
(2008) 09 MAD CK 0120

In the Madras High Court

Case No : Contempt Appeal No's. 1 to 3 of 2008 and M.P. No. 1 of 2008

Bell Products Private Limited

APPELLANT

Vs

M.K. Gupta, Proprietor, Sri Balaji Industries

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104, 104(1), 104(2)

Constitution of India, 1950 — Article 136, 215

Contempt of Courts Act, 1971 — Section 17, 19, 19(1), 20

Citation : (2009) 1 MLJ 1014 : (2009) 39 PTC 277

Hon'ble Judges : V. Periya Karupiah, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : S.P. Chockalingam, for the Appellant; G. Rajagopalan for V. Gopalakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The contempt appeals are filed by the plaintiff. The plaintiff manufactures bell pins and bell clips. According to him the

bell trademark is well-known and the colour scheme of the label and overall features are familiar to the general public. Sometime before the filing of

the suit, the plaintiff came to know the defendant is using similar and identical registered trademarks and copyright. Therefore, the suit was filed for

injunction, in respect of trademark, copyright and for accounts and other reliefs. The plaintiff filed applications for interim injunction and also for

appointment of Advocate Commissioner, leave to combine cause of action etc. On 06-11-2006, a common order was passed in application Nos.

4394 and 4395 of 2006 and O.A.Nos.849 to 851 of 2006. Interim injunction was granted for a period of four weeks, i.e., till 04-12-2006. It is

the case of the appellant that this interim injunction was violated. Therefore, the

Contempt petition Nos. 577, 648,649 were filed. These were dismissed and therefore these appeals have been filed.

2. The learned Senior Counsel for the respondent raised a preliminary objection regarding the maintainability of an appeal against an order dismissing the Contempt petition. He also submitted that even on merits the appeal must be dismissed and that the appeal is an abuse of process of law. The learned Counsel for the appellant submitted that not only were the appeals maintainable but they also deserve to be allowed. We will take up both the objections together and examine them.

3. I. Maintainability:

(a) The learned Counsel for the appellant referred to the following cases S. Arumuganainar Senior Manager Transport (South) and Bharath

Petroleum Corporation Ltd. Vs. Jeenath Roadways, and Tamilnad Mercantile Bank Ltd. and Others Vs. Tamilnad Mercantile Bank Shareholders

Welfare Association, where the Division Bench of this Court had rejected the objection regarding maintainability. He also submitted that in P.S.

Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, , the Supreme court had held that a Letters Patent Appeal was maintainable notwithstanding Section 104(i) CPC.

(b) The cases relied on by the respondent are as follows;

(i) State of Maharashtra Vs. Mahboob S. Alibhoy and another,

(ii) D.N. Taneja v. Shri Bhajan Lal 1988 3 SCJ 88

(iii) T. Marappan v. The Executive Engineer and Ors. 1996 II L.W.117

(iv) Major S. Veerasamy Vs. The Management of Andhra Special and Cultural Association,

(v) M. Lakshmi Narayanan and others Vs. The Chairman, Oil and Natural Gas Commission and others,

(vi) S. smmaiah and Ors. v. Andhra Pradesh State Electricity Board 1994 Cri.L.J. 3830

(vii) Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,

(c) We have considered the submissions made on behalf of either parties with regard to the maintainability of the contempt appeal.

(i) The learned Counsel for the Appellant repeatedly urged that we should follow

Sathappan's case and not Midnapore case, since the former decision was a judgment of a larger bench. But Sathappan's case dealt with the effect of Section 104(2) CPC vis-a-vis Clause 15 of the Letters patent and held that, ""If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie."" , and did not specifically deal anywhere with regard to the appealability of an order dismissing a contempt petition. It is true that in Sathappan's case the Supreme Court dealt with other Acts too as for eg., Guardian and Wards Act, Arbitration Act etc. In fact, in Sathappan's case the Supreme Court held that, ""Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2)."" A contempt petition is different from other proceedings. Here really the issue is between the Court and the Contemnor. That is why the Contemnor, who is punished has the right to appeal against the order, but when a contempt petition is dismissed the court is really saying that its order has not been violated or disobeyed. So there can be no appeal against that. This is explained in Taneja's and Midnapore case. Therefore we are of the opinion that we are bound to follow Midnapore, which is on the very same point.

