
(1977) 11 MAD CK 0026
In the Madras High Court
Case No : Appeal No. 1013 of 1974

STATE OF TAMIL NADU

APPELLANT

Vs

NATIONAL TRADING CO.

RESPONDENT

Date of Decision : 07-11-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2)

Citation : (1978) 7 CTR 277 : (1978) ILR (Mad) 347 : (1978) 91 LW 263

Hon'ble Judges : Ismail, J

Bench : Division Bench

Judgement

Ismail, J. - The defendant in O.S. No. 161 of 71 on the file of the court of the subordinate Judge of Tuticorin is the appellant herein. The defendant-appellant is no other than "the State of Tamil Nadu through the Secretary, Department of Commercial Taxes, Government of Tamil Nadu, Madras-9". The respondent herein filed the suit for recovery of a sum of Rs. 62,369.19 being the sales tax paid by it for the years 1961-62, 1963-64, and 1965-66.

2. The respondent herein, a Partnership firm is a dealer in matches. There were also certain others who were not only dealers in but were also manufacturers of matches. All of them were assessed to tax under the Central Sales Tax Act, 1956. All of them joined together and filed Writ Petitions for refund of the tax on the contention that Ss. 8(2), 8(2-a) etc. of the Central Sales Tax Act, 1956 were ultra vires. Those writ petitions along with certain other Writ petitions were disposed of by of this Court on 30-1-1969. By the order dated 30-1-1968, writs of mandamus were issued for refund of the tax paid by the various petitioners in the Writ Petitions. While disposing of these Weir Petitions, this court simply followed its earlier judgment in Larson and Toubro Ltd. Madras and others vs. Joint Commercial Tax Officer, Mount Road II Division, Madras and others. After the said writ petitions were allowed, the decision of this court in Larsen and Toubro Ltd. Madras and other vs. Joint Commercial Tax Officer, Mount Road II Division, Madras and others, were reversed by the Supreme Court in the State of

Madras vs. N. K. Nataraja Mudaliar,. The earlier Judgment of this Court in Larsen and Toubro Ltd. Madras and others vs. joint Commercial Tax Officer, Mount Road II Division, Madras and others was rendered on April 7, 1967 and the subsequent decision of the Supreme Court was rendered on April 18, 1968. Thus it will be seen that the Writ Petitions filed by the respondent and others were disposed of by this Court on 30th January 1968, that is, after the judgment of this court in Larsen and Toubros case and before its reversal by the Supreme Court in the State of Madras vs. N. K. Nataraja Mudaliar, on 18th April 1968. After the decision of the Supreme Court dated 18th April 1968 the respondent and all the orders Writ Petitioners approached the Commissioner of Commercial Taxes, Board of Revenue as well as the Assessing Authority for implementation of the orders of Writs of Mandamus issued by this Court and they represented to the Commissioner as well as the Authority that in view of the subsequent judgment of the Supreme Court dated 18th April 1968 they would be content if the tax referable to the excise duty portion which was included in the turnover was returned to them and that they would receive the same in full settlement of whatever rights that had accrued to them under the Writs on Mandamus issued by this Court on 30th January 1968. To that effect they filed affidavits before the Assessing Authority and on the basis of those affidavits, the Assessing Authority also revised the assessment orders and made refund of the tax. Thereafter only the respondent herein and others filed suits on the file of the Court of the Subordinate Judge, Tuticorin, other seeking to recover the balance of the tax after giving credit to the tax referable to the central excise duty portion and the respondent herein seeking to recover the entire tax which it had paid for the years 1961-62, 1962-63, 1963-64 and 1965-66. The respondent herein happened to claim the entire amount because it was not a manufacturer and therefore there was no question of the respondent getting refund of the tax referable to the central excise duty portion included in the turnover, while in the case of the others, that position was present. The others contended that the affidavits obtained from them were obtained from them were forced affidavits, that they had not executed those affidavits voluntarily and that therefore they were entitled to the balance of the tax due to them as per the order of this Court in the Writs of Mandamus in the respective writ petitions filed by them. One of the contentions put forward by the State which was the defendant in the suits was that by virtue of their own conduct in approaching the Commissioner of Commercial Taxes, Board of Revenue, and the Assessing Authority and offering to receive the refund of tax referable to the central excise duty portion included in the turnover in full settlement of their right, they were estopped from putting forward the present claims because if they had not made such offers, the State would have preferred appeals to the Supreme Court against the orders of this Court dated 30th January 1968.

