.06.2017 and had transferred them to some other private Home and that the children were deeply upset and were weeping due to their sudden displacement and loss of care and affection. In these circumstances, the petitioner filed a Writ Miscellaneous Petition in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 seeking for an interim direction to the 5th respondent to restore the custody of the five children viz.,(1)Mary Sylvia, (2)Sophia Christy, (3)George Mark, (4)Jacob John and (5)Jasmine to the custody of the petitioner Society in Assisi Illam,

Magazine Road, St. Thomas Mount, Chennai - 600 016 under the same Management pending disposal of the Writ Petition.

12. At the time of hearing of the Writ Miscellaneous Petition in W.M.P.No.15036 of 2017, Ms. Shaikh Mehrunisa, learned counsel appearing for the 5th respondent in the Writ Miscellaneous Petition submitted that the children were in SOS Children's Home, Tambaram and further submitted that the 5th respondent has filed a Habeas Corpus Petition in H.C.P.No.902 of 2017 as against the Police and Assisi Illam for the production of the children. Further, the learned counsel submitted that the Division Bench of this Court had ordered notice to the respondents on 02.06.2017. When the 5th respondent had taken the custody of the children on 01.06.2017 itself, the necessity for moving the Habeas Corpus Petition on 02.06.2017 was not explained by the 5th respondent. Further, it was represented that this fact was not brought to the notice of the Division Bench.

13. The learned Special Government Pleader, who appeared for the respondents 1 to 4 in the Writ Miscellaneous Petition in W.M.P.No.15036 of 2017, made a submission that though the 5th respondent is under the control of the 3rd respondent viz., the District Collector, the 5th respondent has not given any instructions to him and that the 5th respondent had engaged a

private counsel without obtaining any permission from the 3rd respondent, the District Collector.

14. Since the children are between the age group of 9 to 12 years and were brought up by the Assisi Illam right from their childhood, it would not be proper on the part of the 5th respondent to take the custody of the children all on a sudden. It was also brought to the notice of this Court that the children are studying in one of the best schools in the locality and that the children are with the Assisi Illam for nearly 12 years. In these circumstances, taking into consideration the welfare of the children, this Court, by order dated 07.06.2017, directed the 5th respondent to handover the custody of the five children to the petitioner before 05.00 pm on 08.06.2017 and also directed the respondents to file their counter in four weeks' time.

15. Since the respondent had not complied with the directions of this Court made in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 dated 07.06.2017, the petitioner has filed the above Contempt Petition.

16. Fr. Xavier Arulraj, learned Senior Counsel appearing for the petitioner submitted that the respondent had willfully disobeyed the orders

of this Court by not complying with the directions given in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 on 07.06.2017, therefore, the respondent is guilty of contempt and is liable for punishment.

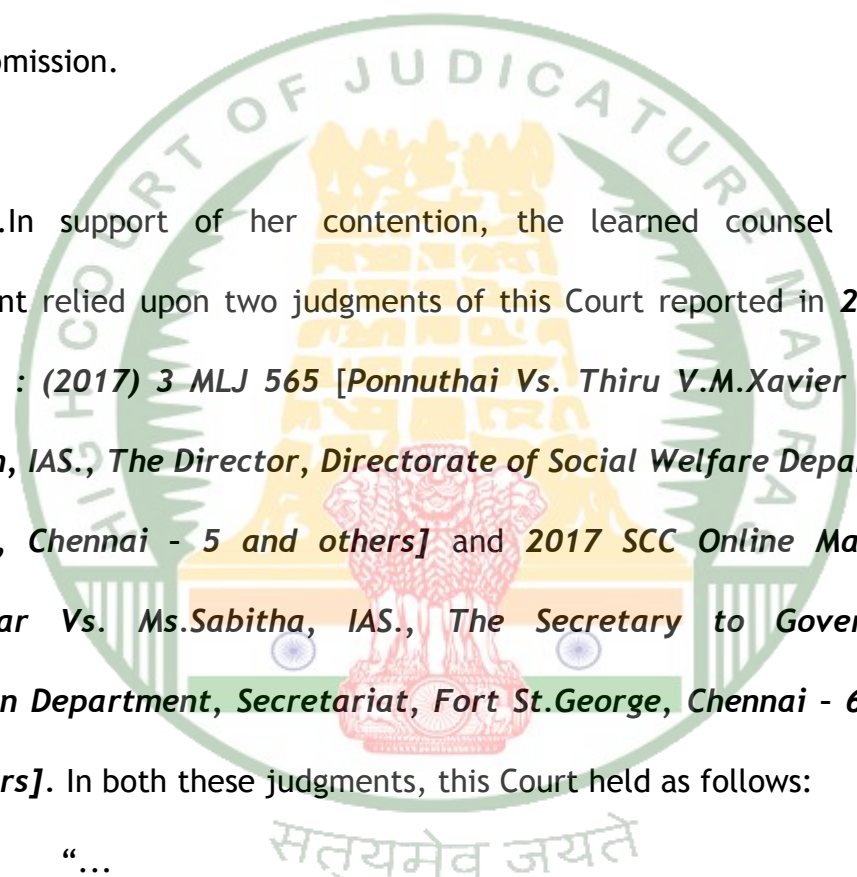
17.In the counter, the respondent had stated that he has filed a Writ Appeal in W.A.No.670 of 2017 as against the order dated 07.06.2017 passed in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 and the stay petition filed therein was neither ordered nor dismissed by the Hon'ble Division Bench of this Court. Further, it has been stated that the petitioner had obtained Registration Certificate for their Assisi Illam through a report of District Child Protection Officer. In the counter affidavit the respondent had only countered the averments stated in the affidavit filed in support of the Writ Petition and he has not stated any reason for not complying with the orders of this Court dated 07.06.2017.

