

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.03.2019

Pronounced on: 05.09.2019

CORAM:

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Contempt Petition No.1259 of 2018

in

A.No.694 of 2017

M/s.Sugesan Transport Pvt. Ltd.,
Rep. By its Director, Mr.Kanthibai Rajendra Sheth
No.7c, Second Canal Road,
Gandhi Road, Adayar, Chennai-600 020.

... Petitioner /Applicant

vs.

1. M/s.E.C.Bose and Company Private Limited,
'ECB Towers', No.13A, St George Terrace,
P.S. Hastings, Kolkata-700 022.

2. Deborshi Sadhan Bose (Billy), Director,
M/s.E.C.Bose & Co. Pvt. Ltd.,
E.C. Bose Group of Companies,
13A, St. George Terrace, Hastings, Kolkata 700 022.

3. Partha Sadhan Bose,
Chairman cum Managing Director,
M/s.E.C.Bose & Co. Pvt. Ltd.,
E.C. Bose Group of Companies,
13A, St. George Terrace, Hastings,
Kolkata 700 022. ... Respondents/Respondents

Prayer:- Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the Respondents herein for the wilful and deliberate disobedience of the Order dated 07.12.2017 in A.No.694 of 2017.

For Petitioner : Mr.Nithyaesh Natraj
For Respondents : Mr.J.Ravikumar

O R D E R

The petitioner alleges contempt of an order of this Court in A.No.694 of 2017 dated 07.12.2017 filed in terms of section 9 of the Arbitration and Concilliation Act 1996 (A and C Act) and prays that the respondents be visited with punishment for wilful and deliberate disobedience of the aforesaid order.

2. The facts in question and brief submissions of Mr.Nithyaesh Natraj, learned counsel for the petitioner/applicant in Section 9 application are as follows:

The petitioner supplies heavy earth equipment on contract basis as well as services incidental thereto. It entered into a Memorandum of Understanding (MOU) with the

respondents on 11.12.2015 to provide financial assistance of an amount of Rs.2.50 crores to enable them to meet their obligation towards provision of a Performance Bank Guarantee from the State Bank of India, Calcutta for the exclusive right to operate cargo at berths 2 and 8 of the Haldia Dock Complex. The amount was to be returned by the respondents within 30 days, but in any event not later than 89 days from the date of MOU.

3. A promissory note was executed by the 2nd respondent on the same date along with a Board Resolution of R1 company authorising the Director to take necessary action in terms of the MOU. A cheque dated 10.12.2015 for a sum of Rs.3 crores was also handed over as security.

4. The respondents are alleged to have defaulted in the repayments. Upon their assurance that the amounts would be positively repaid, the cheques originally given were not presented and six fresh cheques were furnished by the respondents, deposited, but dishonoured. Action has been initiated separately under Section 138 of the Negotiable Instruments Act.

5. While that is so A.No.694/2017 was filed before this Court under Section 9 of the A and C Act seeking a direction to the respondents to furnish security. The matter was listed on 02.05.2017 on which date a learned Single Judge of this Court directed the respondents to furnish security to the extent of claim made in the application within a period of six weeks, failing which there would be an order of attachment as prayed for.

6. The respondents moved Application No.7662/2017 seeking to set aside order passed on 02.05.2017. Both applications came to be heard on 07.12.2017 when the direction to furnish security ordered on 02.05.2017 was reiterated and the respondents directed to comply with the direction within a period of six weeks from that date i.e. 07.12.2017. This was evidently for the reason that the earlier direction issued on 02.05.2017 had itself not been complied with by the respondents. The aforesaid order is extracted in full below:

Application No.694 of 2017 is filed seeking a direction to the respondent to furnish security to the tune of Rs.3.47 crores.

2. Heard Mr.Nithyaesh Natraj, learned counsel for the applicant and Mr.J.Ravikumar,

learned counsel for the respondent.