3. This case was accepted by the trial court and the suits instituted by those persons were dismissed. As far as the present case is concerned, the respondent herein was not a manufacturer and therefore it did not obtain refund of the tax

referable to the central excise duty portion included in the turnover. The learned Subordinate Judge took the view that the question of estoppel did not arise in the case of the respondent and that therefore it was entitled to the refund of the entire tax paid by it. Accordingly the suit instituted by the respondent herein was decreed by the trial Court. We are referring to these facts rather elaborately, in view of the confusion present in the written statement filed in the present suit. Since the present suit was filed along with other suits, the defendant originally did not take note of the special footing of the present respondent not being a manufacturer and therefore in the written statement put forward all the defences which the defendant had put forward in the other suits. Only in the additional written statement filed by the appellant herein the position was made clear that the respondent herein was not a manufacturer, but only a dealer and therefore the question of the respondent obtaining a refund of the tax referable to the central excise duty portion did not arise. This confusion was present even in the issues framed by the trial Court. The issues framed by the trial Court in this suit were :

1. Whether the plaintiffs agreed to receive the refund of tax of the central excise duty portions of the turnover only and filed an affidavit before the defendants Officer to that effect and whether the plaintiff is therefore not entitled to claim refund of the suit amount;
2. Whether the plaintiff is estopped from claiming the suit amount ?
3. Whether the plaintiff got refund of the central excise duty portion of the turnover only in full satisfaction of his claim against the defendant is hence disentitled to claim the suit amount ?
4. Whether the plaintiff is entitled to recover the suit amount from the defendant ?
5. Whether the suit is barred by limitation ?
6. Whether there is valid notice under S. 80 of the CPC ?
7. What relief is the plaintiff entitled to ?

4. It will be seen from the above issues, that issues Nos. 1 to 3 have no reference to the facts of the respondents case and only issues Nos. 4 to 7 are relevant for the respondents case. As we have pointed out already, the learned Subordinate Judge has decreed the suit for the entire amount claimed by the respondent herein. It is against this judgment and decree of the learned Subordinate Judge dated 16th December 1972 that the defendant in the suit has filed the present appeal.

5. During the pendency of this appeal, the appellant herein herein filed two petitions for permission of this Court to raise additional grounds. The first petitions namely C.M.P. No. 11751/77 sought to raise the following ground as additional ground :

"It is submitted that in view of the judgment of the Supreme Court in 22 S.T.C. 376 (Nataraj Mudaliars case) no decree could be passed in the suit without violating Art. 141 of the Constitution of India and on this ground alone the suit should be dismissed".

The next petition, namely C.M.P. No. 12027/77 sought to raise the following two additional grounds :-

"(1) It is submitted that the cause of action stated to arise on 30-1-68 when this Honourable Court delivered judgment in Writ of Mandamus cannot be relied upon by the plaintiff inasmuch as the judgment in Writ of Mandamus (W.P. No. 2818 to 2821/67) cannot form the basis for filing the suit as it will amount to filing of suit on a judgment which is clearly barred under the provision of Civil Procedure Code. Equally the other cause of action relied on by the plaintiff viz. delivery of notice under S. 80 of the CPC on 22-4-1971 is also unsustainable in law.

2. It is also submitted that the suit is not maintainable as it is barred by the principle of res judicata".

Since all these grounds were purely grounds of law not requiring any investigation into the facts, we allowed these petitions and permitted the appellant herein to raise these points.

6. Before proceeding further, we would like to refer only to one other fact. After the other persons concerned had received the refund of the parts of the tax referable to central excise duty portion the respondent as well as other petitioner is the Writ Petitions filed petitions before this Court for taking action against the respondent in the Writ Petitions by way of contempt for not implementing the Writs of Mandamus issued by this Court. A certified copy of the order in W.M.P. No. 88 to 90 etc. of 1970 has been marked as Ex. A-7 in these proceedings. As far as the respondent is concerned, this Court held as follows :

"So far as the other petitions are concerned, we are not inclined to make any order except to observe that the petitioners will be at liberty to pursue any remedy available to them under the law. They are accordingly dismissed".

We will have to consider the effect of this order of this Court also on the right or claim of the respondent herein.

7. Under the above circumstance two questions arise for consideration, namely (1) whether the suit instituted by the respondent herein is maintainable at all; and (2) whether the suit, even if it is maintainable, is barred by limitation or not ?

