

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13-04-2018

Pronounced on : 25.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Contempt Appeal No. 8 of 2017

and

C.M.P. No. 22375 of 2017

Dr. R.N. Manikandan
The Chairman
Child Welfare Committee (Kancheepuram District)
Government Children Home for Boys
G.S.T. Road
Chengalpattu - 603 002 ... Appellant

Versus

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

Appeal filed under Section 19 of The Contempt of Courts Act, 1971 against the order dated 13.12.2017 passed in Contempt Petition No. 1316 of 2017 in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 on the file of this Court.

Contempt Petition No. 1316 of 2017:-

Petition filed under section 11 of contempt of courts act, 1971 to punish the respondent for his wilful and disobedience and contempt to the order dated 07.06.2017 made in WMP.No.15036 of 2017 in WP.NO.13856 of 2017.

W.M.P. No. 15036 of 2017:-

Petition filed under section 226 of the constitution of India, to issue an order of interim direction to the 5th respondent to restore the five children namely Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine to the

custody of the petitioner society in Assis Illam Magazine Road St. Thomas Mount Chennai 600 016 under the same management.

W.P. No. 13856 of 2017 :-

Writ Petition under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a writ of mandamus, directing the 5th respondent to consider and pass orders on the recommendation of the 4th respondent date 09.05.2017 in No. 888/Ma.Ku.Pa/ 2017 permitting the petitioner society to continue the custody of the five children namely Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine in Assis Illam Magazine Road St. Thomas Mount Chennai 600 016

For Appellant : Mr. J. Mohan
for Ms. Shaikh Mehrunisa

For Respondent : Fr. Xavier Arulraj, Senior Counsel
for Ms. A. Arul Mary

JUDGMENT

R. Subbiah, J

This contempt appeal is preferred against the order dated 13.12.2017 passed by the learned single Judge in Contempt Petition No. 1316 of 2017 in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 whereby the learned single Judge allowed the Contempt Petition filed by the respondent herein. While allowing the contempt petition, the learned single Judge, in exercise of the powers conferred under Section 12 of The Contempt of Courts Act, sentenced the appellant herein to undergo simple imprisonment for a period of two months together with a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a further period of 15 days for having disobeyed the order passed on 07.06.2017.

2. The facts which led to the filing of this Contempt appeal can succinctly be narrated as under.

3. The respondent herein has filed WP No. 13856 of 2017 wherein it is contended that the respondent is a religious congregation of catholic nuns, involved in educational and charitable activity. The respondent society was constituted by the congregation of 'Franciscan Sisters of St. Joseph' and it was registered under the Societies Registration Act, 1860. The respondent society is running several educational and

charitable institutions for the welfare of poor and downtrodden. The respondent society is totally a non-profitable organisation. The respondent also established so many orphanages / children's home for the welfare of the marginalised children / destitute and it is involved in such mission for more than hundred years. One such children's home established by the respondent society during the year 2005 is at Door No.15, Nethaji Nagar, St. Thomas Mount, Chennai - 600 016 called as 'Asisi Illam'. At the time of establishing Asisi Home, there were 11 children in the home. The District Collector - Kancheepuram has accorded temporary recognition for running Asisi Home vide Certificate No. 22 of 2007 dated 07.02.2007 under the Orphanage and other Charitable Homes (Supervision and Control) Act, 1960. Subsequently, by proceedings dated 31.03.2011 and Proc.Roc.No.9861/CW2/2010, the authorities attached to the Directorate of Social Welfare, had accorded conditional registration for six months in favour of the respondent society from 01.04.2011 to 30.09.2011 under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 in respect of Asisi home. Subsequently, by proceedings dated 04.04.2016 in No.2077/D1/2016, the Director, Directorate of Social Defence, Chennai had issued a certificate of provisional registration under Section 41 (1) of The Juvenile Justice (Care and Protection of Children) Act, 2015 for a period of six months in respect of Asisi Home. In the said Certificate, it was clearly mentioned that the available infrastructure in the children's home were assessed and that the home can admit a maximum of 35 children. It was also stated therein that the children's home had complied with the Rules and instructions issued by the Directorate from time to time. The authorities attached to the office of Directorate of Social Defence, Chennai also visited the 'Asisi home' from time to time and expressed their satisfaction regarding the manner in which the children were cared and protected therein.

4. According to the respondent, out of the 17 resident children who were under the care and protection of 'Asisi home' run by the respondent society, 12 were semi orphans. The rest of the 5 children were total destitutes as they were abandoned or had been handed over to the Director of Asisi Illam while they were just born, under various social circumstances by various persons. However, the children were taken under the custody of the said home, based on the statements furnished by the individuals, who were in dire straits. Presently, the 5 destitute children, 2 boys and 3 girls are in the age group of 9 to 12 years. From the date of their abandonment as toddlers, the parental guardian care has been fully conferred on them by the catholic nuns and other staff in the home, who are totally dedicated towards these children and others. Thus, these children as also other children have become part of the family of Asisi Home and they enjoyed love and affection and care in a

healthy environment.

5. It was the further case of the respondent that on and off, the authorities have orally told the respondent to upgrade the infrastructure in Asisi Illam in order to meet the requirements under the amended Juvenile Justice (Care and Protection) Act, 2015 and other requirements for renewal of the permission granted to the Asisi Home. In such circumstances, the respondent society decided to close the said Asisi Home from the academic year 2017-2018. Before closing the said Home, the 12 semi-orphaned children were handed over to their respective parent/guardian at the end of the academic year 2017-2018, besides informing the authorities concerned regarding the handing over of the 12 semi-orphaned children. As far as the 5 destitute children are concerned, the respondent society by a letter dated 26.07.2016 requested the authorities concerned to permit the respondent society to transfer them to another Asisi Illam run by the respondent society at Magazine Road, St. Thomas Mount as they are destitute from their infancy and were under the care of the respondent from the childhood. It was also represented by the respondent that the Home at Magazine Road, St. Thomas Mount run by the respondent society is registered under the Juvenile Justice (Care and Protection) Act, 2000 and the registration is valid upto 2017 and the proposal for extension of registration has already been made and is pending. It was also further stated in the letter dated 26.07.2016 that the respondent society is having all the requisite infrastructure to accommodate the 5 children in their Home at Magazine Road, St. Thomas Mount and therefore made a request to permit the respondent society to transfer the five children to the Home run by them at Magazine Road, St. Thomas Mount, Chennai so that there would not be any negative psychological and sociological impact on those five children and it will avoid displacement from their school inasmuch as the Asisi Illam in Magazine Road is situated within one Kilometer from their present location and the school. It was further stated in the said letter that since the Asisi Illam in Magazine Road is also being run by the respondent society, the children can continue to enjoy the same affection, care and protection, as before. While the respondent society was anticipating to hear from the appellant herein, instead of considering the request of the respondent, the appellant had issued a show cause notice dated 06.01.2017 in Letter No. 32 of 2017 calling upon the respondent to explain as to why they did not inform the Government about accepting the five children in the year 2005 after the enactment of Juvenile Justice (Care and Protection) Act, 2000. In the show cause notice, the appellant also called upon the respondent to show cause as to why the children are being brought up as Christians and it was amounting to conversion by depriving the children to enjoy their family life. According to the

