

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: March 19, 2019

1. **COCP No.2807 of 2018 (O&M)**

Ravinder Arora

...Petitioner

Versus

John Pulinthanam & others

...Respondents

2. **COCP No.2808 of 2018 (O&M)**

Ravinder Arora

...Petitioner

Versus

K.B.Vijay Srinivas & others

...Respondents

3. **COCP No.2809 of 2018 (O&M)**

Ravinder Arora

...Petitioner

Versus

A.V.Girija Kumar & others

...Respondents

4. **COCP No.2810 of 2018 (O&M)**

Ravinder Arora

...Petitioner

Versus

Debasish Panda & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate &
Mr. Alok Mittal, Advocate,
for the petitioner.

Mr. D.S.Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate,
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of four Contempt Petitions

bearing Nos.2807 to 2810 of 2018, which have been filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 for willfully and deliberately violating the judgment dated 09.12.2016 (Annexure P-1) passed in Civil Writ Petition No.6626 of 2015 and judgment dated 02.07.2018 (Annexure P-2) rendered in Civil Appeals No.5953-5956 of 2018. The facts are being taken from COCP No.2807 of 2018.

This Court, while deciding FAO No.2604 of 2013 titled as “Rajesh Versus Parmod & others”, noticed certain submissions made on behalf of the Advocates with respect of pending fee bills and vide order dated 10.12.2014, referred the matter to the Acting Chief Justice for the redressal of the grievances of the Advocates. It was numbered as 6626 of 2015 and vide order dated 09.12.2016, disposed of with certain directions. The aforementioned order was assailed in the aforementioned Civil Appeals before the Hon'ble Supreme Court, which have been disposed of vide order dated 02.07.2018 (Annexure P-2) by issuing certain directions.

It is alleged that the respondents have committed the contempt of court in not following the order passed by the High Court for the simple reason that Hon'ble the Supreme Court had only set-aside the direction of the High Court with regard to adhering to the fee Schedule of General Insurance (Public Sector) Association of India (for short, 'GIPSA') dated 21.02.2005 w.e.f. 01.11.2004, whereas the other direction of adhering to the Schedule dated 01.01.2009 and 01.04.2014 was admitted by the Insurance Company before the High Court and, therefore, this Court would have the jurisdiction to entertain and try the contempt petitions.

In pursuance to the notice issued by this Court, written statement has been filed alleging that there is no willful disobedience of any

order and raised the objection qua maintainability of the contempt petitions in this Court by applying doctrine of merger on the premise that the order dated 09.12.2016 of this Court ceases to exist after having been merged with the order dated 02.07.2018 of Hon'ble the Supreme Court. In Para 8 of the written statement, it has been alleged that the GIPSA Schedule nowhere provides the payment of entire professional fee to the empaneled advocates lump sum in advance as claimed by the petitioner, for, it has been an age-old practice to pay 50% of the fees at the time of assigning the matter and balance 50% at the time of/after conclusion of final hearing in any matter by keeping in mind the long duration taken for decision of the cases as well as scenario of change of advocates and, thus, the aforementioned practice was not in violation of the provisions of GIPSA Schedule. In other words, it was submitted that claim of the petitioner for payment of the entire balance fees as per the Schedule of 2009 and 2014 cannot be paid in advance.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr.Santosh Sharma, Advocate, representing the petitioner submitted that the Insurance Company has not shown any regard and respect to the orders of this Court and as well as Hon'ble the Supreme Court and cannot be permitted to supplement by adopting the age-old practice in not adhering to the GIPSA Schedule as there is no contingency reflected in the GIPSA Schedule for payment of 50%. Attention of this Court was drawn to the aforementioned Schedule extracted in the judgment of the Division Bench. This Court would have a jurisdiction to try and entertain the contempt petition as the other two directions by adhering to the Schedule of 2009 and 2014 have been upheld by Hon'ble the Supreme Court, thus, doctrine of merger would not apply.

Per contra, Mr.D.S.Patwalia, learned Senior Counsel assisted by Mr.Sehaj Bir Singh, Advocate, representing the respondents raised the objection of maintainability of the contempt petition by relying upon the ratio decidendi culled out in **Omprakash Verma and others Versus State of Andhra Pradesh and others, (2010) 13 Supreme Court Cases 158 and Vitusah Oberoi and others Versus Court of its own motion, (2017) 2 Supreme Court Cases 314** and submitted that even if the GIPSA Schedule did not provide any payment, the reason given in the affidavit is a ground and hard realities which cannot be ignored protecting the interest of the Insurance Company.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the objection raised by Mr. Patwalia qua the maintainability of the contempt petition by this Court has force.