3. A.No.694 of 2017 was first listed on 07.02.2017 when notice was issued to the respondent. Thereafter, it appears that counsel entered appearance for the respondent and sought time on 13.03.2017 for filing counter. The matter was listed thereafter on 04.04.2017 and then before the vacation Court on 02.05.2017, when this court was pleased to direct the respondent to furnish security as prayed for. According to Mr.Ravikumar, his name was not printed in the printed cause list on 02.05.2017, though the online cause list appears to have contained the same. This submission is borne out by a noting in order dated 02.05.2017, specifically directing the registry to print the name of the respondent counsel in the cause list. The order also directs attachment of the property described in the judges summons if security as directed is not furnished. A.No.7662 of 2017 has thus been filed by the respondent praying for a setting aside of order dated 02.05.2017.

4. It is to be noted that the prayer is itself only to furnish security, no prayer has been sought vis-a-vis attachment of property and no schedule is filed along with judges summons with the description thereof. Hence order dated 02.05.2017 will have to read as containing a direction to furnish security alone. A.No.7663 of 2017 prays for an amendment of prayer in A.No.694 of 2017 inspired by order of this court dated 02.05.2017. The application is dismissed.

5. The disputes between the parties has been referred to learned Arbitrator in O.P.No.113 of 2017 by order dated 14.06.2017 and proceedings for arbitration are stated to be on going. The direction dated 02.05.2017 to furnish security is reiterated, to be complied with, within six weeks from today. The parties are at liberty to seek a

modification of the same before the learned Arbitrator who is requested, after hearing both parties, to consider and adjudicate upon the request.

6. All applications are closed in the aforesaid terms.

7. Since there has been no compliance of order dated 07.12.2017, the petitioner is before this Court alleging contempt, stating that the period of six weeks granted by the Court had expired on 21.08.2018.

8. Counter affidavit has been filed by the 2nd and 3rd respondents, the Director and Chairman-cum-Managing Director of R1 company respectively, along more or less identical lines. The averments therein as well as the oral submissions of Mr.Ravikumar, learned counsel appearing on their behalf are as follows:

The respondents allege suppression of material facts in the Contempt application. They point out that in Application No.694/2017, filed by the petitioner seeking a direction to the respondents to furnish security the respondents had entered appearance on 13.03.2017 under SR.No.10396/2017. There had been no interim direction till

02.05.2017, when the application was listed before the vacation court. The name of the counsel for the respondents, who had entered appearance, was not printed in the cause list. The listing of the matter was itself irregular as pending matters are normally listed before the vacation court only if consent was expressed by both sides.

9. The respondents thus were not aware of order dated 02.05.2017 passed by this Court directing the furnishing of security. Order dated 02.05.2017, while granting an interim order *exparte*, had also directed the petitioner to take notice upon the respondents, but none was taken. It was purely by chance that the counsel for the respondents came to know about the order passed and immediately thereafter filed Application No.7662/2017 seeking to set aside *exparte* order dated 02.05.2017.

10. In the meanwhile, O.P.No.113/2017 filed under Section 11 of the Act seeking appointment of sole arbitrator was ordered on 14.06.2017 by consent of both parties. Proceedings for arbitration are on-going.

11. Application No.7663/2017 had been filed by the petitioner seeking amendment of prayer in application

No.694/2017 by including relief of attachment of property also. Application No.7662/2017 filed by the respondents and Application No.7663/2017 filed by the petitioner were listed along with the Application No.694/2017 for hearing.

12. On 07.12.2017 when all Applications were taken up, the joint submission of both parties was to the effect that they had been relegated to arbitration. Order dated 07.12.2017 thus came to be passed recording the aforesaid position. While reiterating order dated 02.05.2017 for interim protection and directing the respondents to furnish security within six weeks from date of order, this Court also granted leave to the parties to seek modification of the interim order before the Arbitrator.