respondent, these questions are preposterous, having been raised after the children have been in the custody of the respondent all these years. Therefore, the respondent sent a reply letter on 12.01.2017 explaining the circumstances under which these five children were accommodated in the respondent society. The respondent also brought to the notice of the appellant that the Asisi Home was recognised under the Juvenile Justice (Care and Protection) Act, 2000 and renewed from time to time. It was further stated in the reply letter that the Under Secretary to the Government, the Protection Officers, the Members of the Child Welfare Committee and the District Child Protection Officers have periodically inspected the home and were satisfied with the manner in which the children were bestowed with care and protection, which can be verified by the appellant from the inspection reports. Thus, the respondent, in the letter dated 12.01.2017, requested the appellant to permit them to transfer the five children to their other registered home in the same vicinity namely at Magazine Road, St. Thomas Mount, Chennai - 600 016 without displacing the children physically, emotionally and socially. According to the respondent, after receipt of the reply dated 12.01.2017, the authorities of the District Child Protection Unit, Kancheepuram, have visited the home on 11.03.2017 and were satisfied with the manner in which the children are being taken care and the infrastructural amenities provided by the respondent society. Therefore, by letter dated 09.05.2017, the District Child Protection Officer recommended to the appellant that the five children are studying well and considering their future, it will be better to transfer them to Asisi Illam at Magazine Road, St. Thomas Mount, run by the respondent society. Notwithstanding the recommendation made by the District Child Protection Officer in the letter dated 09.05.2017, the appellant had given a complaint dated 31.05.2017 stating that Asisi Illam in Nethaji Nagar is an unregistered home and therefore the children are under illegal custody. The police had informed the respondent about the complaint dated 31.05.2017 given by the appellant. While so, without any written order, the appellant forcibly dislodged the five children from Asisi Illam in Nethaji Nagar with the aid of police and transferred them to some private home not acquainted to the respondent society. The respondent learnt that the children are deeply upset and are weeping due to their sudden displacement and loss of affection. In such circumstances, the respondent society has filed the writ petition before this Court in WP No. 13856 of 2017 praying for issuing a Writ of Mandamus directing the fifth respondent to consider and pass orders on the recommendation of the fourth respondent in the writ petition namely District Child Protection Officer made on 09.05.2017 to permit the respondent society to continue the custody of the five children namely (i) Mary Sylvia (ii) Sophia Christy (iii) George Mark (iv) Jacob John and (v) Jasmine in Asisi Illam,

Magazine Road, St. Thomas Mount, Chennai - 600 016.

6. Pending writ petition, the respondent society has filed W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 praying to issue an interim direction directing the fifth respondent therein, who is the appellant in this Contempt Appeal, to restore the five children namely (i) Mary Sylvia (ii) Sophia Christy (iii) George Mark (iv) Jacob John and (v) Jasmine to the custody of the respondent society in Asisi Illam, Magazine Road, St. Thomas Mount, Chennai - 600 016.

7. In the meantime, apart from giving the complaint dated 31.05.2017, the appellant also filed Habeas Corpus Petition No. 902 of 2017 before this Court praying to direct the respondents 1 and 2 therein to produce the body of the detenu's (3 minor girls and 2 minor boys, all aged between 9 to 12 years), namely (i) Mary Sylvia, D/o. Usha (ii) Sophia Christy, D/o. Amu (iii) George Macc, Son of Ms. Seema (iv) Jacob John, Son of Basha and Shakila and (v) Jasmine, D/o. Nadasha presently in the illegal custody of the third respondent and to produce them before this Court and handover the custody to the petitioner (CWC, Chengalpet, Kancheepuram), set them at liberty.

8. When the writ petition came up for hearing on 07.06.2017, this Court passed the following interim Order after taking note of the Habeas Corpus Petition filed by the appellant herein:-

"13. When the children of the age group between 9 to 12 years are brought up by the Assisi illam right from their childhood, it would not be proper on the part of the fifth respondent to take the custody of the children all of 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. When the children are with the Assisi illam for nearly 12 years, this Court has to see the welfare of the children while deciding the issue with regard to the custody of the children.

14. When the fifth respondent had taken the custody of the children on 01.06.2017 itself, they should have brought the same to the notice of the Division Bench while moving the Habeas Corpus Petition.

15. For the reasons stated above, I am of the view that the custody of the 5 children should be given to the petitioner to accommodate them in Assisi Illam, No.4/92-62, Magazine Road, St. Thomas Mount, Chennai - 16, Kancheepuram District, which is a registered children's home run by the petitioner society. This order is being passed only as an interim measure and taking into consideration the

welfare of the minor children.

16. In these circumstances, I direct the 5th respondent to handover the custody of the five children viz., Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine to the petitioner before 05.00 pm on 08.06.2017.

9. According to the respondent society, as directed by this Court in the order dated 07.06.2017, the appellant did not handover the custody of the five children. On the other hand, the appellant has filed Writ Appeal No. 670 of 2017 before the Division Bench of this Court as against the order dated 07.06.2017 passed in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017. However, the Division Bench of this Court has only ordered notice in the Writ Appeal and refused to grant interim stay of operation of the order dated 07.06.2017. Therefore, the respondent has filed Contempt Petition No. 1316 of 2017 before the learned single Judge complaining non-compliance of the order dated 07.06.2017 passed in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017.

10. In the contempt Petition No. 1316 of 2017, it was contended by the respondent that without any written order rejecting the reply dated 12.01.2017 sent by the respondent society in response to the show cause notice dated 06.01.2017 sent by the appellant, the appellant lodged a complaint with Nanthambakkam Police Station as if the five children are in the illegal custody of the respondent society. Upon hearing about such complaint filed by the appellant, the respondent handed over the custody of the five children before the Inspector of Police, Nanthambakkam Police Station on 01.06.2017 at 10.00 am. After the children were handed over by the respondent society to the Police officials, the appellant has filed Habeas Corpus Petition No. 902 of 2017 to produce the children before this Court as if they were in illegal custody of the respondent society. The fact remains that at the time of filing such Habeas Corpus Petition, the children were only in the custody of the appellant. It is in those circumstances, the respondent society was constrained to file W.P. No. 13856 of 2017 before this Court praying for issuing a Writ of Mandamus and pending disposal of the same, interim direction was sought for in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 in which an interim order was passed on 07.06.2017 directing the appellant to handover the custody of the five children to the respondent society before 5.00 pm on 08.06.2017. The appellant did not handover the custody of the five children as directed by this Court in the order dated 07.06.2017. On the other hand, the appellant has filed Writ Appeal No. 670 of 2017 before the Division Bench of this Court challenging the interim order passed by this Court on 07.06.2017 in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017. In the Writ Appeal, the Division Bench of this Court had issued only notice and refused to grant

interim stay. Subsequently, on 04.07.2017, the appellant withdrew H.C.P. No. 902 of 2017 which was filed for production of the five children before this Court on the ground that they were in illegal custody of the respondent society. Furthermore, the appellant has also filed Crl.OP No. 12446 of 2017 before this Court under Section 482 of the Code of Criminal Procedure praying to issue appropriate direction to the Inspector of Police, Nandambakkam Police Station to register a case against the respondent society on the basis of the complaint given by them. According to the respondent society, the appellant did not handover the custody of the five children as directed by this Court in the order dated 07.06.2017 and therefore, the respondent society sent a contempt notice dated 09.06.2017 stating that the inaction on the part of the appellant in not handing over the custody of the five children as directed by this Court in the order dated 07.06.2017 is nothing short of contempt of the directions issued by this Court. In spite of receipt of the notice dated 09.06.2017, the appellant did not handover the custody of the five children to the respondent society, which prompted them to file the Contempt Petition No. 1316 of 2017 before this Court.