18.On a close reading of the counter affidavit filed by the respondent, it is also clear that the respondent had not even tendered his unconditional apology for disobeying the orders of this Court.

19.When the Contempt Petition was taken up for hearing, the only submission made by Ms.Shaikh Mehrunisa, learned counsel appearing for the

respondent was that the Contempt Petition is liable to be dismissed on the ground that the respondent had filed a Writ Appeal as against the order passed in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 dated 07.06.2017. Except this submission, the learned counsel has not made any other submission.

20. In support of her contention, the learned counsel for the respondent relied upon two judgments of this Court reported in **2017 (3) CTC 783 : (2017) 3 MLJ 565 [Ponnuthai Vs. Thiru V.M.Xavier Chrisso Nayagam, IAS., The Director, Directorate of Social Welfare Department, Chepauk, Chennai - 5 and others]** and **2017 SCC Online Mad 8507 [Rajkumar Vs. Ms.Sabitha, IAS., The Secretary to Government, Education Department, Secretariat, Fort St.George, Chennai - 600 009 and others]**. In both these judgments, this Court held as follows:

“...


4. Learned counsel for the petitioner would contend that a Single Judge is entitled to proceed with a Contempt Petition. To substantiate his case, he has referred to a decision of the Apex Court in the case of *Dineshan, K.K. vs. R.K.Singh and another*, [(2014) 16 SCC 88], wherein, it has been held as under:

“9. We have carefully perused the decision of this Court. A reading of the judgment would certainly

indicate that when the civil appeals and the special leave petitions are dismissed with reasons, the orders passed by the courts below would merge with the judgment and order passed by this Court. The said decision has been followed by this Court in a catena of subsequent judgments of this Court.

10. In view of what has been said by this Court in the aforesaid decision, we cannot hold that the judgment and order passed by the High Court has not merged with the judgment and order passed by this Court when the civil appeal filed by the petitioner complainant was dismissed.”

5. With reference to the three-Judge ruling in Kunhayammed case, a two-Judge Bench in the above case of K.K.Dineshan, in exercise of the powers under Articles 129, 136 and 142 of the Constitution of India, has directed the complainant therein to approach the High Court. But, this Court is not inclined to accept the contention of the counsel for the petitioner in view of the finding of the Apex Court in the subsequent paragraphs of K.K. Dineshan's case, which would read thus:

“12. We requested Shri K.K. Venugopal and Dr. Rajeev Dhawan, learned Senior Counsel to assist us in the matter. Their view on the second question is that undoubtedly the order passed by this Court, while accepting the judgment and order passed by the Courts below, would merge with the judgment and order passed by the Courts below. However, this Court in

exercise of its powers under Articles 129, 136 and 142 of the Constitution of India could direct the complainant/petitioner to approach the High Court and bring to its notice and knowledge that their orders and directions have been disobeyed by the respondents/contemnors.

14. We are mindful of settled law that the orders passed by the High Court would merge with the order passed by this Court. This Court has dismissed the appeal only and, therefore, it is the directions passed by the High Court which in fact have been allegedly disobeyed by the respondents/contemnors. In our considered view, it would be in the interest of justice and to lessen the burden of this Court in the current scenario, it would be appropriate to request the High Court to look into the grievance of the complainant, if a petition is filed before them *inter alia* bringing to their notice and knowledge that their orders and directions have been disobeyed. In our opinion, firstly, this exercise would be beneficial to the parties because they were before the High Court in the writ petition wherein the directions were issued and secondly, by entertaining the petitions of this nature wherein this Court has passed an order of dismissal simplicitor and the alleged contempt arises out of the order passed by the High Court, this Court would saddle the dockets with cases which could otherwise be effectively could be disposed of by the Courts below.”

6. Once the order passed in a Writ Petition gets merged with the order of the Writ Appeal, the remedy available to the petitioner is to file a Contempt in the Writ Appeal and not in the Writ Petition, unless and until the Apex Court specifically directs the High Court to decide the issue. If the order of a Single Judge is affirmed or modified, the contempt can be filed only before the Division Bench and not before the Single Judge. Once a Writ Appeal is numbered, then the Single Judge cannot take up the contempt in view of the decisions of the Apex Court. If the Writ Appeal is withdrawn, certainly contempt will lie before the Single Judge and the time limit as per Section 20 of the Contempt of Courts Act will commence only from the date of order in the Writ Appeal.”

21. On a careful consideration of the materials available on record, it could be seen that this Court had passed the order in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 on 07.06.2017, directing the respondent herein (5th respondent in W.M.P.) to hand over the custody of the five children to the petitioner before 05.00 p.m. on 08.06.2017. As against this order, the respondent preferred an appeal in W.A.No.670 of 2017 on 08.06.2017. Along with the Writ Appeal, the respondent had also filed three Miscellaneous Petitions viz., (i) C.M.P.No.9443 of 2017 to stay all proceedings in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017 dated 07.06.2017; (ii) C.M.P.No.17209 of 2017 to stay further proceeding in the

Statutory Notice dated 11.08.2017 in Contempt Petition No.1316 of 2017 and (iii) C.M.P.No.20279 of 2017 to stay all proceedings in Contempt Petition No.1316 of 2017.

22.Fr.Xavier Arulraj, learned Senior Counsel appearing for the petitioner submitted that the Division Bench of this Court, by order dated 23.11.2017, had disposed of the Writ Appeal in W.A.No.670 of 2017 and confirmed the orders of this Court dated 07.06.2017 made in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017. Further, the learned Senior Counsel submitted that the Division Bench had directed the respondent to hand over the custody of the five children to the petitioner in the open Court itself. Accordingly, the respondent had handed over the custody of the children to the petitioner on 23.11.2017.