8. For the purpose of considering the first point, it is relevant to the plaint itself, as to what according to the plaint was the cause of action for the suit. Paragraph 7 of the plaint states :

"The cause of action arose on 16-3-1963, 7-1-1964, 20-1-1968 and 7-1-1967 when the assessments were made at Kovilpatti and on 30-1-1968 when the High Court delivered judgment on 24-6-1968 when the copy of the judgment was

obtained, and on 22-4-1971 when the notice was delivered and subsequently within the jurisdiction of this Honourable Court".

Thus, it will be seen from this paragraph that the plaintiff appears to rely on three facts, namely (1) the assessment orders themselves; (2) the order of this Court in the Writ Petitions dated 30-1-1968 and the date on which it obtained certified copy thereof that is 24-6-1968; and (3) the date on which S. 80 C.P.C. notice was served on the appellant herein, that is 22-4-1971. The learned counsel for the respondent frankly represented to this Court that he cannot rely on the assessment orders, as constituting cause of action in favour of the respondent for the simple reason that if the assessment orders were allowed to stand, the respondent herein will have no right whatever to claim refund for the tax. In fact it is rather doubtful whether the Writs of Mandamus could have been issued at all calling upon the Assessing Authority to refund the tax without setting aside the orders themselves. In the writ petitions what was done was only to issue Writs of Mandamus to the Assessing Authorities to refund the tax, allowing the assessment orders to be in fact. As far as the statute is concerned, it contemplated remedies to be taken against the assessment orders. If those remedies are not pursued and the assessment orders are allowed to become final, it may not be possible for an assessee to ignore the assessment orders and claim any relief collaterally treating the assessment orders as illegal or void. However, it is unnecessary for us to pursue this matter further except to point out that the learned counsel himself did not rely on the assessment orders as constituting any cause of action.

9. Equally the learned counsel for the respondent does not rely on the date on which notice under S. 80, CPC was served, as constituting cause of action enabling the respondent to file the present suit.

10. Consequently, we are left only with one thing, namely the Writs of Mandamus issued by this Court. The learned counsel for the respondent drew our attention to paragraph 8 of the plaint wherein the respondents had referred to the petitions filed by it and others for committing the respondent in the writ petitions for contempt and the orders passed by this court on 23-4-1971, extracted already, as constituting another cause of action. Even though the cause of action has been expressly given only in paragraph 7 of the plaint, we are prepared to consider this question also against the background of the fact set out already.

11 It is well settled that once this Court had allowed the Writ Petitions in favour of the respondent herein, the rights accrued to it had to be worked out by it only by way of executing the orders passed by this Court in the writ petitions and based on those orders no separate suit can be filed by the respondent. As far as the procedural law of this country is concerned, except within regard to foreign Judgments provided for in the Civil Procedure Code, with reference to all other judgments they cannot constitute an independent cause of action enabling a person to file a suit and such person will have to work out his rights flowing from a judgment only by executing the decree which was passed on the basis of the

judgment. It is not as if in the present case, there are no executable orders in the writ petitions when the Court delivers the judgment deciding to issue a Writ of Mandamus it is followed by a Writ Absolute issued by the Court to be served on the respondent to the writ petition. Therefore there is a decretal order has to be executed. In fact, the respondent itself pursued only that remedy by filing a petition for contempt and once it has failed in getting the relief in that petitions, it is not open to it to turn round and say that it will file a separate suit on the judgment itself.

12. According to the Crown Practice in England :

"If the party against whom a peremptory Writ of Mandamus has been obtained does not, after being served with the writ, do the required to be done, he will be liable to attachment, as to which see that title post, p. 343. The Court or Judge besides, or instead of, proceeding against the disobedient party for contempt, may direct that the act be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a judge may direct, and execution may issue for the amount so ascertained and costs. (R.S.C. Order XLII R. 30, R. 207).

... ..

In the case of a corporation wilfully disobeying the Mandamus may be enforced by leave of the Court or a Judge by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by sequestration against their property (Order XLII R. 31)"

(Crown Practice by Short and Mellor-Second Edn. pages 248 and 249).

13. The above position has been set out in paragraph 1568 of Vol. 11 of Halsburys Laws of England, Fourth Edition, as follows :-

"Disobedience to an Order of Certiorari, Mandamus or Prohibition is a contempt of court and is punishable by committal for contempt."

