



Cont.P.Nos.2036 to 2038 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Cont.P.Nos.2036 to 2038 of 2023
and
Sub.Applns.No.338, 339, 340, 373, & 374 of 2024

V.Venkatesh

... Petitioner [in all Cont.P's]

Vs.

K.Ramya

... Respondent [in all Cont.P's]

PRAYER in Cont.P.No.2036 of 2023: Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971 to punish the respondent for willfully disobeying the fair and decreetal order dated 03.08.2021 passed in IA.3/2019 in OP 3344/2019 by the Hon'ble IV Additional Principal Judge, Family Court, Chennai.

PRAYER in Cont.P.No.2037 of 2023: Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971 to punish the respondent for willfully disobeying the fair and decreetal order dated 03.10.2017 passed in IA.No.2283/2017 in OP No.93/2017 and all improvements on the same by the Hon'ble IV Additional Principal Judge, Family Court, Chennai.



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PRAYER in Cont.P.No.2038 of 2023: Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971 to punish the respondent for willfully disobeying the fair and decreetal order dated 03.05.2021 passed in IA.No.7/2021 in OP.No.3344/2019 by the Hon'ble IV Additional Principal Judge, Family Court, Chennai.

For Petitioner	: Mr.G.Rajagopalan Senior Counsel for Mrs.Geetha Ramaseshan [in all Cont.P's]
For Respondent	: Mr.N.L.Rajah Senior Counsel for Mr.M.Ragul Kousik [in all Cont.P's]

COMMON ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Three contempt petitions have been instituted to punish the respondents for wilfull disobedience of the interim orders passed by the Family Court, Chennai in I.A.No.2283/2017 in OP 93/2017, I.A.No.03/2019 in OP No.3344/2019 and I.A.No.07/2021 in OP.No.3344/2019.

2. Admittedly, the matrimonial dispute exist between the



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contempt petitioner and the respondent. Since we are dealing with the contempt petition, we are not inclined to go into the merits of the matrimonial dispute, which all are expected to be adjudicated before the Court concerned.

3. Mr.G.Rajagopalan, the learned Senior Counsel for the petitioner would submit that the present contempt petitions are filed under Section 10 of the Contempt of Courts Act, 1971.

4. Section 10 of Contempt of Courts Act, 1971 contemplates power of High Court to punish contempts of subordinate Courts. Therefore, High Court is empowered to deal with the contempt petition in respect of interim orders passed by the Family Courts or any other courts subordinate to the High Court concerned.

5. In respect of delay in filing the contempt petition against the interim order passed in the years 2017 and 2021, the learned Senior Counsel would submit that it is continuing cause of action since interim orders are



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relating to visitation rights preventing the child from taking out of Chennai City and another order is also relating to visitation. The relieves granted by the family courts are continuous. Therefore, each and every violation are periodically is to be taken into consideration, while reckoning the period of limitation for institution of contempt petition.

6. The learned Senior Counsel reiterated that the petitioner, father of the minor boy aged about 9 years is prevented from exercising his visitation right as ordered by the Family Court and such right is to be protected and the respondent having violated the orders is liable to be punished under the contempt of Courts Act. The other grounds raised in the contempt petition relating to the matrimonial disputes deserve no merit adjudication from the hands of this Court.

7. Mr.Mr.N.L.Rajah, the learned Senior Counsel for the respondent would strenuously oppose by stating that the contempt petitions are not entertainable. It is a matrimonial dispute between husband and wife and such disputes would be insufficient for invoking the powers conferred



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on the High Court under Section 10 of the Contempt of Courts Act.

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8. For each and every violation, Section 10 of the Contempt of Courts Act cannot be invoked, when an alternate remedy as contemplated both under the Special enactment and under the Code of Civil Procedure. Regarding the visitation right and other disputes, it is for the petitioner to adjudicate the same before the Court concerned. Thus, the present contempt is unnecessary and liable to be rejected.

9. In support of the contention, the learned Senior Counsel Mr.N.L.Rajah would rely on the Judgment of the Division Bench of this Court in the case of *Jayaprakash vs. Most Rev.Dr.B.P.Sugandher* reported in **2006 (2) CTC 729** and in the case of *A.Ramakrishnan vs. Vijayalakshmi & Ors.*, reported in **2016 (2) L.W. 781**.

