

(2013) 09 MAD CK 0223

In the Madras High Court

Case No : Contempt Petition No. 315 of 2011 and Review Sub Application No's. 650 of 2011 and 72 of 2013

K. Balasubramanian, M. Rathinakumar and S. Chandrashekar APPELLANT
Vs

R. Padma, Rajeswari Satish, Satish Raj and V. Rajendran RESPONDENT

N. Adhikesavalu Reddy Vs K. Balasubramanian and
Others
R. Padma Rajendran, Rajeswari Sathish, R.
Sathish Raj and V. Rajendran Vs K. Balasubramanian, M.
Rathinakumar, S. Chandrashekar and N. Adikesavalu Reddy

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0223

Hon'ble Judges : R. Banumathi, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : I. Subramanian and Mr. Prakash Goklaney Cont. P.No. 315 of 2011, Sub. appln. Nos. 598 of 2011 and 162 of 2012 and 99 of 2013, Mr. R. Swaminathan Rev. appln. No. 72 of 2013 and Mr. K. Bijay Sundar in Review Sub. appln. No. 650 o 2011, for the Appellant; I. Subramanian and Mr. Prakash Goklaney for Respondents Nos. 1 to 3 in Review Sub. Appln. No. 650 of 2011 and Review Appln. No. 72 of 2013, Mr. R. Swaminathan for Respondent Nos. 1 to 4 in Cont. P. No. 315 of 2011 and Sub. Appln. Nos. 598 of 2011, 162 of 2012 and 99 of 2013, Respondents 4 to 7 in Review Sub Appln. No. 650 of 2011 and Mr. K. Bijay Sundar 4th Respondent in Review Appln.No. 72 of 2013 and Respondent No. 5 in Sub-Appln. Nos. 598 of 2011, 162 of 2012 and 99 of 2013, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Alleging that there is willful disobedience of the Judgment dated 5.9.2005 made in O.S.A. No. 202 of 2005, the petitioners/defendants 6, 8 and 9 filed Contempt Petition No. 315 of 2011 against respondents No. 1 to 4/ plaintiffs 2, 4, 5 and 6 in C.S. No. 51 of 2005 and the 5th respondent, who is a third party M/s. Continental Warehousing (Nhava Sheva) Limited and has been a lessee under respondents 1 to 3. The dispute over the control and management

of the 1st plaintiff M/s. Citrex Products Limited has been the subject matter of dispute between the parties. The 1st Plaintiff M/s. Citrex Products Limited purchased properties in S.F. No. 157/1 11.50 acres in Thatchur village; S.F. No. 124/12 14.50 acres in Peravallur village; S.F. No. 124/4B 2.00 acres in Peravallur village and S.F. No. 124/11 2.80 acres in Peravallur village in the public auction conducted by M/s. Tamil Nadu Industrial Investment Corporation Limited (TIIC) under registered sale deed dated 28.7.1993. The total outstanding to TIIC was Rs. 120 lakhs. The 1st Plaintiff-M/S. Citrex Products Limited borrowed money of Rs. 1,18,17,677.15 from Defendants Group of Companies for the purpose of discharging the mortgage loan due to the consortium of Banks consisting of Indian Overseas Bank, Canara Bank and TIIC and to redeem the suit schedule property. Case of plaintiffs is that as a security for the said loan, the 1st plaintiff M/s. Citrex Products Limited executed various documents and signed in several blank papers and also opened accounts with Times Bank with whom defendants Group of Companies had a tie up.

2. The further case of Plaintiffs is that out of Rs. 1,18,17,677.15 borrowed by way of a loan, Rs. 1,30,55,995.40 was paid within a period of 22 months. While that being so, in the month of June 2004, Plaintiffs came to know that returns of 1st Plaintiff-M/S. Citrex Products Limited had been filed from 29.07.2003 by some of the Defendants. In or about the same time, Defendants 6, 8 and 9 have also filed two suits in O.S. Nos. 57 of 2004 and 64 of 2004 on the file of Sub-Court, Ponneri. After enquiry, Plaintiffs realised that some of the documents taken as security from them have been misused by Defendants 6, 8 and 9 to create various instruments, as though they have taken over the Company and its property and they are trying to interfere with the affairs of the Company.

