



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Contempt Petition.No.30 of 2018

1.Nadar Mahajana Sangam,
a Society registered under the Societies Act,
bearing Registration No.1/1918,
having its office at 2 South Chitrai Street,
Madurai – 1,
Represented by its General Secretary
Mr.G.Karikol Raj

2.Nadar Mahajana Share Investors Forum,
Members's Satyaseelan
246 Anna Salai
Chennai – 600 002.

...Petitioners

Vs.

1.Mr.Kannan Adityan
2.Ms.R.Pankajam
3.Ms.Geetha Prem Vetri



4.Tamil Nadu Mercantile Bank

Represented by its Managing Director and CEO

Mr.H.S.Upendra Kamath

Having its Regd. Office at

57 V.E.Road,

Tuticorin 628 002.

...Respondents

PRAYER : The Contempt petition is filed under Section 11 of Contempt of Court Act,1971 to punish the respondents for willful disobedience and Contempt under Section 11 of the Contempt of Courts Act, 1971 for having committed contempt on the orders of this Hon'ble Court dated 10.01.2008 made in M.P.Nos.1,1,1,1 and 1 if 2008 in O.S.A.Nos.10,11,14,15,16, and 17 of 2008.

For first petitioner : Mr.K.M.Vijayan

Senior Advocate

for Mr.T.V.Lakshmanan

For R1 to R3 : Mr.Karthick Seshadri

ORDER

(ORDER of the Court was delivered by SUNDER MOHAN.J.)

The contempt petition has been filed by the plaintiffs in C.S.No.491 of 2007 against the respondents herein who are 9th 10th 8th and 4th defendants respectively in the said suit.

2.The brief facts leading to the filing of the contempt petition as

stated in the Affidavit filed on behalf of the petitioners are as follows:



(a) the first petitioner Nadar Mahajana Sangam was formed and constituted to promote the welfare of Nadar Community. The second petitioner called the Nadar Mahajan Share Investors Forum (hereafter referred to as Forum) was formed by the first petitioner Sangam to repurchase the shares for the Nadar community held by certain private individuals in Tamil Nadu Mercantile Bank (hereinafter referred to as TMB)

(b) The Forum entered into an MOU with the Sterling Group which held 67.29 % of shares in TMB on 24.06.1999. As per the said MOU the Forum had to pay Rs.155 Crores for acquiring 67.29 % shares amounting to 191400 shares. The Sangam and the Forum were led by the father of the 1st and 3rd respondents and husband of the second respondent one late B.Ramachandra Adityan, who was the second defendant in the suit.

(c) As per the MOU the Forum had paid Rs.80.75 Crores for which 95,996 shares were allotted to the members of the Forum. The Forum had to pay the balance consideration amount for transferring the remaining 95418 shares held by the Sterling Group in TMB. The said B.Ramachandra Adityan was also holding the post of Director of TMB controlling the Board through other nominee Directors.



(d) Whiles, to the shock of the petitioners the said Ramachandra Adityan and one M.G.M.Maran entered into an Agreement on 10.03.2006 with the Sterling Group for the remaining 95418 shares in their individual capacity for the purchase of the same. The said Ramachandra Adithiyan and M.G.M.Maaran acted as agents for foreign investors. As per the said agreement dated 10.03.2006 the Sterling Group sold 67066 shares of TMB to the foreign investors. B. Ramachandra Adithiyan and Maran retained 28352 shares. Out of the said 28352 shares, 10800 shares were transferred to Ramachandra Adithiyan and 8532 shares were transferred to Mr.M.G.M.Maran. The remaining shares were transferred to 13 persons. These shares were meant for the Sangam as per the earlier MOU in the year 1999.

(e) Aggrieved by the misuse of 95418 shares which was meant to be transferred to the members of the petitioners, the petitioners filed C.S.No.491 of 2007 praying for a declaration that the shares transferred by the defendants namely the Sterling Company in favour of the defendants therein 2, 3, 8 to 19 and 23 to 29 as null and void. The transfer to the said defendants was made at the instance of Ramchandra Adityan and M.G.M.Maran.



