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Sub Application(OS).Nos.192 & 239 of 2023

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in

CONT P.No.625 of 2021

P.VELMURUGAN, J.

Sub Application has been filed to reopen the Contempt Petition in Contempt Petition No.625 of 2021.

2. Sub Application has been filed to direct the third respondent police to detain the first and second respondent for the offence of contempt.

3. The learned Counsel for the petitioner would submit that the present Sub Application in Sub Application(OS).No.192 of 2023 has been filed to reopen the above said Contempt Petition No.625 of 2021 which was disposed by an order dated 29.04.2022, stating that the Order dated 20.04.2022 passed by this Court had still not been complied with and gave liberty to the Applicant to take appropriate steps in the manner known to law. He further submitted that in pursuance of the order dated 20.04.2022 passed in the Contempt Petition, the respondent had filed a Memo on 29.04.2022 before this Court stating that they don't have any other unencumbered assets standing in the name of the respondents 2 and 3. On 29.04.2022, this Court disposed of the Contempt Petition stating that the order dated 20.04.2022 passed by this Court has still



not been complied with and gave liberty to the petitioner to take appropriate steps. This Court gave an ample opportunity to the Contemnors/Respondents to comply with the directions of this Court. Despite that the Contemnors/Respondents ignored to comply with the same, the Contemnors/Respondents repeatedly tried to defeat the orders of this Court and adopted similar attitude in the Arbitration proceedings pending before the Arbitrator and also filed various applications in the Arbitration proceedings. The purpose is only to defeat the order that had been obtained by the applicants.

4. He would further submit that the Contemnors/Respondents have suppressed the fact they purchased the luxury cars on 09.08.2021 for an amount of Rs.97 lakhs and also luxurious foreign trips were also made. It clearly shows that the Contemnors/Respondents have means and capacity to furnish bank guarantees before this Court in terms of Section 9 of the Arbitration Act and also comply with the Order dated 29.10.2021 passed in the Contempt Petition. The Contemnors/Respondents also suppressed the fact and to avoid paying the admitted dues of the Applicant, it is prima facie evident from the lackadaisical attitude adopted by the Contemnors/Respondents. The Contemnors/ Respondents did not even make an attempt to comply with Section



9 of the said Act and further, going on making false excuses for not complying with the directions given by this Court in the order dated 29.10.2021. The Contemnors/Respondents suddenly furnished bank guarantees before this Court in January 2022, after repeatedly stating that they did not have the means and capacity to furnish the bank guarantees. Irrespective of the same, the bank guarantees could not be accepted by the Registry of this Court due to non-compliance with procedural requirements. However, despite having sufficient means, they purposely evaded to comply with the order of this Court. Purchasing of the luxury car worth about Rs.97 lakhs and several foreign trips would amply go to show that the Contemnors 1&2/Respondents 1&2 have got sufficient means and suppressed the same. Therefore, the order passed in the Contempt Petition, dated 29.04.2022 has to be re-opened.

5. The learned counsel for the respondents have also filed the Counter Affidavit and submitted that the Contemnors/Respondents have not suppressed any fact and also all the orders of the Court had been duly complied with and since they could not make security due to the effectiveness of the Contemnors/Respondents. Further, he would submit that once the contempt petition is closed, it cannot be reopened and also the reasons stated for reopening are not valid and therefore, the Sub Applications are liable to be



dismissed. He would further submit that the respondent had already declared that they had one car in its list of assets, which was purchased from financial institution and the same was hypothecated in the said institution and thereafter, the new car was exchanged by the said firm under from promotion scheme of the manufacture for which, the respondents firm was not required to pay any money and since the old car was mal-functioning, it was necessary to get the same exchanged particularly, because the same was happening without putting much additional money for the same.

