(2007) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : CC No. 525 of 2006

Pattem Suryaprakash Rao APPELLANT

Vs

V. Amarender Rao RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:
Banking Regulation Act, 1949 — Section 22
Contempt of Courts Act, 1971 — Section 12(1)

Citation : (2008) 1 ALD 438

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Srinivas, for the Appellant; E. Manohar, for Ashok Anand Kumar, for the Respondent

Judgement

C.Y. Somayajulu, J.—This petition is filed to punish the respondent for contempt of Court, for violating the order of this Court dated 8.2.2005 in WPMP No. 2333 of 2005 in WP No. 23156 of 2004.

2. Petitioner filed WP No. 23156 of 2004 questioning the order dated 6.12.2004 of the Reserve Bank of India cancelling the licence of the Prudential Co-operative Bank Limited (for short - ''the Bank'') u/s 22 of the Banking Regulation Act and the consequential order passed by the Registrar of the Co-operative Societies in appointing the respondent as the liquidator of the Bank. During the pendency of the said writ petition, the Bank, with the permission of the State Government, introduced a Scheme of One Time Settlement (OTS Scheme). Questioning introduction of the said OTS Scheme, petitioner filed WPMP No. 2333 of 2005 in WP No. 23156 of 2004 and sought the suspension of the said OTS Scheme. By the order dated 8.2.2005 interim suspension of the OTS Scheme was granted by this Court. Subsequently, by the common order dated 5.5.2005 in WP Nos. 23156 and 24346 of 2004 and 2501 of 2005 and WPMP No. 2333 of 2005 in WP No. 23156 of 2004, WP No. 23156 of 2004 was partly allowed and the order of the Reserve Bank of India directing the winding up of the Bank and the

consequential order of Registrar of Co-operative Societies appointing the respondent as Liquidator, were set aside and WPMP No. 2333 of 2005 in WP No. 23156 of 2004 in which the interim order violated was passed was dismissed. It is stated that an appeal in WA No. 1053 of 2005 was preferred questioning the order dated 5.5.2005, partly allowing WP No. 23156 of 2004, and that a Division Bench heard that appeal and reserved the case ''for orders''.

3. Alleging that the respondent had, in violation of the interim order granted on 8.2.2005 in WPMP No. 2333 of 2005 suspending the operation of the OTS Scheme, given the benefit of OTS Scheme to Mr. Y. Rajiv Reddy and his associates (for short-''the borrowers'') and thus violated the above interim order of this Court, the petitioner in WPMP No. 2333 of 2005 filed this petition to punish the respondent for contempt of Court.

4. In his counter-affidavit, the respondent alleged that if his act of extending benefits of the OTS Scheme to the borrowers, despite its suspension by the Court, is felt improper by the Court, he tenders unconditional apology, and stated that he, after introduction of the OTS Scheme, received 66 applications in respect of overdraft accounts and 123 applications in respect of overdue loans till 5.2.2005, and that he did not receive further applications under that OTS Scheme subsequently, in view of the interim order passed by this Court in WPMP No. 2333 of 2005 on 8.2.2005, and that the borrowers who borrowed Rs. 22,36,25,492/- under different accounts by creating equitable mortgage by way of deposit of title deeds etc., had repaid an amount of Rs. 22,66,44,108/- upto 31.12.2004 and had, after the introduction of the OTS Scheme, expressed their willingness to settle their loan account in full under Option-I of the OTS Scheme, whereunder they would have to pay Rs. 10,29,82,489/-towards full and final settlement of the dues from them, and had in fact paid Rs. 7,44,82,489/- through three demand drafts dated 2.2.2005 and for the balance amount of Rs. 2,85,00,000/- due from them they issued post-dated cheques, bearing dates from 10.3.2005 to 30.3.2005, on 2.2.2005 itself, and as the OTS Scheme was introduced on 24.1.2005 and as the borrowers who expressed their willingness to avail the benefits of the said Scheme under Option-I paid some amounts on 2.2.2005 and gave post-dated cheques on 2.2.2005 itself, and as the demand drafts were encashed even prior to the passing of the interim order on 8.2.2005, and as he did not accept the cheques from the borrowers after 8.2.2005, his presenting the cheques for encashment does not amount to contempt of Court, and as he has great respect for the orders of the Court and as he did not in fact flout the orders of the Court dated 8.2.2005, he is not liable for punishment.