After stating the above proposition generally with regard to Mandamus, it is stated :

"In case of disobedience to an order of Mandamus, a Court may also direct that the act required to be done, may be done, so far as practicable, by the party by whom the order was obtained or some other person appointed by the Court, and the costs recovered from the disobedient party;"

The position would appear to be the same even in America. In Corpus Juris Secundum Vol. 55 at page 629 in paragraph 360 it is stated :

"The Court entertaining a proceeding for a Mandamus has jurisdiction, and is under a duty to enforce its command by subsequent proceedings and orders to

that end. Thus, as already shown supra paragraph 354 it has been held that an alias Writ of Mandamus may issue when the first order has not been complied with, and, if the Writ has been disobeyed contumaciously, further appropriate steps may be taken to compel obedience and in addition, as discussed infra paragraph 361, the delinquent parties may be punished for contempt."

In paragraph 361 on the same page, it is again stated :

"Disobedience of the command of the Court in Mandamus proceedings may be punished by fine or imprisonment or both in contempt proceedings which proceedings are governed by the rules applicable in contempt proceedings generally".

The alias Writ referred to in paragraph 360, is dealt with in paragraph 354 at page 621 wherein it is stated :

"When the Writ is not obeyed, a second or alias Writ is sometimes issued instead of at once proceeding by attachment.

When the Writ is not obeyed, a second or alias Writ is sometimes issued instead of proceeding at once by attachment. Ordinarily where it appears that there was no intentional or contumacious disobedience of the Writ of Mandamus, an alias Writ, rather an attachment against respondent will issue and where the original respondents term of office has exp[ired, an alias Writ to his successor is permissible and proper."

All that we are interested in pointing out in this context is that a Writ of Mandamus issued by this Court, as in the present case, is not one not capable of execution, but is actually capable of execution. In fact, Ex. A7 certified copy of the order of this Court in the W.M.Ps. referred to above has dealt with several other petitions also in which directions have been actually given directing the respondents in the writ petitions to pay the amounts due to the concerned writ petitioners. Only in the case of the respondent herein and certain others, this Court refused to issue any such directions and dismissed the petitions stating that the petitioners therein will be at liberty to pursue any remedy available to them under the law. This only emphasizes that even this Court considered that the Writs of Mandamus issued by it already were executable by further orders of this Court itself. In view of this alone, we are pointing out that the present suit by way of execution of the Writ of Mandamus cannot be said to be maintainable.

14. There is one other ground which may be taken note of in considering the maintainability of the present suit. A perusal of Ex. A1 certified copy of the order of this Court dated 30-1-1968 in W.P. Nos. 464 etc. of 1967 shows that the respondents to these writ petitions were the Assessing Authority as well as the Commissioner of Commercial Taxes Board of Revenue, Madras. Therefore when such writs issued by this Court were sought to be executed, they could be executed only against the parties in the writ petitions and they cannot be executed against others. The present suit as we have pointed out already is

instituted against the State of Tamil Nadu, through the Secretary, Department of Commercial Taxes, Government of Tamil Nadu, Madras. It is not instituted against the respondents to the writ petitions in which Ex. A1 order was passed. From this point of view also, the present suit cannot be said to be by way of executing the writs issued as per the order of this Court in Ex. A1.

15. Mr. M. R. M. Abdul Kareem learned counsel for the respondent relied on a decision of this Court in Ramaswami Nathan and others v. M.P.M. Muthiah Chetty and in particular, the following passage :

"The decision in Annoda Prasad Banerjee vs. Nobo Kissore Poy (1905) 33 Cal. 560) shows a suit is maintainable on a judgment where no mode of execution (other than proceedings in contempt) is available

In our opinion, there is nothing in all the Indian authorities cited before us against the maintainability of the suit. Such a case can occur only very, rarely. Ordinarily the Indian courts pass judgments which are to be enforced in execution and even when they create new relation involving fresh rights and obligations, they provide for working out the rights in execution. Rarely do they create a new obligation without providing for its execution and indicating a suit as the only method of enforcing it. But when they do, as in this case, the suit is maintainable".

We are of the opinion that for the reason mentioned above, the above decision will have no application to the present case. In fact, Mr. M. R. M. Abdul Kareem, learned counsel for the respondent, fairly stated that he was not able to produce any direct authority with regard to Writs of Mandamus. On the other hand, we are of the opinion that the analogous provision contained in Order XXI. Rule 32, Code of Civil Procedure, dealing with mandatory injunction will clearly apply to such cases. Order XXI, Rule 32 deals with execution of decree for specific performance, for injunction . Sub-rule 1 of Rule 32 says that where the party against whom a decree for the specific performance of a contract or for restitution of conjugal rights or for an injunction has been passed and had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction, by his detention in the civil prison, or by attachment of his property or by both. We do not see any ground for not applying these provisions to a case of Writ of Mandamus issued by this Court, since such a writ is in the nature of merely a mandatory injunction issued by the Court.

