

(1998) 09 KAR CK 0063

In the Karnataka High Court

Case No : Contempt of Court Case No. 2187 of 1997

Erappa

APPELLANT

Vs

Channabasappa

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 215

Contempt of Courts Act, 1971 — Section 10, 11, 2 (c) (2), 2 (c) (iii) 15 (1)

Citation : (1999) CriLJ 2421 : (1999) ILR (Kar) 76 : (1999) 6 KarLJ 278 :
(1999) 3 RCR(Criminal) 781

Hon'ble Judges : Chidananda Ullal, J;B. Padmaraj, J

Bench : Division Bench

Advocate : Sri S. Siddappa, for the Appellant; Sri B. Veerabhadrappe, for the Respondent

Judgement

Chidananda Ullal, J.—The complainant in the above contempt petition was the defendant 1 in O.S. No. 134 of 1985 on the file of the Munsiff, Tarikere, whereas the respondent was the plaintiff 1, being the President of the Trust by name Sri Junjappa Devaru Temple Trust, Bhaktanakatte, Shivani Hobli, Tarikere Taluk along with two other plaintiffs by name, Basappa, son of Siddappa and Naragappa, son of Kengappa. The complainant at the first instance had filed the above contempt petition as a civil contempt petition under Article 215 of the Constitution of India read with Sections 10 and 11 of the Contempt of Courts Act, 1971 (henceforth in brief referred to as "Act"). That subsequently, the said contempt petition came to be converted as a criminal contempt petition. The complaint of the complainant is two folds; firstly that the respondent having suppressed the material facts in W.P. No. 17474 of 1987 resulted in wrong order or judgment in the said writ petition and further that, based upon that judgment in the writ petition, an amount of Rs. 11,00,000.00 was withdrawn from the treasury that belonged to "Junjappa Devaru" deity and it is for that the complainant had filed subsequently a writ petition in W.P. No. 25595 of 1996 that

came to be allowed by this Court on 22-11-1996, whereby this Court had recalled the order/judgment in W.P. No. 17474 of 1987 and further that the judgment or order obtained in W.P. No. 17474 of 1987 obstructed the administration of justice and secondly that filing of suit after suit in respect of the same subject-matter like O.S. No. 198 of 1981, O.S. No. 118 of 1981, R.A. No. 75 of 1983, R.S.A. No. 62 of 1994 and O.S. No. 134 of 1985 amounted to abuse of process of Court punishable u/s 2(ii)(e) of the Act.

2. We deem it proper to quote the relevant averments in para Nos. 3 to 9 with regard to main complaint and further the prayer column and the same read as hereunder:

"3. To make a necessary arrangements to maintain law and order and also to keep the current years Jathara's collection in treasury and conduct an enquiry u/s 17 of the Karnataka Religious and Charitable Endowments Act of 1972. The said order was challenged by the Channabasappa in W.P. No. 21264 of 1980 it is disposed on 30-11-1984 is produced as Annexure-A by observing that the communication dated 14-11-1980 addressed to Assistant Commissioner it is only a communication to hold an enquiry not to take possession of temple. Petitioner shall also be heard in an enquiry proposed to be held u/s 17 of the Karnataka Religious and Charitable Endowments Act.

4. Complainant submits that the said Channabasappa having failed in his attempt at the hands of the Revenue Court instead of rendering accounts of his honest dealing started agitating and filed O.S. No. 198 of 1980 in the Court of Munsiff, Tarikere and obtained an order of temporary injunction against the poojari and another. The complainant submits that during the pendency of the said original suit without withdrawing the said suit filed another suit O.S. No. 118 of 1981. The said suit was dismissed on 22-9-1983. The said order is produced as Annexure-B. Aggrieved by the said order preferred an R.A. No. 75 of 1983 and filed an application for Order 39, Rules 1 and 2 which was dismissed on 16-11-1983. The said R.A. was disposed on 8-11-1985 by the Civil Judge, Tarikere. The said order is produced as Annexure-C by dismissing the same however, it observed in para 18 page 12 of the said judgment "so the learned Munsiff had erred in holding that there was no validly created trust as he was not competent to go into the matter. So from the trust deed a registered document which reads that there has been a validly created trust and has the trust deed shows that trust has the right to perform pooja, Jathra, Utsava of the deity I hold it is established that the plaintiff-trust had right to perform pooja and Jathra of deity it is this observation that led to the poojari to file an regular second appeal- In R.S.A. No. 94 of 1986 which was disposed on 10-2-1996, the said order is produced as Annexure-D by deleting said observation of the lower Appellate Court in its order at para 18 onwards are clearly uncalled for and not binding on the parties. However, the findings of Munsiff Court in O.S. No. 118 of 1981 that the trust is not validly constituted and the suit filed alleging to be its president is not maintainable as per the Rule 48 of the Indian Trust Act.

5. Complainant submits that having failed to get the relief again chose to approach the Munsiff Court, Tarikere with a negative prayer in O.S. No. 134 of 1985 stating that the petitioner herein should be restrained from performing respective duties of pooja and parave (feeding the devotees). The said suit was decreed in his favour. Order is produced as Annexure-F. Aggrieved by the said order R.A. No. 64 of 1994 filed by the petitioner and the order of the learned Munsiff in O.S. No. 134 of 1985 is stayed. The said order is produced as Annexure-F. The respondent Channabasappa who preferred C.R.P. No. 3687 of 1994 which was dismissed by the Hon''ble High Court on 14-6-1995 the said order is produced as Annexure-G with a direction that the petitioner can approach the trial Appellate Court for relief of injunction accordingly an application was filed under Order 39, Rules 1 and 2 of CPC which was dismissed in R.A. No. 64 of 1994 in the interlocutory application.

