

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Cont. P. No.851 of 2019

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- The seal of the High Court of Judicature at Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The lion capital is flanked by two red horses. Below the lion capital is a red wheel. The entire emblem is set against a green background with a white border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular path around the emblem. At the bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed.
1. M/s J.R.S.Crusher
rep. By its Partner Mrs.Ramesh
S.F.No.354/1, Hosapuram Village,
Denkanikottai Taluk,
Krishnagiri District
2. M.Sathiamurthy
3. M.Santhamurthy
4. N.Ramesh ... Petitioners
- Vs.
1. A.Jayakanthan,
S/o. Anumandhan,
24/320-H, 2nd Main Road,
Royakottai Hudco,
Hosur 635 109.
2. J.Jayanth,
S/o.A.Jayakanthan,
34/320-H, 2nd Main Road,
Royakottai Hudco,
Hosur 635 109. ... Respondents
- WEB COPY

Contempt Petition is filed under Section 11 of the Contempt of Court Act, 1971 to punish the respondents for wilfully disobeying the Judgment passed by this Court in C.M.A.No.1575 of 2017 dated 04.08.2017.

For Petitioner : Mr.Manoj Sreevalson

For Respondent : Mr.T.M.Hariharan

O R D E R

The petitioners herein have filed the present Contempt Petition against the respondents stating that the 1st respondent, willfully and with a malafide intention has sent the letter dated 09.10.2017 to the District Environmental Engineer, Hosur, which runs as follows:

'Ref: (1)TNPCB Proceedings No.HSR0574 /OS/DEE/
HSR/A/2009 dated 10.07.2009

(2) Your letter no.HSR0574/OS/DEE/HSR/A/2009 dt.
18.11.2015 addressed to Mr.G.Chinnaraju

(3) Mr.G.Chiinaraju, letter dated 01.12.2015

(4) My Online Application in Id.No.3647034 dated
29.12.2015

(5) My letter dated 12.06.2017.;

'/s Sree Hanuman Blue Metalz, situated at S.No.354/1,

Hosapuram Village, Denkanikottai Taluk, Krishnagiri District has

been issued consent by TNPCB vide proceedings, under (1), whereas you have informed Mr.G.Chinnaraju, vide your letter under ref(2) that you have closed/recorded the consent, based on the alleged letter of the said Mr.G.Chinnaraju. On receipt of your letter, Mr.G.Chinnaraju has personally handed over letter under ref(3), that the alleged letter was not written by him and it must be a fake one with forged signature. For our repeated requests, TNPCB has not taken any effective steps to locate the Forgery persons / Fraudsters.

I came to know that, Mr.N.Ramesh has applied for consent in the name of M/s. JRS Crusher, for the land owned by me, based on the Interim Order dated 24.04.2017 of Arbitrator Mr.L.Yousuf Ali and pursuing for expediting the same. I have already pointed out, vide my letter ref(5) that the said direction is to myself, i.e., A.Jayakanthan not the TNPCB.

Hence, entertaining application of un-authorised person/s by TNPCB, amounts to violation of the Arbitrator/ High Court order and also intrusion into my exclusive legal rights as Land owner.

In my appeal, CMA No.1575 of 2017 and CMP No.8287/2017 of the High Court of Judicature of Madras dt. 25.05.2017, the Madras high Court refused to set aside and confirmed the order of the Honorable Arbitrator and the operational portion of the order of the Arbitrator is reproduced here for your ready reference.

(b) I hereby direct the respondents to abide by the terms and conditions of the partnership agreement dated 27.07.2013 and undertake all activities including obtaining license, raw materials and all running licenses to ensure the operation of the crushing plant

which is the sole purpose of the partnership agreement.

I once again request you sir, to kindly take necessary steps to file criminal complaint with the Police Dept., to trace the culprits involved in submission of letter cited above with Forgery signature and book them under provisions of Indian Penal Code by adopting the laid down procedure by the Government.

I further state that the Arbitration Proceedings commenced again on 05.10.2017.

I hereby declare that the Honorable Arbitrator / High Court has directed the Respondents namely Me.A.Jayakanthan and J.Jayanth, to undertake all activities to ensure operation of the crushing plant and obtaining licenses is one of the activity. I am actively taking necessary steps to implement the order and I will apply for consent in due course. I am the eligible person for applying consent from TNPCB for the said the location. Hence, I hereby request you NOT to entertain application for consent of the TNPCB from aun-authorized persons, namely, N.Ramesh, Mr.M.Sathiamurthy and Mr.M.Santhamurthy.

and according to the petitioners, entertaining an application in TNPCB would have caused a damage to them and that the petitioners have sent a legal notice dated 25.01.2019 to the respondents and prays that the contemnor should be punished for the willful disobedience of this Court's Judgment in C.M.A. No.1575 of 2017 dated 04.08.2017.