15. Having regard to all these aspects we are clearly of the opinion that a separate suit for the purpose of enforcing whatever rights the respondent obtained under Ex. A1 dated 30-1-68 is not maintainable.

16. There is another aspect of the matter to which we would like to draw attention. We have already given the dates of the decision of this Court and the

decision of this Court and the decision of the Supreme Court. As we have pointed out already, this Court in Ex. A1 simply followed its earlier decision in Larsen and Toubro Ltd. Madras-2 & Others vs. Joint Commercial Tax Officer, Mount Road II Division Madras & Others. Ex. A1 dated 30-1-68 simply states :

"The chargeability of the turnover in dispute in each of these petitions is covered by Larsen and Toubro Ltd., Madras and Others Vs. Joint Commercial Tax Officer, Madras and Others, which is in favour of the assesseees. Following the Judgment these petitions are allowed.

Thus, it will be seen that this Court did not go into the merits or the claims of the respondent herein in those cases and simply followed its decision in Larsen & Toubros, case. From this point of view, the Writs of Mandamus issued by this Court can be said to be dependent in the sense that they were dependent upon the continued validity of this Courts earlier decision in Larsen & Toubros, case. Since that decision was reversed on 18th April 1968 by the Supreme Court in the State of Madras vs. N. K. Nataraja Mudaliar the validity of that judgment cannot be said to be any longer continuing and therefore the Writs of Mandamus issued by this court on 30th January 68 relying upon Larsen and Toubros case can also be said to have become unenforceable. In fact, the subsequent observation of this court in Ex. A1 itself will make it clear that this Court wanted to make its order dependent upon the continued validity of its earlier decision in Larsen and Toubro Ltd. Madras-2 and others vs. Joint Commercial Tax Officer, Mount Road II Division, Madras-2 and others. After the portion extracted above from Ex. A-1 this Court proceeded to state :

"Learned Special Government Pleader made a request for adjourning these cases. But we see no particular reason to do so, since the petitions have been pending or over a year. We shall, however, make this safeguard that the petitioners will be entitled to refund of the proportionate tax on furnishing security of the Assessing Officer".

Thus, it will be seen that the request for adjournment on behalf of the respondents in the writ petitions was made solely on the basis of the pendency of the appeal before the Supreme Court and equally only on account of such pendency this Court itself provided for the safeguard. Otherwise, while issuing Writs of Mandamus, there was no need for this Court to provide for this safeguard, namely that the petitioners will be entitled to refund of the proportionate tax only on furnishing security. Thus it is clear that even while issuing Writs of Mandamus on 30-1-1968 in favour of the respondent herein, this Court took care to make it clear that the rights of the respondent would depend upon the final outcome of the appeal which was then pending before the Supreme Court against its earlier decision in Larsen and Toubro Ltd. Madras-2 and Others vs. Joint Commercial Tax Officer, Mount Road II Division, Madras-2 and Others. Ultimately the decision of this Court was reversed by the Supreme Court and once the decision of this Court was reversed naturally the writs issued by this court on 30-1-68 became automatically unenforceable.

17. The above result can be achieved from another aspect also. Article 141 of the Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Once on April 18, 1968 the Supreme Court reversed the decision of this Court in Larsen and Toubro Ltd. Madras-2 and others vs. Joint Commercial Tax Officer, Mount Road II Division Madras,2 & Others and held that S. 8(2), 8(2-A) etc. of the Central Sales Tax Act, 1956 were valid, the said declaration as to the validity of those sections and the consequent assessments made thereunder would be binding on all the courts within the territory of India and therefore in view of the said Constitutional provision the civil court in relief which the respondent herein prayed for, which could be only on the that those sections were invalid. Looked at from any point of view, we are of the opinion that the suit instituted by the respondent herein is not maintainable.

18. That takes us on to the second question as to the limitation, even assuming that the suit was otherwise maintainable. As we have pointed out already, the learned counsel for the respondent rested only on the order issued by this Court on 30-1-1968 as constituting the sole cause of action in support of the suit. That order as we have pointed out already was made on 30-1-68 and the suit was admittedly filed in 23-6-71. Again it is not in dispute that the particular Article which is applicable to suits of this nature is Art. 113 of the Schedule to the Limitation Act 1963, which is as follows :-

Description of suit

Period of limitation

Time from which period begins to run

113.