5. Subsequently, after the case was posted for hearing, respondent filed his additional counter-affidavit taking a plea that inasmuch as this petition is filed more than one year after the date of the alleged contempt, the petition is liable to be dismissed as barred by time.

6. Petitioner filed his reply affidavit inter alia contending that this petition filed within one year from the date of knowledge of the contempt committed by the

respondent, is not barred by time.

7. The point for consideration is whether the respondent violated the orders of the Court in WPMP No. 2333 of 2005 dated 8.2.2005 and, if so, is it a wilful violation ?

8. The contention of Sri V. Srinivas, learned Counsel for petitioner is since the respondent, a Joint Registrar of Co-operative Societies, who was appointed as the Liquidator of the Bank, had, after the passing of the interim order dated 8.2.2005 in WPMP No. 2333 of 2005 suspending the operation of the OTS Scheme, wilfully and deliberately extended the benefit of the said Scheme to the borrowers after encashing the cheques issued by the borrowers subsequent to 8.2.2005, even without informing or obtaining the permission of the Court, is guilty of gross contempt of Court. He drew my attention to the earlier writ petitions filed by the borrowers and the undertaking given by the borrowers to a Division Bench of this Court about their intention to pay the entire amount borrowed by them from the Bank without seeking further concessions within the dates mentioned in the said undertaking and about the Court recording the said undertaking, and contended that the respondent, who is well aware of the said undertaking and also the suspension of the OTS Scheme on 8.2.2005, would not have, had he acted in a bona fide manner, extended the benefit of the OTS Scheme to the borrowers after 8.2.2005 and so it is clear that respondent wilfully, and only with a view to benefit to the borrowers in spite of suspension of the OTS Scheme by the Court extended the benefit of the OTS Scheme to the borrowers, with a view to favour them and so he should be punished for contempt of Court for disobeying the order of the Court dated 8.2.2005.

9. The contention of Sri E. Manohar, the learned Senior Advocate, appearing on behalf of the respondent, is that inasmuch as the respondent received the application of the borrowers, expressing their intention to avail the benefit of OTS Scheme, along with demand drafts and post-dated cheques on 2.2.2005 itself i.e., even prior to the passing of the interim order dated 8.2.2005, the respondent under the bona fide impression that he can encash the cheques even after passing of the interim order, encashed the post-dated cheques and inasmuch as the respondent did not receive any applications for OTS subsequent to the passing of the interim order on 8.2.2005, there is no wilful disobedience of the interim order dated 8.2.2005 of this Court on the part of the respondent and as the respondent tendered his unconditional apology whole-heartedly even in the opening paragraph of his counter-affidavit, the respondent may be pardoned. His next contention is that this petition filed on 6.6.2006 i.e., more than one year after the closure of the accounts of the borrowers by the respondent in April, 2005 is hopelessly barred by time.

10. In reply the contention of the learned Counsel for the petitioner is that inasmuch as the petitioner was not aware of the respondent extending the benefits of the OTS Scheme to borrowers after the order dated 8.2.2005 of this Court till October, 2005, and as the petitioner had, immediately after coming to

know that the respondent, in collusion with the borrowers, closed the debts of the borrowers under the OTS Scheme, and that the prosecution launched against the borrowers in connection with the said borrowing was withdrawn by the Government, filed WP No. 21905 of 2005 inter alia questioning the withdrawal of prosecution launched against the borrowers, and as the petitioner had no access or information relating to the acts done by the respondent in connivance with the borrowers, he was not aware of the respondent closing the accounts of the borrowers or about the Government issuing a G.O. withdrawing the prosecution against the borrowers prior to October, 1995, and as the period of limitation for filing contempt proceedings commences only from the date of knowledge but not from the actual date of contempt, this petition filed on 6.6.2006 and admitted on 9.8.2006, cannot be said to be barred by time, more so because the respondent failed to explain as to how petitioner could have had knowledge of his closing the accounts of the borrowers, done by him in secretive manner, immediately after closure of their debt accounts. He relied on Pallav Sheth Vs. Custodian and Others, and Bank of Baroda Vs. Sadruddin Hasan Daya and Another, , in support of his said contention that limitation commences from the date of knowledge.

