

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Contempt Petition.No.208 of 2018

in

W.M.P.No.3 of 2015

in

W.P.No.12943 of 2015

Tmt. M.Arokia Rosaly .. Petitioner

Versus

1. Dr.G.Narendrakumar
The Secretary,
The Union Territory of Puducherry
Department of Education,
Secretariat, Puducherry - 605 001.

2. L.Kumar
The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.

3. S.Vasuki
The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.

4. J.Krishnaraj
The Joint - Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.

.. Respondent

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the respondents 1 to 4, for their wilful disobedience to the order of this Court dated 29.04.2015 and made in M.P.No.3

For Petitioner : Mr.A.Arul Mary
For Respondents : Mr.R.Syed Mustafa

O R D E R

The contempt application is filed seeking implementation of the order dated 29.04.2015 passed in M.P.No.03/2015 in W.P.No.12943/2015 in the said miscellaneous application.

2. This Court passed an order directing the respondents 1 to 4 to pay salary to the petitioner from 01.05.2015 by granting temporary approval. Though, the copy of the order was served as early as on 15.05.2015 and the writ petitioner also issued a contempt notice on 16.11.2015 itself, no action was taken to file the contempt application within the period of limitation prescribed under Section 11 of Contempt of Courts Act. In other words, the present contempt application is filed on 6th March 2017, beyond a period of one year, as prescribed. Thus, the question arises for consideration is whether the present contempt application is more specifically filed against the interim order can be maintained at this stage, beyond the period of limitation.

3. The fact remains that the interim order was in relation to the grant of temporary approval and for salary. However, the writ petitioner is able to lead his

life in the absence of such temporary approval and salary for about 2 years from the date of passing of the interim orders. Thus, a factual inference has to be drawn that the indigent circumstances initially aroused became vanished.

4. Under these circumstances, the petitioner cannot say that she is unable to meet out her expenditures. However, these issues can be adjudicated in the final hearing of the writ petition. The contempt petitioner was not vigilant and slept over her right in respect of the interim order passed by this Court on 29.04.2015. The legal principles in relation to the period of limitation is adjudicated and an elaborate judgment was delivered in contempt application No.2539 of 2014 dated 05.12.2017 and the relevant paragraphs are extracted hereunder:-

5. Thus, this Court has to examine the maintainability of the contempt application in relation to the limitation prescribed under Section 20 of Contempt of Courts Act, 1971. Section 20 of the Contempt of Courts Act, 1971 provides limitation for actions for contempt "No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

6. Thus, it is clear that a limitation is prescribed for filing a contempt application against an order passed by the Court and one

year period is prescribed from the date of cause of action arose. In the case on hand, the cause of action arose in August 2009 and the contempt application was filed on 15.07.2014. Thus, there is a delay of about 5 years even in filing the present contempt application.

7. Next question to be considered in this regard is that, whether this Court can invoke Article 215 of Constitution of India for entertaining the contempt application beyond the period of one year.

8. Article 215 of the Constitution of India provides that High Courts to be Courts of record "Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself."

9. Thus, the Constitution provides powers to the High Court to punish for contempt itself. No doubt, such a power is granted for the effective implementations of the orders of the Hon'ble High Court. However, this Court has to consider, whether such a power can be exercised beyond the period of limitation prescribed under Section 20 of the Contempt of Courts Act 1971, and under what circumstances.