6. The complainant submits that said Channabasappa who in spite of the order of Civil Court which declared that trust is not validly constituted, went on representing himself as a managing Trustee of the Junjappa Devaru-deity. In all suits, writ petitions and Civil Revision Petition and before the Revenue Authorities.

7. Petitioner submits that respondent filed W.P. No. 17474 of 1987 against the Tahsildar and another without impleading complainant who have been agitating the matter for the past 25 years by suppressing the above said facts even at the time of the disposal of said writ petition on 13-1-1995 did not come forward to bring to the notice of the Court either pendency of the appeal in R.A, No. 64 of 1994 or of stay granted in the said appeal staying the operation of the learned Munsiff in O.S. No. 135 of 1985 and further the pendency of C.R.P. No. 3687 of 1994 which was filed u/s 115 of CPC against the order of learned Civil Judge stayed the operation of the judgment and decree in O.S. No. 134 of 1985 and also earlier suit filed by Channabasappa in O.S. No. 118 of 1981, R.A. No. 75 of 1983 and R.S.A. No. 94 of 1986 in respect of the deity Junjappa Devaru which amounts to suppression of facts before the High Court when the said writ petition was considered on merit.

8. The respondent by making use of the said order drew the amount from the treasury by filing contempt petition vide C.C.C. No. 606 of 1995 wherein Tahsildar was summoned to comply with order W.P. No. 17474 of 1987. However, an appeal against the order in W.P. No. 17474 of 1987 filed by the Government were rejected on the ground of limitation. Since petitioners were not parties either in contempt or writ petition or in writ appeal. The petitioner filed W.P. No. 25595 of 1996 for declaration that judgment delivered in W.P. No. 17474 of 1987 is not binding on the petitioner. As the judgment in the W.P. No. 17474 of 1987 is obtained behind the back of the complainants. Hence, this Hon''ble Court after notice to the respondent i.e., Channabasappa the order rendered in W.P. No. 17474 of 1987 dated 13-1-1995 is recalled and restored and the same is pending for finalisation, wherein complaints have file impleading application and another LA. To redeposit the money withdrawn. The order passed in W.P. No. 25595 of

1996 is produced herewith as Annexure-J.

9. Hence, the petitioner submits that the respondent has committed clear contempt as per Article 136, the Act on the part of the respondent amounts to abuse of process of Court as reported in *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, .

Prayer:

(i) Wherefore, it is prayed that this Hon"ble Court be pleased to initiate contempt proceedings against the accused for having suppressed the material facts in W.P. No. 17474 of 1987, which resulted in wrong judgment basing on that judgment an amount of Rs. 11 lakhs was withdrawn from the Treasury belonged to the deity which was recalled in W.P. No 25595 of 1996, dated 22-11-1996. The judgment delivered in W.P. No. 17474 of 1987 obstructs the administration of justice and filing suit after suit in respect of the same subject-matter like O.S. No. 198 of 1981, 118 of 1981, R.A. No. 75 of 1983, R.S.A. No. 62 of 1994, O.S. No. 134 of 1985, which amounts to abuse of Court processes punishable u/s 2(ii) (e) of the Contempt of Court Act.

(ii) It is further prayed that this Hon"ble Court be pleased to call for records in W.P. No. 17474 of 1987 which was disposed off on 13-1-1995 by this Hon"ble Court without impleading of the petitioners, and further call for records in O.S. No. 118 of 1981, dated 22-9-1983 on the file of the Munsiff Court, Tarikere and R.A. No. 75 of 1983 Civil Judge, Tarikere and R.S.A. No. 94 of 1986 on the file of this Hon"ble Court dated 10-8-1996 and O.S. No. 134 of 1985 disposed off by Munsiff Court, on 10-8-1996, R.A. No. 64 of 1994 pending before the Civil Judge, Tarikere, W.P. No. 34229 of 1996 before this Hon"ble Court and further initiate contempt proceedings against the respondent in the interest of justice and equity".

3. The respondent having entered appearance had filed a detailed objection statement. In filing the same, it is contended by the respondent that the very contempt proceedings are not maintainable because the respondent had not violated any order of this Court or committed abuse of process of law. On the other hand, it was counter alleged that it was the petitioner who was using various methods to "restrain the implementation of the order and decree that came to be passed time to time by the Competent Courts with an intent to mislead this Court. In paras 2 to 11, the respondent had given the particulars of the long drawn litigations between the petitioner on the one side and the respondent on the other. To put it as it had been narrated by the respondent, the same reads as hereunder:

"2. After order of this Hon"ble Court in W.P. No. 21264 of 1980 the Deputy Commissioner restored the possession of the temple to respondent. Against that order petitioners filed appeal before Commissioner of Endowments. The said appeal was allowed. Against that order respondent filed Revision No. 202 of 1991 on the file of Karnataka Appellate Tribunal. The Tribunal allowed revision and held

that respondent alone entitled to be in possession of the temple. Annexure-R1 is copy of said order.