11. The contention of Sri E. Manohar is that since the affidavit of the petitioner, filed in support of the application, is mute about the date of knowledge of the petitioner relating to the closure of the accounts of the borrowers, and as the averment in the reply affidavit relating to the alleged lack of knowledge is made only with a view to wriggle out of the law of limitation, that plea relating to the petitioner not having knowledge of the closure of the accounts of the borrowers cannot be believed or accepted. He faintly contended that inasmuch as the Court dismissed WPMP No. 2333 of 2005 observing that the prayer made therein is beyond the scope of the writ petition, a lenient view may be taken and the act of the respondent in closing the accounts of the borrowers, if taken as a violation of the order dated 8.2.2005 of this Court may be condoned by accepting his apology made at the earliest opportunity.

12. The petition cannot be dismissed merely because WPMP No. 2333 of 2005 was dismissed on 5.5.2005 on the ground that that petition is beyond the scope of the writ petition, inasmuch as the question whether a person, against whom contempt is alleged, committed the contempt alleged or not, does not depend on the result of the main proceedings, as the point for consideration in a contempt case would be whether the person against whom the contempt is alleged, had wilfully disobeyed the order of the Court or not. Therefore, the legality or sustainability of the order disobeyed is not relevant for deciding a contempt case, because even a wrong order of the Court has to be obeyed and followed till it is set aside by the same Court or the appellant-forum or Supreme Court. In fact the apex Court in Prithawi Nath Ram v. State of Jharkhand AIR 2004 SCW 4742 : 2005 AILD 35 (SC), held that the Court exercising contempt jurisdiction cannot take upon itself the power to decide the sustainability of the order disobeyed, and even if ultimately the interim order is vacated or relief granted in the interlocutory order is not granted finally if violation of. the interim order alleged

is negated in the main proceedings, the other side cannot make negation of the relief in the main proceedings a ground for disobedience of any interim order passed by the Court. The learned Senior Counsel, obviously being aware of the said legal position relating to contempt, did not lay much stress on the point faintly raised by him. So, the fact that WPMP No. 2333 of 2005 is dismissed is of no relevance to decide this petition.

13. I would first advert to the question whether there is contempt of the order of the Court dated 8.2.2005 or not, and decide the question relating to limitation later.

14. WP No. 23156 of 2004 questioning the appointment of the respondent as Liquidator of the Bank was filed in 2004. During the pendency of that petition, OTS Scheme, with the approval of the Government, was introduced by the Bank on 24.1.2005. Petitioner filed WPMP No 2333 of 2005 questioning the said OTS Scheme in February 2005. Interim order suspending the operation of the OTS Scheme was passed on 8.2.2005. The case of the respondent is that even on 2.2.2005 i.e., much prior to the passing of the interim order on 8.2.2005 the borrowers applied for discharge of their loans under OTS Scheme and gave three demand drafts, and some post-dated cheques bearing dates from 10.3.2005 to 30.3.2005 and that he, under the impression that he can encash those cheques and grant benefit of OTS Scheme to them, in spite of the order dated 8.2.2005 of this Court, had encashed the cheques and gave the benefit of the OTS Scheme to the borrowers subsequent to 8.2.2005. So, it is clear that it is not the case of the respondent that he extended the benefit of the OTS Scheme to the borrowers, without knowledge of the Court suspending the OTS Scheme. In fact, the respondent, who is made a party to the writ petition in his personal capacity and was represented by a Counsel in the writ petition, was very well aware of the interim order dated 8.2.2005, because that order was passed in the presence of his Counsel. So, it is beyond any pale of doubt that the respondent, having full knowledge of the fact that this Court suspended the OTS Scheme on 8.2.2005, gave the benefit of the OTS Scheme to the borrowers long subsequent to 8.2.2005 and cleared their debt under the OTS Scheme, inspite of its suspension by this Court on 8.2.2005.