10. The general principle of law in this regard is that whenever there is a Special Act enacted in respect of limitation, the powers conferred under the Constitution as well as the Special Act to be read cogently and

harmoniously. Harmonious reading of these provisions, no doubt, the High Courts are empowered to exercise the power of contempt as the High Court is the Court of record. However, such power can be exercised only with reference to Section 20 of the Contempt of Courts Act. This will not mean that, the High Courts cannot exercise the powers of contempt beyond the limitation period of one year. The powers of contempt beyond the limitation period can be exercised only on exceptional circumstances, and sparingly. The powers conferred under the Constitution in normal circumstances are to be exercised only with reference to the Special Act viz., the Contempt of Courts Act. Only in extraordinary circumstances; the High Courts can go beyond the period of one year and exercise the powers of Contempt under Article 215 of the Constitution of India. The practice prevailing now is that, irrespective of the period limitation prescribed under Section 20 of the Contempt of Courts Act, the contempt applications are filed in a routine manner by stating that no limitation is applicable in respect of the contempt applications filed before the High Courts. Such a concept is not in accordance with the legal principles settled in this regard.

11. With regard to Contempt of Court, In *Morris v. Crown Office*, [(1970) 1 All ER 1079 at 1081 LORD DENNING wrote that

"Of all the places where law and order must be maintained, it is here in these Courts. The Courts of Justice must not be deflected or

interfered with. Those who strike at it, strike at the very foundations of our society."

"To maintain Law and Order, the Judges have, and must have, power at once to deal with those who offend against it"

" It is a great power - a power instantly to imprison a person without trial - but it is a necessary power"

12. In the case of *Balogh v. St. Albans Crown Court*, [(1975) 1 Q.B. 73 (C.A)], a person named Balogh planned to put a cylinder of a substance called 'laughing gas' as the inlet to the ventilating system and release the gas into the Court, but was caught. In the Court of first instance, Balogh grossly insulted a Judge after six months of sentence was imposed. LORD DENNING observed that

' But I find nothing to tell us what is meant by " committed in the face of the court". It has never been defined. Its meaning is, I think, to be ascertained from the practice of the judges over the centuries. It was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So "contempt in the face of the court" is the same thing as "contempt which the court can punish of its own motion". It really means "contempt in the cognizance of the court".

He further reviewed a number of cases and gave instances of contempt in the face of court, throwing a missile at the judge, disrupting a trial, refusing to answer a proper question, threatening the witness away from the

Court house after giving evidence, an employer threatening an employee if he responded to a summons to attend court for jury duty.

13. In the famous case of *R v. Metropolitan Police Commissioner* [(1968) 2 QB 150 : (1968) 2 ER 319)], a person Criticised the Court of Appeal in an Article in a magazine. The criticism was in bad taste, wrong and based on erroneous facts. LORD DENNING observed that

" Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decision is erroneous whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that from the nature of our office, we cannot reply to this criticism. We cannot enter into public controversy. Still less into political controversy. We must rely on our own conduct itself to be its own vindication."

14. There are only two issues which are material, one is the date of commission of

alleged contempt and the other is the actual initiation of proceedings for contempt. In *Golcha Advertising Agency v. The State of Maharashtra* [(1990) 2 Bom CR 262 (Bom) at pp. 263,265], the Court observed that no intervening event or order stops the running of time specified in this section. Section 20 of the Contempt of Courts Act of 1971 talks about the limitation period within which the actions have to be taken. It enumerates that the limitation period is a period of one year from the date on which the contempt is alleged to have been committed.

15. Article 215 of the Constitution of India empowers every High Court to punish contempt of Court subordinate to it, but Contempt of Courts Act lays down how that power is to be exercised. Article 215 and provisions of the Contempt of Courts Act have to be read together. The Hon'ble Apex Court has emphasized that Section 20 applies to civil and criminal contempts and would also apply to the contempt committed on the face of High Court or the Supreme Court or even Subordinate Courts. Where there is a limitation for initiation of proceedings of contempt under Section 20 of the Act, the Rules of Code provide that no notice shall be issued if more than one year has lapsed from the alleged act of contempt.

16. In the case of *State of Kerala v. P.K.Ramchandranan* (Civil Appeal No. 2485 of 2005) (Ker.). the Court observed that the Court has no power to extend the period of limitation

as it would otherwise defeat the provision of law. The natural corollary of this would be that after the period, as prescribed by Section 20 of the Act, lapses, the jurisdiction of the Court automatically evaporates and Court loses jurisdiction under the said Act.