23.Though the respondent filed the Writ Appeal on 08.06.2017, the respondent moved the Writ Appeal for admission only on 22.06.2017 and the Division Bench of this Court ordered notice of motion returnable in four weeks on 22.06.2017. However, the Division Bench did not grant any interim order in the Writ Appeal.

24. The petitioner had filed the Contempt Petition on 25.07.2017 and the Contempt Petition was listed for admission on 11.08.2017 and this Court ordered Statutory Notice to the respondent on 11.08.2017. When the matter was listed for hearing on 08.09.2017, though notice was duly served on the respondent, he did not appear. However, Mr. M. A. Gauthaman, learned counsel appeared before this Court and undertook to file vakalat for the respondent and also submitted that he would instruct the respondent to be present in the Court on 15.09.2017. Recording the submission made by the learned counsel, this Court adjourned the matter to 15.09.2017, directing the respondent to be present in the Court.

24.1. On 15.09.2017, the respondent was present in the Court and the learned counsel for the respondent submitted that he would advise the respondent to sort out the issues in an amicable manner and requested this Court to post the matter on 06.10.2017. Recording the submission made by the learned counsel for the respondent, this Court dispensed with the personal appearance of the respondent for the present and posted the matter to 06.10.2017. Subsequently, when the matter was listed on 27.10.2017, none appeared for the respondent, therefore, the respondent was directed to be present in the Court on 07.11.2017 and the Registry was directed to issue notice to that effect to the respondent. On 07.11.2017,

Ms.Shaikh Mehrunisa, learned counsel appearing for the respondent made a representation that the respondent could not appear before this Court due to heavy rain and that he would appear before this Court on 09.11.2017. In view of the submission made by the learned counsel, the matter was adjourned to 09.11.2017 for the appearance of the respondent.

24.2. On 09.11.2017 also, the respondent was not present and a Member of the Child Welfare Committee, by name, Zaheerudin Mohamed, was present in the Court and he represented that the respondent was unwell. On that day, Mr.S.V.Jayaraman, learned Senior Counsel appearing for the respondent submitted that the petitioner has not served the typed set of papers and therefore, the matter may be adjourned to 13.11.2017, enabling the respondent to file a counter. Since the respondent was not present in the Court on 09.11.2017 and disobeyed the orders of this Court by not being present in Court, the Registry was directed to take steps to issue Bailable Warrant for the appearance of the respondent before this Court. The learned Senior Counsel submitted that the respondent would appear before this Court on 13.11.2017 without fail. Recording his submission, Registry was directed to take steps to execute the warrant after 14.11.2017.

24.3. On 13.11.2017, the respondent was present in the Court and the learned Senior Counsel sought time till 17.11.2017 for filing counter and to argue the Contempt Petition. Since the respondent was present in the Court, the warrant of arrest for the production of the respondent issued on 09.11.2017 was recalled. However, it was made clear that the personal appearance of the respondent is not dispensed with. On 17.11.2017, again at the request of the learned Senior Counsel, the matter was adjourned to 20.11.2017.

24.4. On 20.11.2017, the respondent was present and a representation was made on behalf of the learned Senior Counsel that he was held up at Bangalore and hence, the Contempt Petition may be adjourned to 23.11.2017. Accordingly, the Contempt Petition was adjourned to 23.11.2017. On 23.11.2017, the respondent was present and a representation was made by Ms. Shaikh Mehrunisa, learned counsel appearing for the respondent that the respondent is going to produce the children before the Division Bench of this Court in W.A.No.670 of 2017 at 04.30 p.m. on the same day. Recording the submission made by the learned counsel for the respondent, the Contempt Petition was adjourned to 27.11.2017.

24.5. When the matter was taken up for hearing on 27.11.2017, it was represented by the learned counsel on either side that the Division Bench of this Court, by order dated 23.11.2017, had disposed of the Writ Appeal in W.A.No.670 of 2017 and had confirmed the orders of this Court. At the request of the learned Senior Counsel appearing for the respondent, the matter was adjourned to 04.12.2017 for filing additional counter. On 04.12.2017, when the matter was taken up for hearing, the respondent was not present and Ms.Shaikh Mehrunisa, learned counsel for the respondent filed an affidavit, along with a Medical Certificate dated 30.11.2017 issued by a Doctor stating that the respondent is suffering from Cervical and Lumbar Spinal Canal Stenosis and that he was advised to avoid travelling for two weeks with effect from 01.12.2017. In the affidavit filed along with the Medical Certificate, the respondent has stated that the Writ Appeal in W.A.No.670 of 2017 has been disposed of and the order has also been complied with and the relief sought for in the Writ Petition itself has become infructuous and he has tendered apology for not appearing before the Court on 04.12.2017. Thereafter, the learned counsel on either side made submissions as stated above.

25.It is pertinent to note that this Court, taking into consideration the welfare of the children, had directed the respondent to hand over the

custody of the children before 05.00 p.m., on 08.06.2017. As already stated, the children were brought up by the petitioner Home from their childhood. The children are with the petitioner Home for nearly 9 to 12 years and they are between the age group of 9 to 12 years.

26.It was also brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner that the petitioner Home had registered and also obtained the Registration Certificate from the Commissioner of Social Defence for running the Home.