10. Considering the arguments as advanced between the parties to the *lis* on hand, preliminarily the scope of Section 10 of the Contempt of Court Act is to be exercised on certain exceptional circumstances, whether the High Court formed an opinion that an alternate remedy contemplated under the Special Act is ineffective or would not provide any adequate



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remedy to the parties.

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11. Exercise of the powers conferred under Section 10 of Contempt of Courts Act need not be exercised in a routine manner, so as to make an alternate remedy contemplated under the Special enactments ineffective. The Rule is to exhaust the remedies contemplated under the Special enactments and general law can be invoked such enactments are inadequate for the purpose of redressal of the grievances of the parties.

12. It is a discretionary power conferred on the High Court and to be exercised cautiously and not in a routine manner. Even the powers conferred under Article 215 of the Constitution is to be exercised in just cases and cannot be exercised in order to punish a person for violation of certain interim orders passed by the Courts subordinate to the High Court.

13. Exercise of restrain while invoking contempt jurisdiction is of paramount importance and in the event of entertaining contempt petitions under Section 10 in a routine manner, it will open pandora's box and for



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each and every violation of the interim orders of the sub-ordinate Courts, the parties would be tempted to file a contempt petition before the High Court. Therefore, no person can claim that a contempt under Section 10 as a right. It is for the High Court to exercise its discretion while appreciating the facts and circumstances whether to entertain contempt under Section 10 of the Act or not.

14. The Judgment relied on in the case of **Jayaprakash** cited *supra* is amply clear. The Division Bench relying on the earlier Judgments in the case of **Ramalingam v. Mahalinga Nadar**, reported in **AIR 1966 Mad.21** and in the case of **Perspective Publications (Pvt).Ltd. vs. State of Maharashtra**, reported in **AIR 1971 SC 221**, the following observations are made:

"5. *Whether a petition of this nature can be filed as a matter of course without approaching the Civil Court which passed the interlocutory order, was sought to be assailed by the counsel that even though applications are filed before the Subordinate Court under the Code to punish the alleged contemnors in case of contempt of its order, the Subordinate Courts are unwilling to proceed with the matter, stating that the same can be taken up along*



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*with the suit and therefore, the affected persons are forced to knock at the doors of the High Court. We are not inclined to subscribe to a general plea of this nature. In the instant case, there is no such pleading to that effect. On the contrary, an application as contemplated under Order 39, Rule 2-A of the Civil Procedure Code has not been filed before the Subordinate Court. It is not the case of the petitioner/applicant that the Subordinate Court has refused to entertain an application and pass appropriate orders. When such is the case, this Court should not be called upon to take up such applications as a matter of course, as has been done in this case. It is not desirable to exercise the extraordinary jurisdiction of the High Court under Sections 10 and 12 of the Contempt of Courts Act against the alleged contemnor for violation of the order of the Subordinate Court. In this regard, it will be relevant to refer to a decision of our High Court **Ramalingam v. Mahalinga Nadar, AIR 1966 Mad.21**, wherein it has been held as follows:*

"On the contrary, it would be in the interests of justice to exercise contempt jurisdiction, or to commence to do so, only when the facts on record ex facie support such a proceeding; any detailed enquiry must be left to the Court which has passed the order and which is presumably fully acquainted with the subject-matter of its own decree of temporary prohibitory injunction. For this reason, we are of the view that the Order 39, Rule 2(3), (Rule 2-A) of the Civil Procedure Code is a far more adequate and satisfactory remedy in such cases. Again, where the situation is strictly inter parties and third party rights are not involved, it is clearly more desirable that



the Court which made order of injunction, should go into the facts, and ascertain the truth of alleged disobedience and the extent to which it has been willful."

*Further, in **Perspective Publications (Pvt.) Ltd., v. State of Maharashtra, AIR 1971 SC 221**, it has been held as follows:*

"The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice". (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed enquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it [Vide 1964 (68) Cal. WN 148; AIR 1951 Pat. 231; AIR 1966 Mad.21 and AIR 1971 All.231]".