17. In the case of *Ruksana Begum, Km v. B.P.Varma*, 1990 AII L.J.341, which is held that the contempt proceedings having been initiated after a lapse of more than one year from that date were held as barred under Section 20 where suo motu contempt was registered after nearly 4-1/2 years, after violation of undertaking given to Court, held not maintainable even in the case of *O.P.Sreedhara Menon v. K.Amarnath Shetty*, 2013 Cr.L.J.1684.

18. In the case of *Dineshbhai A. Parekh v. Kripalu Co-operative Housing Society, Nagarvel Ahmedabad*, AIR 1980 Guj. 19 at p.199, the Court held that the pendency of a contempt petition for more than one year after the alleged act of contempt and no notice having been issued even thereafter would not enable this Court to continue to keep the petition pending indefinitely. The jurisdiction of the Court is that the Court shall not initiate any proceedings for contempt either on its own motion or otherwise, after the expiration of a period of one year from the date on which contempt is alleged to have been committed.

19. The Supreme Court of India held in this regard that the proper construction to be

placed on Section 20 must be that the action initiated either by filing of an application or by the Court issuing notice suo moto, within a period of one year from the date on which the contempt is alleged to have been committed. No doubt, the High Court is not powerless even when the period of one year is expired from the date of alleged violation of Court's order, the Courts can exercise its inherent power under Article 215 of the Constitution of India. However, such powers ought to be exercised only on exceptional circumstances, more so to mitigate the gross in justice if any occurred and the inherent powers ought to be exercised sparingly and not in a routine manner. The High Courts cannot make the limitation period prescribed under Section 20 of the Contempt Courts Act illusory. The limitation prescribed under Section 20 is to be scrupulously followed in all cases and the provisions as to be read harmoniously along with Article 215 of the Constitution of India. One step further this Court has to emphasize that the Contempt of Courts Act is a Special Act and the same will prevail in respect of filing of the contempt application under the very same Act. The general powers conferred under the Constitution has to be read along with the provisions of the contempt of Courts Act. The Act is to be construed as the procedure for initiating contempt contemplated, by virtue of the powers conferred under the constitution.

interests of the public in order to protect these dual interests, unwarranted interference with administration of justice must be prevented. The power to punish for contempt is conferred on Courts for two reasons. Firstly, that the Courts may be armed with the power to enforce their orders, Secondly, they may be able to punish obstruction to the administration of justice. To ensure these objective, there are also constitutional provisions dealing with contempt of Courts, apart from Contempt of Courts Act. Under Article 215 of the Constitution of India a Court of record is a Court, the records of which are admitted to be evidentiary value and not to be questioned when produced before any Court. Such a Court enjoys a power to punish for contempt as its inherent jurisdiction. The impression created by the Court is that even if Article 129 and 215 were not there in Constitution the contempt powers of Courts of record would have been preserved. However the High Courts have to exercise his powers keeping in mind Section 20 of Contempt of Courts Act.

21. In the case of Pallav Seth v. Custodian and Others [(2001) 7 SCC 549], the Hon'ble Supreme Court held as follows:-

"Firstly, a contempt proceedings can be initiated by two modes, either the Court can initiate the contempt proceedings on its own (suo moto), or otherwise. The word otherwise has been interpreted to mean that the initiation would have to be done by a party by filing an application. Therefore, the Supreme Court was of

the opinion that the proper construction to be placed on Section 20 of the Act must be that action must be initiated, either by filing of an application, or by a Court issuing notice suo moto within a period of one year from the date on which the contempt is alleged to have been committed.

Secondly, the Hon'ble Supreme Court did not find that Section 20 of the Act either stultifies or abrogates the power bestowed upon the Apex Court under Article 129 or Article 215 of the Constitution of India.