15. That the respondent seems to be very much interested in the borrowers, and tried his best to help them by hook or crook in extending the benefit of the OTS Scheme under which they got a benefit of several crores of rupees and the Bank seems to have lost those crores-may be due to their closeness to the powers that be, as disclosed from Para 5 at Page 4 in the affidavit of the petitioner filed in support of WP No. 21905 of 2005 reading

It is relevant to mention here that the 7th respondent is a close relative of the present Chief Minister of the State who was the Leader of Opposition in the Assembly prior to 2004. Due to the political influence exercised by the 7th respondent, the 5th respondent Bank has irregularly sanctioned loans and overdrafts to him and his group and the same were not recovered at all." (7th respondent in WP No. 21905 of 2005 is Mr. Y. Rajiv Reddy, the main borrower from the Bank shown as the 5th respondent in the said writ petition)

or for other reasons, is very clear from G.O. Rt. No. 640 dated 11.5.2005 issued by the Government withdrawing the prosecution against the borrowers, as it reads:

...as the aforesaid (borrowers) have paid the entire amount as per O.T.S. Scheme as evidenced by the letter of Liquidator for Prudential Bank dated 3.2.2005 addressed to the Principal Secretary to Home Department....

(Underlining mine)

Therefore, it is clear that the respondent had, even on 3.2.2005 i.e., long before encashing the post-dated cheques bearing dates from 10.3.2005 to 30.3.2005, addressed a letter to the Government that borrowers cleared the loans due to the Bank, when in fact the loans taken by the borrowers from the Bank admittedly were not cleared by 3.2.2005. In fact it is not the case of the respondent even in his counter-affidavit in this petition that the borrowers cleared all the loans even by 3.2.2005. That issuance of a post-dated cheque does not clear a loan must be within the knowledge of the respondent, a high-ranking responsible officer in the Co-operative Department. So, it is very clear that the respondent knowing that the debts due to the Bank from the borrowers, in fact, were not cleared by 3.2.2005 addressed a letter to the Government on 3.2.2005 informing that the borrowers cleared the loans due to the Bank. Respondent could not have, and admittedly did not, encash the post-dated cheques bearing dates from 10.3.2005 to 30.3.2005 given by the borrowers to the Bank by 3.2.2005. I wonder if the respondent would have issued any receipt of full satisfaction to any other debtor of the Bank by receiving post-dated cheques and without encashing those cheques. Probably because the borrowers were ''Special'' to him, the respondent might have addressed such a letter to the Government even on 3.2.2005 informing that the borrowers had discharged the loans due to the Bank, to enable the borrowers to move their pawns in the Government for withdrawal of the prosecution against them.

16. Respondent does not deny his violating the order of the Court dated 8.2.2005 suspending the OTS Scheme, by extending its benefit to the borrowers after 8.2.2005. His case is that his action of extending the benefit of OTS Scheme after 8.2.2005 is not a wilful disobedience of the order dated 8.2.2005. So, it has to be seen whether the respondent wilfully disobeyed the order dated 8.2.2005 of this Court or not.

17. In State of Orissa and Others Vs. Md. Illiyas, , the apex Court while considering the meaning of ''wilful'', held:

(12) THE expression ''wilful'' excludes casual, accidental, bona fide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligence. It must be intentional,

deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression ''wilful'' means an act done with a bad purpose, with an evil motive.

(13) "wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in Courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent....

Respondent being a Joint Registrar of Cooperative Societies in the Co-operative Department of the Government should be presumed to know that he is bound by the order of the Court, because in T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, it is observed--

in Major Genl. B.M. Bhattacharjee (Retd.) and another Vs. Russel Estaqte Corporation and another, , it was observed by this Court that -

(all of the officers of the Government) must be presumed to know that under the constitutional Scheme obtaining in this country, orders of the Courts have to be obeyed implicitly and that orders of the apex Court-for that matter any Court- should not be trifled with

As stated earlier, the respondent can be imputed with knowledge that the OTS Scheme ceased to be in operation from 8.2.2005 because of its suspension by the Court. So, till suspension is revoked, the OTS Scheme is as good as non-existing. Therefore, question of extending its benefit to any body, after its suspension by the Court, does not arise. Had the respondent received the entire amount due from the borrowers i.e., without extending the benefit of the OTS Scheme, it would not amount to contempt of Court, because the benefit of the OTS Scheme is not extended. But, if the respondent, by granting the benefit of the OTS Scheme, receives amounts less than that are actually due as per the contract, or the previous undertaking from any borrower after 8.2.2005, and during the period of operation of the said interim order, it cannot but be said that he deliberately, wilfully and wantonly and in disregard of the order of suspension of the OTS Scheme by the Court, granted the benefit of that Scheme to that debtor. Respondent, though was aware that the OTS Scheme is suspended by this Court on 8.2.2005, having extended its benefit to the borrowers after 8.2.2005 cannot be heard to say that inasmuch as he received the post-dated cheques from the borrowers on 2.2.2005 i.e., prior to the suspension of the OTS Scheme, he could grant benefit of the suspended OTS Scheme to them. As stated earlier, surprisingly, even before encashing the post-dated cheques respondent had on 3.2.2005 itself addressed the Government that the borrowers cleared the debts due to the Bank under the OTS Scheme. In the circumstances of the case, I am of the considered opinion that the respondent, in order to justify his writing to the Government on 3.2.2005 about the borrowers clearing the loans, probably with a view to save himself from the consequences of sending a false report relating the discharge of the loans by the borrowers, when in fact the loans of the borrowers were not cleared by 3.2.2005, must have extended the benefit of the OTS Scheme to them, by encashing the cheques after 8.2.2005, deliberately, probably under an impression that that action of his may go unnoticed, or might have thought that he can, by filing an affidavit stating that he is tendering unconditional apology, get away from the contempt proceedings, if initiated.