11. The contempt petition filed by the respondent was resisted by the appellant by filing a counter affidavit contending inter alia that the respondent society was an unregistered society and it was illegally running orphanage homes and accommodated children in violation of Section 36 of Juvenile Justice (Care and Protection) Act, 2000. As per Section 36 of the said Act, children below 5 years can be sheltered only with the licensed adoption agency as the kids can go in for adoption and have a full fledged family atmosphere giving them love, care and security. On the other hand, by keeping the infants in the home run by the respondent society, the children were deprived from going in adoption and having a family. It was further stated in the counter affidavit by the appellant that out of the 17 children accommodated in the Home run by the respondent society, 12 children, who were semi-orphans, were handed over to their respective parents or guardians, as the case may, be for want of registration of the Home. Further, the five children in question, who were totally destitute, were sought to be shifted to another home run by the respondent society. It was the contention of the appellant in the counter affidavit filed in the Contempt Petition that the five children in question were born to Hindu and Muslim parents, however, they were illegally converted into Christians by the respondent society, by abusing the child rights. According to the appellant, the five children were brought up as Christians, which is not their religion. Therefore, when the above violations committed by the respondent society came to light, the appellant issued a show cause notice dated 06.01.2017 and

sought the response of the respondent society. On receipt of the show cause notice, the respondent society agreed to close down the Asisi Home run by them at Nethaji Nagar and handover the five children to the custody of the appellant. However, the respondent did not handover the five children, therefore, on 31.05.2017, the appellant, along with the police and officials of the District Child Protection Unit, attempted to rescue the five children in question from the illegal custody of the respondent. However, the children were not in the home at the time of inspection. In those circumstances, the appellant was constrained to give a complaint to the Inspector of Police, Nandambakkam Police Station. Thereafter, on 01.06.2017, the appellant filed a Habeas Corpus Petition before this Court and on the same day, the five children were handed over to the custody of the appellant by the Police Officials and not by the respondent society. On 02.06.2017, the Habeas Corpus Petition was numbered as HCP No. 902 of 2017. When the Habeas Corpus Petition No. 902 of 2017 was listed for hearing before the Division Bench of this Court on 06.06.2017, the counsel for the petitioner/appellant could not reach the Court in time, with the result, the Habeas Corpus Petition was taken up for hearing by the Division Bench of this Court and adjourned by a week.

12. Above all, it was contended by the appellant in the contempt petition that on 06.06.2017, he came to know about the writ petition filed by the petitioner herein and on 07.06.2017, he had signed and entrusted Vakalath to his counsel to contest the writ petition. However, on 07.06.2017, this Court, on the basis of the pleadings raised by the petitioner and on the basis of the recommendation made by the fourth respondent in the writ petition namely the District Child Protection Unit, has passed the order dated 07.06.2017 directing the appellant to handover the custody of the five children to the respondent society. It was specifically contended in the Counter affidavit that the appellant is the competent authority to decide on the provisions of Section 30 of The Juvenile Justice (Care and Protection) Act, 2000 and it is the duty of the appellant to safeguard the five children from exploitation, abuse and neglect. It was further stated that the five children are accommodated in SOS Children Home, Tambaram, Chennai, which is an internationally reputed institution. Further, this Court issued the direction on 07.06.2017 based on the recommendations made by the fourth respondent in the writ petition namely District Child Protection Unit, which is his subordinate whose function is only to assist the appellant in discharging his responsibilities. It was further stated in the contempt petition that the action of the fourth respondent in the writ petition namely District Child Protection Unit in recommending to handover the children to the respondent society is an act of oblique motive and not intended towards the welfare of the children. In the counter affidavit of

the appellant, it was further stated that the plea of the respondent society to shift the five children to their another home at Magazine Road, St. Thomas Mount, Chennai - 600 016 cannot be considered since the said Home lacks infrastructural amenities.

13. As regards the order dated 07.06.2017 passed by the learned single Judge in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017, it was contended by the appellant that on the next day namely 08.06.2017, they have filed Writ Appeal No. 670 of 2017 before the Division Bench of this Court and that the writ appeal is pending adjudication. On the other hand, the respondent has filed the Contempt Petition No. 1316 of 2017 only in the month of July 2017 only on the ground that there is no interim stay granted in Writ Appeal No. 670 of 2017 filed by the appellant. Above all, it was stated in the counter affidavit that since the appellant has already filed W.A. No. 670 of 2017 before the Division Bench of this Court in which notice was also taken by the respondent society, the Contempt Petition itself is not maintainable and prayed for dismissal of the contempt petition.

14. The learned single Judge has considered the rival submissions and after elaborate discussion has concluded that the action of the appellant in not complying with the directions issued on 07.06.2017 is wilful and deliberate. It was further concluded by the learned single Judge that in the counter affidavit filed by the appellant in the contempt petition, he has not stated any reason for not complying with the order passed on 07.06.2017, rather, he has only referred to the pendency of the Writ Appeal filed by him before the Division Bench of this Court in W.A. No. 670 of 2017. The learned single Judge has also concluded that even the counsel for the appellant herein, in his submission, only referred to the pendency of the Writ Appeal No. 670 of 2017 as the reason for not complying with the order passed by this Court on 07.06.2017 and except the same, no other justifiable reasons have been adduced for not adhering to the directions issued on 07.06.2017. The learned single Judge, after quoting several decisions relied on by the learned counsel for the appellant herein, has concluded that the non-compliance of the order dated 07.06.2017 is wilful and deliberate. It was also further stated by the learned single Judge that the appellant herein has not only committed contempt, but also his conduct proved that he abused the process of the Court by flouting and disobeying the orders of this Court. It was further concluded that inspite of his deliberate disobedience of the orders passed by this Court, he has not even bothered to tender unconditional apology for such disobedience. By referring to the counter affidavit filed in the contempt Petition, the learned single Judge has concluded that if the act

of the contemnor/appellant herein 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. After having arrived at such conclusion, the learned single Judge has imposed the punishment of simple imprisonment for two months with fine, as narrated above and it is this order which is challenged by the appellant in this contempt appeal.