3. C.S. No. 51 of 2005 has been filed by the Plaintiffs inter alia for the reliefs:-

(i) to declare that the pledge of the 900 shares belonging to Plaintiffs 2, 3, 5 to 11 infavour of 2nd Defendant stands discharged and consequently direct the 2nd Defendant to return 900 shares pledged by Plaintiffs 2, 3, 5 to 11;

(ii) to declare that Plaintiffs 2 to 6 continue to be the Directors of 1st Plaintiff Company and Plaintiffs 2, 3, 5 to 11 continue to be the shareholders of the 1st Plaintiff Company and consequently restrain the Defendants by means of a permanent injunction from in any manner interfering with the management of the 1st Plaintiff Company; and

(iii) to declare that the agreement of sale dated 02.06.1997 and 25.08.1995 are null and void and not binding upon the 1st Plaintiff Company and other reliefs.

4. Alleging that Plaintiffs are attempting to encroach into the property and that the Power of Attorney executed infavour of Defendants dated 07.04.1999 is irrevocable, Defendants 6, 8 and 9 have filed O.S. No. 57 of 2004 on the file of Sub-Court, Ponneri. O.S. No. 57 of 2004 has been filed for the reliefs:-

(i) declaration that the sale deed dated 13.07.1998 registered as Doc. No. 1761

of 1998 on the file of Sub Registrar, Ponneri in respect of Schedule "B" property is void abinitio;

(ii) declaration that the sale deed dated 13.07.1998 registered as Doc. No. 1765 of 1998 on the file of Sub Registrar, Ponneri in respect of Schedule "C" property is void abinitio;

(iii) declaration that the Power of Attorney dated 07.04.1999 registered as Doc. No. 362 of 1999 on the file of Sub Registrar, Adyar infavour of Plaintiffs 2 to 4 is irrevocable;

(iv) permanent injunction restraining the Defendants from disturbing the Plaintiffs' peaceful possession of the schedule mentioned property comprised in S.F. Nos. 157/1, 124/12, 124/48 and 124/11 in Thatchur village, Ponneri Taluk;

(v) permanent injunction restraining the Defendants from dealing with the schedule mentioned property comprised in S.F. Nos. 157/1, 124/12, 124/48 and 124/11 in Thatchur village, Ponneri Taluk.

5. Along with C.S. No. 51 of 2005, Plaintiffs have filed O.A. No. 58 of 2005 for grant of interim injunction restraining the Defendants from in any manner interfering with the control and management of the 1st Plaintiff-M/s. Citrex Products Limited. By an order dated 30.08.2005, Justice D. Murugesan (as His Lordship then was) held that Plaintiffs have not made out a prima facie case and dismissed O.A. No. 58 of 2005 and vacated the interim injunction.

6. Being aggrieved by the above said order dated 30.08.2005, Plaintiffs preferred Appeal in O.S.A. No. 202 of 2005. By the Judgment dated 05.09.2005, the Division Bench of this Court found that there was no reason to differ from the prima facie conclusion of the learned single Judge, but however, to protect the interest of the 1st Plaintiff Company, the Division Bench modified the order of the learned single Judge as under:-

(1) Neither the appellants nor the respondents shall alienate any of the immovable assets or movable assets belonging to the company without the permission of the court.

(2) The appellant No. 5 viz., Mr. R. Sathish Raj shall function as Receiver of the Company for the purpose of collecting rent from the various lessees in respect of the properties already leased out. After collecting such amount, the amounts shall be deposited in the name of the company. No amount shall be withdrawn from the account without the specific permission of the learned Single Judge.

(3) For the purpose of meeting out any expenses towards upkeep and maintenance of the properties in question, if it is agreed between the appellants and the respondents to incur such expenditure, such amount can be withdrawn on the basis of the joint signature of appellant No. 5 viz., Mr. R. Sathish Raj and the 8th respondent viz., Mr. M. Rathinakumar.