27.Even in the Writ Appeal, the Division Bench of this Court had directed the respondent's counsel to produce the children before the Division Bench. However, the respondent did not produce the children inspite of repeated adjournments given by the Division Bench for the production of the children. The Division Bench also obtained the report from a Psychiatrist, who evaluated the five children and also obtained report from the Director of Social Defence. The Division Bench also directed the Principal District Judge, Kancheepuram to scrutinize the security and safety facilities at Assisi Illam and file a report. On 31.10.2017, the Division Bench made it clear that if the children are not produced before it, contempt proceedings would be initiated against the respondent and

others, who impede the compliance of the directions and adjourned the matter to 23.11.2017. On 23.11.2017, the children were produced before the Division Bench. On the same day, the Division Bench confirmed the orders of this Court dated 07.06.2017 and disposed of the Writ Appeal by handing over the custody of the children to the petitioner.

28. From the above, it is clear that the respondent had willfully disobeyed the orders of this Court by not handing over the custody of the children to the petitioner inspite of the fact that no interim order was granted by the Division Bench of this Court in W.A.No.670 of 2017. Though the respondent had filed three petitions viz., C.M.P.Nos.9443 of 2017, 17209 of 2017 and 20279 of 2017 seeking for stay of the order passed in W.M.P.No.15036 of 2017, to stay the Statutory Notice issued in the Contempt Petition on 11.08.2017 and to stay all further proceedings in Contempt Petition No.1316 of 2017, respectively, the Division Bench did not grant any interim order in favour of the respondent. Further, the Division Bench had confirmed the orders of this Court and handed over the custody of the children to the petitioner on 23.11.2017. As already stated, even before the Division Bench, inspite of repeated directions, the respondent did not produce the children. The conduct of the respondent made the Division Bench to observe that contempt proceedings would be initiated

against the respondent and others concerned if the children were not produced on 23.11.2017.

29. It is clear that the order dated 07.06.2017 passed by this Court was very much in force during the pendency of the Writ Appeal. Now, the only contention raised by the learned counsel for the respondent was that the Contempt Petition is liable to be dismissed for the reason that the Writ Appeal was pending. The conduct of the respondent would clearly establish that he had bent upon to flout the orders of this Court by one reason or another. This Court cannot permit a person to disobey the orders of this Court. The order passed by this Court should not remain as a paper order and it should be implemented in letter and spirit.

30. In the judgment reported in (1995) Supp 4 SCC 465 [*Modern Food Industries (India) Ltd., and another Vs. Sachidanand Dass and another*], the Hon'ble Supreme Court held as follows:

“...
WEB COPY

3. The learned Single Judge of the High Court by his Order dated January 10-1-1992 quashed the order of termination of the services of the first respondent by the appellants and directed his reinstatement and payment of back salary. Appellants preferred an appeal to the Division Bench and also sought a stay, pending appeal, of the

operation of the learned Single Judge's order. The Division Bench did not take up the appeal for admission nor considered the prayer for interlocutory stay. In the meanwhile, on the allegation that the learned Single Judge's order had not been obeyed, the first respondent moved for initiation of proceedings for contempt against the appellants pursuant to which the High Court directed the Chairman of the first appellant to appear in person so that the complaint of contempt be proceeded with.

4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the

order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in *State of J & K v. Mohd. Yaqoob Khan*, 1992 4 SCC 167.”

30.1. In the judgment reported in **(2012) 1 Supreme Court Cases 297 [H.G.Rangangoud Vs. M/s.State Trading Corporation of India Limited and others]**, the Hon'ble Supreme Court held as follows:

“...

3. Bereft of unnecessary details the facts giving rise to the present appeals are that the appellant applied on 16th of April, 2003 for grant of mining lease for iron ore over an area of 350 acres in Yeshawanthnagar Range of the Kumarswamy Reserve Forest Area within Sandur Taluk in Bellary District of the State of Karnataka. The State Government processed the request and in exercise of powers under Section 5 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act') by its letter dated 9th of February, 2004 recommended to the Central Government for grant of mining lease in favour of the appellant to the extent of 16.8 hectares.

However before any decision could be taken, the Central Government issued notification dated 27th of June, 2005 in exercise of the power under Section 17 A (1A) of the Act and reserved iron ore deposits in the area in question for exploitation by State Trading Corporation of India Limited, a public sector undertaking. In view of the aforesaid reservation the Central Government returned the proposal of the State Government to grant mining lease to the appellant by its letter dated 21st of July, 2005. Aggrieved by the aforesaid notification appellant preferred WP No. 19339 of 2005 (H.G.Rangangoud v. Minister of Coal & Mines, represented by the Secretary & Ors.) before the Karnataka High Court, inter alia praying for quashing the notification reserving the iron ore deposits in favour of the State Trading Corporation of India Limited. The writ petition filed by the appellant was heard along with another writ petition filed by Salgaocar Mining Industries Private Limited and the learned Single Judge by its judgment and order dated 14th of August, 2007 quashed the aforesaid notification dated 27th of June, 2005. Armed with the order of the High Court, appellant represented to the State Government to consider his application for grant of mining lease by its representation dated 18th of September, 2007. After one day of filing of the representation i.e. on 20th of September, 2007 the State Trading Corporation, aggrieved by the order of the learned Single Judge preferred appeal before the High Court. Said appeal was posted for consideration on 3rd of October, 2007 and the Division Bench of the High Court taking into

consideration the 'enormity' of the case and finding that all the parties have been served and represented, directed for its final disposal on 11th of October, 2007. However, no interim order was passed. As directed, the matter was heard and reserved for judgment but before the judgment could be pronounced the State Trading Corporation, the appellant before the High Court, brought to its notice that "when the matter was in the hearing process, Government of Karnataka has sent a communication to the Union of India for mining lease in favour of the writ petitioners". The Division Bench of the High Court, when informed about the aforesaid fact "called upon the Government Advocate to explain this situation".