13. According to the respondents, they did not receive the certified copy of the order dated 07.12.2017 till 13.03.2018 when they proceeded to file Original Side Appeals challenging the same. In the meantime, the petitioner approached the Arbitral Tribunal seeking interim direction in terms of Section 17 of the Arbitration and Conciliation Act on the basis of a internet copy of the order dated 07.12.2017. Thereafter O.S.A.Nos.161 and 162 of

2018 came to be listed for admission in May 2018. Admittedly, no orders were obtained by the respondents at that stage. The matter was listed thereafter in June 2018 and was disposed on 06.06.2018 only clarifying that it was upon to the Arbitral Tribunal to pass orders afresh without being influenced by order dated 07.12.2017.

14. One of the main arguments raised is that the respondents were precluded from canvassing their case on merits before this Court and had they done so, things would have been different. The respondents state that by seeking relegation of the parties to the pending Arbitration proceedings, the petitioner has disentitled itself from invoking contempt jurisdiction. Thus according to the respondents no case has been made out to establish wilful violation of order dated 07.12.2017. The petitioner, in rejoinder, draws attention to the order of this Court dated 06.06.2018 passed in O.S.A, pointing out that order dated 07.12.2017 was in fact, confirmed, the Bench only permitting the Arbitrator to adjudicate upon the question of interim relief, without being influenced by the order passed by this Court.

15. Be that as it may, the petitioner states that the time granted on 17.12.2017 for furnishing of security was six weeks from date of order and such time had expired on 21.01.2018 without compliance of the order by the respondents. Admittedly, the respondents were represented in Court when the order had been passed. Thus, no other interpretation could be drawn except to state that the respondents, being fully aware of the order passed by this Court, choose to wilfully ignore the same, thus committing contempt.

16. The petitioner points out in this regard to the Application filed by it under Section 17 of Arbitration and Conciliation Act before the Tribunal wherein at paragraph 13 thereof, reference is made to order dated 07.12.2017, pointing out that there has been no compliance of the same.

17. Having heard both learned counsel it appears quite clear to me that the respondents have wilfully avoided compliance of order dated 07.12.2017. First of all, the order in question has been passed in the presence of counsel and they admittedly, are aware of the same, even as on the date when it was passed. The submissions of the

respondents in regard to the proceedings that have transpired prior to passing of order dated 07.12.2017 are, in my view, of very limited relevance, if any, as this petition is based solely on one event, that is, order dated 07.12.2017 and its compliance or otherwise.

18. As far as this is concerned, the respondents make not even a semblance of an attempt to deny the fact that there has been no compliance with order dated 07.12.2017, the purpose of which was to provide a measure of interim protection to a party pending initiation of proceedings for arbitration. By its contempt, the respondents have thwarted the interim relief that was directed to be furnished, till such time the arbitrator passed an order in the Section 17 application directing attachment of the property. Thus, the non-compliance of order dated 07.12.2017 is admitted.

19. Moreover, there is absolutely no merit in the argument that the respondents were prevented from arguing the matter on merits as nothing stood in the way of the petitioner pursuing the application in this regard. In fact, order dated 07.12.2017 was passed after hearing both parties in extenso and appreciating the merits of the

matter in so far as it related to the grant of interim directions pending arbitration.

20. Even according to the respondents, the order in question was received by them in March 2018, but appeals were filed only in May 2018. An exchange of e-mails has been placed on file that reveals that the counsel for the respondents, on their behalf, had been seeking time before the Arbitral Tribunal on the ground that the respondents are actively engaged in arriving at an amicable out-of-Court settlement with the petitioner. Emails dated 05.04.2018, 20.04.2018, 11.05.2018 & 15.05.2018 exchanged between the parties during the arbitration proceedings have been placed on record. In fact one of the e-mails, dated 11.05.2018, is on the same day when the O.S.As are stated have been filed before the Court. The mail is extracted below:

*'From: EC Bose <billy 7272@ecbosepic.in>
Date: 11 May 2018 at 17:44:00 IST
To: Rakesh Seth Chennai <rakesh@karismaa.co>
Cc: Asis Chatterjee <asis.chatterjee61@gmail.com>
Subject: Settlement discussion*

*Sugesan Transport Private Limited
Chennai*

Kind Attention : Mr.Raakesh Sheth

Dear Mr.Rakesh (Dada) Sheth

Greetings from ECBOSE & Company Private Limited!