(4) It is open to the 5th appellant R. Sathish Raj in his capacity as Receiver, to

approach the learned Single Judge to withdraw any amount for any other purposes and in such event, we expect the learned Judge to consider the question of granting permission for such withdrawal after hearing the respective parties concerned.

(5) The appellant No. 5 viz., Mr. R. Sathish Raj shall also file accounts before the learned Single Judge once in three months with copies of the other side.

7. The related appeal preferred before the Hon'ble Supreme Court in Civil Appeal No. 1009 of 2006 was disposed off modifying the above Direction No. 3 as under:-

So far as direction No. 3 given by the Division Bench is concerned, in case there is any dispute regarding the expenditure claimed to have been made and there is no concurrence between present appellant No. 4 viz., Mr. R. Sathish Raj and present respondent No. 8 viz., Mr. M. Rathinakumar it shall be open to the concerned parties to move learned Single Judge for such directions as may be necessary.

8. Alleging that in violation of the judgment of the Court dated 05.09.2005 in O.S.A. No. 202 of 2005, 4th Respondent-V. Rajendran has executed lease deed [19.12.2005] for 3 acres for a period of 20 years to M/s. V.R. Packers with the lease rent of Rs. 1000/- per annum and that 4th Respondent had executed sale deed in respect of the land in S. No. 124/4B, Defendants 6, 8 and 9 have filed the Contempt Petition. It is averred that lessee M/s. V.R. Packers is a firm wholly owned by the wife of 4th Respondent-V. Rajendran along with their two daughters-in-law. Petitioners further averred that the Respondents are fully aware of the Judgment dated 05.09.2005 in O.S.A. No. 202 of 2005 and created the lease deed on onerous terms, with a view to frustrate the claim of the Petitioners from exercising their lawful rights and entitlement and is clearly an act of disobedience of the judgment of the Court.

9. Along with the Contempt Petition, Petitioners have filed Sub Application-Sub-A. Nos. 183 to 186 of 2011. By an elaborate Order dated 10.6.2011, we have allowed Sub Application No. 186 of 2011 directing the 5th respondent Continental Warehousing Corporation (Nhava Sheva) Limited to deposit the monthly rent of Rs. 15,75,000/- less TDS at the rate of 20% to the credit of the suit in C.S. No. 51 of 2005 on the file of this Court from 1.3.2011. We have further directed that the arrears of rent for the months of March, April and May, 2011 are to be deposited within a period of six weeks from the date of the Order. It was further directed that from the month of June, 2011, the lease rent of Rs. 15,75,000/- per month is to be deposited to the credit of the suit C.S. No. 51 of 2005 on or before 15th of every succeeding English Calendar month by the 5th respondent.

10. Review Sub Application No. 650 of 2011:-The 5th respondent Continental Warehousing Corporation (Nhava Sheva) Limited filed this review application No. 650 of 2011 to review the Order dated 10.6.2011. According to the 5th

respondent, only an area of 77,500 sq. ft. and later 62,500 sq. ft. was in occupation for which gross rent (without TDS deduction), a sum of Rs. 1,93,16,289/- (including service tax) was paid by the 5th respondent during the lease period from 1.10.2008 to 28.2.2011. Contending that even though it was initially agreed by M/s. VR Packers to provide a land and building measuring about 1,05,000 sq. ft., only 77,500 sq. ft. was provided and later the 5th respondent was in occupation of only 62,500 sq. ft. In the review application A. No. 650 of 2011, the 5th respondent had undertaken to deposit the rent of Rs. 25 lakhs, being the arrears for the months of March, April, May, June and July, 2011 at the rate of Rs. 8/- per sq. ft. For 62,500 sq. ft. Having regard to the averments in the review application No. 650 of 2011 and considering the submissions of the learned counsel appearing for the 5th respondent, by Order dated 5.8.2011, we directed the 5th respondent-Continental Warehousing Corporation (Nhava Sheva) Limited to deposit Rs. 5 lakhs per month without deducting TDS and service tax. Insofar as the arrears for the months of March to July, 2011 were concerned, the 5th respondent was directed to deposit the arrears of Rs. 25 lakhs to the credit of C.S. No. 51 of 2005 and further directed to continue to deposit Rs. 5 lakhs as monthly rent without deducting TDS and service tax to the credit of C.S. No. 51 of 2005 on or before 7th of every succeeding English calendar month.