(ii) The following paragraphs from Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, are relevant:

Re: Point (i)

10. Section 19 of the Contempt of Courts Act, 1971 ("the CC Act" for short) provides for appeals. Relevant portion of Sub-section (1) thereof is extracted below:

19. (1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

The scope of Section 19 has been considered by this Court in Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High

Court, , Purshotam Dass Goel Vs. Hon''ble Mr. B.S. Dhillon and Others, , Union of India v. Mario Cabral e Sa : AIR1982SC691 D.N. Taneja v.

Bhajan Lal (cited supra) , State of Maharashtra v. Mahboob S. Allibhoy (cited supra) and J. Parihar Vs. Ganpat Duggar and others, . These cases

dealt with orders refusing to initiate contempt proceedings or initiating contempt proceedings or acquitting/exonerating the contemnor or dropping

the proceedings for contempt. In all these cases, it was held that an appeal was not maintainable u/s 19 of the CC Act as the said section only

provided for an appeal in respect of orders punishing for contempt.

10.1. In *Baradakanta Mishra*¹ a three-Judge Bench of this Court held that an order declining to initiate a proceeding for contempt amounts to

refusal to assume or exercise jurisdiction to punish for contempt and, therefore, such a decision cannot be regarded as a decision in the exercise of

its jurisdiction to punish for contempt. The question as to whether an appeal would be maintainable u/s 19 where the court initiates a proceeding

for contempt but after due consideration and hearing finds the alleged contemnor not guilty of contempt, or having found him guilty declines to

punish him, was left open.

10.2. In *Purshotam Dass Goel*² certain aspects of Section 19 were left open. This relevant portion is extracted below: (SCC pp. 371-72, para 3)

The [contempt] proceeding is initiated u/s 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said

proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each

and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the

High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie

view that the case is a fit one for drawing up the proceeding, does not decide any question. It is neither possible, nor advisable, to make an

exhaustive list of the type of orders which may be appealable to this Court u/s 19. A final order, surely, will be appealable.

If the alleged contemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being

barred u/s 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court u/s 19

from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard

to such an order, but we merely mention this type of order by way of an example

to show that even orders made at some intermediate stage in the proceeding may be appealable u/s 19.

10.3. While Baradakanta Mishra¹ and Purshotam Dass² left open the question whether an appeal u/s 19 would be maintainable in certain areas, in

D.N. Taneja⁴ a three-Judge Bench of this Court categorically held that appeals u/s 19 would lie only against the orders punishing the contemnor

for contempt and not any other order passed in contempt proceedings. We extract below the relevant portions from the said decision: (SCC pp.

29-32, paras 8, 10 & 12)

The right of appeal will be available under Sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise

of its jurisdiction to punish for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does

not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the

High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.

* * *

It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the

materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt.

When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the

High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the

High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

* * *

The aggrieved party u/s 19(1) can only be the contemnor who has been punished for contempt of court.

10.4. In Mahboob S. Allibhoy (cited supra) this Court reiterated the above position thus: (SCC p.414, para 3)

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction

to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under Sub-section (1) of Section 19 of the Act. As Sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said Sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words "any order" have to be read with the expression "decision" used in the said Sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order" is not independent of the expression "decision". They have been put in an alternative form saying "order" or "decision". In either case, it must be in the nature of punishment for contempt. If the expression "any order" is read independently of the "decision" then an appeal shall lie under Sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt,

that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the

proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they

may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the

punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the

dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of

"jurisdiction to punish for contempt" and, therefore, not appealable u/s 19 of the CC Act. The only exception is where such direction or decision is

incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.

(iii) Now we will look at the other decisions.

(a) In *S. Arumuganainar Senior Manager Transport (South) and Bharath Petroleum Corporation Ltd. Vs. Jeenath Roadways*, the Division Bench relying on the majority view in *Sathappan*'s case held as follows:

11. In our opinion, there is nothing in the majority view which in any way postulates that the appeal under Clause 15 of the Letters Patent would be barred merely because the impugned order in the contempt petition is not appealable u/s 19 of the Contempt of Courts Act.

In this case, the learned Single Judge in the contempt petition actually held that, though the Court could punish the respondent for violating the orders, there was no deliberate violation and that in view of the inconvenience caused to the petitioner and also the incompatibility expressed by the respondents in respect of punishing the respondents, the learned Single Judge gave certain directions which would meet the ends of justice.