The issue with regard to the implementation of the orders of the High Court and Hon'ble the Supreme Court came to be debated upon in **Omprakash's case (supra)**, wherein, while relying upon certain guidelines, it was held that even if at the stage of Special Leave Petition or Civil Appeal, i.e., nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or capable of being laid shall be determinative of the applicability of doctrine of merger. The superior jurisdiction is capable of reversing, modifying or 'affirming' the order put in issue before it. Hon'ble Supreme Court under Article 136 of the Constitution may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of the petition for special leave to appeal. In essence, it was held that doctrine of merger can only apply to the

former and not to the latter. For the sake of brevity, Paras 43, 45, 48 and 49 are extracted herein below:-

*“43) Equally, reliance placed by the appellants upon the observations and findings reached in the judgment of the Division Bench of the High Court in the earlier round of litigation which culminated in the judgment of this Court in **Audikesava Reddy’s** case (supra) regarding lands in issue having been agricultural lands, the prayer of extension of the Master Plan thereto is also mis-conceived and unsustainable. As pointed out by learned senior counsel for the respondents by virtue of special leave petition filed against the judgment dated 04.12.1996 delivered in Writ Appeal No. 918 of 1994 as also the judgment dated 28.10.1994 delivered in Writ Appeal No.1220 of 1994, finality of the said judgment and all findings contained therein stood destroyed. It is useful to refer the decision of this Court in **Dharam Dutt and Others vs. Union of India and Others**, (2004) 1 SCC 712. This Court held filing of an appeal destroys the finality of the judgment under appeal (vide para 69).*

*45) In **Kunhayammed and Others vs. State of Kerala and Another**, (2000) 6 SCC 359, this Court held:*

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final,

binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below.”

48) *In the same decision, their Lordships have summarized their conclusion as under:*

“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.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

49) It is clear that once leave was granted by this Court in

the special leave petitions filed against the Division Bench of the High Court in the earlier round of litigation and the consequent civil appeals arising therefrom filed by the State Government is allowed by this Court, the judgment of the Division Bench lost its identity and merged with the judgment of this Court. The said judgment of the Division Bench of the High Court, therefore, cannot be relied upon for any purpose whatsoever.”

Articles 129 and 215 of the Constitution of India holds the Supreme Court and High Court as a Court of rule and power of contempt. For the sake of brevity, provisions of Articles 129 and 215 are extracted herein below:-

“Article 129.

Supreme Court to be a court of record The Supreme 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 “

Article 215.

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.”

In **Vitusah Oberoi's case (supra)**, the High Court of Delhi found the person guilty of contempt taking suo motu cognizance of a publication published in Mid Day, a daily English Newspaper with a large circulation in the National Capital Region alleging misuse of official residence of former Judge and Chief Justice of Hon'ble Supreme Court of India. In a criminal appeal, Hon'ble Supreme Court, after noticing the arguments and the provisions of Article 129 of the Constitution, held that the interpretation culled out by the counsel representing the contemner would preserve the inherent jurisdiction of the Supreme Court being the superior court of record to safeguard and protect the subordinate judiciary,

which forms the very backbone of administration of justice. It was held that when the availability of the power under Article 129 and its plenitude is yet another reason why Article 215 can never be intended to empower the High Court to punish for the contempt of the Supreme Court. It would be apt to reproduce Paras 11 and 12 of the judgment in **Vitusah Oberoi's case**, read thus:-

*“11. Whether or not the power to punish for contempt of a subordinate court was an attribute of a court of record fell for consideration of this Court in **Delhi Judicial Service Association vs. State of Gujarat (1991) 4 SCC 406**. The argument there was that the Supreme Court could not initiate contempt proceedings based on an incident that involved a subordinate court like a Chief Judicial Magistrate working in the State of Gujarat. That contention was examined and rejected by this Court. It was held that the language employed in Article 129 indicated that the Supreme Court is a Court of Record and was entitled not only to punish for its own contempt but to do all that which is within the powers of a Court of Record. This Court held that since the Constitution has designed the Supreme Court as a Court of Record, Article 129 thereof recognises the existing inherent power of a Court of Record in its full plenitude including the power to punish for its own contempt and the contempt of its subordinate. The Court said:*

“29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself (emphasis supplied). The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression

“including the power to punish for contempt of itself.” The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression “including.” The expression “including” has been interpreted by courts, to extend and widen the scope of power. The plain language of the Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since, the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression “including” was deliberately inserted in the Article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very back bone of administration of justice. The subordinate courts administer justice at the grass root level, their protection is necessary to preserve the confidence of people in the efficacy of Courts and to ensure unsullied flow of justice

at its base level.”