18. Encashing of post-dated cheques bearing dates in March, 2005, after 8.2.2005 per se may not amount to violation of the order dated 8.2.2005 of the Court, because by mere encashment of the cheques issued by the borrowers, they i.e., the borrowers would not get the benefit of the suspended OTS Scheme. But, granting the benefit of the OTS Scheme by the respondent to the borrowers subsequent to 8.2.2005 without the knowledge or permission of the Court, in the circumstances stated above, cannot but be said to be a deliberate and wilful violation of the order of the Court dated 8.2.2005, by the respondent.

19. If the respondent entertained a doubt as to whether he can extend benefit of the OTS Scheme to the borrowers, subsequent to 8.2.2005 due to his receiving of the application and post-dated cheques bearing dates in Mach, 2005 prior to 8.2.2005, and if really the respondent was acting in a bona fide fashion, he as on ordinary prudent person would have sought a clarification from the Court whether he could in those circumstances extended the benefit of the OTS Scheme to the borrowers or not. He did not do so. So, he deserves to be punished for contempt of the order of this Court dated 8.2.2005.

20. The next question is whether the apology of the respondent relieves him of the consequences of the contempt committed by him. As contended by Sri E. Manohar, the learned Senior Advocate for the petitioner, it is no doubt true that the counter-affidavit of the respondent contains the following as Para 3.

I submit that I tender unconditional apology, if this Hon''ble Court comes to the conclusion that I have extended the benefits of OTS Scheme dated 24.1.2005 to the borrowers of the Prudential Co-operative Bank Ltd., despite the suspension of the same by this Hon''ble Court by order dated 8.2.2005 in WPMP No. 2333/2005.

The statement in the counter-affidavit of the respondent reading ''If the Court comes to a conclusion'''' that the act done by him is in violation of the interim order dated 8.2.2005, he is sorry for what he has done, makes me feel that the respondent is under an impression that though he did not violate the order of the Court dated 8.2.2005 he is unnecessarily dragged to the Court by filing this petition. There is no repentance for the breach of the order of the Court committed by him. So, it is clear that the alleged ''unconditional'' apology is not from the heart of the respondent, but is a mere eyewash. The observations of the apex Court in L.D. Jaikwal Vs. State of U.P., reading:

WE are sorry to say we cannot subscribe to the ''slap-say sorry-and forget'' school of thought in administration of contempt jurisprudence. Saying ''sorry'' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.

fits like a glove to the facts of this case. In T.N. Godavarman Thirumulpad''s case (supra), the apex Court held that when mens rea in committing the contempt is writ large, apology cannot be accepted and the contemnor deserves severe punishment.

21. In the circumstances stated above, mens rea on the part of the respondent to bestow a favour on the borrowers by extending the benefit of the OTS Scheme after March 2005 even though it was suspended by the Court, in writ large, and so the respondent cannot be let off by accepting his apology, because accepting apology, and letting off the respondent in a case like this would send wrong signals, and would embolden people to violate the orders of Court, because they would get an impression that by their just writing a sentence in their counter-affidavit that they are tendering an unconditional apology, they get purged of the contempt alleged against them, and the Courts would not take any further action against them.