11. Sub Application No. 162 of 2012 has been filed by the petitioners to withdraw the concession made by way of interim order dated 5.8.2011 and to direct the respondents to comply with the original order dated 10.6.2011. Sub Application Nos. 598 of 2012 and 99 of 2013 have been filed by the petitioners to direct the 6th respondent to deposit in Court the monthly rents received from the 5th respondent from March, 2011 till date in respect of the leases by the 6th respondent from M/s. VR Packers. Respondents 1 to 4 have also filed review application No. 72 of 2013 in Sub Application No. 186 of 2011 to review the Order dated 10.6.2011.

12. In Review Application No. 72 of 2013, Mr. Swaminathan, learned Senior Counsel for respondents 1 to 4 submitted that the lessee has clearly stated that the actual area occupied by the lessee was only 77,500 sq. ft. in 2008 and subsequently with effect from 16.1.2010 it was restricted to 62,500 sq. ft. and the rent payable in respect of the said area was at the rate of Rs. 7/- per sq. ft. for the first six months and then Rs. 7.50 per sq. ft. for the next six months and from 13th month onwards, Rs. 8/-per sq. ft. and while so, the order directing the 5th respondent/lessee to pay lease rent at Rs. 15,75,000/- per month does not reflect the actual area leased out and therefore prayed for reviewing the order. Insofar as the alleged contempt, it was submitted that the judgment of the Division Bench in O.S.A. No. 202 of 2005 was on 5.9.2005 and much before the judgment in O.S.A. No. 202 of 2005, the lease agreement was entered into by the parties on 1.8.2005 and the same was registered on 19.12.2005 and therefore there was no disobedience of the Judgment of this Court in O.S.A. No. 202 of 2005. Learned counsel submitted that in O.S.A. No. 202 of 2005 dated

5.9.2005, the Division Bench has injuncted only alienation of the Company property and an examination of the materials produced would reveal that the property leased was not the Company property and therefore there is no question of disobedience of the Order to initiate contempt proceedings. It was also submitted that by taking undue advantage of the confusion in the Survey Numbers/boundaries of the property, the petitioners have filed the contempt petition.

13. Mr. I. Subramanian, learned Senior Counsel appearing for the petitioners submitted that the Order can be reviewed only on an error apparent on the face of the record. The Order dated 10.6.2011 does not suffer from any such error apparent on the face of the record warranting review. In support of his contention, the learned counsel placed reliance upon the decisions of Supreme Court in *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, ; *M.M. Thomas Vs. State of Kerala and Another*, ; *Parsion Devi and Others Vs. Sumitri Devi and Others*, ; *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, ; *Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others*, , *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, and a decision of Division Bench of this Court in *Kumaran Silk Trade Ltd. Vs. Dr. Devendra and Others* .

14. The scope of an application for review is much more restricted than that of an appeal. The court of review has only a limited jurisdiction circumscribed by the definite limits fixed by the language used in Or 47 R. 1. The Court may allow a review on three specified grounds, namely, (1) discovery of new and important matter of evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (2) mistake or error apparent on the face of the record; or (3) for any other sufficient reason.

15. In *M.M. Thomas Vs. State of Kerala and Another*, , the Supreme Court has held that the High Court, as a Court of Record, has a duty to itself to keep its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only the power, but a duty to correct it. The High Court's power in that regard is plenary.

16. In *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, , the Supreme Court has held that the High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including jurisdiction to determine their own powers.

17. Keeping in view the above legal principles, we have considered the grounds raised in the Review Sub Application Nos. 650 of 2011 and 72 of 2013.