12. The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court’s power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside.”

Now coming to the controversy in hand. The directions issued by this Court in the order dated 09.12.2016 read thus:-

“The petition is accordingly disposed of and the Insurance Companies shall adhere to the three schedules framed by GIPSA i.e. 01.11.2004, 01.01.2009 and 01.04.2014 and full fee wherever payable shall be paid and balance wherever payable shall be paid. The necessary due payments should be made to all the advocates to whom fee is due and payable as expeditiously as possible after necessary verification and preferably by 30.06.2017 and in case the same is not paid, the amount payable shall entail payment of simple interest at 7 per

cent per annum from 01.07.2017 onwards from 08.04.2015, when this Court issued notices to the Insurance Companies.”

The directions contained in the order dated 02.07.2018 rendered by Hon'ble the Supreme Court are extracted herein below:-

“(i) The direction of High Court directing insurance companies to adhere to fees schedule issued by GIPSA dated 21.02.2005 w.e.f. 01.11.2004 is set aside.

We, however, make it clear that any payment of fee made as per said circular dated 21.02.2005 shall be treated as final and not to be re-opened.

(ii) The insurance companies shall adhere to the schedule framed by GIPSA, i.e.01.01.2009 and 01.04.2014 and fee wherever payable shall be paid and balance wherever payable shall be paid as admitted by insurance companies themselves before the High Court.

(iii) The direction issued by the High Court regarding payment of interest is set-aside.”

No doubt, Hon'ble the Supreme Court set-aside the implementation of the circular dated 21.02.2005 effective from 01.11.2004, but with regard to the implementation of the Schedule dated 01.01.2009 and 01.04.2014, envisaging the fees @ ₹ 10,000/- plus 10% clerkage and ₹20,000/- for Mumbai and Delhi and ₹ 15,000/- for other cities plus 10% clerkage, upheld the directions of this Court. Even if the directions of this Court have been upheld, but in view of the ratio decidendi culled out in **Omprakash's case (supra)**, the doctrine of merger would apply.

Since the petitioner has alleged violation of the directions in not adhering to the payment of 100% fees in the absence of any contingency or provision, for payment of 50% fees, they can seek redressal of the grievance in a superior forum, i.e., file contempt petition under Article 129

of the Constitution or under the provisions of the Contempt of Courts Act, 1971.

I would be failing in my duty in not extracting the stand of the Insurance Company in supporting the averment of payment 50% fees being an age-old practice, Para 8 of the reply reads thus:-

“It is reiterated that the Hon'ble Supreme Court while modifying the order dated 09.12.2016 of this Hon'ble Court has directed the Company to pay in terms of GIPSA Schedule of 2009 and 2014. The said GIPSA Schedule nowhere provides payment of entire professional fee to the empaneled advocates lump sum in advance as is being claimed by the petitioner. It is submitted that it has been an age-old practice of the Insurance Companies, to pay 50% of fees at the time of assigning a matter and balance 50% at the time of/after conclusion of final hearing in any matter. This practice of splitting of fees was adopted by the Insurance Companies keeping in mind the long duration taken for conclusion of cases as well as scenarios of change in advocate. Therefore, as per the practice, balance 50% of fees is released at the time of conclusion of the matter. The said practice is not in violation of any of the provisions of the GIPSA Schedule. It is submitted that the petitioner has also been admittedly paid 50% of his total fee as per the applicable GIPSA Schedule in the matters that he has been assigned by the Company and the balance 50% shall be paid to him at the conclusion of the pending cases. It is the most respectful submission of the respondents that the respondents are complying with the order dated 02.07.2018 passed by the Hon'ble Supreme Court and as a consequence all dues wherever payable are being paid by the Company in a timely manner and all efforts are made to ensure that no fee remains unpaid.”

Though, apparently it appears that the Insurance Company cannot misinterpret the directions of this Court appreciated in the order of

the Hon'ble Supreme Court by coining out a story of age-old practice, but its implication would be in the domain of the competent court and not in this Court.

For the reasons stated above, the contempt petitions are dismissed with liberty to the petitioner to avail the remedy as per the observations made above.

March 19, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No