Thirdly, since Section 20 of the Act is a special law prescribing a period of limitation, different from the limitation prescribed by the Limitation Act, which happens to be the general law, the special law would naturally override and take precedent over the Limitation Act- the general law. Thus while exercising the power of contempt under Article 215 of the Constitution of India it has to be exercised in consonance with Section 20 of the Act.

Fourthly, the word to initiate a proceeding would mean the filing of a petition, The said word does not mean the taking of cognizance by a Court, as was held in the case of Om Prakash Jaiswal v. D.K.Mittal [(2000) 3 SCC 171]"

upon this Court under Article 215 of the Constitution of India would have to be exercised, while keeping in mind the limitation prescribed by Section 20 of the Contempt of Courts Act. Therefore, the contention raised by the learned counsel with regard to lack of applicability of the limitation upon a power bestowed by Article 215 of the Constitution of India is unacceptable.

23. In the case of [Hiralal Dixit v. State of U.P., AIR 1954 SC 743] it is held that power to be sparingly exercised but where public interest demands it, the Court will not shrink from exercising it.

24. In the case of [Subrata Kundu v. Kshiti Goswami, AIR 2010 Cal 44] it is held that High Court has jurisdiction under Article 215 of the Constitution of India to initiate contempt proceedings but this has to be exercised in accordance with the procedure prescribed by law. The Supreme Court in the said case by necessary implication held that the said Act 1971 is the procedure prescribed by law and the provision for limitation in the said Act has to be made applicable.

25. In the case of A.Paul Pandi v. A.Karthik [Contempt Petition No.3147 of 2014 Dated 21.11.2014] this Court held that when there is a specific law enacted by the legislature, namely the Contempt of Court Act, 1971, which contemplates a period of limitation under Section 20 of the Act, the said provisions

should be read harmoniously and proceedings under the contempt of Courts Act, 1971 should be initiated within a period of one year of alleged contempt, as envisaged in Section 20 of the Act. In the said case, the learned Judge of this Court lay down the said principles based on the ratio lay down by the Hon'ble Supreme Court of India in the case of Pallav Sheth v. Custodian, cited Supra.

26. In the Hon'ble Supreme Court in the case of MAHESHWAR PERI v. HIGH COURT OF JUDICATURE AT ALLAHABAD thro. Registrar General, reported in 2016 (6) scale 425, dealt with the Contempt of Courts Act 1971, His Lordship Justice Kurian Joseph J., while speaking for the Bench held as follows:

"8. The main contention advanced by the learned counsel for the appellants is that the High Court, having initiated action only after four years of the alleged contempt, the whole proceedings are barred by Section 20 of the contempt of Courts Act, 1971 (herein after referred to as 'the Act') which has prescribed the period of limitation of one year for initiating any proceedings of contempt, be it suo motu or otherwise. Section 20 of the Act reads as follows:

"20. Limitation for actions for contempt.- No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the

contempt is alleged to have been committed."

9. Learned counsel appearing for the High Court , however contends that being an action initiated by the High Court under Article 215 of the Constitution of India and since the genesis of the initiation of the contempt is the application dated 18.11.2008 filed by Mr.Manoj Kumar Srivastava and Mr.Veer Singh, Advocates, and since the High Court had considered the application within one year and had taken action by issuing notice, though after six years, it is within time.

10. Our attention is invited to a three Judge Bench decision of this Court in Pallav Sheth v. Custodian and Others and particular to paragraph -39 and 40. Paragraphs 39 and 40 reads as follows:

"39. In the case of criminal contempt of a subordinate court , the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate -General or the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the Court the wilful disobedience of any Judgement, decree, order etc. which could

amount to the commission of the offence. The attention of the Court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a Court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the Court to the contempt having been committed,. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate -General or a law Officer, it must logically follow that proceeding for contempt are initiated when the applications are made.