18. In the Order dated 10.6.2011, we have directed the 5th respondent to deposit Rs. 15,75,000/- per month pointing out that 1,05,000 sq. ft. (closed warehouse area) and the open space of 2,10,000 sq. ft. was leased out to the 5th respondent. The calculation of Rs. 15,75,000 per month which was directed to be deposited reads as under:

25. In the absence of any documents to the contrary, we are governed only by the lease agreements entered between M/s. V.R. Packers and 5th Respondent-Continental Warehousing Corporation (Nhava Seva) Limited as per which an extent of 1,05,000 sq. ft. [closed warehouse area] was leased out and the lease rent payable at the rate of Rs. 10/- per sq. ft. and the total lease rental payable for the closed warehouse area is Rs. 10,50,000/- per month. For the open space area of 2,10,000 sq. ft., the lease rent is payable at Rs. 2.50 per sq. ft. per month and the total lease rental payable for the open space area is Rs. 5,25,000/- per month. Thus the total lease rent payable is Rs. 15,75,000/- per month less TDS at the rate of 20%. The said amount is directed to be payable from March 2011 during which the Sub Application came to be filed.

19. The 5th respondent/lessee had filed Review Application No. 650 of 2011 stating that even though the lease deed states that an extent of 1,05,000 sq. ft. was promised and agreed to be given on lease, M/s. V.R. Packers was not in a position to provide the agreed extent of 1,05,000 sq. ft. and only an area of 77,500 sq. ft. was provided and later only 62,500 sq. ft. was provided and it was in occupation of 5th respondent for which the rent was calculated at the rate of Rs. 8/- per sq. ft.

20. At the time when the 5th respondent Continental Warehousing Corporation (Nhava Sheva) Limited moved the Review Sub-application No. 650 of 2011, it was stated that lease was of an extent of 62,500 sq. ft. and that the rent payable is only Rs. 8/- per sq. ft. and only lesser rent is payable by the Continental Warehousing Corporation. In the review Sub-application, Continental Warehousing Corporation undertook to pay Rs. 25 lakhs being the arrears of rent from March, 2011 to July, 2011. Having regard to the submissions of the learned counsel appearing for Continental Warehousing Corporation, on 5.8.2011, we have modified the earlier order dated 10.6.2011 and we have directed the Continental Warehouse garnishee to deposit the arrears of Rs. 25 lakhs and further directed to deposit Rs. 5 lakhs as monthly rent without deducting TDS and service tax.

21. In so far as the other Sub Application No. 162 of 2012 to withdraw the concession and Sub. Application Nos. 598 of 2012 and 99 of 2013 to direct the 6th respondent to deposit in Court the monthly rents received from the 5th respondent in respect of the lease are concerned, in the Sub Application No. 162 of 2012, it is stated that in the original lease deed, an area of 1,05,000 sq. ft. (warehouse) and open space of 2,10,000 sq. ft. (warehouse) has been leased out and while so, Continental Warehousing Corporation cannot contend that only a lesser extent was leased out and therefore the petitioners seek to recall the

order dated 5.8.2011.

22. Based on the extent mentioned in the lease deed, we have passed the Order dated 10.6.2011. Since it was submitted by the lessee that only a lesser extent was leased out we have modified the Order dated 10.6.2011. The Order dated 10.6.2011 was passed by this Court only to protect the interest of the parties without prejudice to their contentions in the suits and in the contempt application. As pointed out earlier, various suits are pending between the parties on the Original Side of the Madras High Court as well as in the District court at Tiruvallur and Subordinate Court at Ponneri and the 5th respondent, being a Company, the accounts of the Company are governed by the auditor's statement and the balance sheet. Insofar as the communications between the parties are concerned, they have to adduce oral and documentary evidence. Therefore, it is for the parties to work out their remedy in the pending suits by adducing oral and documentary evidence.

23. The order dated 10.6.2011 and 05.8.2011 do not suffer from any error apparent on the face of the record. Since we have already modified our earlier order dated 10.6.2011 by order dated 5.8.2011, Review Sub-application Nos. 650 of 2011 and 72 of 2013 are liable to be dismissed.

CONTEMPT PETITION:

24. The Contempt Petition is filed alleging willful disobedience of the Judgment in O.S.A. No. 202 of 2005 dated 5.9.2005. Willful disobedience of the said order is alleged on two aspects: (i) The 1st respondent acting on behalf of M/s. Meta Films had executed a sale deed-document No. 121 of 2006 dated 18.1.2006 in favour of one Ramakrishnan for 22 cents of land in S. No. 124/4B on the northern side of Kilmeni road claiming as though the said property was purchased by Metafilms; (ii) Survey No. 124/12 of Peravallur village, which is a part of B-Schedule property was leased out in violation of the Order passed by the Court.