3. In R.A. No. 75 of 1983 on the file of the Court of Civil Judge, Tarikere, the Hon''ble Court held that trust created was valid one and it was entitled to manage the temple. But appeal was dismissed because all trustees were not made parties to the suit. Therefore, respondent filed fresh suit O.S. No. 134 of 1985 in the Court of Munsiff, Tarikere and obtained temporary injunction against the petitioner. The said temporary injunction was confirmed by the Trial Court on 14-8-1986 and by Appellate Court in M.A. No. 15 of 1986 and by this Hon''ble High Court in C.R.P. No. 4840 of 1986 ultimately suit O.S. No. 134 of 1985 was decreed (Annexure-R2).

4. Against the judgment and decree in O.S. No. 134 of 1985 complainant filed R.A. No. 64 of 1994 and obtained stay. In the C.R.P. No. 3687 of 1994 filed by respondent this Hon''ble Court observed the stay in R.A. No. 64 of 1994 amounts to status quo ante (Annexure-R3).

5. The respondent filed W.P. No. 17474 of 1987 against order of Tahsildar to take away hundi collections. The petitioners were not necessary party. The said writ petition was allowed on 13-1-1995. At that time Munsiff Court had finally decreed the suit. That fact was orally and casually mentioned though it was not necessary. The Hon''ble Court allowed the said writ petition on 13-1-1995. But said order was recalled in W.P. No. 25595 of 1996 on 22-11-1996. Thereafter W.P. No. 17474 of 1987 was posted for hearing and after hearing the both parties including petitioner it was allowed on 17-11-1997 (Annexure-R4).

6. The original suit O.S. No. 134 of 1985 filed by the Trustees for declaration and permanent injunction against complainant was decreed. In appeal R.A. No. 64 of 1994 the said decree was stayed on 11-11-1994.

7. In 1996, the Tahsildar passed an order restraining the respondent from conducting Pooja and others. He also appointed complainant as Poojari to perform the Pooja though there was decree against complainant in O.S. No. 134 of 1985. The said orders were challenged and this Hon''ble Court allowed the writ petition in W.P. No. 34229 of 1996. Annexure-R5 is the copy of the said order.

8. These facts are suppressed by the complainant and not even referred in the contempt petition.

The claim of the complainant that respondent had abused the process of law by filing suit after suit is not correct.

9. Sri Junjappa Devaru Temple is an ancient temple. For more than fifty years father of this respondent was vahivatdar of the temple and after him this respondent became vahivatdar. In order to involve all sections of the public, this respondent and devotees constituted Sri Junjappa Devaru Temple Trust on 13-11-1980. The complainant tried to set up a rival claim. Hence O.S. No. 198 of 1980 was filed for bear injunction before the Court of Munsiff, Tarikere. After

formation of the Trust, O.S. No. 118 of 1981 was filed for declaration and injunction. By mistake all Trustees were not impleaded as party. The Trial Court dismissed the suit. The Appellate Court in R.A. No. 75 of 1983 held the Trust was duly constituted and was entitled to manage the temple. But dismissed the appeal on the ground all Trustees were not impleaded as parties. Accepting the said judgment the Trust and all Trustees filed O.S. No. 134 of 1985 for declaration and injunction against the complainant and obtained temporary injunction. The temporary injunction continued during the pendency of the suit. The suit was ultimately decreed. In the suit, the complainant categorically admitted that he was not the Poojari but one Eranna S/o. Doddaerappa was the Poojari of the temple. The decree is now pending in Appeal No. 64 of 1994 on the file of Civil Court Judge, Tarikere.

10. W.P. No. 17474 of 1987 was filed challenging order of Tahsildar to take away Hundi collections. The said writ petition was allowed for the second time after hearing the complainant.

11. W.P. No. 34299 of 1996 was filed challenging the order of Tahsildar prohibiting this respondent from conducting Pooja, Jatra, in the temple and in turn appointing complainant as Poojari (contrary to Civil Court decree in O.S. No. 134 of 1985). The said writ petition was allowed".

4. To meet the averments in the complaint, the respondent had counter averred in his objection statement that he was not guilty of suppression of facts in W.P. No. 17474 of 1987 and further that he had not obtained a favourable order or judgment in the said writ petition and that for the said writ petition, the petitioner herein was not a necessary party as the said writ petition was directed against the Tahsildar, when he had passed an order illegally in DVS.CR. 68/87-88, dated 20-10-1987 to the effect that, since the interim order dated 23-11-1985 in O.S. No. 134 of 1985 passed by the Munsiff, Tarikere was confirmed by the High Court, the same was sought to be executed and therefore it was ordered therein that the money offerings by the public at large to the deity by way of "Kanike" had to be collected in "hundis" under the supervision of the Sheristedar of Ajjawara Nadakachery by name H.M. Doddaiah and further that all the hundi collections made be deposited in the Taluk Treasury on completion of "Utsavam". It was also further averred by him in his objection statement that he was not guilty of suppression of any material facts in his W.P. No. 17474 of 1987 with regard to the suit filed by him as against the complainant in O.S. No. 134 of 1985 on the file of the Munsiff, Tarikere and as such it was totally erroneous on the part of the complainant to say that the respondent was guilty of suppression of the material facts in the matter of obtaining the order in W.P. No. 17474 of 1987.