The explanation was furnished in which it was inter alia stated that "as there was no interim order granted in the writ appeal and keeping in view the fact that if the mining area is not sanctioned to the writ petitioners the existing mining operation would be forced to close down and keeping in view the jeopardy to the workmen, such recommendation has been made." The explanation put forth by the State Government did not find favour with the High Court and on its prima facie finding that the aforesaid conduct "amounts to interference with the due course of judicial process" initiated suo motu criminal contempt proceedings against the appellant herein and K. Jayachandra, Under Secretary to the Government of Karnataka, Commerce and Industries Department. While doing so the High Court observed as follows:

".....On going through the affidavit as well as the

records, prima facie it appears to us that there is a clear attempt on the part of the writ petitioner Mr. H.G.Rangangoud and the concerned official to take such action when the grant of lease/licence itself was seized and was under consideration by this Court thereby cause on the merit or decision of this court."

...

7. In the present case, even before filing of the appeal the appellant has brought to the notice of the State Government the order passed by the learned Single Judge and sought its implementation.

In the representation he had not voiced and could not have voiced any opinion on the appeal as the same was not filed till then. The Under Secretary while making recommendation also did not voice any opinion on the pending appeal. It has to be borne in mind that any attempt to influence the outcome of the matter pending before the court to prejudice the parties therein may prejudice or interfere with the due course of any judicial proceeding but in our opinion, mere filing of the representation and making recommendation thereon in no way prejudices or interferes or tends to interfere with the due course of any judicial proceeding. In our opinion, it is criminal contempt to voice opinion on a case pending in court as that would seem to influence the outcome of the matter and to prejudice the parties therein. However, we hasten to add that fair reporting of Court proceedings and fair comments on the legal issues do not amount to contempt. The order of the learned Single Judge

was not stayed. Further, mere filing of the appeal would not operate as a stay of order appealed from.”

30.2. In the judgment reported in **1994 Supp (3) SCC 73 [Collector of Customs, Bombay Vs. M/s. Krishna Sales (P) Ltd.]** the Hon'ble Supreme Court held as follows:

“...

6. According to the said para 4, the goods will not be released even where the party succeeds in cases where the customs authorities decide to go in appeal before the Tribunal or the Supreme Court. They will consider the issuance of such certificate only after the decision of the Tribunal or the Supreme Court, as the case may be. The learned Counsel for the respondent characterises the said direction as arbitrary and contrary to law. We see the force in his submission. If the authorities are of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal. As is well-known, mere filing of an appeal does not operate as a stay or suspension of the order appealed against. Moreover, such detention is likely to create several complications relating to the demurrage charges besides the possible deterioration of the machinery and goods. We hope and trust that the Collector of Customs, Bombay shall

appropriately revise the said public notice in the light of the observations made herein. If he does not do so, there is a likelihood of the customs authorities being themselves made liable for demurrage charges in appropriate cases.”

30.3. In the judgment reported in ***Manu/TN/0003/2005 [R.Karuppan Vs. Dhanapalraj and another]***, a Division Bench of this Court held as follows:

“...:

3. The Appellant in person submitted that since in the appeal filed by him, the Supreme Court has granted bail to the appellant, it must be taken that the order of the High Court punishing the appellant for contempt is deemed to have been suspended.

...

5. Section 19(2) empowers the Appellate Court to suspend the execution of the punishment as well as to suspend the order appealed against. Under Section 19(2)(b), the Appellate Court is also entitled to release the appellant on bail, if he is in confinement. Punishment can be fine or imprisonment or both. In case the Appellate Court suspends the execution of the punishment, the person convicted for contempt is not required to undergo punishment for the time being. In other words, he need not pay the fine or need not undergo the sentence of imprisonment. Where, however, such convicted person moves the Appellate Court, if he is in

confinement, he can be released on bail by exercising power under Section 19(2)(b). However, the suspension of the execution of the punishment under Section 19(2)(a) or grant of bail under Section 19(2)(b) ipso facto does not have the effect of suspending the order appealed against. In other words, it does not have the effect of staying the operation of the impugned order under which a person has been found guilty of contempt. Where the order appealed against is suspended, there would be no order of conviction for the time being till the appeal is decided. Where, only the execution of the punishment is suspended or the person is released on bail, such order does not amount to staying the operation of the entire order appealed against. The effect is that the person need not serve the sentence for the time being. There is fine distinction between the two powers.

6. The appellant also submitted that since an appeal was pending, the order of conviction was yet to become final, and therefore, till the appeal is decided on merit, Rule 14 of the Madras High Court Rules under the Advocates Act cannot be enforced. In our opinion, the aforesaid submission is not acceptable. Law is well settled that mere filing of appeal does not operate as stay of the order appealed against, unless there is a specific provision of law to that effect. On the other hand, the very fact that a provision has been made for staying the operation of the impugned order, in Section 19(2) of the Contempt of Courts Act, clearly indicates that mere filing of an appeal would not operate as stay of the order appealed against.”

30.4. In the judgment reported in **1989 Crl.L.J. 2065 [Dr.Sajad Majid Vs. Dr.Syed Zahoor Ahmed and another]** a Division Bench of the Jammu and Kashmir High Court held as follows:

“...

9. To the same effect are the observations made by their Lordships of Himachal Pradesh High Court, reported in 1985 Cri LJ 1030 having observed as under (at p. 1033):

“Mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and till an application for stay is moved and granted by the appellate Court, or, in the alternative, the Court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate Court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is sub-judice, may amount to contempt of Court punishable under the Contempt of Courts Act, 1971.”