(f) In the said suit, the petitioners filed O.A.Nos.681 and 682 of 2007 for interim injunction restraining the respondents from transferring the shares and for other prayers. This Court by the order dated 10.01.2008 was pleased to grant interim injunction as prayed for in O.A.Nos. 681 and 682 of 2007.

(g) Some of the defendants in the said suit filed an appeal before the Division Bench of this Court in O.S.A.Nos.10, 11, 14 to 17 of 2008. In the said appeals, this Court granted interim stay of the order passed by the learned Single Judge in O.A.Nos.681 and 682 of 2007. The Division Bench of this Court passed the following order.

“Interim Stay, subject to the condition that the shares in question shall not be alienated or transferred without the leave of the Court.”

(h) Whiles, the said Ramachandra Adityan died and the respondents 1 and 3 filed C.S.No.386 of 2014 for various reliefs against the 4th respondent Bank herein in respect of the shares held by them and held by late Mr.Ramachandra Adityan. In the said suit, the respondents filed Application Nos. 6117 of 2015 and obtained an order from this Court dated 06.10.2015 wherein this Court permitted transmission of the shares held in the name of late Ramachandra Adityan in favour of the first respondent herein.



(i) In the said A.No.6117 of 2015 in C.S.No.386 of 2014, the respondents did not bring to the notice of the learned Single Judge, the interim order passed by the Division Bench of this Court in O.S.A.Nos. 10, 11 14, 17 of 2008. The respondents had suppressed the order passed by the Division Bench. Further by their voluntary acts have committed disobedience of the order passed by this Court by transferring the shares late Ramachandra Adithyan in favour of the first respondent herein without the leave of the Court as directed by the Division Bench of this Court.

3.The 1st respondent filed an Affidavit stating that the respondents had not violated the order of this Court. They did not alienate or transfer the shares. On the death of their father B.Ramachandra Adityan on 16.12.2013 the shares were acquired by him by operation of law. He sought directions from this Court to ensure that his name gets reflected in the register of members of the 4th respondent Company. The Contempt Petition was an afterthought. The petitioners sought to implead themselves in C.S.No.386 of 2014 by filing the application in A.No.8237 of 2015 on 14.12.2015. The said application was dismissed by this Court on 07.03.2016. The petitioners filed another impleading application suppressing the earlier application and its dismissal. The second application was also dismissed by the order dated 08.08.2016. This Court



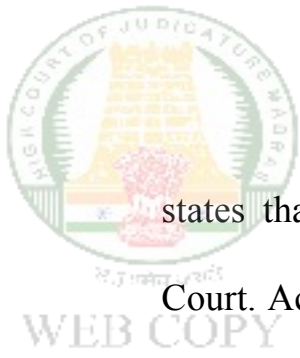
granted liberty to the petitioners to seek restoration of the application that was dismissed earlier. In the contempt petition, the petitioners have suppressed the above facts and are seeking for a prayer to punish the respondents when there is no violation.

4. Mr.K.M.Vijayan, learned Senior Counsel for the first petitioner submitted that the respondents have committed wilful disobedience of the order of this Court in O.S.A.Nos.10, 11, 14 to 17 of 2008. This Court had granted interim stay of the order passed by the learned single Judge on the condition that the shares in question shall not be alienated or transferred without the leave of the Court. The learned senior counsel submitted that the transfer of the shares from the name of the deceased Ramachandra Adityan in favour of the 1st respondent herein would amount to transfer and it clearly amounts to disobedience of the order of this Court. The learned Senior Counsel further submitted that in any event, the respondents while obtaining an order from this Court in A.No.6117 in C.S.No.386 of 2014 ought to have brought to the notice of the learned Single Judge of this Court, the order passed by the Division Bench in the above O.S.A.'s. Therefore, they are also guilty of suppressing the truth before the Court. The learned Senior Counsel hence submitted that these acts constituted Contempt of Court.