25. Insofar as the alleged violation of execution of sale deed document No. 121 of 2006 dated 18.1.2006 for 22 cents of land in S. No. 124/4B11 and B12 (new Survey No. 124/4B) is concerned, case of 1st respondent is that the property that has been sold to Ramakrishnan is not part of 30.80 acres originally belonging to the 1st plaintiff Company. According to the 1st respondent, 30.80 acres, which originally belonged to the 1st plaintiff Company, is situated on the southern side of Kilmeni road as is evident from all the documents; whereas the said 22 cents that is sold by M/s. Metafilms to Ramakrishnan is on the northern side of Kilmeni road and the boundaries would clearly demonstrate that the properties so sold to Ramakrishnan is not part of 30.80 acres of land sold to the 1st plaintiff Company by the TIIC. Since the respondents contend that the 22 cents of land sold to Ramakrishnan by Meta Films is not the part of 30.80 acres sold to the 1st plaintiff Company by TIIC, the dispute between the parties can be resolved only by adducing oral and documentary evidence. Therefore, based on

the averments, the act of sale of 22 cents in New S. No. 124/4B cannot be said to be an act of disobedience of the order of the Court.

26. Next limb of act of contempt alleged by the Petitioners is that the respondents have dubiously created a lease deed in respect of survey No. 124/12 in favour of V.R. Packers for a meager sum of Rs. 1,000/- per annum and the said V.R. Packers is controlled by the respondents 1 and 2. Grievance of the petitioners is that V.R. Packers in turn had leased out vast extent of property to Continental Warehousing Corporation for huge amount.

27. According to the 1st respondent, the property leased out to M/s. V.R. Packers belonged to the 1st respondent and is covered by the sale deed executed by the 1st plaintiff Company in his favour and that there has been lot of confusion as to the lie of the lands and the portions that are covered under the villages of Thatchur and Peravallur. According to the 1st respondent, right from the inception the survey numbers and villages have been quoted wrongly in various sale deeds and that adducing oral and documentary evidence would show that the property leased out was a different property.

28. A close perusal of the order in the Sub Application would make it clear that direction was to protect the interest of the 1st Plaintiff company in the suit. The Petitioners are now taking advantage of the order in the Sub Application as a basic material to prove the Contempt.

29. Since the scope of the contempt petition is very limited and same cannot be enlarged to settle all the contentious issues between the parties and various suits are pending between the parties, it is for the parties to work out their remedy in the pending suits and the merits of the said contentions cannot be gone into in the Contempt Petition. The parties will have to adduce oral and documentary evidence relating to the actual extent given on lease and the actual rent received by the 6th respondent in the pending suit, besides the identity of property sold.

30. On a consideration of the submissions made and since the lease was for a long interminable period of twenty years, in our order dated 10.6.2011, we find that prima facie there is violation of the Order of the Court in O.S.A. No. 202 of 2005 dated 5.9.2005. The petitioners are now taking advantage of the said Order dated 10.6.2011 in the Sub Application as a basic material to prove the contempt. The order passed in the Sub Application was to balance the equities during the currency of the contempt petition. It was only by way of supporting reasons directing deposit of monthly rent, tentative findings were given by directing the garnishee to deposit the rent in court, by giving reasons for arriving at such a prima facie finding, it cannot be said that this Court has already concluded the issues against the respondents. The reasoning contained in the order in Sub Application should be taken in that sense.

31. As pointed out earlier, the petitioners have contended that a detailed examination of the schedule of property including its boundaries would prove the falsity of the case pleaded by the respondents. The petitioners now wanted this

Court to engage in a factual analysis and to find out as to whether execution of lease deed and sale deed would constitute violation of the judgment in O.S.A. No. 202 of 2005.

32. The respondents have produced a copy of the Order in Contempt Petition No. 268 of 2010 indicating that with respect to the very same judgment, a Contempt Petition was earlier filed and the same was disposed of by the Division Bench by Order dated 22.11.2011.