2. The brief history of the case is that the petitioners 2 to 4 herein and the respondents are partners and they had entered into a partnership agreement on 27.07.2013 for carrying on the business of crushing blue metal. The 1st respondent also entered into a lease deed leasing out his land measuring about 3 acres and 84 cents and the same was granted to the 1st petitioner for the running the said operations of the partnership firm. The respondents herein had 20% shares in the said firm and the petitioners have the maximum shares.

3. It is also seen that there was a dispute arose between the parties regarding supply of boulders and other materials and accordingly, the petitioners herein have sent a legal notice to the respondents claiming that the respondents were not co-operating in the business and calling upon to cooperate for continuation of the said business, which has also ended up in a criminal case being filed between parties. Since there was an arbitration clause in the partnership agreement entered between the parties and the respondents did not co-operate for nomination of arbitrator, an application for appointment of arbitrator was filed by the petitioners and arbitrator was also appointed and pending arbitration proceedings, the petitioners herein have filed a interim application in I.A.No.3 of 2016 in O.P.No.347 of 2016 with the following prayers:

a. to direct the respondents not to interfere with the possession and peaceful enjoyment of the claimants in survey no.354/1 in Hosanapuram village

b. Direct the respondents to abide by the terms and conditions of the Partnership agreement and undertake all activities including obtaining license, raw materials, and all running licences to ensure the operation of the crushing plant which is the sole purpose of the partnership agreement.

4. After considering the submissions and averments stated in the said application, the Arbitrator have passed an order on 24.04.2017 and the relevant paragraphs runs as under:-

' With regard to the issue of irreparable loss, it is the admitted case of the applicants that the operations of the machines has come to a standstill and it cannot be lost sight of the fact that it is subjected to depreciation, degradation and loss and that apparently there no income to the partnership firm, which has come to a grinding halt. Whereas the respondents herein who are co-guarantors in the loan have not evidently played their role in the repayment of the loans. Therefore, under these circumstances, I find that if the Applicants are not granted an interim order as prayed for, they will be subjected to irreparable loss and the subject matter of the dispute will become defunct by the time, the dispute between the parties are resolved.

In the result, this interim application filed by the applicants is allowed. In the circumstances of this case, there will be no order as to costs. Under these staring circumstances,

(a) I direct the respondents not to interfere with the possession and peaceful enjoyment of the claimants in Survey No.354/1 in Hosanapuram Village.

(b) I hereby direct the respondents to abide by the terms and conditions of the partnership agreement dated 27.07.2013 and undertake all activities including obtaining license, raw materials and all running licenses to ensure the operation of the crushing plant which is the sole purpose of the said partnership agreement. '

In consequence, it is case of the petitioners herein that the respondents have not taken any steps to obtain license for running of the said unit as per the orders of the learned Arbitrator. Aggrieved by the orders of the Arbitrator, the respondents have filed Civil Miscellaneous Appeal No.1575 of 2017 before this Court, seeking to set aside the orders of the learned Arbitrator dated 24.04.2017 made in I.A.No.3 of 2016 in O.P.No.347 of 2016.

5. After hearing both the parties, this Court, on 04.08.2017 has dismissed the said CMA stating that as per the agreement entered into between the parties during the partnership, wherein both the parties have to co-operate, and be true and faithful to each other and shall not do or cause to be done anything, which may be detrimental to the interest of the firm and as a major share holders, stating that the respondents therein would be

affected from by the non running of the business, thereby observed that the Court does not find any illegality to interfere in the orders passed by the learned Arbitrator and dismiss the said appeal with the cost of Rs.10,000/- payable by the appellants/respondents to the respondents/petitioners.

6. In spite of the same, the respondents did not act as per the orders in the said CMA. The respondents have also sold the said property in Survey No.354/1 to the third party. Now, the third parties interest is also crept in. In addition to the said act, the 1st respondent has also sent a letter dated 09.10.2017 to the District Environmental Engineer, Hosur, as stated supra, and has submitted that unauthorised persons' application should not be entertained by the TNPCB and it amounts to the violation of the Arbitrator order / High Court order and also intrusion into his exclusive legal rights as land owner. In the said letter, it is also stated by the 1st respondent that the arbitrator has directed the respondents namely, Jayakandan and Jayanth to undertake all activities including obtaining license, raw materials and all running licenses to ensure the operation of the crushing plant, which is the sole purpose of the partnership agreement and 1st respondent will apply for consent in due course and that he is a eligible person for applying consent from TNPCB for the said location and not to entertain application for consent of the TNPCB from unauthorised persons, namely, N.Ramesh,

M.Sathiyamoorthy and M.santhamoorthy.