Therefore, one might say that it was actually a decision in the exercise of its jurisdiction. Therefore, the appeal was actually filed on the ground that

the learned Single Judge having found that there was no willful and deliberate violation ought not to have traveled beyond the scope of the

contempt petitions by issuing several directions affecting the right of the parties. Therefore, the Division Bench was of the opinion that the directions

were neither incidental nor clarificatory, but independent positive directions beyond the limited scope of controversy of the contempt petition and

on this ground, entertained the contempt appeal and allowed it.

(b) In *Tamilnad Mercantile Bank Ltd. and Others Vs. Tamilnad Mercantile Bank Shareholders Welfare Association*, , the learned Single Judge

warned the respondent to be careful in future and thereafter, gave certain directions and closed the contempt petition. Against that, the appeal was

filed. The Division Bench held that the appeal was maintainable for the following reasons:

16. On going through the relevant provision, viz., Section 19 of the Contempt of Courts Act, the judgment of the Supreme Court as well as other

decisions referred to by the Division Bench in the above said case, we are in agreement with the view expressed by the Division Bench, and

considering the fact that similar issue arises in our appeal and in the light of various directions issued by the learned Judge and of the fact that the

parties affected therein were not before the learned Judge, we hold that the present Letters Patent Appeals under Clause 15 of the Letters Patents

are maintainable.

(c) *T. Marappan v. The Executive Engineer and Ors.* 1996 II L.W. 117

The learned single Judge has recorded a categorical finding that the complainant-appellant herein has failed to prove that the respondents have

committed any contempt. The question for consideration is as to whether this appeal is maintainable under Clause 15 of the Letters Patent. The

proceedings in question is the one arising out of Contempt of Courts Act. In this proceedings there is no other matter decided or dealt with which

can be said to fall outside the purview of the Contempt of Courts Act. We have no hesitation in holding that the Letters Patent Appeal is not

maintainable. As such the position of law is that there should be no further continuation of the case by way of appeal, against the order dismissing

the application filed for contempt of court holding that no commission of contempt of court is established. Therefore in such a case if it is held that

the Letters Patent Appeal is maintainable, it would result in defeating the object contained in Section 19 of the Contempt of Courts Act.

2. The learned single Judge has recorded a categorical finding that the complainant- appellant herein has failed to prove that the respondents have

committed any contempt. The learned single Judge has also found that the contempt application was not bona fide and the intention of the

complainant was to coerce the officials concerned to make an allotment under

the guise that they have disobeyed the order of the court. Under these circumstances, the learned Judge while dismissing the contempt application has awarded costs of Rs. 10,000 to be paid to each of the respondents.

On a consideration of the entire materials, the learned Judge has held that no such violation or disobedience of the order of this Court is

established. As already pointed out, the learned Judge has held that the petition itself was not bona fide. It cannot be said that awarding of costs

falls outside the purview of contempt proceedings. The application for contempt filed by the complainant can be dismissed even with costs, if the

court finds that such application is not bona fide and tenable. Cost is a part of the cause. In *K. Karthikeyan v. The State Bank of Mysore*

represented by its Chief Manager, Madras-1, L.P.A. No. 112 of 1995, dated 6.4.1995, a Division Bench of this Court has held that Letters

Patent Appeal preferred against an order dismissing a contempt application was not maintainable under Clause 15 of the Letters Patent. The same

position obtained in the instant case. Therefore, we have no hesitation in holding that the Letters Patent Appeal is not maintainable.

(d) Major S. Veerasamy Vs. The Management of Andhra Special and Cultural Association,

3. Appeal u/s 19 of the Contempt of Courts Act would lie against the order of punishment and not against the order dismissing the contempt

application. Therefore, the Letters Patent Appeal is filed on the ground that the order under appeal amounts to judgment and hence the appeal is

maintainable, irrespective of the fact that such appeal could not be filed u/s 19 of the Contempt of Courts Act.