You are aware the our Legal Attorney has been given to Mr.Asis (uncle)

We are grateful that you visited us in Kolkata and already taken the initial regards to our dispute and for exploring other future business prospects.

We would only request you to kindly arrange meeting between both our adjournment with regards to the arbitration hearing.

Looking forward to your kind understanding and ever given cooperation.

Regards

Deborshi Sadhan Bose (Billy)

Director

ECBose & Company Private Limited.'

21. The submissions of the learned counsel for the respondents is thus, wholly bereft of merit. The conduct of the respondents is clearly contemptuous, and quite clearly, intended to be as such.

22. Learned counsel for the respondents relies on the observations of the Supreme Court in *Mrityunjoy Das & Anr.*

V. *Sayed Hasibur Rahman & Ors.* ((2001) 3 SCC 739) as follows:

'13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide *Murray & Co. v. Ashok Kr. Newatia*). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction the majesty of law.

In *Chottu Ram v. Urvashi Gulati & Anr.* [(2001) 7 SCC 530], this Court held that a contempt of court proceeding being quasi criminal in nature, the burden to prove would be upon the person who made such an allegation. A person cannot be sentenced on mere probability. Willful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on ipse dixit of the court. It must be arrived at on the materials brought on record by the parties.

Yet again in *Anil Ratan Sarkar & Ors. V. Hirak Ghosh & Ors.* [(2002) (4) SCC 21], it was opined :

"15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a 'civil contempt' within the meaning of Section 2(b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the

Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise."

In *Dr. Prodip Kumar Biswas v. Subrata Das & Ors.* [(2004) (4) SCC 573], after noticing various provisions of the Calcutta High Court Rules held :

"The Court may, however, in a contempt proceeding take such evidence as may be considered necessary. Admittedly, rule nisi was not drawn up. In fact, it seems that neither was any notice of contempt issued to the appellant nor any hearing took place except what has been noticed hereinbefore.

The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. (See *Supreme Court Bar Assn. v. Union of India*)."

Recently in *Sushila Raje Holkar v. Anil Kak (Retd.)* [2008 (7) SCALE 484], this Court held :

"It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a

contempt proceeding would not be maintainable."

It was furthermore opined that the effect and purport of the order should be taken into consideration and the same must be read in its entirety."

23. This case does not advance the case of the respondents in the least. There are no two interpretations possible as far as the order in question is concerned. The direction is clear to the effect that security shall be furnished and a time frame fixed for the same. Thus, the facts in the case relied upon are wholly distinguishable.

24. He also relies upon the observations of the Supreme Court the case of *R.N.Dey and Ors. Vs. Bhagyabati Pramanik and Ors.* ((2000) 4 SCC 400), where, at paragraph 7, the Bench states:

'We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that

it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified."

25. In *Three Cheers Entertainment Pvt. Ltd. And Ors. Vs. C.E.S.C. Ltd.* (AIR 2009 SC 735), a Bench of the Supreme Court observes that, '*Indisputably, the majesty of the Court is required to be upheld. The Court must see that its orders are complied with. But for the said purpose, a roving enquiry is not permissible.*' In the present case, no enquiry, roving or preliminary, is called for to determine whether contempt has indeed been committed by the respondents. It is writ large upon the sequence of events

that have transpired. The proceedings for contempt had, in the case of *Three Cheers Entertainment* (supra), been initiated even when a learned single Judge of the Court had framed issues in relation to the very same issue upon which contempt had been alleged. Thus, noticing that multiple actions had been initiated in regard to the same cause of action, the Bench had dismissed the petition, stating at para-34:

'34. Mr. Rao, when asked, failed to satisfy us that the rules framed by the High Court had been complied with. If the trial had begun with a view to find as to whether the statement of the appellant that he had handed over the materials to the CECS officials was correct or not, why another proceeding should be initiated simultaneously before another learned Judge is beyond anybody's comprehension.