22. Coming to the question of limitation, it is no doubt true that in the affidavit filed in support of this petition, the date on which the petitioner came to know about the respondent extending the benefit of the OTS Scheme to the borrowers is not mentioned. But that fact is not much of consequence because petitioner could not have had knowledge of the date when the respondent actually extended the benefit of the OTS Scheme to the borrowers, even on the day the benefit thereof was extended to the borrowers, because the respondent, and the borrowers, were executing their plan and design of the flouting of the interim order of this Court dated 8.2.2005, in a clandestine fashion. Moreover, it is not the case of the respondent that he published the factum of his giving the benefit of the OTS Scheme to the borrowers on the Notice Board of the Bank, or through any other mode, for the public or the petitioner to know about that fact even on the day on which he extended the benefit of the OTS Scheme to the borrowers, or on any other day. Court can take judicial notice of the fact that it would take sometime for third parties knowing about the collusion between parties, who execute their plan or design in a clandestine fashion.

23. Referring to the averments in the Additional Reply Affidavit filed by the petitioner, where he alleged that he filed WP No. 21905 of 2005 questioning the action of the Government in withdrawing the prosecution against the borrowers, where he made a reference to G.O. Rt. No. 640 dated 11.5.2005 issued by the Government of Andhra Pradesh, learned Counsel for the respondent contended that petitioner should be imputed with the knowledge of the respondent extending the benefit of the OTS Scheme to the borrowers even by 11.5.2005, if not earlier, and so this petition filed one year after 11.5.2005 is barred by time. I

am not able to agree with the said contention. Merely because the date of the G.O., and the date on which the benefit of the Scheme was extended by the respondent to the borrowers, are mentioned in the affidavit filed in support of the WP No. 21905 of 2005, and in the affidavit filed in support of this contempt petition, petitioner cannot be imputed with knowledge of those events, even on the dates on which the proceedings bear. Petitioner, who is not expected to keep a watch on all the activities of the respondent and the borrowers, cannot be expected to go around the Secretariat to find out what G.Os. are being issued by the Government in respect of the criminal case filed against the borrowers. Since it is not the case of the respondent that he gave notice of his intention to close the accounts of the borrowers, by extending the benefit of the suspended OTS Scheme, prior to his taking the step of closing the debt accounts of the borrowers or that he has put the petitioner on notice about his intention to close the debt accounts of the borrowers after 8.2.2005 or about thee Government issuing G.O. Rt. No. 640 dated 11.5.2005 closing the crime against the borrowers, petitioner could not have had knowledge of those events on the dates they bear. Public or Petitioner can know that such events took place only after lapse of considerable time, when those events gradually gain publicity either due to the non-appearance of the borrowers in the criminal Courts for hearings or due to some other events. The respondent did not state as to how the petitioner could have had knowledge of his closing the accounts of the borrowers after 8.2.2005, and before October, 2005.

24. From a reading of the affidavit of the petitioner filed in support of the WP No. 21905 of 2005 it can be taken that the petitioner had knowledge of the respondent extending the benefit of the OTS Scheme to the borrowers and the Government withdrawing the prosecution against the borrowers only on or after 31.7.2005, because in Paras 7 and 8 thereof it is stated:

7...It is submitted that the amount due from the 7th respondent and his group as on 31.7.2005 was Rs. 42.82 crores as appears in the books of the Bank and the amount of Rs. 10.29 crores paid by them has been kept in a suspense account. Even then the amount due from the said group of persons is Rs. 32.52 crores.

8. It is respectfully submitted that even as on today the books of accounts of the Bank shows the above mentioned amount due from the 7th respondent and his group. However, the 6th respondent addressed a letter to the 3rd respondent to withdraw the criminal case pending against the 7th respondent since the loans have been settled under the new OTS Scheme. It appears that the 1st and 2nd respondents and thereafter G.O. Rt. No. 640 dated 11.5.2005 has been issued for withdrawing the criminal case pending against the 7th respondent....

25. So this petition filed on 6.6.2006 within one year from 31.7.2005 is very much within time.

26. Till the date of filing of this petition, the Court also was not made aware of

the respondent extending the benefit of the OTS Scheme to the borrowers, either by the respondent or by anybody else through a memo or otherwise. So, it is clear that till the petitioner filed this petition, the Court also was not aware of the respondent violating the orders of this Court dated 8.2.2005. Hence, the possibility of this Court taking suo motu action for contempt arose only when this petition came up for admission before this Court but not earlier.