The petitioner was granted the relief consequent to allowing of the writ petition. The petitioner filed Contempt Application No. 36 of 1991. The

learned single Judge dismissed the contempt application, without prejudice to his right, keeping it open to him, to challenge in any appropriate

proceedings with reference to the order of termination and claim consequential relief, if the petitioner is entitled to. The contempt application was

dismissed only on the ground that the respondent had paid a sum of Rs. 45,000 as directed by the court. Therefore it is clear that the contempt

application has been decided by the learned single Judge without affecting the

other rights of the parties. It is in such a situation, the Division Bench of this Court in *Marappan, T. v. The Executive Engineer and Ors.*, 1996 (2) L.W. 117 has held that the Letters Patent Appeal is not maintainable.... While considering the maintainability of the Letters Patent Appeal preferred against the order the Division Bench in the aforesaid *Marappan* case took note of the observations contained in para 27 of the Full Bench decision in *Vidya Charan Shukla v. Tamil Nadu Olympic Association* by its General Secretary K. Murugan 1991 (2) L.W. 295 held as follows:

There is no doubt that the court has got the power to do *ex debito justitiae*. But, the question is whether such a power could be exercised in a proceeding which is not maintainable before it. Therefore, unless this Letters Patent Appeal is maintainable, the jurisdiction as stated in paragraph 27 of the aforesaid judgment cannot be exercised. The proceeding in question is the one arising out of Contempt of Courts Act. In this proceeding, there is no other matter decided or dealt with, which can be said to fall outside the purview of the Contempt of Courts Act. The learned single Judge has dealt with the question as to whether there has been any violation of the order committed by the respondents as alleged by the complainant. On a consideration of the entire materials, the learned Judge has held that no such violation or disobedience of the order of this Court is established. As already pointed out, the learned Judge has held that the petition itself was not bona fide. It cannot be said that awarding of costs falls outside the purview of contempt proceedings. The application for contempt filed by the complainant can be dismissed even with costs, if the court finds that such application is not bona fide and tenable. Cost is a part of the cause. In *K. Karthikeyan v. The State Bank of Mysore* rep. by its Chief Manager, Madras 13, L.P.A. No. 112 of 1995 dated 6.4.1995 a Division Bench of this Court has held that Letters Patent Appeal preferred against an order dismissing a Contempt Application was not maintainable under Clause 15 of the Letters Patent. The same position obtained in the instant case. Therefore, we have no hesitation in holding that the Letters Patent Appeal is not maintainable. As such the position of law is that there should be no further continuation of the case by way of appeal, against the order dismissing the application filed for contempt of

court holding that no commission of contempt of Court is established. Therefore, in such a case, it if is held that the Letters Patent Appeal is

maintainable, it would result in defeating the object contained in Section 19 of the Contempt of Courts Act. Hence we are of the view that this

appeal is not maintainable. Accordingly, it is dismissed as not maintainable.

(e) M. Lakshmi Narayanan and others Vs. The Chairman, Oil and Natural Gas Commission and others,

4. The question for consideration is, as to whether the appeal is maintainable under Clause 15 of the Letters Patent. The proceeding in question is

one arising out of Contempt of Courts Act. In these proceedings there is no other matter decided or dealt with which can be said to fall outside the

purview of the Contempt of Courts Act. We have, therefore, no hesitation to hold that the present appeal is not maintainable. Three other Division

Benches of this Court have also taken the same view, and they are reported in Vidya Charan Shukla v. Tamil Nadu Olympic Association (1991) 2

L.W. 29; K. Karthikeyan v. The State Bank of Mysore L.P.A. No. 112 of 1995 dated 6.4.1995 and T. Marappan v. The Executive Engineer

(1996) 2 I.W. 117 in the last cited decision, one of us was a party to the Division Bench.

5. For the fore-going reasons, the Letters Patent Appeal is dismissed as not maintainable. No costs.

(f) S. Smmaiah and Others Vs. Andhra Pradesh State Electricity Board and Others,

...Where right of appeal is not provided u/s 19(1) of "The Act", the applicant cannot have recourse to Clause 15 of the Letters Patent (Madras) for

filing an appeal. Holding otherwise will lead to anomalous situation. In the view we have taken that no appeal lies under Clause 15 of the Letters

Patent (Madras), it is not necessary for us to express any opinion on the question whether the order dismissing an application filed for punishing the

contemnor for contempt of Court is a "Judgment" within the meaning of Clause 15 of the Letters Patent (Madras).