15. The learned counsel appearing for the appellant would vehemently contend that the appellant is the Chairman of Child Welfare Committee, Kancheepuram District and his appointment was duly notified in the official gazette by the Government of Tamil Nadu. The Child Welfare Committee is functioning as a statutory body for the District, in fulfilment of the provisions contained under Section 30 of The Juvenile Justice (Care and Protection) Act, 2000. The Child Welfare Committee of Kancheepuram District consists of The Chairman (appellant herein) and four other members and is collectively functioning as a bench with powers conferred under the Code of Criminal Procedure on a Metropolitan Magistrate or as the case may be a Judicial Magistrate of First Class. Further, the Child Welfare Committee is competent to decide on matters ensuring care, protection and rehabilitation of children based on individual child care plan as per the Juvenile Justice Act. It is also the duty of the Committee to safeguard such children from abuse, neglect and exploitation. According to the learned counsel for the appellant, the appellant has not wilfully disobeyed the order passed by the learned single Judge warranting initiation of contempt proceedings and the consequential punishment of imprisonment imposed on him. According to the counsel for the appellant the Honourable Supreme Court in the order passed in WP (Crl) No. 102 of 2017 in Re - Exploitation of Children in Orphanages in the State of Tamil Nadu versus Union of India and others as well as in the order passed by the Division Bench of this Court in WP No. 21267 of 2014 had directed the Government of Tamil Nadu to close down all the unregistered and illegal children home in Tamil Nadu immediately to uphold and implement the provisions contained in Juvenile Justice (Care and Protection) Act, 2000 and to safeguard the children from being exploited. It is in the backdrop of the aforesaid direction issued by the Honourable Supreme Court, the appellant had discharged his official duties and responsibilities in ensuring care and protection to the five children in question.

16. As regards the order dated 07.06.2017 passed by the learned single Judge in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017, the learned counsel for the appellant would contend that the respondent society runs several children home of which few are registered and some are unregistered. The said

Writ Petition No. 13856 of 2017 and WMP No. 15036 of 2017 were filed on 02.06.2017 and when the matter was taken up for hearing on 07.06.2017, the learned single Judge has passed an interim order directing the appellant to handover the custody of the five children to the respondent society. Out of 17 children housed in the Asisi Home run by the respondent society, 12 of them were handed over to their parents or guardians and the five children were sought to be transferred to the children home run at Magazine Road, St. Thomas Mount, Chennai - 600 016. Further, these five children were born to Hindu and Muslim parents, however, they were converted as Christians which is not their religion and this is an abuse of child right. Above all, it is contended by the learned counsel for the appellant that the order dated 07.06.2017 in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 was passed by the learned single Judge in gross violation of principles of natural justice and that is the reason why the appellant was constrained to file an appeal against the same order in WA No. 670 of 2017. The appeal was preferred on the very next day namely 08.06.2017 whereby the appellant has proved that his intention is not to disobey the order passed by the learned single Judge wilfully or wantonly. Therefore, pending disposal of the writ appeal and a stay petition, the contempt proceedings ought not to have been initiated against the appellant. Further, even though the decision with respect to handing over the five children to the respondent society was collectively taken by the appellant Committee, the contempt proceedings was initiated only against the appellant in his individual capacity.

17. The learned counsel for the appellant would further contend that during the pendency of the Writ Appeal, the Division Bench directed the five children to be evaluated by Medical Psychologists and two reports were filed before the Division Bench, one by the Probation Officer who interacted with the children and the other report by a Psychologist. Both the reports recommended that the children be placed under group foster care and they need counselling. Further, during the pendency of the Writ Appeal, the appellant and another member of the Child Welfare Committee appeared before the Division Bench of this Court on 31.10.2017 and explained in detail the circumstances under which the children could not be handed over to the respondent society. It was specifically stated that one of the children was suffering from a serious medical complication which had been neglected by the respondent society for a long time and the child required immediate medical attention. The ailing child also underwent a surgery as per the advice of the Doctors and the child is now able to recover from the ailment. Taking note of the above facts, the Division Bench of this Court disposed of W.A. No. 670 of 2017 directing the appellant to handover the custody of the children to the

respondent society and to agitate all the issues in the main writ petition. In any event, on 23.11.2017, the Division Bench of this Court disposed of the Writ Appeal directing the appellant to handover the five children to the custody of the respondent society and immediately, the five children were handed over to the respondent society on the same day and thereby the appellant had complied with the direction issued by the learned single Judge. However, the learned single Judge proceeded with the contempt proceedings and imposed the punishment of imprisonment against the appellant.

18. The learned counsel for the appellant would reiterate that the learned single Judge passed the order in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 on 07.06.2017 and on the next day, on 08.06.2017, the appellant has filed WA No. 670 of 2017 before the Division Bench of this Court, assailing the order dated 07.06.2017. Therefore, by reason of the filing of the Writ Appeal before the Division Bench of this Court immediately on the next date, the appellant had proved his bonafide intention to challenge the order passed by the learned single Judge and therefore the question of not complying with the order passed by the learned single Judge does not arise. The order dated 07.06.2017 passed by the learned single Judge merged with the appeal filed by the appellant in W.A. No. 670 of 2017 and therefore, on the principles of Doctrine of Merger, the learned single Judge ought not to have initiated contempt proceedings against the appellant. In order to buttress his submissions, the learned counsel for the appellant relied on several decisions. In one of the decisions relied on by the learned counsel for the appellant in the case of (Kunhayammed and others vs. State of Kerala and another) reported in (2000) 6 Supreme Court Cases 359, the Honourable Supreme Court has held as follows:-

"41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though

at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned have been subjected to judicial scrutiny of this Court.

42. "To merge" means to sink or disappear in something else, to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality (See Corpus Juris Secundum, Vol.LVII, pp. 1067-68)

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage, obviously that order cannot also be affirmed at the SLP stage.

"44. To sum up our conclusions are :-

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law....."

सत्यमेव जयते

19. For the very same proposition, the learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of (Gojer Bros. Pvt Ltd., versus Shri Ratanlal Singh) reported in AIR 1974 SC 1380 wherein it was held as follows:-

"19. The fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate Court is that in such cases the decree of the trial court is merged in the decree of the appellate Court.....

20. By placing reliance on the aforesaid decisions, the

learned counsel for the appellant would contend that when once an appeal is filed against the order passed by the learned single Judge, the order of the learned single Judge gets merged with the writ appeal. In such event, the learned single Judge ought not to have proceeded with the contempt proceedings against the appellant.

21. The next fold of submission of the learned counsel for the appellant is that though interim stay was not granted by the Division Bench in the writ appeal filed by the appellant, the petition for interim stay was not dismissed and the writ appeal as well as the petition for interim stay were pending. If the Division Bench of this Court had dismissed the petition for interim stay, then, the appellant would have complied with the order passed by the learned single Judge or would have preferred a Special Leave Petition thereagainst. When the petition for interim stay was not dismissed, it cannot be said that the appellant had violated the interim order passed by the learned single Judge and consequently, the contempt proceedings against the appellant are not warranted. In order to buttress this submission, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in (Modern Food Industries (India) Limited and another vs. Sachidanand Dass and another) reported in 1995 Supplementary (4) Supreme Court Cases 465 wherein it was held as follows:-

" 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 of the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find as had now happened, the very purpose of appeal and the prayer for interloctuary 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 any 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

atleast simultaneously with the complaint for contempt. To keep the prayer for stay stand by and to insist upon proceeding with the contempt might in many conceivable cases, as here, cause serious prejudice...."