7. In the meanwhile, one Chinnaraju, who is none other than the uncle of the 1st respondent has filed W.P.No.34773 of 2018 before this Court with a prayer for issuance of Writ of Mandamus by directing the respondents 1 & 2 therein to consider his representation dated 05.03.2018 and 02.04.2018 and to cancel the consent order dated 15.11.2017 issued by the 2nd respondent therein in favour of the 3rd respondent therein / 1st petitioner herein. The said matter was taken up by the Hon'ble Division Bench of this Court and disposed of with a direction to the respondents 1 and 2 therein to consider the said representations by holding enquiry and by affording sufficient opportunity to the necessary parties within a period of two weeks from the date of receipt of copy of that order. It is pertinent to note that the same is pending and no orders have been passed.

8. It is also seen that M/s Sree Hanuman Blue Metalz has been issued with consent by TNPCB in the year 2009 and the same was closed based on the alleged letter of Chinnaraju dated 02.11.2015. However, the said Chinnaraju had submitted a letter dated 01.12.2015 that the alleged letter has not been written by him and it is a fake one and for his repeated requests, TNPCB has not taken any effective steps. It was submitted by the petitioners that only due to some other problem arisen, now, they have

stopped production and the arbitration proceedings between the parties are pending. Due to the said letter issued by the 1st respondent, the petitioners have to face a loss in the production, as they could not run the unit without getting consent from the TNPCB.

9. Firstly, the learned counsel for the respondents has tendered his unconditional apology on behalf of the 1st respondent for writing such a letter dated 09.10.2017 and then, for alienating their land in Survey No.354/1 Hosanapuram Village, Thenkanikottai to one Jaganathan by way of a registered sale deed dated 16.06.2017. As the 1st respondent has invested all his life savings in the partnership business and the petitioners herein have not allowed him to access the accounts and no income was paid to him in the business, he had to sell his lands for his livelihood and meet his everyday expenses. In March 2019, the petitioners have resumed their operations and day and night production had been done and they are also having a good income. Secondly, regarding the letter dated 09.10.2017 written by the 1st respondent addressed to the District Environmental Engineer, TNPCB, Hosur, the learned counsel submits that originally the said consent was issued to Chinnaraju s/o late Govindasamy Gounder, who had run the business in the name and style of M/s Shri Hanuman Blue Metalz, and he had settled the property along with the unit to his sister by

way of a gift deed, who inturn had settled the same in favour of her son, viz., Jayakanthan on 13.02.2013. The 1st respondent had filed an online application on 29.12.2015 to the District Environmental Engineer, TNPCB, Hosur, for consent. The TNPCB, Hosur on 07.1.2015 has not issued the consent in his favour by stating that there is already an objection has been raised regarding the consent. He further submitted that the petitioners have forged the signature of Chinnaraju in a No objection certificate dated 02.11.2015 and moved TNPCB, Hosur to record the same, as if he has given no objection to be issued to the Kannmmal or her subsequent purchaser. Chinnaraju immediately addressed a letter on 01.12.2015 that he has not issued a no objection certificate dated 02.11.2015 and requested not to close his business file and requested to keep it alive for resuming operation soon. Moreover, the 1st petitioner made an application on 07.12.2015 to the Tamilnadu Pollution Control Board, Hosur for consent with respect to the said land in Survey No.354/1, Hosanapuram village. In the said letter to the Environmental Engineer, TNPCB, the petitioners have mentioned regarding the conduct of the 1st respondent herein.

10. Further, the learned counsel for the respondents submits that on 15.11.2017, TNPCB has granted consent order to the petitioners and the Chinnaraju has also filed a complaint before the Superintendent of Police,

Krishnagiri and the same is pending. The respondent would also submit that he had no intention to disobey the orders passed by this Court and he had tendered unconditional apology before this Court on behalf of the 1st respondent for writing a letter dated 09.10.2017 addressed to the Environmental Engineer, Tamilnadu Pollution Control Board, Hosur.

