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LPA No.2 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Letters Patent Appeal No. 2 of 2024
and
C. M. P. No. 3291 of 2024

1. Mr. Rohan Daniel Mukherjee
Partner
M/s. Rising Tide
8/1/H Diamond Harbour Road
Kolkata - 700 027

2. M/s. Arnab Daniel Mukherjee
Partner
M/s. Rising Tide
8/1/H Diamond Harbour Road
Kolkata - 700 027

.. Appellants

Versus

M/s. The Waterbase Limited
A Company registered under the Companies Act
1956 and having its registered office at
Ananthapuram Village, Thotapalli
Gudur Mandal, Nellore District - 524 344
rep. by its authorised signatory
Mr. R. Suresh Kumar
Also at Thapar House
No.37, Montieth Road, Egmore
Chennai - 600 008

.. Respondent



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WEB COPY Letters Patent Appeal is filed under Clause 15 of The Letters Patent against the order dated 19.12.2023 passed by the learned Judge in Sub Application No. 192 of 2023 in Contempt Petition No. 625 of 2021.

For Appellants : Mr. A.L. Somayaji, Senior Advocate
for Mr. T. Saikrishnan

For Respondent : Mr. M.S. Krishnan, Senior Advocate
for Mr. Anirudh Krishnan

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

The appellants have come forward with this Letters Patent Appeal questioning the correctness of the order dated 19.12.2023 passed by the learned Judge in Sub Application No. 192 of 2023 in Contempt Petition No. 625 of 2021.

2. For the purpose of disposal of this appeal, certain facts, which are absolutely germane and necessary, are elucidated hereunder.

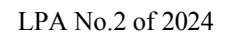
3. The respondent is a company engaged in the business of manufacture and sale of shrimp/prawn feed and other allied products such as farm care products, shrimp hatchery and shrimp processing and they have set up their manufacturing facility in Nellore. Similarly, the appellants are partners



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of the firm called M/s. Rising Tide, a registered Partnership firm constituted under the Indian Partnership Act, 1932. The appellants are also primarily engaged in the business of selling of shrimp/prawn feed, shrimp processing and export of sea food items and they are having their factory located at Kolkatta.

4. During the course of such business, the respondent entered into a Dealership agreement dated 21.12.2018 as well as a Business Term Sheet dated 21.12.2018 with the appellants whereby the respondent herein was appointed as the dealer of the appellants to market, sell and distribute shrimp/prawn feeds and related products. In pursuance of the agreements dated 21.12.2018, the appellants also executed an unconditional and irrevocable Corporate Guarantee dated 21.12.2018 in favour of the respondent for a sum of Rs.6 crores. During March 2019, dispute arose between the appellants and the respondent alleging that the appellants started defaulting in making payments against the invoices raised by the respondent. There were exchange of communications between the parties and ultimately, the respondent filed O.A. No. 1136 of 2019 praying for grant of an order of interim injunction restraining the appellants from dealing with any of their movable or immovable properties. That apart, they also filed Application No. 9720 of 2019 for a direction to the appellants to furnish a bank guarantee to the tune of



In addition, another application in O.A. No. 138 of 2020 has been filed praying to grant an interim injunction restraining the appellants from alienating or encumbering or creating any third party interest in respect of the shares held by them in their capacity as partners of M/s. ASF Exports (now known as M/s. Rising Tide) in Matara Aquaculture West Bengal Private Limited, pending disposal of the arbitration proceedings.

6. Aggrieved by the order dated 31.07.2020, the appellants have filed



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O.S.A. No. 240 of 2020 and by judgment dated 15.02.2021, a Division Bench of this Court disposed of the appeal with an observation that the ground relating to absence of arbitration clause in the agreement entered into between the parties cannot be decided in the appeal and it can only be decided in the Original Petition.

7. Pursuant to the aforesaid order dated 31.07.2020, the respondent has filed OP No. 441 of 2020 invoking Section 11 of the Arbitration and Conciliation Act, 1996, in which, an Arbitrator was appointed to adjudicate the dispute *inter se* between the parties.