40. In other words the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971."

11. We are afraid, the contentions advanced by the learned Counsel for the appellants cannot be appreciated. Be it an action initiated for contempt under Article 129 of the Constitution of India by the Supreme Court or under Article 215 of the Constitution

of India by the High Court , it is now settled law that the prosecution procedure should be in consonance with the Act, as held by this Court in Pallav Sheth case (supra)

12. And thus, the dispute boils down to the question of limitation only.

13. Under the Act, the action for contempt is taken by only two courts, either the Supreme Court or the High Court. The procedure is prescribed under Section 15 of the Act, which reads as follows:

"15. Cognizance of criminal contempt in other cases.- (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

(a) the Advocate-General , or
(b) any other person, with the consent in writing to (sic of) the Advocate-General, or

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2). In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by subordinate Court or on a mote made by the Advocate-General or, in relation to a Union territory, by such

Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3). Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation - In this section, the expression "Advocate-General" means-

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner, such law officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

14. Criminal Contempt of Court subordinate to High Court can be initiated either suo motu or on a motion made by the Advocate-General. The suo motu action is set in motion on a Reference made to it by the subordinate court, in Pallav Sheth case (supra), it has been held that the reference is the starting point of the process of initiation of the action for contempt. That is why in paragraph-39, which we have extracted above, it has been clearly held that... "unless a Court was to take suo motu action, the proceeding under The Contempt of Courts Act, 1967 would normally commence with the filing of an application drawing the attention

of the court to the contempt having been committed. "The application is the motion provided under Section 15 of The Contempt of Courts Act, 1971. Such a motion, by any person other than Advocate-General, can be made only with the consent in writing of the Advocate-General. In other words, any other application made by a person without the consent of the Advocate-General, is not an application in the eyes of law".

15. This aspect has been succinctly discussed and subtly distinguished in paragraph-44 of the Pallav Sheth case (supra).To quote paragraph -44:

"44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application, In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

27. The Hon'ble Supreme Court of India in the case of Prakash Kakubhai Rangwala Vs. Nyayalaya Karmachari Anne Nayayadish Hitkari Sangh and Another, reported in (2011) 14 Supreme

Court Cases 762 held as follows :

7. These facts would, therefore, indicate and establish that the decision of initiation of proceedings under the Contempt of Courts Act, 1971 was taken on 3.12.2009 when notice was issued and, therefore, it is established from the records that the aforesaid suo motu issuance of notice for the offence of contempt on 3.12.2009 is within the period of limitation of one year.

8. Even otherwise, we may appropriately refer to the decision of this Court in Pallav Sheth v. Custodian wherein this Court, after referring to a decision in Om Prakash Jaiswal case held that : (SCC p. 570, para 42)

" 42. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the court for the purpose of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of

Courts Act, 1971 is enshrined in Article 215 of the Constitution."

It was also held that such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution."

28. First of all, the facts of the above said case is that the suo motu issuance of notice for the offence of contempt was initiated within a period of limitation of one year. Secondly, the Hon'ble Supreme Court referred the decision in the case of Pallav Seth v. Custodian and Others [(2001) 7 SCC 549]. wherein the Hon'ble Supreme Court has elaborately discussed all these circumstances. The ultimate interpretation would be that the limitation prescribed under Section 20 has to be read harmoniously along with Article 215 of the Constitution of India.

29. The High Court's cannot invoke the powers under Article 215 of the Constitution of India, in all the cases by entertaining the contempt application beyond the period of one year, so as to dilute or eradicate the law prescribed under Section 20 of the Contempt of Courts Act, 1971. All contempt applications ought to be filed within the period of limitation prescribed under Section 20 of the Contempt of Courts Act, 1971. The High Court on exceptional circumstances, on arriving a conclusion that a gross injustice to the society or the case is of public importance,