6. He further submitted that the foreign trips were only business trips which were very much necessary for the business of the Contemnors/Respondents, as they are involved in exports of seafood, and unless the Contemnors/ Respondents personally visited various countries, it is very difficult and almost impossible to obtain further orders for exports and therefore, the reasons stated in the Sub Application for reopening the contempt petition is not maintainable. In support of his submissions, the learned Counsel for the respondents had placed the reliance on the following **Judgment**

i) the Hon'ble Supreme Court reported in 1987 (2) SCC 179 in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another held as follows:

"10.The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the



order of dismissal had been finally disposed of on August 10, 1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decide. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

ii) V.K.Jain Vs. The State of Punjab reported in MANU/PH/1111/1994

"16.The learned Counsel for the appellant has cited State of



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Uttar Pradesh V. Shri Brahm Datt Sharma and another, MANU/SC/0711/1987: AIR 1987 SC 943, for the proposition that when C.O.C.P.No.709 of 1991 has been finally decided, then it could not be survived by filing Civil Miscellaneous Applications in the already decided Contempt Petition and on the basis of those Civil Miscellaneous Applications procuring fresh orders, which has been so done by respondent No.2 in the year 1993.

22.It is strange enough to note as to how Shri.K.B.Rai, respondent No.2 could reopen the proceedings by means of a fresh Miscellaneous Application when C.O.C.P.NO.709 of 1991 was finally decided on November 15, 1991 by a learned Single Judge of this Court. It was not permissible to reopen the proceedings which already stood terminated by final disposal of the Contempt Petition by means of a Miscellaneous Application. We get support for this view of onus from a decision of the Apex Court in State of Uttar Pradesh V. Shri Brahm Datt Sharma and another, MANU/SC/0711/1987 : AIR 1987 SC 943. The relevant files speak themselves that in the absence of the orders of contempt mentioned in the impugned order itself and the order, dated August 27, 1993 in which notice was given to the State of Punjab through the newly added Secretary, Public Works Department, Shri.G.S.Cheema, through a Miscellaneous Application in an already decided Contempt



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Petition (COCP No.709 of 1991) on November 15, 1991 by the learned Single Judge of this Court as already mentioned above, the impugned order of promotion could not have been passed. Inspection of the files further revealed that the Authority selecting Shri.K.B.S.Rai as Chief Engineer even misinterpreted the order of the learned Single Judge in the above-referred to Contempt Petition. Even the learned Single Judge had directed the State to consider respondent No.2 for selection to the post of Chief Engineer but had not directed them to appoint him any circumstance. Even otherwise, no direction could be given by the learned Single Judge in a Contempt Petition to consider/appoint respondent No.2 on particular considerations or from a particular date. Even if the respondent-State considered it as a direction of the learned Single Judge in the Contempt Petition decided on November 15, 1991, the effect of that order was washed off by the subsequent orders of this Court in Civil Writ Petition No.11016 of 1991 and Civil Writ Petition No.3021 of 1992, particularly when these petitions were filed by Shri. K.B.Rai, respondent No.2 himself. It is specifically stated in Civil Writ Petition No.11016 of 1991 as under:

"Under these circumstances no case to interfere is made out on writ jurisdiction side, especially when some enquiry regarding misappropriation of Government money



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against the petitioner is going on and charge-sheet was issued on 23.07.1991 and post of Chief Engineer is not a promotional post but a selection post. Dismissed at this Stage."

iii) *V.Saroja Vs. the Government of Tamil Nadu and Ors. reported in MANU/TN/1998/2020*

"13. Even thereafter, in spite of such indulgence granted by this Court by closing the said contempt petition, the petitioner's husband did not utilize the directions issued, but chose to file a sub-application in the said contempt petition in Sub A. No.26 of 2017 seeking to direct the second respondent to accept the guideline value at the rate of Rs.100/- per sq.ft. This sub application was elaborately heard and ultimately, it was held that the petitioner's husband could not reopen the said contempt petition and that the same was not permissible. The said sub-application was closed on 14.7.2017 wherein the relevant portions read thus :

"This sub-application has been filed by the petitioner in the main contempt petition praying for a direction upon the second respondent to accept the payment of a sum of Rs.3,60,000/- as sale consideration calculated at Rs.100/- per sq.ft., and to execute and register sale deed in his favour.