22. By placing reliance on the aforesaid decision, the learned learned counsel for the appellant would contend that by reason of filing of the Writ Appeal No. 670 of 2017 and the fact that the custody of the five children have been handed over to the respondent society on 23.11.2017 as has been directed by the Division Bench of this Court, it cannot be said that the appellant has wilfully or deliberately violated the order passed by the learned single Judge warranting initiation of contempt proceedings against the appellant and imposition of punishment on him. The learned counsel for the appellant therefore prayed for setting aside the order of punishment passed by the learned single Judge by allowing this Contempt Appeal.

23. Countering the submissions of the learned counsel for the appellant, the learned counsel for the respondent would vehemently contend that the learned single Judge passed an order on 07.06.2017 in WMP No. 15036 of 2017 in WP No. 13856 of 2017 directing the appellant to handover the custody of the five children to the respondent society before 5 pm on 08.06.2017. Such an order was passed by this Court in the best interest and welfare of the five children. Even though the appellant is the statutory authority and not a private person, he had no respect for the rule of law and the majesty of the Court, which is evident from the fact that the appellant did not comply with the order dated 07.06.2017 but contends that he has filed an appeal before the Division Bench of this Court and therefore, the contempt petition itself is not maintainable. The learned counsel for the respondent would further contend that mere filing of an appeal before the Division Bench of this Court against the interim order passed by the learned single Judge would not attract the principles of doctrine of merger or it cannot be the reason for not complying with the order passed by the learned single Judge. Furthermore, in the absence of any interim stay having been granted by the Division Bench of this Court in the Writ appeal filed by the appellant, by taking advantage of the pendency of the writ appeal, the appellant cannot be permitted to violate the order passed by the learned single Judge. Further, the learned counsel for the respondent would contend that even during the pendency of the writ appeal, the Division Bench of this Court repeatedly advised the appellant to purge the contempt and then proceed with the appeal, but the appellant disregarded the advice given to him by the Division Bench of this Court and it could be evident from

the various orders passed by the Division Bench of this Court on 14.09.2017, 18.09.2017, 04.10.2017, 31.10.2017 and 23.11.2017. Ultimately, the Division Bench of this Court, disposed of the writ appeal on 23.11.2017 directing the appellant to handover the custody of the five children to the respondent and accordingly, the five children were handed over to the respondent on 23.11.2017. Thus, according to the learned counsel for the respondent, even the belated compliance of the order passed by the learned single Judge does not arise because the appellant complied with the order passed by the learned single Judge only after disposal of the writ appeal by the Division Bench of this Court directing the appellant to handover the five children to the respondent society.

24. The learned counsel for the respondent also brought to the notice of this Court Crl.OP No. 12446 of 2017 filed by the appellant before this Court seeking to transfer the investigation in the case registered against the respondent society to CB CID, but the said Petition was dismissed by this Court. Once again, the appellant filed another Petition in Crl.OP No. 25686 of 2017 to transfer the investigation to Central Bureau of Investigation and it was also dismissed on 18.12.2017. in the order dated 18.12.2017, certain observations were made with respect to the conduct of the appellant. According to the learned counsel for the respondent, the successive Criminal Original Petitions were filed by the appellant with a view to avoid complying with the order dated 07.06.2017 passed by the learned single Judge and the filing of the two petitions were not with any good intention.

25. The learned counsel for the respondent would contend that the appellant has a right to file an appeal, however, when the Division Bench did not grant any interim stay, the appellant has to comply with the order passed by the learned single Judge and he cannot disregard the direction issued by this Court. The learned counsel for the respondent also brought to the notice of this Court that even in the grounds of the Contempt Appeal, in para Nos. 8, 9 and 10, the appellant has blamed the Government Advocate Mr. Thambi Durai as if he colluded with the respondent, which is not in good taste. A further reference was made in the grounds of appeal stating that "It was shocking to note that the learned Judge obliged to the respondent society's Senior counsel and the AGP and passed an order against the CWC, Kancheepuram." These averments made in the grounds of the present Contempt Appeal would clinchingly indicate that the appellant has scant regard for the order or direction issued by this Court and to make it appear that his actions are in the best interest of the five children in question. Above all, the appellant also made reference to the order passed by the Division Bench of this Court by stating that "The Hon'ble Division Bench on 23.11.2017

directly handed over the five children back to the respondent society from the chamber, without obtaining discharge order from the CWC, which was similar in nature, to the order passed by the learned single Judge." These statements made in the grounds of appeal would indicate the conduct of the appellant. In this context, the learned counsel for the respondent placed reliance on the decisions rendered in (Delhi Development Authority vs. Skipper Construction and another) reported in 1995 3 SCC 507; (Mohammed Aslam vs. Union of India) reported in (1994 (6) SCC 442 and the decision rendered in (State of Madhya Pradesh and another v. Suresh Narayan Vijayvargiya and others) reported in 2014 (11) SCC 694. According to the learned counsel for the respondent, the appellant has scant regard for the order or directions issued by this Court and taking note of the same, the learned single Judge has rightly initiated contempt proceedings against the appellant and imposed the punishment on him. Therefore, the learned counsel for the respondent prayed for dismissal of the Contempt Appeal.

26. We have given our anxious consideration to the rival submissions made. We have also gone through the material records placed before us, including the order passed by the learned single Judge.

27. As we have narrated the factual sequence which led to the filing of the present Contempt Appeal in detail, we refrain from dealing with the same any further. However, for the purpose of disposal of the present contempt appeal, certain facts, which are germane and absolutely necessary alone are dealt with hereunder.

28. Before dealing with the correctness or otherwise of the order passed by the learned single Judge, which is questioned in this Contempt Appeal, we wish to observe that this Court is vested with power under Section 12 of the Contempt of Courts Act to initiate contempt proceedings against those who violate or fail to comply with any direction or order issued. However, the powers conferred under Section 12 of the Contempt of Courts Act are seldom invoked by this Court unlike exercise of power vested under Article 226 or 227 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure, which are exercised time and again to issue a Mandamus or direction. While dealing with Contempt Petitions, whenever, it is reported that an order or direction issued by this Court has been complied with, of course even after expiry of time granted for compliance of such order, this Court merely records such compliance and drops all further contempt proceedings against the Contemnor. Thus, this Court normally hesitates and remains slow in the matter of initiating contempt proceedings against a person who is complained of having violated the order passed by

this Court and that is the reason why this Court is confronted with the task of disposing of burgeoning contempt petitions. At the same time, if it is noticed that an order or direction issued by this Court is flouted with impunity or there is wilful or deliberate negligence in complying with a direction or order passed by this Court, which would have the effect of eroding the majesty of this Court or to obstruct the course of judicial proceeding and the administration of justice, this Court will not hesitate to invoke the powers conferred under Section 12 of the Contempt of Courts.