(iii) In the present case, the learned Single Judge had in fact not entered upon the merits at all. The inadequate pleadings, the suppression of

material facts were the reasons for dismissing the petition. In Taneja's case, the Supreme Court had explained why such an appeal is not

maintainable. A contempt petition is between the Court and the contemnor. So the aggrieved party is the contemnor alone. We have seen that all

along the view of this Court has been that no appeal is maintainable against an order refusing to exercise contempt jurisdiction. Above all,

Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, settles the controversy. In this case, the Supreme Court has

held that an appeal u/s 19 would be maintainable only if an order is passed in exercise of the jurisdiction to punish for contempt and that if at all it

may be open to challenge under Article 136 and specifically it was stated that any direction issued on the merits of the dispute between the parties

unless incidental to or inextricably connected with the order punishing for contempt is not in the exercise of "jurisdiction to punish for contempt" and

therefore, not appealable. In the case on hand, the learned Single Judge refused to exercise his contempt jurisdiction and dismissed the contempt

petition.

(iv) The counsel for the appellant repeatedly urged that Sathappan's case was defeated by the Larger Bench whereas Midnapore case is by a

smaller Bench and further the Two Division Benches of this Court in S. Arumuganainar Senior Manager Transport (South) and Bharath Petroleum

Corporation Ltd. Vs. Jeenath Roadways, and Tamilnad Mercantile Bank Ltd. and Others Vs. Tamilnad Mercantile Bank Shareholders Welfare

Association, have held that an appeal was maintainable and therefore, if we wanted to differ we should refer this to a Larger Bench. We have

already held above that Sathappan's case did not decide this issue whereas Midnapore case decided precisely this issue and therefore, it is not

necessary to refer to a Larger Bench and we are bound to follow the Supreme Court. We are also of the opinion that in both S. Arumuganainar

Senior Manager Transport (South) and Bharath Petroleum Corporation Ltd. Vs. Jeenath Roadways, and Tamilnad Mercantile Bank Ltd. and

Others Vs. Tamilnad Mercantile Bank Shareholders Welfare Association, certain directions were given which were not incidental to the issue and

therefore, the appeal was entertained.

(v) In fact Midnapore case takes care of this situation in para 11(v) where it is held that if a person is aggrieved by any decision on an issue or any

direction on the merits in a contempt proceeding he can challenge it by an intra-

court appeal. We are bound by propriety to follow the Supreme

Court's view it being the law of the land. Over the years also, this Court has consistently rejected appeals against dismissal of contempt petitions. A

last ditch effort was made by the learned Counsel for the appellant, who contended that the imposition of costs is a direction and since the single

judge had imposed costs an appeal can be filed. We think not. Imposition of costs is neither a decision on an issue nor a direction on the merits. It

was a "reward " for abusing the process of law. We answer the issue of maintainability against the appellant.

II. Merits:

(i) The learned Counsel for the appellant submitted that even on merits, the appellant has a good case. On the contrary, the learned Senior Counsel

submitted that the learned Judge never went into the merits. He was not inclined to pass orders in exercise of the contempt jurisdiction. Now let us

look at the dates and events. As seen above ex parte order of interim injunction was granted on 06-11-2006. On 04-12-2006, when the matter

came up before the learned Judge who was hearing such matter, the Registry was directed to get appropriate orders for posting before some other

Court for extension of interim orders. On 07-12-2006 interim injunction granted was extended by four weeks and time was given to the

respondent/defendant for filing counter. On 10-01-2007 again interim injunction was extended and the matter was adjourned at the request of the

learned Counsel for the defendant. On 12-01-2007, again the matter was adjourned by four weeks till 19-01-2007 and interim injunction was

granted until further orders. On 19-01-2007, the learned Counsel for the respondent/defendant submitted before the learned Single Judge that an

application has been filed to vacate the interim order. Registry was directed to post all the applications together on 01-02-2007. On 01-02-2007,

the matter was adjourned at the request of both the learned Counsel. Similarly, it was adjourned to 13-02-2007, 09-04-2007 and 16-04-2007.

On 06-06-2007, the learned Counsel for the respondent was absent and the interim injunction was extended. Again it was adjourned to 20-06-

2007 and on 06-07-2007, the matter was posted to 11-07-2007 for orders. In the mean time, the appellant herein filed contempt applications and

moved sub-application No. 198 of 2007 for appointment of Advocate

Commissioner. On 10-07-2007, an order was passed in the contempt application directing the appointment of Advocate Commissioner.

