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Cont.P.No.237 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Cont.P.No.237 of 2020

1.Chennai Port Trust,
Rep. by its Chairman
Rajaji Salai,
Chennai – 600 001.

2.The Chief Mechanical Engineer
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

...Petitioners

Vs.

1.Anil H. Lad
Rep. by its Senior Executive Officer,
M/s. V.S. Lad & Sons,
House of Lad's
Palace Road,
Sandur,
Bellary District,
Karnataka – 583 101.

2.M.M.Chishty,
The General Manager,
Punjab National Bank,
Large Corporate Branch,
Centenary Building, No.28, M G Road,
Bangalore 560 001.
[impleaded as party 2nd respondent
as per the order of this court
dated 27.02.2020 made in
Sub.Appln(OS)No.202 of 2020



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....Respondents

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents for the Contempt of court for non-compliance and dis-obedience of the orders of this Hon'ble Court in WMP.27796 of 2017 in W.P.No.29399 of 2010 dated 13.10.2017.

For Petitioner : Mr.R.Sankara Narayanan
Additional Solicitor General
for Mr.M.R.Dharani Chander
For Respondents : Mr.Satish Parasaran, Senior Counsel - R1
for Mr.M.S.Murali for
M/s R & P Partners
Mr.V.Bharathidasan - R2
for Mr.M.L.Ganesh

ORDER

Heard Mr.Sankara Narayanan, learned Additional Solicitor General appearing for Mr.M.R.Dharani Chander, learned counsel for Chennai Port Trust, Mr.Satish Parasaran, learned Senior Counsel appearing for Mr.M.S.Murali, learned counsel for the contemnor and Mr.V.Bharathidasan, learned counsel appearing for the Bank.

2. For brevity, the petitioner in the Writ Petition is referred to as 'company' and the respondent/Chennai Port Trust is referred to as 'Port Trust'/'CPT'. The Bank is not arrayed as respondent in the Writ Petition, but is arrayed R2 in this Contempt Petition.

3. The relevant sequence of dates and events as necessary to decide this Contempt Petition are as follows:



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W.P.No.29366 of 2010 was filed by the first respondent in this Contempt Petition seeking a Writ of Certiorari quashing the demand of rent for space made available by the CPT for storage of iron ore/coal.

4. When the Writ Petition had come up for admission on 22.12.2010, a learned single Judge of this Court had granted interim injunction protecting the interests of the company. This injunction was extended on 31.01.2011 upon condition that the bank guarantee furnished by the petitioner be kept alive till the disposal of the Writ Petition.

5. Admittedly, the petitioner had renewed the bank guarantee, which has a tenure of one year, from time to time, keeping it alive till 30.09.2017. In the meanwhile, CPT has moved a vacate stay petition before this Court and have separately written to the company on 09.08.2017, marking a copy of the letter to the Bank, bringing to the notice of the company that the bank guarantee was due to expire on 30.09.2017 and requesting that the company extend its validity for another 12 months.

6. Despite a reminder from the Bank to pump in necessary funds to keep the bank guarantee alive, the company, ostensibly for the reason that it had no resources, did not do the needful. As a result, the bank guarantee expired on 30.09.2017. CPT is thus, admittedly, aware of the fact that the expiry of the bank guarantee was imminent on 30.09.2017, and in the considered view of the



Court ought to have taken necessary and timely steps to protect its interests.

Such steps could assume various measures, such as approaching this Court well in time to secure orders to protect its interests or directing the Bank to enforce the guarantee upon expiry and if the same was not re-activated by the company, among others. However, nothing was done in the matter.

7. When the vacate stay application came up before this Court on 13.10.2017, this Court vacated the interim injunction. The operative portion of the order, being paragraph 9, is extracted below:

9. Although sufficient time was given to the writ petitioner company to extend the validity of the bank guarantee, it appears that no effort has been taken either to extend the validity of the bank guarantee or to give proper instructions to their counsel. Since this Court, vide its order dated 31.01.2011, extended the interim order with a condition that the bank guarantee shall be kept alive till the disposal of the writ petition and such condition having not been complied with by the writ petitioner company, this court is of the considered view that the interim injunction granted by this Court, cannot be given effect to. Accordingly, the interim injunction granted by this court vide order dated 22.12.2010 in M.P.No.2 of 2010 in W.P.No.29366 of 2010 shall stand vacated. It is open to the petitioner/Chennai Port Trust to invoke the bank guarantee and encash the same as it deems fit.

8. It is as against the aforesaid order that CPT alleges contempt, which allegation, in my view, is misconceived for more than one reason. Firstly, the petition has been filed only in 2020 which is beyond a period of one year from



the date of alleged contempt as stipulated under Section 20 of the Contempt of Courts Act, 1971. No explanation is set out in regard to the delay and this would well suffice to dismiss this Contempt Petition. However, seeing as submissions have been made on the merits of the matter as well, I proceed to address the same.

9. The interim order granted by this Court and extended from time to time was conditional, i.e., the company was protected from coercive recovery subject to the bank guarantee being kept alive. Thus, it is, in my considered view, incumbent upon CPT to ensure that its interests were protected by corresponding with the bank or better, impleading the bank in order that the status of the bank guarantee could be ascertained pending Writ Petition. This was not done.

10. Though the company citing paucity of funds, would submit that it was unable to renew the bank guarantee, such non-renewal does not, in my considered view, amount to contempt as the renewal of bank guarantee is a pre-condition for grant of interim injunction. If the condition were not complied with, as in this case, interim injunction would, as a consequence, lapse. It has, in fact, been vacated by this Court under order dated 13.10.2017. The trajectory of events do not establish or reveal contempt, warranting any action in this regard.



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11. A specific argument put forth by CPT is that it can only take action pursuant to 30.09.2017, as it was only on that day that the bank guarantee expired and the interests of the CPT were protected till then. This argument does not appeal for the reason that it is for the Port Trust to have adopted any number of measures that were in its arsenal to have protected its interests prior to the expiry of the bank guarantee. If it were going to wait till the 12th hour and beyond to seek remedy, it has only itself to blame and has to face the consequences of such inaction.

12. It is not for the Court or the other parties to suggest the measures available and possible. If at all, the Port Trust was of the view that the order of the Court required clarification, such clarity ought to have been obtained from the Court at the relevant point in time and not in a contempt petition that requires it to establish the commission of an act amounting to contempt.

13. In light of the discussion as above, this Contempt Petition is dismissed. No costs.

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Index : Yes/No

Speaking Order

Neutral Citation: Yes



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