Any suit for which no period of limitation is provided elsewhere in this Schedule.

Three years

When the right to sue accrues.

Thus, under Article 113 the period of limitation is three years from the date when the right to sue accrues. If the respondent contends that it has acquired the right to sue by virtue of the judgment rendered by this Court on 30-1-68, the period of three years must be computed from that date, and if so computed admittedly the suit which was instituted on 23-6-71 is beyond three years and therefore barred by limitation. In order to get over this difficulty, the learned counsel for the respondent urged two grounds. One was that the certified copy of the order of this Court was received by the respondent only on 24-6-68 and that the period of limitation should be computed only from 24-6-1968 and id so computed, the suit instituted on 23-6-71 would be within time. We are of the opinion that this contention is misconceived. It is S. 12(2) of the Limitation Act, 1963 that deals with exclusion of time for obtaining certified copies of judgment. But that section

deals only with the case of an appeal or an application for leave to appeal or an application for leave to appeal or for revision or for review of a judgment and it has no application to a case of suit at all. S. 12(2) states :

"In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded".

On the terms of the section it will have no application to a suit of this nature.

19. The learned counsel then contended that under S. 14(1) of the Limitation Act, the respondent will have a right to exclude the period during which he was prosecuting the petition filed by it for contempt of the respondent in the Writ Petition and that therefore that period must be excluded. As we pointed out already, in paragraph 8 of the plaint, the respondent has referred to the order of this Court in Ex. A7 dated 23-4-71. It is with reference to that order the present argument was advanced. Here again, we are of the opinion that S. 14(1) of the Limitation Act also will have no application to a case of this nature. S. 14(1) states :-

"In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it."

We are not sure whether this section will take in the proceedings by way of executing an order or decree already passed. Apart from that, even assuming that the contempt proceedings taken by the respondent herein of can be brought within the scope of S. 14(1) of the Limitation Act, still S. 14(1) cannot apply to the facts of this case, because the respondent herein cannot be said to have been unable to obtain relief from this Court in the contempt proceedings from defect of jurisdiction or other cause of a like nature. In fact, Writs of Mandamus have been issued by this Court. The only court competent to deal with contempt was this Court and therefore when this Court dismissed the petition filed by the respondent herein for Contempt, it cannot be contended that this court dismissed the same from defect of jurisdiction or other cause of a like nature. Further, as we have pointed out already, Ex. A-7 itself shows that in the case of certain other petitioners, this Court really gave relief and only in the case of the respondent and certain others, this Court dismissed the petitions and therefore the inability of the respondent to obtain relief in the petition for contempt cannot be said to be the result of any defect of jurisdiction on the part of the High Court or other cause of a like nature. Hence, S. 14(1) of the Limitation Act also cannot apply. From another point of view also S. 14(1) will have no application. "Another civil

proceedings" referred to in S. 14(1) must be against the defendant, i.e., the appellant herein. Admittedly the contempt proceedings were not taken against he appellant. If so, the respondent cannot plead connection between the former and the latter proceedings. No other principle or provision of law was brought to out notice for holding that the suit instituted on 23-6-71 was within time.

20. The learned counsel made a faint attempt to contend that only when the High Court dismissed the contempt petitions on 23-4-71, the respondent acquired the right to file the present suit and that calculating from that day onwards, the suit was within time. We have already referred to the terms in which this Court passed the order in Ex. 7. So far as the petitioners (including the respondent herein) are concerned, this Court merely stated :

"So far as the other petitions are concerned, we are not inclined to make any order except to observe that the petitioners will be at liberty to pursue any remedy available to them under the law. They are accordingly dismissed".

All that can be stated with reference to this order is that this order did not constitute any cause of action, did not confer any new right on the respondent not did it give liberty to the respondent to pursue any new remedy. All that this Court stated was that whatever remedy the respondent might have had with reference to the Writs of Mandamus, it would be at liberty to pursue the same and that the Court itself would not commit the respondents in the Writ Petitions for contempt in those petitions. Hence, such an order cannot be said to give a case of action to the respondent herein, not could it enable the respondent to compute the period of limitation for filing the suit from that day onwards.

21. Under these circumstances, we are of the opinion that the respondent herein ought not to have been granted any relief in the present suit and that the suit should have been dismissed. In the result, appeal is allowed and the decree and judgment of the learned Subordinate Judge of Tuticorin dated 16th December 1972 are set with costs both here as well as the trial Court.