5. The learned Counsel for the complainant Sri Siddappa had taken us at length the various litigations between the parties. He had also argued that the deity, "Junjappa Devaru" was nothing to do with the respondent and his trust as the same belong to a socially backward class by name "Gollas" and the complainant

since he belonged to that social group, the deity belonged to the "Golla" community at large. It was also argued by him that for the purpose of obtaining a favourable order in W.P. No. 17474 of 1987 before the learned Single Judge of this Court, the respondent did not implead the complainant as a party and further suppressed the facts that the decree the respondent obtained in O.S. No. 134 of 1985 on the file of the Munsiff, Tarikere was stayed in R.A. No. 64 of 1994, filed by the complainant to challenge the judgment and decree and further that after obtaining a favourable order in the above writ petition, by resorting to a coercive petition in C.C.C. No. 606 of 1995 filed against the Tahsildar, he had collected the "hundi" collections unto himself. Therefore, according to him, the respondent was guilty of suppression of material facts and the same was with mala fide intention to put the complainant into peril and thereby interfering with or attempt to interfere with the due process of the judicial proceedings within the meaning of Section 2(c)(iii) of the Act.

6. With regard to the objection raised by the other side that the contempt petition was not maintainable for want of consent in writing by the Advocate General of the State as contemplated u/s 15(l)(b) of the Act, it was argued by Sri Siddappa that this Court in a complaint filed under Article 215 of the Constitution of India may take action on its own motion when the fact as to the interference or tend to interfere with or obstruct or tend to obstruct the administration of justice was brought to its notice and therefore in the instant case all that the complainant had done is only to bring the said facts to the notice of this Court and that this Court thereafter had taken suo motu action by initiating contempt proceedings against the respondent and further that the original complaint registered as civil petition was directed to be registered as a criminal contempt. Therefore, according to him, there is no substance or merit on the part of the respondent to say in his objection statement that the complaint was bad for want of consent from Advocate General as contemplated u/s 15 of the Act. He therefore prayed that the said objection raised by the respondent be overruled and this Court be pleased to punish the respondent adequately in consonance with law. Sri Siddappa had also cited good number of decisions on different points they are as hereunder:

1. Power to take cognizance suo motu and consent of Attorney General not mandatory.

(1) Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, ;

(2) S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra, ;

(3) Video Movies by Prop. Haji Rasheed Mohammed v D. Ramanujam;

(4) Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, ;

(5) S.N. Nagaraja Rao Vs. Chikkachennappa and Others, ;

- (6) Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa, ;
- (7) Naraindas Vs. The Government of Madhya Pradesh and Others, ;
- (8) Afzal and another Vs. State of Haryana and others, ;
- (9) Pratap Singh and Another Vs. Gurbaksh Singh, ;
- (10) In re P.C. Sen;
- (11) Balram Singh Vs. Bhikam Chand Jain and Others, .

7. Per contra, the learned Counsel for the respondent, Sri B. Veerabhadrappe, vehemently argued that the complaint of the complainant cannot be entertained by this Court at the threshold for want of consent in writing of the Advocate General of the State as contemplated u/s 15(l)(b) of the Act and as such the same is liable to be dismissed in limine on that score alone. In the alternative, he had argued that there was no suppression of any fact by the respondent in filing the writ petition in W.P. No. 17474 of 1987 and further in obtaining the final order thereon. It is his argument that the complainant in the said writ petition was not at all a necessary party to the writ petition and as such impleading him as a necessary party to the said writ petition did not arise at all. Furthermore, there was no necessity for him to mention in the writ petition anything about R.A. No. 64 of 1994, wherein the complainant had challenged the judgment and decree in O.S. No. 134 of 1985 and further about the stay order he had obtained staying the operation of the judgment and decree in the said R.A. No. 64 of 1991, as the same was of no relevance to the case of the respondent in the writ petition filed against the Tahsildar and the Deputy Commissioner and all that were referred to in the course of the argument in the writ petition, that too by the learned Government Pleader incidentally, was with regard to the decree the respondent had obtained in O.S. No. 134 of 1985 by the respondent. According to Sri Veerabhadrappe, either mentioning of the preference of an appeal in R.A. No. 64 of 1994 by the complainant or the pursuant stay order he had obtained thereon staying the operation of the decree in the said suit was of no consequence inasmuch as it was true and correct to say that the complainant had suffered a decree of permanent injunction restraining the complainant from interfering with or meddling with the suit schedule temple property of deity "Junjappa Devaru" in the hands of the respondent. It was further argued by him that as the stay of the decree would not totally obliterate either the effect of decree the complainant suffered in the suit or disturb the legal possession the respondent enjoyed for long of the temple property of the deity. It was also argued by Sri Veerabhadrappe that the respondent being the petitioner in the said writ petition was master of his case and all that what was relevant for the writ petition as against the Tahsildar and Mujarai Officer and further the Deputy Commissioner and the District Mujarai Officer, wherein the order of first of them was challenged (when he was directed him that he should not make the hindi collections), were pleaded. Therefore, he submitted that on both the counts the complaint has to fail. He had also relied upon the following decisions in support

of his case, they are.-

1. Naraindas case, supra;

2. P.N. Dua Vs. P. Shiv Shanker and Others, ;

3. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, ;

4. Dr. D.C. Saxena, Contemnor Vs. Hon"ble the Chief Justice of India, .

8. In the light of the above argument and counter argument advanced, the three points that arise for our consideration are as hereunder:

(i) Whether the instant contempt petition is not maintainable for want of consent letter as contemplated u/s 15 of the Act.