10. Above all, the Supreme Court in identical situation in , has laid the following rule:

“A subordinate Court or Tribunal refusing to follow a High Court decision where a petition for leave to appeal to Supreme Court against that High Court decision was pending, held amounts to deliberate disobedience and

wilful disregard of the High Court and is contempt of Court.”

11. Thus, in a situation faced, it is made abundantly clear that pendency of the appeal before the appellate Court will not bar the Court to issue Rule for non-compliance of Court order which is not stayed by the appellate Court or modified by the same Court.

12. In the circumstance, reliance placed by Mr. Khan, CGA, in support of his argument on will not hold good for the reason time limit having been prescribed under Section 82, CPC for execution of a decree which aspect of the matter had come under discussion in reference to contempt proceedings within the execution period.

13. For the reasons given and observations made, the question framed gets settled and we hold that there is no bar to entertain contempt proceedings or issue Rule during limitation period provided for appeal or even if the appeal against the order is filed and stay is not obtained.”

30.5. In the judgment reported in **263 ITR 69 Cal [Golam Momen Vs.**

Assistant Commissioner of Income Tax], the Calcutta High Court held as follows:

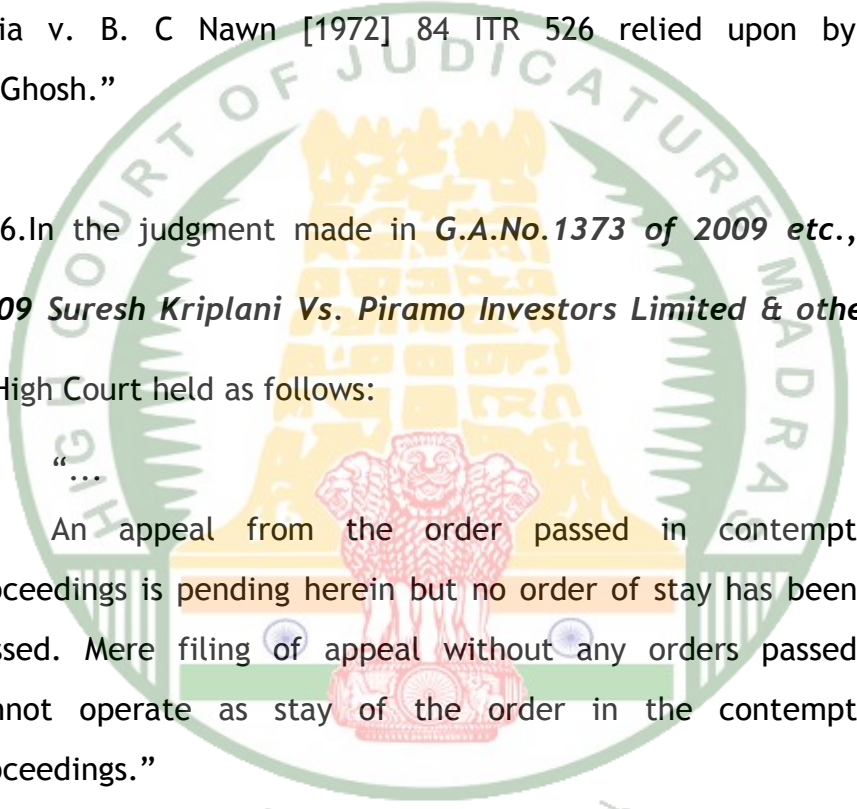
“...

21. After hearing learned counsel for the parties and after going through the scheme of the Income-tax Act, 1961, it is apparent that after the tax has been assessed and a notice of demand is issued under Section 156, the tax so

assessed becomes payable and after the expiry of the period mentioned in Section 220 if the tax remains unpaid, the assessee becomes a defaulter enabling the Tax Recovery Officer to proceed by any of the modes prescribed in Section 222 of the Act. Section 220(6) of the Act, however, authorises the Assessing Officer to treat the assessee as not being in default in his discretion subject to such condition as he may impose during the pendency of an appeal under Section 246 of the Act. The aforesaid provision manifests the intention of the Legislature that the fact of mere filing of an appeal does not constitute stay of the demand. As pointed out by the Supreme Court in the case of ITO v. M. K. Mohammed Kunhi [1969] 71 ITR 815, although the Act is silent, Section 254 of the Act impliedly grants the authority to the Appellate Tribunal to make necessary order staying recovery proceeding. But the apex court hastened to add that such power should not be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue law. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay recovery proceedings and on what conditions and the stay should be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. Therefore, so long as the appellate authority does not pass any specific order granting stay of recovery during the pendency of an appeal, there is no bar to proceeding with

the process of recovery unless a favourable order has been passed in terms of Section 220(6) of the Act. Mere filing of an application for stay cannot place the assessee in any better position. My aforesaid observation is in conformity with the Division Bench decision of this court in the case of *Union of India v. B. C. Nawn* [1972] 84 ITR 526 relied upon by Mr.Ghosh.”

30.6.In the judgment made in *G.A.No.1373 of 2009 etc., dated 21.05.2009 Suresh Kriplani Vs. Piramo Investors Limited & others*, the Calcutta High Court held as follows:

“...

 An appeal from the order passed in contempt proceedings is pending herein but no order of stay has been passed. Mere filing of appeal without any orders passed cannot operate as stay of the order in the contempt proceedings.”

30.7.In the judgment reported in *AIR 2009 Cal 216 [Sachin Halder Vs. Md.Shaid]*, the Calcutta High Court held as follows:

“...