33. The Order dated 22.11.2011 in Contempt Petition No. 268 of 2010 shows that the petitioners therein filed a Contempt Petition with the following relief:

It is therefore prayed that this Hon"ble Court may be pleased to punish the respondent suitably for the contumacious disobedience of the order of this Hon"ble Court passed in O.S.A. No. 202 of 2005 on 5 September 2005 and pass such further or other orders as this Hon"ble Court may deem fit and proper in the circumstances of the case and thus render justice.

34. This contempt petition therefore raises a substantial question as to whether it is open to the parties to initiate contempt proceedings in a piecemeal manner.

35. Order 2 Rule 2 of CPC reads thus:-

2. Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

36. The filing of earlier contempt petition No. 268 of 2010 was only on account of the alleged violation of the judgment directions in O.S.A. No. 202 of 2005. This Court has already rejected one set of contentions and accepted another set of allegations and punished the contemnor. The petitioners without divulging the pendency of earlier contempt petition, filed this contempt petition, giving additional reasons. The disposal of the earlier contempt petition by the Division Bench would operate as a bar for maintaining second contempt petition alleging violation of the directions contained in the very same judgment.

37. The provision is therefore very clear that in case plaintiff omits to sue or relinquish any portion of the claim in the earlier round of litigation, it is not open to him to claim the same at a later point of time or to file a fresh suit for the

relief so omitted earlier, except with the leave of the Court.

38. The Division Bench has not given leave to the petitioners to file a second contempt petition based on the judgment dated 5 September 2005 in O.S.A. No. 202 of 2005. Therefore, the second contempt petition would attract the statutory bar. Since we have already considered the merits of the matter, it is not necessary to discuss the said question in detail.

39. The civil suits between the parties are now pending before various courts. The parties are not interested to take up the suits for final disposal. The interlocutory orders passed in suits are used now to settle scores. There was another contempt petition filed before this court in Contempt Petition No. 545 of 2011 at the instance of a Company closely associated with the petitioner herein. The allegation was that the respondents herein committed contempt by violating the undertaking given in I.A. No. 396 of 2004 in O.S. No. 57 of 2004 before Sub Court, Ponneri. The Division Bench was pleased to dismiss the contempt petition by order dated 22 November 2011. We are referring the background facts only to show that even the contempt jurisdiction has been invoked to settle the scores by the parties on multiple occasions.

40. The Supreme Court in Kanwar Singh Saini Vs. High Court of Delhi, , observed that there must be a clear cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of contempt proceedings. The Supreme Court said:-

25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.

41. The Supreme Court in Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another, , indicated that to take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged. The Supreme Court observed:-

A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behooves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.

42. The petitioners and respondents have produced voluminous documents to prove and disprove the respective contentions in the contempt petition. The suit in OS. No. 51 of 2005 has nothing to do with the property which is the subject matter of this contempt petition. The order in the injunction petition, which was the subject matter in O.S.A. No. 202 of 2005 was not in relation to immovable property. It was essentially relating to the management of the Company. It was only to protect the interest of both sides, the Division Bench was pleased to issue certain directions. The scope of the said judgment cannot be extended by analysing the minute details of property on a comparison of schedule of property in various documents. The petitioners now wanted to expand the scope of contempt petition. The contempt jurisdiction cannot be invoked to settle the private disputes between the parties and to make one of the parties to surrender to the other side.

43. The Garnishee has already deposited the rent amount on the credit of the suit. The Registry is directed to deposit the entire amount in a fixed deposit, initially for a period of three years in Egmore Branch of Corporation Bank and the said deposit would be subject to the outcome of the suit in OS. No. 51 of 2005 and the directions, if any, issued in the said suit.

44. We are of the considered view that on the basis of the materials available on record, no definite finding could be recorded with regard to the alleged violation of the directions issued by the Division Bench by Judgment dated 5 September 2005 in O.S.A. No. 202 of 2005. We, therefore, hold that the respondents are not liable for action under the provisions of the Contempt of Courts Act. In the result, the Contempt Petition, Sub Applications, Review Application and Review Sub Applications are all dismissed. No costs.