(ii) Whether the respondent was guilty of suppression of fact in W.P. No. 17474 of 1987 resulting in wrong order to the advantage of the respondent and further in resulting withdrawal of sum of Rs. 11,00,000.00 from the Treasury that belong to the deity thereby he had committed offence within the meaning of Section 2(c) (2).

(iii) Whether the respondent was guilty of the criminal contempt punishable u/s 2(ii)(c) by abuse of process of Court in filing the suit after suit in respect of the same subject-matter like O.S. No. 138 of 1987, O.S. No. 118 of 1981, R.A. No. 75 of 1983, R.S.A. No. 62 of 1994, O.S. No, 134 of 1985 etc.

9. Now we take up the above three points in that order.

10. Regarding Point No. (i):

It was vehemently argued by the learned Counsel for the respondent that the instant complaint is not maintainable for want of consent letter from the Advocate General of the State as contemplated u/s 15 of the Act and as such on that short point alone the instant complaint is liable to be rejected. Per contra, the learned Counsel for the complainant had argued that it was perfectly maintainable as the complaint herein was for the contempt of the very High Court, a Court of record within the meaning of Article 215 of the Constitution of India. Both sides had cited authorities thereto before us and they are as above. Here we feel it proper to point out that the original complaint came to be registered by this Court as a civil contempt and subsequently the same came to be converted into a criminal contempt at the instance of the Court. On going through the complaint on its entirety, it appears to us that the grievance of the complainant herein are two-folds; firstly that the respondent by suppressing some material facts had obtained a favourable order in W.P. No. 17474 of 1987 and further that by making use of the same, he had resorted to coercive action in C.C.C. No. 606 of 1996 as against the Tahsildar in order to withdraw a substantial sum of Rs. 11,00,000.00 belonging to "Junjappa Devaru" deity and secondly that the respondent by resorting to suit after suit, proceedings after

proceedings was guilty of misuse of due process of law. If the said contentions were to be true, it does not appear to us that the complainant need obtain consent letter from the Advocate General as contemplated u/s 15(1)(b) of the Act. As a matter of fact, to substantiate such a contention put forth by the learned Counsel for the complainant, Sri Siddappa had cited before us, the Division Bench rulings of this Court in the cases of Nagaraja Rao and Vijaya Bank Employees' Housing Co-operative Society Limited, *supra*. In first decision aforementioned, it was held by the Division Bench of this Court that the power conferred by Article 215 of the Constitution of India, the power of the High Court to punish for contempt of itself is wide enough to cover cases of *ex facie* criminal contempt as also every act or omission which amounts to contempt of the High Court and that being so, the contempt action can be resorted to without there being any consent from the Advocate General as contemplated u/s 15(1)(b) of the Act and further that under Article 215 of the Constitution of India does not contemplate such a condition. The Division Bench of this Court laid down as above by following the Supreme Court decisions in the case of C.K. Daphtary, *supra*, R.L. Kapur Vs. State of Madras, and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . What the Division Bench of this Court held in the above case is quoted hereunder and the same reads as follows.-

"Constitution of India, Article 215 -- Contempt of Courts Act of 1971, Section 15(1) -- Motion of Criminal Contempt of High Court -- Consent of Advocate General -- If mandatory.

The power conferred by Article 215 of the Constitution on the High Court to punish for contempt of itself is wide enough to cover cases of *ex facie* criminal contempt as also every act or omission which amounts to contempt of the High Court. Therefore, whether the contempt of the High Court alleged to have been committed by any one is of the description referred to in Section 14 or 15 of the Contempt of Courts Act, it is competent for the High Court to punish the alleged contemner in exercise of its power under Article 215. Such action could be taken either on its own motion or on motion made by the Advocate General or any other person. Consent of the Advocate General is not contemplated by the article for a motion made by any other person.

By the coming into force of the Contempt of Courts Act, 1971, with Section 15(1) in it, the power of the High Court given to it under Article 215 has not been affected.

Therefore, Section 15(1) providing for consent of the Advocate General cannot be construed as mandatory, as the power of the High Court to punish for criminal contempt of itself is conferred on it by Article 215 without any such restriction".

11. The above decision was cited before us by Sri Siddappa on the point that when there is a contempt of the High Court, the High Court being the Court of Record, obtaining the consent letter from the Advocate General u/s 15(1) of the Act is not necessary. To substantiate the second limb of his argument in this

regard that when a party was guilty of abuse of process of law, the question of obtaining the consent of the Advocate General under the above provision of law is also not necessary and that this Court can take action on its own motion, Sri Siddappa had placed his reliance on the observation of the Division Bench in the above said case. In para 7 thereof, it was held as hereunder:

"7. As regards the second submission of Mr. Subbaiah that the Advocate General's permission is required to initiate criminal contempt, we are not persuaded to accept the same because Section 15 of the Contempt of Courts Act enables this Court to take action on its own motion (suo motu)"-

12. In view of the above two rulings, we are convinced that when there is contempt of this Court itself by a party who is guilty of an offence of criminal contempt within the meaning of Article 215 of the Constitution of India either by suppression of facts or by making false statement to obtain a favourable order or for that matter when guilty of the abuse of process of law within the meaning of Section 2(c) of the Act, there is no necessity for a party to obtain the consent of the Advocate General for initiating the proceedings for contempt of this Court and all that what a party has to do in such situation is to bring to the notice of this Court such an act of omission or commission on the part of the contemnor resulting in the contempt of this Court itself and this Court being a Court of Record, power is very much available for this Court to initiate contempt proceedings suo motu and as such, in our considered view, the question of obtaining a consent of the Advocate General as contemplated u/s 15(1) of the Act is not necessary. Hence, we hold that the consent of the Advocate General for maintaining contempt petition in the facts of the circumstances of the case as put up before us, is not necessary. Therefore, we answer Point No. (i) in favour of the complainant.