 Of the several authorities that could have been brought to throw some light on the subject, a judgment reported at (1995) Supp. 4 SCC 465 (*Modern Food Industries (I) Ltd. v. Sachidanand Dass*) appears to be the best-suited in justification of the respondent's defence. Paragraph 4 of the

report captures the principle:

"4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt.

To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in *State of J & K v. Mohd. Yaqoob Khan*."

Even while laying down the principle, the Supreme Court has reminded that the mere filing of an appeal or an application for stay does not by themselves absolve the appellant from obeying the order under appeal. The court has not imposed the duty of obedience. The word "disobedience" is found in the relevant statute. Article 215 of the Constitution recognises every High Court to be a Court of record and accords all powers of such a Court "including the power to punish for contempt of itself."

If the mere filing of an appeal or of an application for stay therein may not be enough to impede the contempt proceedings, it needs to be assessed as to when the court would exercise restraint and not permit the contempt petition to be prosecuted during the pendency of an appeal from the relevant order or an application for stay in the appeal. There can be no inflexible rule. There are certain orders that are orders of the moment and require immediate compliance. An injunction restraining a construction to be carried on or a demolition to be executed cannot be ignored on the ground of an appeal having been preferred therefrom or of a stay application in the appeal languishing in some corner of the department.

Since the order of May 4, 2009 was not complied with, the

reasons for such non-compliance have to be looked into. The respondent could have bona fide been of the view that the order was erroneous. The respondent had a right to carry the order in appeal. But the bona fides of the respondent had to be demonstrated once it was apparent that the order had not been complied with. The act that the writ petitioner complained of was not one of confiscation of the property for good. The nature of the order of requisition was such that even without the intervention of court, the vehicle was liable to be returned. The implication of the order of May 4, 2009 was that the act of requisitioning the vehicle was bad and it had to be returned forthwith. For the respondent to have consciously ignored the order, a little more diligence in the appeal was called for. The order was pronounced in presence of counsel representing the respondent and an authenticated copy thereof was available on the same afternoon. The respondent was perfectly justified in harbouring a view that the order was erroneous and required correction, but since the efficacy of the direction contained in the order was of limited duration, the mere filing of an appeal and an application for stay therein would not absolve this respondent of the duty to obey the direction and to respect the constitutional scheme of things.

...

The rationale of contempt proceedings not being proceeded with during the pendency of a stay application in the relevant appeal is to avoid the beneficiary of the order to enjoy the fruits thereof with undue haste without having the order

tested before a superior forum. In the present case the respondent has merely filed the appeal and the stay application and allowed the time to run out before taking any meaningful steps in the appeal.”

30.8. In the judgment reported in **2008 (1) ShimLC 491 [Shashi Films (P) Ltd., Vs. Rajinder Kaushal]**, the Himachal Pradesh High Court held as follows:

“∴

11. Coming to the arguments of Mr. Sood that in terms of Section 24 of 1986 Act the filing of an appeal against an order of District Forum etc. would automatically, by itself amount to the stay of execution of the said order, we do wish to observe that on a plain reading of Section 24 we feel that such an interpretation cannot be put upon Section 24 as is sought to be placed by Mr. Sood. All that Section 24 says is that if no appeal has been preferred, against the orders mentioned therein, these orders would become final. It was quite natural for the legislature to specify, in clear terms that if against an order passed by a District Forum, State Commission or the National Commission no appeal has been preferred, such an order would become final. The Section does not say anything more. This plain meaning of Section 24 cannot be stretched to include a situation where the mere filing of the appeal would amount to the staying of the operation of the impugned order. That would run contrary to the well established principle of law that unless a specific

order by the Appellate Court staying the operation/execution of the order appealed against is passed, the mere filing of the appeal would not operate as a stay.”

31. From the above referred judgments of the Apex Court, this Court and other High Courts, it is clear that mere filing of an appeal would not operate as a stay of the order appealed from and that mere filing of an appeal and an application for stay do not, by themselves, absolve the respondent from obeying the order under appeal. That apart, the very fact that a provision has been made for staying the operation of the impugned order in Section 19(2) of the Contempt of Courts Act clearly indicates that mere filing of an appeal would not operate as stay of the order appealed against. If the mere filing of an appeal or of an application for stay therein may not be enough to impede the contempt proceedings, it needs to be assessed as to when the court would exercise restraint and not permit the Contempt Petition to be prosecuted during the pendency of an appeal from the relevant order or an application for stay in the appeal. There can be no inflexible rule. There are certain orders that are orders of the moment and require immediate compliance. An injunction restraining a construction to be carried on or a demolition to be executed cannot be ignored on the ground of an appeal having been preferred or of a stay application in the appeal languishing in some corner of the department. Even while laying

down the principle, the Supreme Court has reminded that the mere filing of an appeal or an application for stay does not by themselves absolve the respondent from obeying the order under appeal. The Court has not imposed the duty of obedience. The word “disobedience” is found in the relevant statute. Article 215 of the Constitution recognizes every High Court to be a Court of record and accords all powers of such a Court “including the power to punish for contempt of itself”.

32. In the case on hand, this Court, by order dated 07.06.2017, taking into consideration the welfare of the minor children and also taking note of the fact that they were under the care and affection of the Nuns, who do not have family of their own and were deeply upset and were weeping due to their sudden displacement and loss of care and affection, had directed the respondent to hand over the custody of the five children to the petitioner before 05.00 p.m. on 08.06.2017. The respondent had not complied with the directions of this Court, instead, he filed the Writ Appeal in W.A.No.670 of 2017 on 08.06.2017 and brought the Appeal for admission before the Division Bench only on 22.06.2017. Ultimately, after several directions given by the Division Bench for the production of the children, the respondent produced the children only on 23.11.2017, on which date, the Division Bench confirmed the orders of this Court and disposed of the

Writ Appeal. The rationale of contempt proceedings not being proceeded with during the pendency of a stay application in the relevant appeal is to avoid the beneficiary of the order to enjoy the fruits with undue haste without having the order tested before a superior forum. In the present case, the respondent has merely filed the appeal and the stay applications and allowed the time to run out before taking any meaningful steps in the appeal.