5.Mr.Karthick Sehasadri, learned counsel for the respondents 1 to 3 submitted that the shares were not alienated or transferred. The shares of late Ramachandra Adityan were transmitted in the name of the 1st respondent as he was the nominee of the said shares. The Division Bench of this Court had stated that the “shares shall not be alienated or transferred.” The transmission of shares by operation of law which is an involuntary action of the respondents cannot be termed as disobedience of the order of this Court. The learned Counsel further submitted that they filed I.A.No.6117 of 2015 in C.S.No.386 of 2014 praying for a direction to the Registrar General to forward the share certificates in his custody to the registered office of the first respondent for effecting the transmission of the shares in the manner known the law. The order of the Division Bench in effect meant that the transfer or alienation which would bring in the interest of third parties shall not be made without the leave of the Court. The transmission of shares from the deceased to his nominee is neither a transfer nor alienation as it did not involve third parties. The learned counsel further submitted that in any event the transmission of shares cannot be said to be a wilful disobedience.

6.We have perused the order passed by this Court which is said to have been disobeyed by the respondents. The order that we have extracted earlier



states that no transfer or alienation shall be made without the leave of the Court. According to the petitioners, the transmission of shares to the nominee of the deceased would amount to transfer and the same ought not to have been done without leave of this Court. It is also their case that while obtaining the permission from this Court in A.No.6117 of 2015 in C.S.No.386 of 2014 for forwarding the share certificates in the custody of the Registrar General of this Court to the fourth respondent for the purpose of transmission, the respondents suppressed the order passed by this Court in the O.S.As. The learned counsel for the respondent on the other hand would submit that the first respondent was the nominee of the shares belonging to the deceased Ramachandra Adityan and on his death he became entitled to the shares as a nominee. This was an involuntary action and all that he did was to seek permission to have his name registered as a holder of the shares by virtue of the nomination.

7.We find that the respondents were aware of the order passed by the Division Bench of this Court. Even in the above application filed by them in C.S.No.386 of 2014 before the learned Single Judge, they did not disclose the order passed by this Court in the Original Side Appeals restraining the alienation and transfer of shares without the leave of this Court. Even assuming



that the first respondent's action may not be a transfer or alienation, it would have been proper on his part to have obtained leave of this Court.

8. However, the question before us is whether that conduct of the respondents would amount to wilful disobedience of the order passed by this Court. It is settled law that in order to punish a person for civil contempt, the petitioners have to allege and establish wilful disobedience. A wilful act has to be distinguished from acts done carelessly thoughtlessly or inadvertently. The Hon'ble Apex Court in *Ram Kishan vs Tharun Bajaj and others* reported in **(2014) 16 SCC 204** had occasion to consider the meaning of word “wilful” employed in Section 2 (b) of the Contempt of Courts Act. The relevant portions of the Judgment of the Hon'ble Apex Court is extracted hereunder for better understanding.

“12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be



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done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

9.In the instant case, we find that the 1st respondent had a right to hold the shares by virtue of the nomination made by the said Mr.Ramachandra Adityan. Therefore, the Act of getting his name registered in the Registrar of the 4th respondent would not strictly amount to transfer or alienation. He acquired the right over the shares not by any voluntary action but by the operation of the law. In our view the act of the 1st respondent would not amount to the wilful disobedience. The proceedings under the contempt of Courts Act are quasi criminal in nature and the proof required to punish a person is similar to the proof required in criminal cases. The respondents are entitled to all safeguards/rights which are provided in Criminal Jurisdiction.



The Hon'ble Apex Court in ***Kanwar Singh Saini v. High Court of Delhi***, reported in **(2012) 4 SCC 307** had held as follows:

“38. The contempt proceedings being quasi-criminal in nature, the standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures. In Debabrata Bandhopadhyaya v. State of W.B. [AIR 1969 SC 189 : 1969 Cri LJ 401] , this Court observed as under: (AIR p. 193, para 9)

“9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. ... Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

10. We find that when two interpretations are possible then the benefit has to enure in favour of the respondents. The first respondent in this case had by the operation of law acquired the right over the shares. The transmission in his



name is a consequential act and in our view would not amount to wilful disobedience of the order of this Court. In the instant case, the question as to whether the transmission of shares would amount to a transfer or alienation can have two answers. One in favour of the respondents and the other in favour of the petitioners. In such a situation, we cannot hold the respondents guilty of contempt. Hence, the contempt petition deserves to be dismissed.

11. Accordingly, the Contempt Petition is dismissed.

(V.M.V.,J)

(S.M.,J)

30.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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**V.M.VELUMANI,J.
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SUNDER MOHAN,J.
dk**

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