29. We wish to add that adherence to Rule of Law by one and all is an essential facet of Justice delivery system. No one is above Law and Law is Supreme. The important function of Courts is not only to ensure that the grievance of a litigant is redressed by reason of passing an order or issuing a direction, but it must ensure that such order or direction is complied with in letter and spirit without being flouted. If the orders or direction issued by this Court are not complied with, it will not only frustrate the litigants in whose favour such an order or direction was issued, but it would have the effect of shaking the very Justice Delivery System. In such event, this Court will have no other option but to wield the judicial sword to uphold the Majesty of Law so as to repose faith and instil confidence in the minds of the litigants that no one could thwart the rule of law. In the above context, useful reference can be made to the decision rendered in (Mohd Aslam @ Bhure vs. Union of India, State of Uttar Pradesh and others) reported in 2005 1 SCC 705 wherein it was held by the Honourable Supreme Court as follows:-

"30. It is unhappy that a leader of a political party and Chief Minister has to be convicted of an offence of contempt of Court. But it has to be done to uphold the majesty of law. We convict him of the offence of contempt of Court. Since the Contempt raises larger issues which affect the very foundation of the secular fabric of our nation, we also sentence him to a token imprisonment of one day. We also sentence him to pay a fine of Rs.2000/-. The fine shall be paid within a period of two months. For the sentence of imprisonment a warrant will issue."

30. With this background, we examine as to whether the non-compliance of the directions issued by the learned single Judge, by the appellant, is wilful, deliberate and intentional and whether the learned single Judge is right in initiating contempt proceedings against him.

31. The respondent herein has filed Writ Petition No. 13856 of 2017 before the learned single Judge praying to issue a Writ of Mandamus directing the fifth respondent therein, who is the

appellant herein, to consider and pass orders on the recommendation of the fourth respondent in the writ petition namely District Child Protection Officer made on 09.05.2017 to permit the respondent society to continue the custody of the five children namely (i) Mary Sylvia (ii) Sophia Christy (iii) George Mark (iv) Jacob John and (v) Jasmine in Asisi Illam, Magazine Road, St. Thomas Mount, Chennai - 600 016. Pending writ petition, the respondent herein filed WMP No. 15036 of 2017 praying to issue an interim direction directing the appellant to handover the custody of the five children. When the writ petition was listed for hearing, on 07.06.2017, the learned single Judge, in exercise of his discretionary powers conferred under Article 226 of The Constitution of India issued a direction to the appellant herein to handover the custody of the five children to the respondent society. The order dated 07.06.2017 was passed after hearing the parties to the writ petition, including the appellant herein, who was arrayed as fifth respondent in the writ petition. Thus, the appellant was fully aware of the said order passed by the learned single Judge on 07.06.2017. However, for the reasons best known, the appellant herein, against whom such an order dated 07.06.2017 was passed by the learned single Judge, did not comply with the said order. However, it is claimed that the appellant has questioned the order dated 07.06.2017 of the learned single Judge by filing Writ Appeal No. 670 of 2017 before the Division Bench of this Court on the next day itself namely 08.06.2017. However, the writ appeal was listed before the Division Bench for hearing only on 22.06.2017. Even though the appellant has filed CMP No. 9443 of 2017 praying for granting interim stay of operation of the order dated 07.06.2017 passed by the learned single Judge, the Division Bench refused to grant interim stay and issued notice to the respondents in the writ appeal. We are of the opinion that at least, at this stage, when the Division Bench refused to grant interim stay, the appellant ought to have complied with the order dated 07.06.2017 passed by the learned single Judge without waiting for final disposal of the writ appeal filed by him, but it was not done.

32. During the pendency of the appeal, the respondent herein has issued a pre-contempt notice dated 09.06.2017 calling upon the appellant to comply with the order dated 07.06.2017 passed by the learned single Judge, but the demand made in the said notice dated 09.06.2017 have not been complied with by the appellant. Therefore, on 25.07.2017, the respondent herein has filed Contempt Petition No. 1316 of 2017 complaining non-compliance of the order dated 07.06.2017 passed by the learned single Judge. When the contempt petition was taken up for hearing, this Court issued a statutory notice on 11.08.2017 for appearance of the appellant before this Court. Even in response to the statutory notice, the appellant did not appear before

this Court on the hearing date namely 08.09.2017 and therefore, the contempt petition was adjourned to 15.09.2017, on which date, the appellant was directed to appear before the learned single Judge.

33. It is seen from the records that one day prior to the date of hearing of the contempt petition on 15.09.2017, the writ appeal No. 670 of 2017 filed by the appellant herein came up for hearing before the Division Bench of this Court on 14.09.2017. On that date i.e., 14.09.2017, the appellant has filed CMP No. 9443 of 2017 in W.A. No. 670 of 2017 praying to stay all further proceedings pursuant to the statutory notice dated 11.08.2017 issued in Contempt Petition No. 1316 of 2017. The appellant also filed another Petition in CMP No. 20279 of 2017 in WA. No. 670 of 2017 to stay all further proceedings in Contempt Petition No. 1316 of 2017, but the Division Bench only ordered notice in the two petitions filed by the appellant. While so, on 15.09.2017, when the contempt petition No. 1316 of 2017 was listed before the learned single Judge for hearing, the appellant was present and the counsel who represented the appellant sought time purportedly to comply with the order passed by this Court. Subsequently, on 18.09.2017, when Writ Appeal No. 670 of 2017 was taken up for hearing by the Division Bench of this Court, an undertaking was given on behalf of the appellant to the effect that the appellant would produce the children in the Court during the next hearing on 04.10.2017. However, the children were not produced before this Court by the appellant on 04.10.2017 and therefore the Division Bench of this Court has passed an order on 04.10.2017 to the following effect:-

"1. Unfortunately, despite the directions of this Court dated 18.09.2017, the Child Welfare Committee i.e., the appellant has not produced the children.

2. Ms. Shaikh Mehrunisa, who appears for the appellant, says that she has filed an affidavit dated 04.10.2017, explaining therein as to why the children could not be produced in Court today.

2.1 A perusal of the affidavit shows that out of the five (5) children involved in the case, one of them, apparently, had to be taken to the hospital for medical treatment, while the other four (4) children apparently, were not produced since they had to attend school.

2.2 However, on hearing the submission advanced by the learned counsel for the appellant, the sense we get, is that, there is an attempt to keep the children away.

2.3 The reason we had asked for production of the children was to ascertain their view in the matter.

3. Having regard to the above, the appellant is once again directed to produce the children before us

on the next date of hearing i.e., 31.10.2017.

3.1 If the children are not produced before us on the next date of hearing, the Chairperson of the Child Welfare Committee, Kancheepuram District, shall remain present in Court....."