13. Regarding Point No. (ii):

The learned Counsel for the complainant argued that the respondent had suppressed the material facts with regard to the filing of R.A. No. 64 of 1994 by the complainant to challenge the judgment and decree of permanent injunction obtained by the respondent in O.S. No. 134 of 1985 and further about the stay orders he i.e., the complainant had obtained staying the operation of the said decree resulting in wrong order or judgment in W.P. No. 17474 of 1987 to the advantage of the respondent and further by resorting to coercive action in C.C.C. No. 606 of 1995 as against the Tahsildar, complaining non-compliance of the order or judgment in the W.P. No. 17474 of 1987, the respondent had withdrawn substantial sum belonging to the deity from the Treasury; furthermore the respondent was guilty in not impleading the complainant as a necessary party to the said writ petition. To find out the correctness of the above argument advanced by Sri Siddappa, we have gone through the copy of the writ petition in W.P. No. 17474 of 1987 filed by the respondent (petitioner 2 in the said writ petition, when Junjappa Devaru Trust represented by him as the President was the petitioner 1 therein). As we see, in para 4 of the petition averment in the

above writ petition, the respondent and his Trust had averred as hereunder:

"In the meanwhile the petitioners had filed O.S. 134 of 1985 on the file of the Court of Munsiff, Tarikere and obtained interim injunction on 2-12-1985, against their opponents Sri Erappa and Others. The interim injunction was confirmed after hearing defendants on 14-8-1986. Against that order the defendants therein filed M.A. No. 15 of 1986 on the file of Court of Civil Judge, Tarikere. The said appeal was dismissed on 17-11-1986 and the temporary injunction was confirmed. Against that order the defendants filed C.R.P. No. 4840 of 1986 on the file of this Hon"ble High Court and obtained stay. Later this Hon"ble High Court also vacated the stay order and the said C.R.P. No. 4840 of 1986 is still pending. In other words in all proceedings the petitioners have temporary injunction in their favour to manage the temple and its affairs".

With regard the confirmation of the ad interim order of temporary injunction in O.S. No. 134 of 1985 as against the complainant on 14-8-1988 and further with regard to the dismissal of his miscellaneous appeal in M.A. No. 15 of 1986 on the file of the Civil Judge, Tarikere on 17-11-1988 as against the confirmation of the ad interim order of temporary injunction and also with regard to C.R.P. No. 4840 of 1986 filed by the respondent before this Court, wherein he had obtained the stay of the judgment in M.A. No. 15 of 1986 referred to above and further with regard to the fact that the said stay was obtained at the instance of the respondent and further that the said C.R.P. was pending etc., were all pleaded; of course at that relevant point of time the said O.S. No. 134 of 1985 though came to be decreed in favour of the respondent, the complainant in filing R.A. No. 64 of 1994 had obtained stay of execution of the said decree. It was argued by Sri Siddappa that the respondent with mala fide intention did not implead him as a necessary party to the said writ petition and further misguided the Court by suppressing the fact that the decree he had obtained in O.S. No. 134 of 1985 was stayed in R.A. No. 64 of 1994 and that, but for that suppression of fact the learned Single Judge would not have allowed the said writ petition. Such an argument sustained by Sri Siddappa while adverting to para 4 of the order dated 13-1-1995 in W.P. No. 17474 of 1987, wherein the learned Single Judge with reference to the argument advanced by the learned Government Pleader recorded that it was clear from the narration that the proceedings had come to an end insofar as the dispute before the Munsiff was concerned with the decree thereof having been passed in favour of the respondent and his Trust and the basis upon which the Tahsildar and the Deputy Commissioner and the respondent appear to have proceeded did not subsist. We feel it proper to quote the said para 4 of the final order dated 13-1-1995 in the said writ petition and the same reads as hereunder:

"4. In the circumstances, there is hardly any justification for the respondents to have issued the order at Annexure-K. However, the learned Government Pleader urged that whatever arrangement was made, was only an interim arrangement as there was dispute between the two parties, but it is clear from the narration

made above that the proceedings have come to an end insofar as the dispute in the Munsiff Court is concerned and a decree thereof having been passed in favour of the petitioners. The basis upon which the respondents appear to have proceeded does not subsist. Consequently, the order at Annexure-K shall stand quashed. But this order will not come in the way of the respondents taking action pursuant to the order made in Writ Petition No. 21234 of 1980. Inasmuch as the order impugned herein is quashed, the respondents will have to refund the monies kept with them to the petitioners. Petition allowed. Rule made absolute accordingly".