11. Moreover, the learned counsel for the respondents brings it to the notice of this Court that the petitioners are operating and 1500 to 2000 tonnes of raw materials have been processed for manufacturing Jelly and eventhough presently the respondents have share in the partnership, they were completely excluded from the partnership and the entire income is being taken only by the petitioners. The 1st respondent was appointed as one of the working partners in the partnership firm, but, admittedly he has been neglected. The entire accounts are with the petitioners and loans have been repaid, but no share of the income has been paid to respondents. The 1st respondent had sold the property only on account of severe financial crunch and again, pleaded the respondents have not entered into the property and disturbed the possession of petitioners and prays this Court to accept his unconditional apology and close the contempt petition.

12. It is seen from the records filed before this Court that the partnership firm has been in existence between the petitioner and the

respondent from 27.07.2013 and the same was situated in Survey No.354/1 of Hosanapuram Village and the respondents herein has 20% of share, as the respondents being the owner of the land, they were made as a partners in the partnership firm. There were some dispute, arose between the parties and arbitration clause has been invoked and arbitration proceedings has been conducted, interim orders have been passed by the Arbitrator. The grievance of the petitioners herein is that the respondents have not obeyed the said order and they have acted against the said order willfully.

13. From the Interim order of the learned Arbitrator in I.A.No.3 of 2016 in O.P.No.347 of 2016, it is found that the respondents should not interfere with the possession and peaceful enjoyment of the property of the petitioners in Survey No.354/1, Hosapuram Village. Till date there is no such interference with the peaceful possession and enjoyment of petitioners, as they have enjoyed the same for seven years and it ends up in the year 2020.

14. With regard to the clause (b) of the order to the 24.04.2017 passed by the Arbitrator, the respondents have to abide by the terms and conditions of the Partnership agreement dated 27.07.2013 and to undertake all activities including obtain license, raw materials and all running licenses to ensure the operation to the crushing plant, which is a sole purpose of the

said partnership agreement.

15. It is also learnt that there were some dispute arose regarding the consent being obtained from the TNPCB. Originally the said order of consent was stood in the name of one Chinnaraju, Maternal uncle of the 1st respondent herein, who inturn has settled the property to his sister and inturn, the same was settled in the name of the 1st respondent herein. It is also seen that the 1st respondent has taken steps to get a consent in his favour which was also stopped due to the intervention of the petitioners herein. After the orders passed in CMA, the 1st respondent herein has written a letter to the said authorities that the Court has directed only the 1st respondent and his son to undertake all activities to ensure operation of the crushing plant and obtaining licenses is one of the activity and that he is taking necessary steps to implement the order and he will apply for the consent in due course. He is the eligible person for applying consent from TNPCB for the said property. Hence he requested the TNPCB not to entertain application from the petitioners herein. This letter has been written by the 1st respondent at the time, when there was a dispute going on between the petitioners and the respondents.

16. It is also seen that the respondents have interpreted the order as if the court has directed them to abide by the terms and conditions and

undertake all the activities including the activities, for obtaining license, so, the learned counsel for the respondents submits that only based on the said directions, 1st respondent had written the letter that not to entertain application of consent to Ramesh Sathiyamoorthy and Santhamoorthy and in the counter affidavit, it is stated that there was no willful intention to do so.

17. With regard to the forgery signature of the said Chinnaraju, a criminal case is pending and this Court is not inclined to go into the said issue and regarding the other issues raised by the parties, the same will be looked into by the Arbitrator. Regarding the non-payment of Rs.10,000/-, the learned counsel for the respondents submitted that he was willing to pay the same, but the petitioners have not accepted.

18. Today before this Court, the learned counsel for the respondents has tendered a sum of Rs.10,000/- and same was handed over to the learned counsel for the petitioners, which the petitioners' counsel showed reluctance in accepting the same. It was made clear by this Court that the petitioners can receive the same, as there was no time limit prescribed in the said order, the petitioner counsel had received the said amount. Accordingly, the said point raised by the petitioners has been settled in an amicable manner.

19. With regard to the letter dated 09.10.2017 to the District

Environmental Engineer, TNPCB, Hosur by the 1st respondent, unconditional apology tendered by the said respondent was accepted and advised that the respondent should not indulge in such activities, which will be detrimental to the running of the said partnership firm. It was found that in total, the respondent and his son are having 20% share in the partnership firm. and they can work out their remedy regarding sharing of the income and other issues before the said Arbitrator in the arbitration proceedings.

20. By accepting the unconditional apology by the respondents, the Contempt Petition stands closed. No costs.

ssd

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/23/11/2020