34. The Division Bench of this Court therefore granted time to enable the appellant to produce the children on 23.11.2017. On 23.11.2017, the appellant produced the five children and they were also interacted by the Division Bench of this Court in the chambers. After such interaction, on 23.11.2017, the Division Bench of this Court disposed of the writ appeal by issuing the following direction:-

"6. We have directed that their custody be handed over to Asisi Illam, after having received inputs not only from Mr. Raja Srinivas, but also from Mr. Lalvena, Director of Social Defence, Government of Tamil Nadu, bearing in mind the best interest of children. Therefore, the report received by Mr. Selvakumar, PDJ, Kancheepuram District, can now be placed before the learned single Judge and if, any further directions are to be issued on the report, the learned single Judge will issue necessary directions in that behalf.

7. The appeal is accordingly disposed of. Resultantly, pending applications shall stand closed."

35. It is pursuant to the order dated 23.11.2017, the custody of the children were entrusted with the respondent society. In other words, the order dated 07.06.2017 passed by the learned single Judge was upheld by the Division Bench of this Court and ultimately the custody of the children were entrusted to the respondent society.

36. It is to be noted that the manner in which the appellant defended the writ proceedings filed by the respondent and the various orders passed by the Division Bench of this Court mentioned supra would only gives an impression that the appellant, at all stages, attempted to justify his action and to project as though he was solely acting in the best interest of the children. We hasten to add that the care and protection which the appellant is said to have taken towards the children will not outweigh the manner in which this Court takes care of the larger interest of the society as a whole through the judicial proceedings. We also wish to add that through out the writ proceedings, the appellant intended to justify his actions and to portray as though he is the statutory authority or competent authority who has the power and authority to indulge in certain actions in the best interest of the children and to ensure that the children are not abused or exploited. Such statutory powers vested with the appellant is always subject to judicial review and scrutiny by this Court and his actions are

always not unquestionable. We are constrained to say so because the tone and tenor with which the appellant has raised certain grounds in the present contempt appeal portrays volumes about the actions of the appellant. The grounds raised by the appellant in the present Contempt Appeal also would infer the conduct and manner in which the the appellant defended the present writ proceedings. Some of the averments raised in the present grounds of appeal, which may be a tip of the ice berg, are delineated hereunder:-

" 8.Sensing collusion between the AGP and the respondent society/ unregistered children's home, the CWC Kancheepuram immediately convened an emergency meeting and decided to hire the services of a private counsel to represent their case.

9.The learned single Judge chose to ignore the representation of their Counsel and passed an order directing the CWC Kancheepuram to handover the 5 children in question back to the respondent to one of their registered homes at Magazine Road, St. Thomas Mount, Chennai on 08.06.2017 at 5.00 pm as stated by the AGP to the CWC Member the previous day.

10.It was also shocking to note that the learned Single Judge obliged the respondent society's Senior counsel and the AGP and passed an order against the CWC, Kancheepuram on the date of the appellant entering appearance itself without hearing them and without even being served with a copy of the papers. The appellant submits that the learned single Judge purely and totally relied only on the submissions of the respondent society's Senior counsel which is against natural justice.

21.The appellant submits that as per the adjudication in W.A. No. 670 of 2017 dated 21.10.2017, the Division Bench also recorded that they will initiate contempt proceedings against him. It was a very strange situation where the appellant was facing threats of contempt proceedings being initiated against him in two different Courts in the same matter, at the same time."

37. The above averments, in our opinion, are not in good taste. This is more so in a contempt appeal. The tone and tenor with which the appellant has raised grounds in the contempt appeal portrays a confrontational attitude and as a measure of justifying his actions. Rather, the appellant ought to have raised grounds in such a manner to smoothen the roughed feathers. This is totally absent in the present contempt appeal. We also wish to add that the appellant had also earned the wrath of the Division Bench of this Court in the order dated 04.10.2017 mentioned supra. While so, the appellant need not have raised several grounds to justify his actions in the

grounds of the present contempt appeal, instead, he could have merely stated that he has no intention to disobey or violate the order of the learned single Judge in a few paragraphs.

38. It was repeatedly harped upon by the appellant that against the order dated 07.06.2017, he has filed W.A. No. 670 of 2017 thereby he has proved his bonafide intention and the circumstances under which he could not comply with the order of the learned single Judge, hence, the question of non-compliance of the order of the learned single Judge does not arise. It was further repeatedly contended that the respondent society is running several unregistered homes in which children are accommodated in violation of the provisions contained under the Juvenile Justice (Care and Protection) Act, 2000.

39. At the outset, we wish to add that the scope of the present writ proceedings or the contempt proceedings has nothing to do with the fact whether the respondent society is running children homes in compliance with the provisions of the Juvenile Justice (Care and Protection) Act, 2000 or not.

40. As regards the doctrine of merger, we see that the Division Bench of this Court has not granted any interim stay of the operation of the order dated 07.06.2017 passed by the learned single Judge. Thus mere filing or pendency of the writ petition as against the order of the learned single Judge cannot be construed as a merger. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (K.K. Dineshan vs. R.K. Single and another) CDJ 2014 SC 203 relied on by the learned counsel for the respondent, wherein it was 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 respondent/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 interalia 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 the cases which could otherwise be effectively disposed of by the courts below.

15. In view of the aforesaid aspects of the matter, in our considered opinion, though we hold that when the judgment and order passed by the High Court has merged with the order passed by this Court while disposing of the civil appeal, we direct the complainant/petitioner to file an appropriate contempt petition before the high court for the alleged disobedience of the order and directions issued by the High Court within two months from today. If such a contempt petition is filed, the High Court would consider the same in accordance with law after giving appropriate opportunity of hearing to all the parties concern."

41. From a reading of the above decision, it could be evident that the Honourable Supreme Court, after holding that though the order passed by the High court merged with the order passed by the Honourable Supreme Court, directed the petitioner to file a contempt petition before the High Court since the alleged contempt arises out of the order passed by the High Court. Therefore, even if the order is merged, ultimately, the contempt proceedings could be initiated for non-compliance of the order passed by the learned single Judge as it is the order of the learned single Judge which is complained to have been violated.

42. The next submission of the learned counsel for the appellant is that since the petition for interim stay filed by the appellant along with the writ appeal was not dismissed and kept pending, there is no violation or disobedience of the order passed by the learned single Judge. In this regard, the learned counsel for the respondent relied on the decision of the Division Bench of the Himachal Pradesh High Court in the case of (M/s. Shashi Films Pvt Ltd., vs. Rajinder Kaushal) reported in AIR 2008 HP 4 wherein it was held as follows:-

"12. 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."

43. This decision relied on by the learned counsel for the respondent squarely applies to the facts of the present case. In this case, during the pendency of the writ appeal, particularly when only notice was ordered by the Division Bench in the petition for interim stay, we are of the view that the appellant ought to have complied with the order of the learned single Judge instead of waiting for the disposal of the writ appeal. Further, the Writ Appeal itself was ultimately disposed of by the Division Bench by upholding the order passed by the learned single Judge on 07.06.2017 without interfering with the same. In such circumstances, merely because the appellant has filed W.A. No. 670 of 2017, it will not absolve him of his failure to comply with the directions issued by the learned single Judge on 07.06.2017. In this context, reference can be made to the decision of the Honourable Supreme Court in the case of (Dr. H. Phunndre Singh and others vs. K.K. Sethi and another) reported in (1998) 8 Supreme Court Cases 640 wherein it was held as follows:-

"2. In our considered view, in the facts of the case, particularly when the order passed by the learned single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted. In the facts of the case, we feel that the contempt petition should be disposed of within a period of three months from the date of the communication of this order and we order accordingly. It is further directed that before disposal of the contempt petition, the pending appeal should not be taken up for hearing. The appeal is accordingly disposed of."