6. While considering the power of the Civil Court in enforcing its order invoking the power under Order 39, Rule 2-A of the C.P.C., a Division Bench of this Court in the case **PVG Industries v. M/s. Premier Industries Drives (P) Limited**, 2004 (5) CTC 332, while confirming the order of one of us (P.K.Misra, J.) held as follows:

"Order 39, Rule 2-A, C.P.C deals with consequence of disobedience or breach of injunction and it contemplates that, "in the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 any Court...may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison...". Thus Order 39, Rule 2-A, C.P.C even contemplates the order of attachment of the property."

It is therefore obvious that the remedy provided under the code as aforesaid is equally effective and efficacious. Unless and until the party concerned is able to show that the remedy provided in the code will not be effective and further depending upon the nature of the injury, its seriousness and the threat it created to the enforcement of the order of the Court, and the public interest of the administration of justice which has been affected is so large that it requires the consideration of the High Court to exercise its inherent power. Petitions of this nature will not as a matter of right be entertained. The Court will be circumspect to invoke the jurisdiction, save and except in special and extraordinary



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*circumstances. Such a reason has been endorsed by a Full Bench of this Court in the decision **Vidya Charan Shukla v. Tamil Nadu Olympic Association**, AIR 1991 Mad. 323.*

7. In the present case, we find that since adequate remedy is available to the petitioner under Order 39, Rule 2-A, C.P.C., it will not be advisable for this High Court to exercise its extraordinary jurisdiction and proceed under Section 10 read with Section 12 of the contempt of Courts Act and interfere with the proceedings of the Trial Court, particularly when the suit is pending and the issues are at large before the Subordinate Civil Court."

15. In the case of **A.Ramakrishnan vs. Vijayalakshmi & Ors.**, reported in **2016 (2) L.W. 781**, the Division Bench of this Court again relied on the case of **Samir Kumar Sarkar v. Maharaj Singh, 1983 Cri LJ (NOC)** observed as follows:

*"25. A Hon'ble Division Bench of the Calcutta High Court in **Samir Kumar Sarkar v. Maharaj Singh, 1983 Cri LJ (NOC) 1**, held that in cases of disobedience or breach of injunction order issued temporarily during pendency of the suit either under Rule 1 or Rule 2 of Order 39, Code of Civil Procedure, it is inexpedient to invoke and exercise contempt jurisdiction. In such cases, action is contemplated by the Court which issued the injunction under Rule 2A of Order 39, Code of Civil Procedure. It was further held that it*



is well settled principle of law that when there is a special law and general law, the provisions of special law prevail over general law and since special provisions and procedure are contained in Code of Civil Procedure itself under Rule 2A of Order 39, Code of Civil Procedure, for taking action for the disobedience of an order of injunction, the general law of Contempt of Court cannot be invoked."

16. Section 18 of the Family Courts Act, 1984 contemplates execution of decrees and orders, which reads as under:

*"18. **Execution of decrees and orders:-** (1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family



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Court which passed it or by the other Family Court or ordinary civil

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court to which it is sent for execution."

17. When the Special enactment contemplates procedure for execution of decrees and orders and it indicates that the decree or an order passed by the Family Court shall have the same force and effect as a decree or an order of Civil Court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, the petitioner ought to have approached the Court concerned for the purpose of redressing his grievances.

18. When the Special enactment contemplates procedure, invoking the General law cannot be encouraged. Special law will prevail over the General law and thus the High Court need not entertain such contempt applications filed against the decree or order passed by the Courts subordinate to the High Court concerned, when such special enactment provide an efficacious remedy for implementation of execution of decree or order passed by such subordinate courts.



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19. Such contempt petitions are not entertainable, in view of the fact that such *inter se* party disputes deserves no consideration from the hands of this Court especially by exercising the contempt jurisdiction under Section 10 of the Contempt of Courts Act. The contempt petitions filed to resolve the inter party disputes would not fall under the ambit of administration of justice. These facts essentially do not warrant adjudication of merits from the hands of this Court. Thus, the parties are at liberty to workout their remedy in the manner contemplated under Law.

20. With the above observations, all the contempt petitions are dismissed.

[S.M.S., J.] [V.S.G., J.]

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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