14. According to Sri Siddappa, had the respondent pleaded in his petition with regard to the stay of operation of the judgment and decree in O.S. No. 134 of 1985 in R.A. No. 64 of 1994, the learned Single Judge would not have passed the above order in the writ petition. According to him, the same was the material suppression made by the respondent with the mala fide intention to obtain a favourable order in the said writ petition. It was also argued by him that in the subsequent writ petition filed by the respondent in W.P. No. 25595 of 1996 for declaration of the above order in W.P. No. 17474 of 1987 was not binding on the complainant, came to be allowed by the learned Single Judge on 22-11-1996 on the very ground that the stay obtained in R.A. No. 64 of 1994 staying the operation of the decree in O.S. No. 134 of 1985 was not pleaded. In the second writ petition, the learned Single Judge recalled the above order dated 13-1-1995 in W.P. No. 17474 of 1987 on the ground that in the pursuant appeal as against the judgment and decree in O.S. No. 134 of 1985 the stay order in R.A. No. 64 of 1994 was not brought to the notice of the learned Single Judge. We feel it proper to quote the operative portion of the order in W.P. No. 25595 of 1996 obtained by the complainant and the same reads as hereunder:

"ORDER

This petition is filed seeking for review of the order made in W.P. No. 17474 of 1987. That matter came to be disposed of by an order made on 13th of January, 1995. The petitioners therein called in question the action of the Tahsildar in collecting the offerings of Sri Junjappa Devaru Temple of Bhaktanakatte, Shivani Hobli, Tarikere Taluk, Chickmagalur District. One of the important contention urged on behalf of the petitioners therein was that on a dispute as to who should have control over the management of the Trust in respect of the temple a suit had been filed in O.S. No. 134 of 1985 on the file of the Munsiff, Tarikere and the said suit was decreed. It is brought to my notice now that an appeal has been filed against the said decree and an order of stay has been obtained in respect of the decree passed by the Munsiff Court. That fact was not brought to my notice on the date when W.P. No. 17474 of 1987 was disposed of. Further, the persons who had been impleaded as parties in O.S. No. 134 of 1985 are the appellants in the appeal arising thereof have not been impleaded as parties to this writ petition.

2. In the circumstances, I do not think the order made by me earlier can survive.

The order made on 13th of January, 1995 is recalled and W.P. No. 17474 of 1987 stands restored. This petition stands disposed of accordingly".

15. While taking us through the above order of the learned Single Judge recalling the order dated 13-1-1995 in W.P. No. 17474 of 1987, it was further argued by Sri Siddappa that his contention that the learned Single Judge would not have allowed the original writ petition stands vindicated. Therefore, according to him, it was clear that there was a suppression on the part of the respondent in filing the original W.P. No. 17474 of 1987 and it is because of that suppression the respondent had obtained a favourable order in his favour to file a coercive petition in C.C. No. 606 of 1995 as against the Tahsildar, the respondent 2 in the original writ petition to collect a big sum of Rs. 11,00,000.00 in the Treasury belonging to the deity "Junjappa Devaru".

16. The above argument of Sri Siddappa on the face of it though appears to have some force, in reality the same was nothing but fallacious; the reason being that the very writ petition i.e., W.P. No. 17474 of 1987 which was restored by allowing W.P. No. 25595 of 1996 as stated above, finally came to be allowed once again in favour of the respondent on 17-1-1997. In the penultimate two paras, the learned Single Judge while allowing the said writ petition for the second time had observed that by a mere stay of the judgment and decree in O.S. No. 134 of 1985 in R.A. No. 64 of 1994 did not mean that the judgment and decree obtained by the respondent in the said suit had ceased to operate. Such an observation was made by the learned Single Judge by following the decision of Hon'ble Supreme Court reported in *Mis. Shree Chamundi Mopeds Limited, supra*. It is pertinent to point out here that in the said order of the learned Single Judge, he had further observed that the complainant herein and yet another person by name Kenchappa, son of Hanumappa shall not be allowed of come into possession of the temple of Junjappa Devaru deity in the guise of any interim arrangement. To quote the said two penultimate paras in the final order dated 17-1-1997 in W.P. No. 17474 of 1987, the same read as hereunder:

"It is to be remembered that to Annexure-D decree the 3rd respondent herein was party as the 1st defendant therein. He was clearly enjoined by the Civil Court from interfering with the enjoyment. No doubt, the matter has been taken in appeal and merely because the stay has been granted by the Appellate Court, it does not follow that the judgment and decree is ceased to operate. The only consequence would be that its implementation or enforcement is kept in abeyance and for all purposes the judgment and decree is in force. The following passage from the judgment may be adverted to in this behalf:

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on that date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would

not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and that it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. . . ."

If this be the position, the result would be, by no stretch of imagination, respondents 3 and 4 who have been enjoined by the Civil Court not to interfere with the right of the petitioners, could be brought into picture by means of an executive order passed by the Tahsildar, namely, the 2nd respondent herein. The 2nd respondent cannot be allowed to ignore the declaration of the Court. Merely because the decree has been challenged in appeal and its operation stayed. It does not mean that the 2nd respondent gets power to issue executive orders to ignore the declaration of the Civil Court. Even apart from all these circumstances as noticed above by the order of the Revisional Authority in Revision Petition No. 202 of 1993 (Annexure-C), the order of the Deputy Commissioner dated 23-1-1985 has been restored. That order has to be in operation if the decree of the Civil Court is stayed. Taking into account all the circumstances, the 2nd respondent Tahsildar should not have inducted respondents 3 and 4 into the picture and given possession of the temple to them. The orders Annexures-E, F and H are hence not sustainable in law. They are accordingly quashed. However, I make it clear that if there be any law and order situation, the 2nd respondent may issue appropriate order to safeguard the interest of the temple and smooth functioning of the temple. I also make it clear that while issuing such orders, the 2nd respondent may keep in conformity with the pronouncements of the Civil Court, and the orders of the Appellate Authority. All that need to be asserted is that in any event, respondents 3 and 4 shall not be allowed to come into possession of the temple in the guise of any interim arrangement. I am informed by the respective Counsel that an enquiry has been ordered under the Muzrai Act by the authorities and the same is pending. I make it clear that any finding entered herein should not influence that enquiry in any manner. With the above observations, the writ petition is disposed of.