8. In the meantime, the respondent issued notices dated 16.09.2020 and 22.02.2021, calling upon the appellants to comply with the order dated 31.07.2020 passed by the learned Judge and to furnish bank guarantee of Rs.5,14,03,344/-. However, the appellants did not comply with the order dated 31.07.2020. Therefore, the respondent initiated contempt proceedings in Contempt Petition No. 625 of 2021.

9. On 04.10.2021, when the contempt petition came up for hearing,



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the learned Judge directed the appellants to deposit Rs.1 crore to the credit of A. No. 9720 of 2019 on or before 27.10.2021. However, it was stated that the appellants did not comply with the said order dated 04.10.2021. Therefore, the respondent preferred Sub Application No. 517 of 2021 in Contempt Petition No. 625 of 2021, stating that the appellants, on the one hand, pleaded their inability to deposit the sum of Rs.1 crore, on the other hand, they have purchased high end cars for more than Rs.1 crore. Stating so, the respondent prayed for a direction to appoint an Advocate Commissioner to seize and sell the vehicles mentioned in the Schedule to the Petition and to deposit the sale proceeds into this Court to the credit of the application.

10. On 29.10.2021, when the Sub-Application No. 517 of 2021 along with other applications were taken up for hearing, the learned Judge was of the view that the appellants can be directed to deposit a sum of Rs.1 crore, as ordered earlier, before 22.11.2021 and the amount so deposited should be kept in a fixed deposit and would not be released to anyone till the rights of the parties are crystallised in arbitral proceedings. However, at the request of the learned counsel for the appellants, the learned Judge directed the appellants to furnish bank guarantee for Rs.1 crore, instead of cash deposit, on or before 15.12.2021. Admittedly, the said order dated 29.10.2021 has not been



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complied with by the appellants.

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11. Thereafter, when the Contempt Petition No. 625 of 2021 was taken up for consideration, the learned Judge recorded that the appellants have furnished bank guarantee only to the tune of Rs.25 lakhs and the order of the learned Judge dated 31.07.2020 to furnish bank guarantee for Rs.1 crore has not been complied with and therefore, the act of the appellants would clearly show that they have wilfully disobeyed the order and thereby committed contempt of court. It was also stated that due to non-compliance of some requirements, the said bank guarantee for Rs.25 lakhs was returned by the Registry. Taking note of all these factors, the learned Judge directed the appellants to pay Rs.10,00,000/- to the respondent as compensation on or before 28.04.2022; and further directed them to furnish bank guarantee for Rs.75 lakhs on or before 20.05.2022 and to furnish the details of security for the remaining amount, failing which, the respondent was at liberty to initiate steps for attachment or for detention. Subsequently, on 26.04.2022, when the said contempt petition was listed, it was clarified by the learned Judge that Rs.75 lakhs mentioned in the order dated 20.04.2022, was substituted as Rs.1 crore, as the bank guarantee furnished for Rs.25 lakhs has already been returned by the Registry for complying with certain defects. Subsequently,



when the contempt petition was listed for hearing, the learned Judge passed the following order:

"3. When the matter is taken up for hearing today (29.04.2022) it was reported that the order of this Court dated 20.04.2022 has not been complied with. Therefore, the petitioner is at liberty to proceed further in the manner known to law.

4. Accordingly, this Contempt Petition is disposed of."

12. Pursuant to the order dated 29.04.2022 passed by the learned Judge, the respondent herein has filed Sub Application No. 192 of 2023 praying to re-open the contempt petition stating that when the appellants have not complied with the order passed by the learned Judge on 31.07.2020, the closure of the contempt petition has caused serious prejudice to the respondent. The respondent has also filed Sub Application (OS) No. 239 of 2023 praying to issue appropriate direction to the police to detain the appellants for the offence of contempt of the order dated 29.04.2022 passed by the learned Judge. The learned Judge, after hearing both sides, vide order dated 19.12.2023, allowed the sub application no.192 of 2023 and consequently, reopened the contempt petition; and directed the Registry to post contempt petition no. 625 of 2021 along with sub application no. 239 of 2023 for hearing on 10.01.2024. The relevant paragraphs of the order dated 19.12.2023 are quoted below for ready reference:

"8. From a perusal of the records, it is seen that, admittedly, the applicant filed Contempt Petition No. 625 of 2021, and the said



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Contempt Petition came to be disposed of on 29.04.2022. Subsequently, the petitioners have filed the present Sub-Application for reopening the contempt on the ground that the contemnors/respondents had suppressed the facts. They are having sufficient means and despite having sufficient means, they evaded to comply with the order of this Court. The Applicant later came to know about the fact that the petitioner purchased a luxury car worth about Rs.97 lakhs and also the respondents made several foreign trips. Unless the contemnors/ respondents have means, it is not possible to purchase the luxury car worth near about Rs.1 crore and also made several foreign trips and therefore, the 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 have purchased the car, however, they have 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 one 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 record. The contempt petition was not decided on merits.*

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 is concerned, both the petitioner and the 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."*



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13. Challenging the aforesaid order dated 19.12.2023 of the learned Judge, the present Letters Patent Appeal is filed by the appellants before this court.

14. The learned Senior counsel appearing for the appellants submitted that there was no provision under law for reopening a contempt petition which had been disposed of, on merits. If there is any grievance on the part of the respondent in the order dated 29.04.2022, the remedy is to file appropriate application in the manner provided under law and the order dated 19.12.2023, reopening of the contempt petition, is legally not sustainable. It is further submitted that whether the appellants have got the means to purchase luxury cars or undertake overseas trip cannot be examined by the learned Judge in the contempt proceedings. That apart, the appellants have admittedly paid a sum of Rs.25 lakhs out of Rs.1 crore, besides remitting Rs.10 lakhs imposed as compensation. It is the fervent plea of the learned Senior counsel for the appellants that the appellants are not resourceful enough to comply with the order passed by the learned Judge and having accepted it, the learned Judge has closed the contempt petition, which cannot be reopened under law. When the learned Judge closed the contempt petition with liberty to proceed further in the manner known to law, the respondent is estopped from filing an application



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to reopen the same to deal with the appellants for non-compliance of the order of the learned Judge. On the one hand, the respondent moved the learned Arbitrator with the very same relief. In any event, the sub application filed by the respondent ought not to have been entertained by the learned Judge to revive the contempt proceedings. It is also submitted that the Sub Application filed by the respondent to reopen the contempt proceedings contains the very same allegations which were earlier raised and were already considered by the learned Judge, while closing the contempt petition. While so, the sub application filed by the respondent to reopen the contempt petition is hit by the principles of resjudicata and the respondent is disentitled to seek for such relief. Thus, according to the learned senior counsel, when the learned Judge, on exercise of discretion, closed the contempt petition, the respondent has no right to seek for reopening the same simply because he is not satisfied with the order passed by the learned Judge. The learned Judge did not see that after disposal of the contempt petition, the Court becomes *functus officio* and therefore, the sub-application to reopen the contempt petition is not maintainable. With these submissions, the learned Senior counsel prayed for setting aside the order of the learned Judge and allowing this Letters Patent Appeal.



15. Per contra, the learned Senior counsel for the respondent invited the attention of this Court to series of orders passed by the learned Judge and contended that inspite of extension of time granted, the appellants have not complied with the order passed by the learned Judge. Even though the learned Judge, on request, directed the appellants only to furnish bank guarantee for Rs.1 crore, instead of cash deposit, yet, they did not comply with such direction. The learned Judge, having satisfied with the plea of the respondent that the appellants are having the wherewithal to comply with the order, has observed that the appellants wilfully and deliberately failed to comply with the order and therefore, rightly reopened the contempt petition. The respondent has also filed several documents to show that the appellants are having the wherewithal and resourceful enough to comply with the direction to furnish bank guarantee. Thus, the deliberate inaction on the part of the appellants in not complying with the order, would only compel the learned Judge to reopen the contempt petition to specifically examine as to whether the appellants have deliberately violated the directions issued by the learned Judge to deposit the amount within a specified time limit. The learned Senior counsel therefore submitted that the order of the learned Judge does not call for any interference at the hands of this court.