26. The facts and circumstances of the above cases are different and distinguishable from that before me and the observations made by the Benches and extracted above have to be seen only in the context of those observations. They simply have no application in the present case.

27. On the other hand, the following cases, relied upon by the petitioners, are in similar and comparable

factual matrices, and the observations of the courts therein, support the case of this petitioner.

28. A Division bench of this Court, in *Dr.R.N.Manikandan, Chairman, Child Welfare Committee (Kancheepuram District), Government Children Home for Boys, G.S.T.Road, Chengalpattu - 603 002 v. Franciscan Sisters of St. Joseph, represented by its President, FSJ Generalate, St. Louis Convent, St. Thomas Mount, Chennai-600 016* ((2018) 5 MLJ 641) states as follows at paragraphs 43 & 45:

'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.

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."

29. In *Hans Raj Dhir v. State of Himachal Pradesh and others* (1984 SCC OnLine HP 42) a Bench of the Himachal Pradesh High Court states at paragraph 15 as follows:

'15. Be it stated that in that case, even though the Commissioner had declined to follow the decision of the High Court rendered in a different case on the ground that an appeal having been preferred against the said decision its binding character had disappeared, the contempt jurisdiction was invoked and exercised. When there is disobedience to a specific order of the court, whether on account of sheer neglect or refusal to implement the order on the ground that an appeal is preferred or intended to be preferred, the contempt would take still a more aggravated form and will be liable to be visited with a higher penalty.'

30. Then again, the Jammu and Kashmir High Court in *Dr. Sajad Majid v. Dr. Syed Zahoor Ahmed and another* (1989 SCC OnLine J&K 31) states as follows at paragraphs 8 to 10 & 13 thereof:

'8. It is not disputed before us that SLP against the Court direction has been filled before the Supreme Court. It is also not disputed that no stay has been obtained against the

implementation of the order but all the same the Court direction has been kept in abeyance by the respondent simply under the pretext of pendency of appeal before the apex Court against the Court order. There is no doubt that appeal against a judgment from one forum to another forum may be available under the Statute, the question is : Whether this provision even if availed by a party without obtaining a stay from the appellate Court will ipso facto keep the implementation of the order in abeyance? The proposition put forth by Mr. Khan, CGA appears to us misconstruing the provision of appeal and period of limitation. Non-compliance of the order during the pendency of appeal without stay order appears to us an attempt by a party to support his intention of not complying the Court direction. The, initiation of contempt proceedings for non-compliance of an order, in our opinion, will forestall only after service of stay order on the party provided, firstly, a certain period for compliance has been specified and within that period no contempt proceedings will lie. Secondly, when after the service of order the party has obtained stay from the appellate forum. Thirdly, on motion by the party time is granted by the Court for execution of the order which passed the same. No other circumstances apparently can be made available to a party against whom the order has been passed to sleep over the execution of the order or flout its execution. Mere pendency of appeal before the appellate Court against the order will not absolve the party not to comply the order and if he so does, it will be on his own risk without any legal justification and the provisions of appeal even if availed without any stay, will expose the party to contempt proceedings, for non-compliance and pendency of such appeal will

not protect him from facing the proceedings of non-compliance of the order. Once a relief has been granted by a Court not modified or varied by such Court or its execution staved by appellate Court, its compliance is warranted from the date the party against whom it is passed or from the date he acquires knowledge of the said order. This observation will dispose the argument of Mr. Khan having submitted that no time limit is specified in the order of implementation. We, therefore, make it clear that a party against whom order has been passed by the Court, having knowledge of the same or the order being served on him, cannot take refuge of limitation period for preferring an appeal for non-compliance of the order or even if the appeal has been filed but no stay has been obtained against the order, contempt proceedings will be entertained against such party for non-compliance. However, it is the discretion of the Court finally, while holding the defaulting party guilty, to pass appropriate orders looking to the gravity of the matter and conduct of such party, but in no case rebate of non-compliance of the Court order will be made available merely an appeal without stay is sending. We are further supported in our view by the observations made by their Lordships of the Allahabad High Court, reported in 1978 Cri LJ 789, in these words:

"It is the duty of each and every person who is a party in a proceeding before a Court to comply with the orders of the Court and if he has any grievance against the order he is free to file appeal or to make application before that Court for modification or discharge of the same, but unless that order is stayed, varied or modified the party concerned has no justification to flout the order of the Court. Thus, a mere filing

of the appeal under Article 136 of the Constitution before the Supreme Court against any order of the High Court cannot be a justification for disobedience or non-compliance of the orders of the High Court. Of course the position would be different if the Supreme Court takes cognizance of appeal and passes any positive order of stay."

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

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

10. Above all, the Supreme Court in identical situation in (1973) 1 SCC 446, has laid the following rule:

"A subordinate Court or Tribunal refusing to follow a High Court decision where a petition for leave to appeal to Supreme Court against that High Court decision was pending, held amounts to deliberate disobedience and wilful disregard of the High Court and is contempt of Court."

11.....

12.....

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

31. The Supreme Court in *Reliance Communication Limited & Ors. V. State Bank of India & Ors* (Contempt Petition (C) No.1838 of 2018 in W.P.(C) No.845 of 2018 and others) states that 'The law of contempt has been recognized in English law at least from the 12th Century A.D. to the present time [see *The History of Contempt of Court: The Form of Trial and the Mode of Punishment* by Sir John C. Fox, at page 1]. It is always important to bear in mind, as was stated in *Attorney-General v. British Broadcasting Corporation*, [1980] 3 All ER 161 [House of Lords], per Lord Salmond, that "The description "contempt of court" no doubt has an [sic] historical basis but it is nevertheless most misleading. Its object is not to protect the dignity of the courts or the judges but to protect the

administration of justice....." (at page 170)'. .

32. In continuation, the words of Lord Scarman are quoted to state 'It is high time, I would think, that we re-arranged our law so that the ancient but misleading term "contempt of court" disappeared from the law's vocabulary.' (at page 184). Another edifying statement, by Lord Diplock in *Attorney-General v. Leveller Magazine Ltd. and Ors.*, [1979] 1 All ER 745 [House of Lords], states '..... It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.'

33. Coming to the matter on hand, the position on facts is that order dated 07.12.2017 was passed after hearing both the counsel for the petitioners as well as the respondents in detail, the order is categoric as regards the direction to furnish security as well as the time frame for the same, and it has not been appealed against till after the expiry of the period set out therein for compliance. Despite not complying with the same, there is not one contrite statement or note of apology from the

respondents and the only endeavour through and through the counter and the arguments advanced is to offer an explanation for why the order was not complied with. The explanations offered, in my considered view, are entirely untenable and an afterthought, designed to get over, unsuccessfully, the factum of wilful non-compliance.

34. In the light of the discussion above, I am of the view that this petition deserves to be allowed and I do so. The respondents are held to be in contempt of order of this Court dated 07.12.2017. They shall pay a sum of Rs.1,00,000/- (Rupees one lakh only) as costs to purge themselves of the contempt committed within a period of two weeks from date of receipt of this order failing which respondents 2 and 3 shall each undergo imprisonment for a period of one week.

35. Upon pronouncement of this order, learned counsel for the respondents pleads that both the 2nd and 3rd respondents are suffering from terminal illnesses and are hospitalised. In these circumstances, he prays for suspension of the order for a few weeks. Taking into account the afore-

said submissions, this order shall stand suspended for a period of four weeks from today and shall take effect from 03.10.2019.

SD/-

ASSISTANT REGISTRAR (COMM. CASES)

SKA

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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

Smi/14/10/2019

1. M/s.E.C.Bose and Company Private Limited,
'ECB Towers', No.13A, St George Terrace,
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