17. From the above, one thing is abundantly clear that the stay of the judgment and decree of O.S. No. 134 of 1985 obtained by the complainant in his R.A. No. 64 of 1994 was of no consequence and relief to him. Had it been of any consequence, the learned Single Judge would not have allowed W.P. No. 17474 of 1987 yet again on 19-9-1997 as stated above. Even otherwise from the order dated 13-1-1995 in W.P. No. 17474 of 1987 quoted at para 13, supra it is clear therefrom that such a reference as to the suit in O.S. No. 134 of 1985 was not

made by the Counsel for the respondent herein but by the learned Government Pleader who represented the respondents Tahsildar and the Deputy Commissioner in the writ petition. Therefore, we hold that the respondent herein was not guilty of suppression of any fact, much less as it had been claimed by the complainant in filing the contempt petition. Hence, we hold Point No. (ii) as against the complainant and further in favour of the respondent.

18. Regarding Point No. (iii):

It is also the complaint of the complainant that the respondent was also guilty of the abuse of process of Court within the meaning of Section 2(ii)(c) of the Act inasmuch as he had filed O.S. No. 198 of 1991, 118 of 1981, R.A. No. 75 of 1983, R.S.A. No. 62 of 1994 and O.S. No. 134 of 1985 etc. To sustain such an argument, Sri Siddappa had also cited before us the Division Bench ruling of this Court in the case of *Vijaya Bank Employees' Housing Co-operative Society Limited*, supra. In the said decision, the Division Bench of this Court held as under:

"Contempt of Courts Act.--1971 (Central Act No. 70 of 1971), Section 2(c) -- Contempt of Court; not mere disobedience but even abuse of process of Court -- Action calculated to obstruct due courses of judicial proceedings and administration of justice, criminal contempt -- Filing suit after suit, application after application daring raid on Court and abuse of process of Court.

Held:

Filing suit after suit and application after application could not but be characterised as daring raid on the Court and an abuse of process of the Court.. they are undoubtedly calculated to obstruct the due course of a judicial proceeding. . . It is not mere disobedience but even abuse of process of the Court would amount to contempt of Court within the meaning of Section 2(c) of the Contempt of Courts Act. Therefore, where the action of the accused is calculated to obstruct the due courses of a judicial proceeding and the administration of justice, it would amount to criminal Contempt of Court".

19. From going through the said decision, it is clear that in the said reported case, the respondent was resorting to one proceeding or another as against the appellant-Vijaya Bank Employees' Housing Co-operative Society Limited's case, supra, despite the fact that the matter was finally settled by the Apex Court in favour of the appellant-Vijaya Bank Employees' Housing Co-operative Society Limited's case, supra, confirming its right, title and interest on the subject land involved therein and it is in the said circumstances, the Division Bench of this Court held that the respondent therein was guilty of the abuse of process of Court tantamounting to contempt of Court within the meaning of Section 2(c) of the Act.

20. As we see, by citing the above decision an attempt was made by the learned Counsel for the complainant that his party was on the top and that the

respondent was hackling or harassing him with one proceedings or another, despite there being a valid right, title and interest in the deity Junjappa Devaru vested in him as if the matter was settled finally by the Court or Courts in his favour. But on facts, it is now clear to us that the complainant did not obtain as on date any order, judgment or decree from any Court, either civil, revenue or for that matter from this Court in any proceedings resorted to by him to show that he had anything to do with the said deity and further that the other side does not have any semblance of right, title or interest thereon. But unfortunately, the true position is otherwise, for in O.S. No. 134 of 1985, the complainant himself had suffered a judgment and decree in the hands of the respondent and another and further even in W.P. No. 17474 of 1987 on contest he had suffered yet another order as against him as stated above; of course the said order in the writ petition has not reached finally as the same came to be challenged in the writ appeal in the hands of the complainant, as represents to us. That being the position, it is very difficult for us to accept the argument of the learned Counsel for the complainant Sri Siddappa that the respondent was guilty of abuse of process of Court in filing the suit after suit. Hence, even on the third point, we do not find any merit in the argument of the learned Counsel for the complainant. Therefore, we answer the said point also as against the complainant.

For the aforesaid reasons, we hold that though the complaint filed by the complainant is maintainable in law, the same does not merit any consideration in our hands. However, by way of caution we add in this context that, in view of the circumstances that certain litigations between the parties are pending before different Courts and yet to be decided finally, any of the observations made herein in this order, in any way be reckoned either for or against any of the parties herein by any Court or Courts. We further clarify that any such observation made herein is restricted to this contempt petition alone.

The complaint therefore stands dismissed.