(ii) On 11-07-2007, the injunction application came up before V. Ramasubramaniam, J., who has recorded as follows:

On 03-04-2007, when these applications came up for hearing, it was represented by the learned Senior Counsel appearing for the defendant that

a modified label had been furnished to the plaintiff to work out an amicable settlement. Therefore, the application was adjourned. After reopening

of the court, the applications came up again on 06-07-2007. On 06-07-2007, Mr. G. Rajagopalan, learned Senior Counsel for the defendant was

ready to get along with the arguments in the vacate injunction application but also submitted that the defendant is not averse the idea of changing

the scheme of the label. He also produced two set of labels and carton in which the defendant's products could be marketed. Therefore, the

applications were posted for orders on 11-07-2007 to enable the plaintiff to consider if the modified scheme of the label was acceptable to the

plaintiff. Today, it is represented by the learned Counsel for the defendant that pending this application the plaintiff moved a contempt petition and

obtained interim orders in a sub-application appointing a Commissioner for seizure of labels and cartons available in the office premises of the

defendant.

(iii) Thereafter, the contempt applications came up for orders on 06-08-2007. The order is extracted as follows:

11. The only question that arises for consideration is whether the defendant has committed contempt of the orders passed by this Court on

6.11.2006 in O.A.Nos.849 to 851 of 2006.

12. It is not in dispute that ex parte interim injunctions were granted by this Court for a period of four weeks in O.A.Nos.849 to 851 of 2006 on

6.11.2006. This order was infact, passed by me. Thereafter, the interim orders were extended by the other learned Judges from 4.12.2006 to

6.6.2007. In such circumstances, an onus is cast upon the plaintiff to establish that my order dt. 6.11.2006 which was in force for a period of four

weeks was willfully disobeyed by the defendant. But the affidavits filed in support of the Contempt Petitions are in bereft of particulars in this

regard. Para 6 & 7 in the affidavits are relevant in this regard and they read as

under:

6. In spite of this Court order against the respondent restraining him from infringing the petitioner's registered Trademark and Copyright and from

passing off, the respondent still continues to sell the products namely Paper Pins and Paper clips with the offending Trade Mark and Copyright.

During the subsistence of the Injunction Order granted by this Court, the respondent is selling its product Paper Pins containing the impugned label.

Meantime, the respondent has also filed Vacate Stay Petitions before this Court and the same is pending for hearing.

7. The respondent has acted in flagrant violation of this Court order. The respondent has committed gross contempt. Hence, this petition to initiate

contempt proceedings against the respondent for violating the order dated 6.11.2006 passed by this Court in the above O.A. No. 851 of 2006 in

C.S. No. 802 of 2006 and punish the respondent for the same.

13. With the above averments only, the Contempt Petitions have been filed and in my considered opinion the averments are not sufficient as there

is no mention about the dates on which the alleged wilful disobedience has been committed by the defendant. Therefore, in my view the Contempt

Applications deserve to be dismissed on the lack of proper and necessary pleadings alone.

14. Apart from that, the conduct of the plaintiff in not disclosing the necessary and relevant facts before the learned Single Judge who posted the

injunction application for orders on 11.7.2007 and also before me on 10.7.2007 when the Contempt Petitions were moved before me along with

the Sub application No. 198 of 2007.

15. It is not in dispute that on 3.4.2007 the learned Senior Counsel appearing for the defendant represented before the learned Single Judge that a

modified label had been furnished to the plaintiff to work out an amicable settlement. Therefore, the learned Single Judge on 6.7.2007 posted the

injunction application for orders on 11.7.2007 to enable the plaintiff to consider the modified scheme of the label produced by the learned Senior

Counsel on behalf of the defendant. But on 10.7.2007, suppressing the entire details and what transpired between the parties before the learned

Single Judge who was dealing with the injunction applications, the plaintiff moved the Contempt Petitions and obtained interim order in Sub appln.

No. 198 of 2007. This conduct of the plaintiff in suppressing material facts before the learned Single Judge and before me is to be held against the plaintiff as the parties to a litigation are expected to come out with full particulars before the Court of Justice. It is not for the litigants to reveal the facts which are in favour of them and to suppress the facts which are against them or the facts if disclosed the court may not pass order in favour of them. The Courts of Justice are not playgrounds to play a game of hide and seek and to come out with facts and particulars in piecemeal, that too, when they are in favour of them.