44. The above decision of the Honourable Supreme Court would squarely apply to the facts of the present case, In this case also, in the writ appeal preferred by the appellant before the Division Bench of this Court, along with an application for interim stay, the Division Bench did not grant interim stay. While so, the appellant ought to have complied with the order passed by the learned single Judge of this Court without waiting till the disposal of the petition for interim stay. Mere pendency of writ appeal, especially when there was no interim stay granted, will not be a ground for non-compliance of the order passed by the learned single Judge.

45. It is needless to mention that the scope of appeal is different from that of the contempt proceedings. The appeal filed by an appellant will result in either upholding the order of the learned single Judge or reversing or modifying it. Even assuming that the order of the learned single Judge is reversed by the Division Bench, still the appellant can be proceeded with contempt proceedings for violation or disobedience of the order passed by the learned single Judge in the absence of any interim stay having been granted by the appellate Court. The scope of contempt proceedings is to ensure that stream of justice in the Country remains pure, that it's course is not hindered or obstructed by any one in any manner.

46. Even though the appellant has tendered apology and prayed to exonerate him from the purview of contempt proceedings, we feel that even the apology tendered by the appellant without even an iota of remorse, cannot at all be condoned, given the nature of wilful disobedience committed by the appellant herein in complying with the order of the learned single Judge. In fact, in similar circumstances, the Honourable Supreme Court refused to accept the apology tendered by a contemnor in the case of (Delhi Development Authority vs. Skipper Construction and another) reported in (1995) 3 Supreme Court Cases 507 which reads as follows:-

"67.No doubt, the contemnors have tendered apology. The apology is coming forth after realising that the adventures have turned out to be misadventures, realising that the contemnors have ended up in a cul-da-sc. An apology is not a weapon or defence forged to purge the guilt of the offences nor is it intended to operate as a panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrongdoer's power. We do not find the apology to be so in this case. The conduct of contemnors is lightly reprehensible....."

47. In the present case, given the nature of grounds of

contempt appeal raised by the appellant and the manner in which the appellant attempted to justify his actions as a statutory authority, we are of the unhesitant view that the apology sought to be tendered by the appellant was only to escape from the clutches of the contempt proceedings initiated against him. The contemptuous behaviour persistently exhibited by the appellant is subversive to the majesty of the Rule of law and has created an affront to the institution of judiciary which requires to be dealt with iron hands to deter such recurrence. Hence, we fully concur with the sentence imposed upon the appellant by the learned single Judge and find that there is absolutely no scope for accepting the apology of the appellant to relieve him from undergoing the imprisonment. The learned single Judge has rightly exercised the jurisdiction conferred on him under Section 12 of The Contempt of Courts Act and punished the appellant for having violated the order dated 07.06.2017 passed in WMP No. 15036 of 2017 in WP No. 13856 of 2017.

48. In the result, we confirm the order dated 13.12.2017 passed in Contempt Petition No. 1316 of 2017 in W.M.P. No. 15036 of 2017 in W.P. No. 13856 of 2017 passed by the learned single Judge. Consequently, the contempt appeal fails and it is dismissed. No costs.

Today, after pronouncing the Judgment in the above Contempt Appeal No. 8 of 2017, the learned counsel appearing for the appellant prayed this Court to suspend the substantive portion of the sentence of imprisonment alone so as to enable the appellant to prefer an appeal before the Honourable Supreme Court.

2. Having regard to the above submission of the counsel for the appellant, we are inclined to suspend the substantive sentence of imprisonment alone for a period of four weeks. Accordingly, the substantive sentence of imprisonment alone is suspended for a period of four weeks

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Assistant Registrar(CS IV)

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Sub Assistant Registrar

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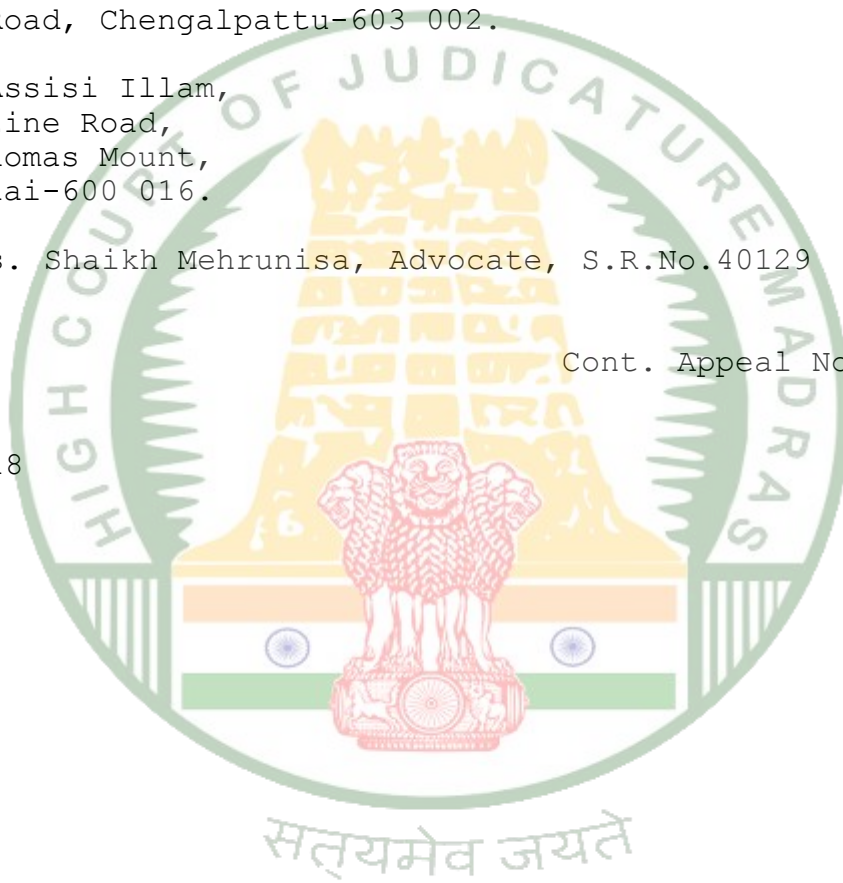
Copy To

1. The Chairman,
Child Welfare Committee
(Kancheepuram District)
Government Children Home for Boys,
GST Road, Chengalpattu-603 002.
2. The Assisi Illam,
Magazine Road,
St.Thomas Mount,
Chennai-600 016.

+1cc to Ms. Shaikh Mehrunisa, Advocate, S.R.No.40129

Cont. Appeal No. 8 of 2017

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