33. In the judgments relied upon by the learned counsel for the respondent cited supra, this Court had extracted the judgment of the Apex Court reported in **(2014) 16 SCC 88 [Dineshan K.K. Vs. R.K.Singh and another]** wherein the Apex Court, while disposing of the Contempt Petition filed in the Civil Appeal on the file of the Hon'ble Supreme Court, observed that the High Court can entertain the Contempt Petition for disobedience of the order, which is under appeal before the Apex Court. This Court, in the above referred judgments, held that once a Writ Appeal is numbered, then the Single Judge cannot take up the Contempt, in view of the decision of the Apex Court.

34. However, on a reading of the judgment reported in **(2014) 16 SCC 88 [Dineshan K.K. Vs. R.K.Singh and another]**, which was relied upon by

this Court in the judgments reported in **2017 (3) CTC 783 : (2017) 3 MLJ 565 [Ponnuthai Vs. Thiru V.M.Xavier Chrisso Nayagam, IAS., The Director, Directorate of Social Welfare Department, Chepauk, Chennai - 5 and others]** and **2017 SCC Online Mad 8507 [Rajkumar Vs. Ms.Sabitha, IAS., The Secretary to Government, Education Department, Secretariat, Fort St.George, Chennai - 600 009 and others]**, it is clear that the Apex Court has held as follows:

“...

14.We are mindful of settled law that the orders passed by the High Court would merge with the order passed by this Court. This Court has dismissed the appeal only and, therefore, it is the directions passed by the High Court which in fact have been allegedly disobeyed by the respondents/contemnors. In our considered view, it would be in the interest of justice and to lessen the burden of this Court in the current scenario, it would be appropriate to request the High Court to look into the grievance of the complainant, if a petition is filed before them inter alia bringing to their notice and knowledge that their orders and directions have been disobeyed. In our opinion, firstly, this exercise would be beneficial to the parties because they were before the High Court in the writ petition wherein the directions were issued and secondly, by entertaining the petitions of this nature wherein this Court has passed an order of dismissal simplicitor and the alleged contempt arises

out of the order passed by the High Court, this Court would saddle the dockets with cases which could otherwise be effectively could be disposed of by the Courts below.”

35. Further, the Apex Court observed that it had dismissed the appeal only and therefore, it is the directions of the High Court, which in fact have been allegedly disobeyed by the contemnors. Therefore, the Apex Court observed that it would be appropriate to request the High Court to look into the grievance of the complainant, if a petition is filed for contempt, *inter alia* bringing to their notice and knowledge that their orders and directions have been disobeyed. Further, the Apex Court, though held that when the judgment and order passed by the High Court merged with the order passed by the Hon'ble Supreme Court, while disposing of the Civil Appeal, the Apex Court directed the complainant/petitioner to file an appropriate Contempt Petition before the High Court for the alleged disobedience of the orders and directions issued by the High Court and if such a Contempt Petition is filed, the High Court would consider the same in accordance with law. Therefore, from the judgments cited supra, it is clear that mere filing of an appeal shall not absolve the respondent of the duty to obey the directions of this Court.

36. For the reasons stated above, I am of the considered view that there is willful disobedience of the order dated 07.06.2017 passed by this Court, by the respondent. The Contemnor, not only committed contempt, but also his conduct proved that he abused the process of Court by flouting and disobeying the orders of this Court. In spite of disobeying the orders of this Court, the Contemnor has not even bothered to tender unconditional apology for the disobedience of the order dated 07.06.2017 in the counter filed by him. If the act of the Contemnor is condoned and if he is allowed to go without any punishment, it will set a bad precedence and many will think of flouting the orders of this Court, which cannot be permitted. In these circumstances, the Contemnor is guilty of contempt for disobeying the order dated 07.06.2017 made in W.M.P.No.15036 of 2017 in W.P.No.13856 of 2017.

37. Therefore, I am of the considered view that this is a fit case for imposing punishment on the Contemnor under Section 12 of the Contempt of Courts Act, 1971. Hence, the Contemnor is liable for punishment for willful disobedience of the order dated 07.06.2017.

38. In these circumstances, ***the Contemnor is sentenced to undergo Simple Imprisonment of two months and to pay a fine amount of***

Rs.2,000/- (Rupees Two Thousand only). The Contemnor shall pay the fine amount within one week and in the case of default, the Contemnor should undergo Simple Imprisonment for a further period of fifteen (15) days.

39. With these observations, the Contempt Petition is ordered.

Index : No
Internet : Yes
Speaking Order
va

13.12.2017

After the pronouncement of the order, the learned counsel appearing for the respondent submitted that the punishment imposed in this order may be suspended for a period of two weeks enabling the respondent to file an appeal as against this order.

In view of the submission made by the learned counsel for the respondent, the punishment imposed in this Contempt Petition is suspended for a period of two weeks.

13.12.2017

va

Note: Issue order copy today itself.

To

Mr.Manikandan,
The Chairman, Child Welfare Committee,
Government Children Home for Boys,
GST Road, Chengalpattu - 603 002.



WEB COPY

M.DURAIWAMY,J.

va



Pre-delivery Order in
Contempt Petition No.1316 of 2017

WEB COPY

13.12.2017