16. Yet another conduct which is also to be held against the plaintiff is that the prayer in Appln. No. 4394 of 2006 and the prayer in Sub Appln.

No. 198 of 2007 is one and the same and when the appln. No. 4394 of 2006 is very much pending for consideration after notice was ordered by

me on 6.11.2006, suppressing the same in the affidavit filed in support of Sub Appln. No. 198 of 2007, the plaintiff obtained an ex parte order of

appointment of Advocate Commissioner before me. This conduct of the plaintiff is not approved of by this Court.

17. When questioning about the dubious conduct of the plaintiff in not disclosing the relevant and material facts before the learned Single Judge and

before me, the learned Counsel for the plaintiff instead of explaining the reason for the vacillating conduct of the plaintiff vehemently contended that

the conduct of the plaintiff would not amount to suppression of facts and there is no legal duty cast upon the plaintiff to disclose before the

Contempt Court what transpired before the other learned Judge who was dealing with the injunction applications. The learned Counsel for the

plaintiff in support of his contentions cited a number of judgments. A perusal of the same would only disclose that in all those decisions the settled

legal principles involved in dealing with the Contempt Petitions are discussed by the Hon''ble Supreme Court and other High Courts. There is no

controversy with regard to those settled legal principles. At the same time, it is to be borne in mind, while reading a prior binding decisions what is

relevant is that how the legal principles involved in that particular decisions. The legal principles involved in a particular fact of a case cannot be

straightaway lifted and applied to another case without going into the facts and particulars of the other case. Therefore, I am of the considered view

that those decisions are not helpful to the plaintiff in view of the peculiar facts of the present case and the unapproved conduct of the plaintiff in this case.

18. I am unable to accept the contention of the learned Counsel for the petitioner that the petitioner need not come out with full particulars and need not reveal what transpired between the parties before one learned Single Judge to another learned Single Judge in the very same suit and applications in which Contempt Petitions were filed. Infact, I am surprised to hear such arguments from the learned Counsel for the plaintiff.

19. In the result, all the Contempt petitions are dismissed as devoid of merits and a cost of Rs. 5000/- is imposed in each of the Contempt Petitions. The total cost of Rs. 15,000/- is directed to be paid to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, within four weeks from the date of receipt of copy of this order.

Therefore, it is clear from the above that the learned Single Judge did not go into the merits of the contempt applications. He found that the averments are not at all sufficient; there was no mention about the dates on which the alleged disobedience have been committed by the defendants.

(iv) It was also found on Paragraph No. 14 that when the matter came up before the learned Single Judge on 11-07-2007, the full facts were not

brought to his notice. Similarly, on the previous day on 10-07-2007, when the contempt applications was moved the facts that the matter was

posted for orders was also not brought to the notice. In Paragraph No. 15, the offer made on behalf of the respondent for amicable settlement is

referred. In Paragraph No. 16, he refers to the fact that the averments in application No. 4394 of 2006 and in sub-application No. 198 of 2007 is

one and the same and when the application in the suit was pending for consideration after notice was ordered, this ex parte order of appointment

of Advocate Commissioner was moved suppressing the fact that the injunction petitions were posted for orders on the next day i.e.11.7.2006.

Therefore, the contempt applications were dismissed on the ground that the applicant did not disclose the full facts on the other hand there was

willful suppression of facts.

(iv) We are in full agreement with the view taken by the Learned Judge in the

Contempt petition, that such a litigant deserves no indulgence from the Court.

III. Costs:

Though while we had dealt with maintainability issue, we have dealt with costs, to remove any ambiguity, we are again giving our finding in that regard. The learned Counsel submitted that against imposition of costs, an appeal will lie. This submission deserves to be rejected outright. The cost was for the mala fide conduct of the appellant and not a direction in exercise of contempt jurisdiction. In fact, in identical circumstances in 1996 II L.W. 117 (cited supra) the First Court held that the award of cost falls outside the purview of contempt proceedings and that the applications for contempt can be dismissed with costs if the Court finds that such an application is not bona fide and tenable and costs is the part of the cause and therefore, they rejected the letters patent appeal as not maintainable. We have seen that the consistent view of this Court is that an appeal is not maintainable against an order dismissing the contempt application and refusing to exercise the contempt jurisdiction.

4. In the result, we have no hesitation in dismissing the contempt appeals.