then the inherent powers provided under Article 215 of the Constitution of India, can be exercised without reference to Section 20 of the Contempt of Courts Act. A litigant may come out with an interpretation that an injustice is caused to all the orders or judgements passed by the High Courts. Such a general proposition, as advanced by the learned counsel appearing for the petitioner deserves no merit consideration. No doubt, the litigants approach the Court to get justice, that does not mean that all the contempt applications have to be entertained after a period of one year prescribed under Section 20 of the Contempt of Courts Act, 1971. Generalisation in this regard can never be encouraged. What exactly the circumstances warranting interference under Article 215 of the Constitution of India has to be decided judiciously and applying the peculiar facts and circumstances prevailing in each and every case. General application in this regard is certainly impermissible and Courts have to interpret these provisions in a pragmatic way than in a general manner. In other words, the principles of constructive interpretation is to be adopted while interpreting the period of limitation under Section 20 of the Contempt of Courts Act as well as Article 215 of the Constitution of India. Thus, this Court is not inclined to consider the arguments advanced by the learned counsel appearing for the petitioner by citing the above judgement of the Hon'ble Supreme Court.

5. In view of the fact that the present contempt application was not filed within the period of limitation contemplated under Contempt of Courts Act and in view of the fact that the present application is filed against an interim order passed by this Court, this Court is not inclined to entertain this application in view of the legal dictum elaborately discussed in the judgment cited supra.

6. Accordingly, the contempt application stands dismissed.

SD/-

ASST. REGISTRAR (Commr. Cases)

AT

//Certified to be true copy//

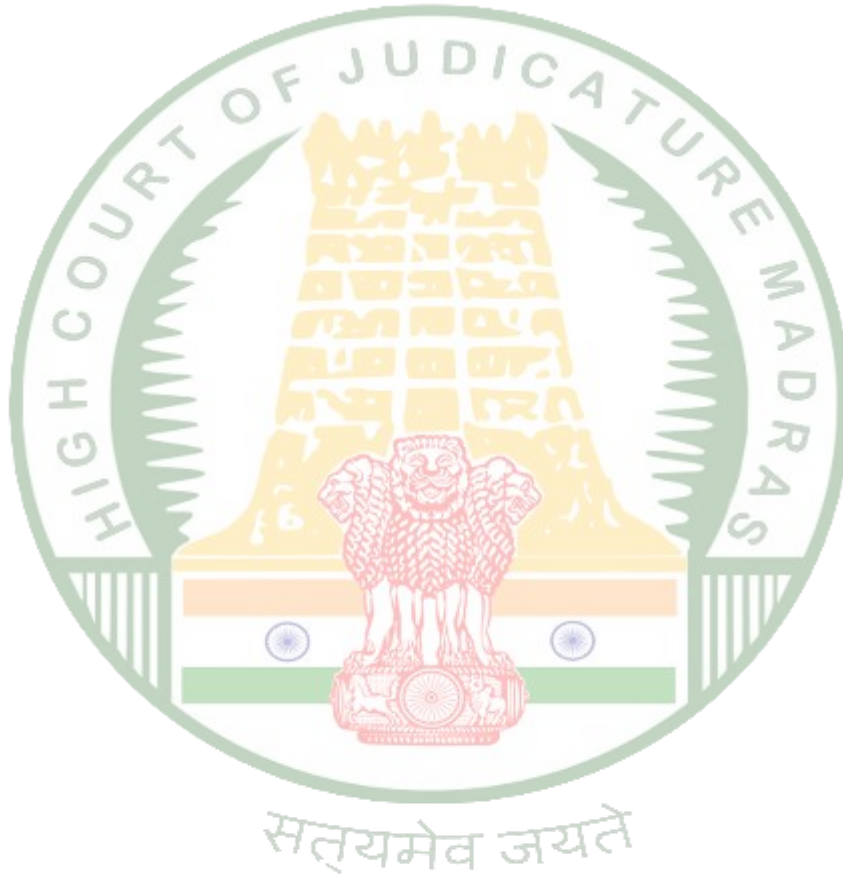
Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

CO/10/05/2018.

one cc to M/s. Father Xavier Associates, SR.No.5857.



WEB COPY