3. Thus, the present attempt of the petitioner appears to be



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to extend the scope of the writ petition as well as the direction issued in the contempt petition. The contempt petition having already been closed, the present attempt of the contempt petitioner to reopen the same by way of this sub-application is not permissible."

iv) Telangana Non-Gazetted Mutually Aided Co-operative Housing Society Ltd. Vs. State of A.P. reported in MANU/AP/1323/2014

"12.Challenging the same, first petitioner herein filed letter patent appeal to the Division Bench contending that once C.C. is closed, the Court has no power and jurisdiction to reopen the same and accepting the said contention, Hon'ble Division Bench passed the following order:

13. Having heard the learned counsel for the parties, we are of the view that under the Contempt of Courts Act, 1971 (for short the Act), we do not find that there is any jurisdiction to the Court to reopen the application, which has already been closed by it. On the contrary, it appears to us that when a contempt case is closed, it cannot be revived by an application of party and no adverse findings or orders can be passed against third parties, who are not impleaded. Therefore, it appears to us that when the Court cannot reopen the matter in question, the Hon'ble Single Judge could not have passed the impugned order, in fact, it is the



second point, which was urged by the learned Senior Counsel appearing on behalf of the appellants. Even on that score, the order so passed by the Hon'ble Single is not sustainable in the eye of law and the order of the Hon'ble Single Judge is liable to be set aside on that ground. We further keep it on record that at the time of closing the contempt case by the Hon'ble Single Judge, the power which has been granted by the statute under Section 10 of the Act to punish the contemnors has already been exhausted and thereby, it appears to us that once when an order was passed by the Hon'ble Single Judge by closing the said contempt case, it has to be taken into account that the proceedings for all the purposes has already been concluded and cannot be reopened again."

v) *K.A.Ansari and another Vs. Indian Airlines Limited reported in 2009 (2) SCC 164*

"17.It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning.



said fact came to know by the petitioner only at a later point of time and therefore, they have filed a present Sub Application to reopen the Contempt Petition.

9. A perusal of the Counter Affidavit filed by the Contemnors/ Respondents, it is seen that they admitted that they purchased the car, however they stated that the same was replaced by the old car and raised the funds from the financial institution and also hypothecated the said car. The financial institution where they obtained the loan and all the foreign trips, are necessary that they spent it only for business trips and not luxury.

10. Now, the Contemnors/Respondents admitted about the purchase of the car and went to foreign trips and whether it has been done or not, the car was purchased in the funds of the petitioner or through a loan and replacing the mal-functioning of the old car which are to be decided only after re-opening the Contempt Petition and also whether the trip made by the Contemnors/Respondents are essential one, have to be decided. The citations referred to by the learned counsel for the respondent are not applicable to the present case. The facts and circumstances of the present case are distinguishable from those cases referred to by the learned counsel for the respondents on records. The Contempt petition was not decided on merits.



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11. Therefore, on a perusal of the affidavit filed by the applicant and also Counter Affidavit filed by the respondents, this Court find that there are Prima facie materials to re-open the Contempt Petition in Cont.P.No.625 of 2021. Therefore, this Sub Application is allowed and Contempt Petition is also re-opened for hearing.

12. As far as Sub Application No.239 of 2023 is concerned, both the petitioner and respondents are directed to file the relevant documents and this application will be heard later.

13. Sub Application No.192 of 2023 is Allowed. Contempt Petition No.625 of 2021 is reopened.

14. List Cont. P.No.625 of 2021 and Sub Application No.239 of 2023 for hearing on 10.01.2024.

19.12.2023

Index : Yes/No
Speaking order/Non-speaking order
Netural Citation: Yest/No
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