16. We have heard the learned Senior counsel for the appellants and the learned Senior counsel for the respondent and also perused the materials placed.

17. The factual sequences that had unfolded in this case are that in the applications taken out by the respondent, the learned Judge has passed a conditional order on 31.07.2020 directing the appellants to furnish a bank guarantee to the tune of Rs.5,14,03,344/- within a period of two months. The said order dated 31.07.2020 was challenged by the appellants by filing O.S.A. No.240 of 2020, but the Division Bench of this Court, by judgment dated 15.02.2021, did not interfere with the order dated 31.07.2020, while leaving it open to the parties to adjudicate the dispute in the original petition for appointment of an arbitrator. Even thereafter, the appellants did not comply with the order dated 31.07.2020 passed by the learned Judge and therefore, the respondent preferred Contempt Petition No. 625 of 2021 along with sub applications, in which, by order dated 29.10.2021, the appellants were directed to furnish bank guarantee for Rs.1 crore on or before 15.12.2021. However, the appellants stated to have furnished bank guarantee to the tune of Rs.25 lakhs and not for Rs.1 crore; and that, the said bank guarantee furnished for Rs.25 lakhs was also returned by the Registry for certain defects. Having



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observed that though the appellants have granted sufficient time, they have not furnished the bank guarantee and thereby disobeyed the order of this court, which amounts to contempt of court, violated committed the contempt of court, the learned Judge, by order dated 20.04.2022, directed the appellants to pay Rs.10 lakhs as compensation to the respondent on or before 28.04.2022, besides furnishing bank guarantee for Rs.1 crore on or before 20.05.2022. Though the appellants have paid the compensation sum of Rs.10 lakhs, they did not furnish bank guarantee for the sum of Rs.1 crore. By recording the same, the learned Judge by order dated 29.04.2022, has disposed of the contempt petition, granting liberty to the respondent to proceed further in the manner known to law. Aggrieved by the closure of the contempt petition, the respondent filed Sub Application No. 192 of 2023 in Contempt Petition No. 625 of 2021, seeking to reopen the contempt petition, stating that the order dated 29.04.2022 closing the contempt petition has caused serious prejudice to them. It was further stated by the respondent that when the order passed by the learned Judge has not been complied with by the appellants, closure of the contempt proceedings is unwarranted. Taking note of the same, the learned Judge allowed the sub application and reopened the Contempt Petition, by order dated 19.12.2023, which is impugned in this Letters Patent Appeal.



WEB COPY18. Though the appellants questioned the order passed by the learned Judge to revive the contempt petition, this court is not inclined to accept the same. On considering the plea of the respondent that the contempt petition has not been decided, on merits, the learned Judge, by order dated 19.12.2023, has revived the contempt proceedings against the appellants. It is an admitted fact that the appellants did not comply with the earlier direction issued by the learned Judge, furnishing bank guarantee to the tune of Rs.1 crore, despite several opportunities were provided to them. In such circumstances, the learned Judge came to the conclusion that re-opening the contempt petition for examining as to whether the non-compliance of the directions issued by the learned Judge, is wilful or otherwise, is justifiable. The position of law is that Article 215 of the Constitution gives the power to High Court, which is a court of Record, to punish for contempt. It is also to be kept in mind that justice must not only be done, but also must be seen to be done by all concerned. Therefore, we do not find any infirmity in the order so passed by the learned Judge.

19. In the result, the Letters Patent Appeal is dismissed. However, liberty is granted to the appellants to place all the materials to substantiate their stand before the learned Judge. No costs. Consequently, connected



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miscellaneous petition is closed.

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J.]

[R.M.D,J.]

[M.S.Q,

15.02.2024

Internet : Yes

Neutral Citation : Yes/No

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