

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(CONTEMPT JURISDICTION)

MONDAY, THE 4th DAY OF OCTOBER 2021

THE HON'BLE MR.JUSTICE R. SUBRAMANIAN

SUB APPLICATION (OS) NO.203 OF 2018

IN

CONTEMPT PETITION NO.414 OF 2017

Mr.Rakesh Sheth

No.340, 1st South Main Road, Kapaleeswar Nagar,
Neelankarai Chennai-600 115.

.. Petitioner/Petitioner in Cont.P and Sub Application

Vs

1.M/S.KGS CONSTRUCTIONS LTD.,
No.63, Kamaraj Avenue 1st Street,
Adayar Chennai-600 020.

2.M/S.KGS DEVELOPERS LTD.,
No.63, Kamaraj Avenue 1st Street,
Adayar Chennai-600 020.

3.Mr.GIGI GEORGE,
Director,
M/s KGS DEVELOPERS LTD and
M/S KGS CONSTRUCTIONS LTD
No.63 Kamaraj Avenue, 1st Street,
Adyar, Chennai-600 020.

4.Mr.PICHAIIYA VELAYUTHAM SANMUGAM,
Director,
M/s KGS DEVELOPERS LTD and
M/S KGS CONSTRUCTIONS LTD
No.63 Kamaraj Avenue, 1st Street,
Adyar, Chennai-600 020.

5.Mr.Kumaran Kandasamy, Director,
M/s KGS DEVELOPERS LTD and
M/S KGS CONSTRUCTIONS LTD
No.63 Kamaraj Avenue, 1st Street,
Adyar, Chennai-600 020.

...Respondents/Respondents
in Cont.P and Sub Application

Sub Application, under Section 151 of CPC Praying this Hon'ble
Court may be pleased to reopen and revive the Contempt Petition No.414 of
2017.

The above Sub Application are coming on this day before this Court
for hearing in the presence of Mr.Sharath Chandran, learned Counsel
appearing for the Petitioner herein; and of Mr.R.Parthasarathy for
M/s.Rekha, learned Counsel appearing for the Respondent No.1,2&4 and
Mr.Keerthi Kiran, learned Counsel appearing for the Respondent No.3
herein; and upon reading the petition and affidavit of Rakesh Sheth,
S/o.Premkumar Sheth, in Sub.Application filed herein; the Court made
the following order:

***“This application has been filed by the petitioner in Contempt
Petition No.414 of 2017 seeking to re-open and revive the contempt
petition on the ground that the respondents have failed to honour the
undertaking given by them in the memorandum of compromise dated 30th
July 2017.***

***2. This case has got a chequered history. The original Company
Petition in C.P.No.377 of 2016, in which this proceeding arises was filed***

by the present applicant seeking liquidation of the 1st respondent Company viz., M/s.KGS Constructions Ltd., There were several memoranda of understanding between the parties. The main ground on which the Company is sought to be liquidated is the non-payment of the award amount as per the award dated 03.01.2015 passed by the sole Arbitrator who was appointed pursuant to an understanding between the parties.

3. There was a settlement agreement between the parties on 29.11.2016, after the award, under which the parties had agreed to settle the dispute as between them. According to the petitioner, the respondent failed to honour the settlement agreement and the Company Petition was filed in December 2016.

4. Pending the Company Petition, the parties entered into settlement agreement on 06.07.2017, providing for settlement of the disputes between them. The settlement agreement dated 06.07.2017 fixed the liability of the Company to pay a sum of Rs.9 Crores 50 Lakhs to the applicant herein. The said sum of Rs.9 Crores 50 Lakhs was to be adjusted by transfer of certain properties and by payment of cash. This settlement agreement dated 06.07.2017 was followed by a joint memorandum of compromise dated 30.07.2017. The same was recorded by this Court by its order dated 11.08.2017.

5. It will not be out of place to point out that the respondents had agreed to pay the interest at 24% per annum on the sum of Rs.9 Crores and 50 Laksh. Upon recording of the settlement, this Court has closed the Contempt Petition on 12.10.2017. Even before that, the original Company Petition was closed on 01.12.2016. Complaining that the respondents have not honoured the undertaking given by them to this Court in the joint compromise dated 30.07.2017, the applicant had come up with this petition seeking restoration of the Contempt Petition.

6. It is to be noted that there was a subsequent order dated 28.04.2018, wherein, this Court had recorded the fact that the transfers of immovable property has been effected and the balance amount payable by the respondents to the applicant would be Rs.5.10 Crores. It is also recorded that a sum of Rs.3 Crores out of that Rs.5.10 Crores has been paid and the balance is only Rs.2.10 Crores. Thereafter, another joint memorandum of compromise appears to have been entered into between the parties on 05.06.2018. But, the said compromise was not recorded by the Court at any point of time.

7. I have heard Mr.Sharath Chandran, learned counsel appearing for the applicant and Mr.R.Parthasarathy, learned counsel appearing for the respondents.

8. Mr.R.Parthasarathy, learned counsel appearing for the

respondents would vehemently contend that the entire amount payable as per the compromise agreement has been paid and there is nothing due. He has also produced the statement of accounts along with an affidavit signed by the 4th respondent.

9. Mr.Sharath Chandran, learned counsel appearing for the petitioner would submit that the calculation of interest in the statement of accounts is seriously flawed and therefore the same cannot be accepted.

10. The fact that there is some interest outstanding is accepted by both the parties. I also find that the manner in which the interest calculated in the statement of accounts filed by Mr.R.Parthasarathy, is not according to proper accounting procedures.

11. Recording the above factors and also the fact that the 4th respondent attempted to blame his earlier counsel, I had required the counsel on record to file an affidavit as to under whose instructions the counter affidavit was filed. The counsel has filed an affidavit stating that the 4th respondent had instructed her to file such an affidavit.

12. The 4th respondent is his counter affidavit had chosen to question the very basis of the compromise. I do not think he could be allowed to do so at this distance point of time, after having lead this Court to believe that he has a bonafide interest in settling the matter.

13. From the compromise agreement dated 06.07.2017, it is clear

that the respondents had agreed to pay interest on the amount that should be paid by way of cash. I find that an attempt is being made to wriggle out of the liability to pay the interest. I had, in fact, recorded the above happenings. I had, given the parties, an opportunity to settle on the quantum of interest payable.

14. Today, when the matter is called, the learned counsel appearing for the parties would submit that there is no meeting ground and that they are unable to settle the issue. Since, the Contempt Petition itself was closed recording the settlement arrived at between the parties and now that the settlement has not fructified and the terms of settlement have been breached. I have no other option, but, to revive the Contempt Petition.

15. The Contempt Petition therefore stands revived.

16. Post the Contempt Petition on 25.10.2021.”

WITNESS THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE OF HIGH COURT AT MADRAS, AS AFORESAID, THIS THE 04th DAY OF OCTOBER, 2021.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

//Certified to be true copy//

Dated at Madras this day of 2021.
COURT OFFICER(O.S.)
 from 25th day of September 2008 the Registry is issuing Certified copies of
 the Orders/Judgments/Decrees in this format.

MK/07/10/2021

SUB APPLICATION NO.203 OF 2018
IN
CONTEMPT PETITION NO.414 OF 2017
THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN
ORDER
DATED : 04/10/2021

FOR APPROVAL : 08/10/2021

APPROVED ON : 20/10/2021

To:

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No.63, Kamaraj Avenue 1st Street,
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