27 The facts in Thiruvalkani K. Nagaraj Vs. Thiruvalkani Sarojamma and Another, , relied on by Sri E. Manohar, which was decided by me, are entirely different from the facts of this case. In that case, violation of the undertaking given by the contemnor came to the knowledge of a Division Bench of this Court even long time prior to the date of initiation of the suo motu proceedings for contempt by me, when CMP No. 7898 of 2001 came up for hearing before me. During the course of arguments it was brought to my notice that violation of the undertaking given by the contemnor was brought to the notice of a Division Bench of the Court, when CMP No. 15271 of 2000 came up for hearing before that Division Bench and that the Division Bench by its order dated 8.9.2000, dismissed the CMP with certain observations, without initiating proceedings for contempt suo motu. By the date I initiated suo motu contempt proceedings one year elapsed from the date of knowledge of the contempt, which was brought to the notice of the Division Bench. On the ground that the Division Bench, which had knowledge of the contempt committed by the contemnor did not initiate suo motu action for that contempt, and as more than one year elapsed by the date I initiated the suo motu contempt proceedings, I dropped the suo motu proceedings for contempt initiated by me, as barred by time, because Court is indivisible. In this case the Court had knowledge of the violation of the order of this Court dated 6.6.2006 by the respondent, only when the petitioner filed this petition but not earlier. A learned Judge before whom this case came up for admission, admitted this petition on 9.8.2006. The learned Judge admitting the petition for contempt can be treated as a suo motu action for contempt, because there, in fact, is no difference between a suo motu contempt proceeding and a contempt proceeding initiated by any other party as far as the contemnor is concerned. When contempt of its order comes to the notice of the Court, and if nobody files a petition for contempt, the Court takes up the contempt proceedings suo motu within one year from the date of knowledge as held in Pallav Sheth ''s case (supra). As it would be redundant to initiate suo motu contempt proceedings when a petition for that purpose is filed, Courts do not initiate suo motu contempt proceedings after a petition for contempt is filed by some other person. The reason for initiating contempt proceedings is to make people aware that violation of order of the Court would result in punishment. Persons who deliberately violate the orders of Court deserve to be punished.

28. In view of the ratio in Pallav Sheth''s case (supra), the date of knowledge would be the criteria for determining the period of limitation for initiation of contempt proceedings. Since there is no material on record to show that the petitioner had knowledge of the respondent extending the benefit of the

suspended OTS Scheme at any time after 8.2.2005 and prior to his filing the WP No. 21905 of 2005, and since it is the specific case of the petitioner that he came to know about the respondent extending the benefit of the suspended OTS Scheme to the borrowers, and also the Government withdrawing the criminal cases against the borrowers only in October, it cannot be said that the petition is barred by time.

29. Since the Court also has power to initiate action for contempt suo motu for violation of its order, the Court which had knowledge of the violation of its order by the respondent through the petition filed by the respondent took cognizance of the case on 9.8.2006 i.e., well within one year of the date of its knowledge about the respondent committing contempt of the order of the Court, it can be taken that the Court took cognizance of the case well within the period of one year from the date of knowledge and so I am unable to agree with the contention of Sri E. Manohar that the case is barred by time.

30. In my considered opinion, imposition of fine, even heavy fine, against the respondent would not suffice, because there is every possibility of the respondent seeking the help of the borrowers to come to his rescue for payment of that heavy fine, as a quid pro quo for his conferring the benefit of the suspended OTS Scheme on them whereby they i.e., the borrowers, got a benefit of Rs. 32.5 crores, as per the case of the petitioner. So, the borrowers would happily help the respondent in paying the heavy fine, because they came out the criminal cases and the heavy debts due to the Bank only due to the respondent extending the benefit of the suspended OTS Scheme to them. Therefore, as a deterrent, respondent has to be sentenced to imprisonment, so that orders of Court are not violated with impunity, and the contemnors may not come forward with an apology with lips expressing sorry for what they did, and get away happily unpunished.

31. Contemnor present. Heard him on the question of punishment. Counsel for respondent says that respondent is tendering unconditional apology under proviso to Section 12(1) of the Contempt of Courts Act, 1971. For the same reasons mentioned above the apology of the respondent is not accepted. In the circumstances, respondent is sentenced to simple imprisonment for four months and a fine of Rs. 1,000/- (Rupees one thousand only) in default simple imprisonment for one month.

