

(2008) 12 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No's. 7129-7130 of 2008 (Arising out of SLP (C) No's. 19378 - 19379 of 2008)

Tamilnad Mercantile Bank Share Holders Welfare Association

APPELLANT

Vs

S.C. Sekar and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Companies Act, 1956 — Section 166, 210
Constitution of India, 1950 — Article 136, 142, 215
Contempt of Courts Act, 1971 — Section 12, 14, 19, 19(1), 19(2)

Citation : (2010) 1 CompLJ 357 : (2008) 13 JT 49 : (2009) 2 MLJ 878 : (2009) 42 OCR 730 : (2009) 1 PLJR 260 : (2008) 16 SCALE 205 : (2009) 2 SCC 784

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : T.R. Andhyarujina, L.N. Rao, C.A. Sundaram, Dushyant Dave, V. Kanakaraj, S. Vallinayagam, Y. Raja Gopala Rao, R. Shankarnatrajan, K.S. Mahadevan, Rajesh Kumar, Krishan Kumar, Aman Gupta, Mayank Mishra, Vibha Datta Makhija, Niharika, R. Musa, Abhishek Gupta, Zafar Inayat, V.G. Pragasam, Elam Bharathi, S. J. Aristotle, Prabhu Rama Subramanian, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Tamilnad Mercantile Bank Ltd. (for short, "the Company") was established by the Nadar Community. It is incorporated and registered under the Indian Companies Act, 1956. It carries on banking business inter alia in the State of Tamil Nadu.

Members of the Appellant-Association hold a large number of shares in the company. For one reason or the other its Annual General Meetings could not be held for a number of years. By reason of an order dated 14th October, 2003, the Company Law Board directed that Annual General Meetings for the years 1996 to 2003 be held. Pursuant thereto meetings were held and some Directors were elected.

3. 24th December, 2004 was the date fixed for holding of 82nd Annual General Meeting. Appellant, however, filed a suit which was registered as C.S. No. 981 of 2004 in the High Court of Judicature at Madras in its ordinary original civil jurisdiction. Indisputably proceedings in contempt in respect of an order relating to the said suit came up for consideration before this Court in Civil Appeal No. 3034 of 2006 and by an order dated 12th July, 2006 the matter was remitted to the High Court for consideration thereof afresh, observing:

In this view of the matter, we are of the opinion that the High Court cannot be said to have committed an error in holding that if a proceeding for contempt was not maintainable, no direction could have been issued therein. We are, however, of the opinion that in view of the order passed by the Division Bench and also for the views we have taken, it is necessary to pass a consequential order, namely, directing the learned Single Judge to consider the matter afresh. Learned Single Judge of the High Court is, therefore, requested to consider the application for grant of injunction filed by the appellants afresh on merits. All the contentions raised by the parties shall remain open. We may place on record the statement made before us by Mr. Salve, learned senior counsel appearing on behalf of the appellants that the Bank and its Directors shall be impleaded as parties in the Suit. We may further notice that learned Counsel for the Bank and learned Counsel for some of its Directors have been appearing in the matter throughout. It may also be stated that some of the Directors have also preferred appeals before the Division Bench. Learned Counsel appearing on behalf of the Bank states that the Bank shall enter formal appearance in the Suit and file written statement within two weeks.

Learned Single Judge is also requested to consider the desirability of disposing of the Suit as expeditiously as possible. It would be open to the learned Single Judge to issue such direction(s) as may be found to be necessary as regards holding of 83rd Annual General Meeting for the said purpose extend the time therefor. We may further place on record that by our order dated 11.5.2006 the time for holding 83rd Annual General Meeting was extended upto 30.7.2006.

In view of the order aforementioned, the said order need not be complied with.

4. A notice convening 83rd Annual General Meeting on 27th July, 2006 was issued on 14th June, 2006.

5. Before the High Court applications being OA Nos. 597 to 599 of 2006, praying for grant of injunction were filed in the said suit and by an order dated 26th July, 2006 a learned Single Judge of the High Court passed an order of injunction, directing:

Till such time, without postponing the meeting, there can be a better arrangement to conduct the Annual General Meeting as scheduled on 27.7.2006 so far as the subject matters 1, 2 and 6 found in the agenda (by show of hands) are concerned and regarding the other subject matter Nos.3 to 5 found in the agenda, the General Body Meeting may be adjourned until further orders of the

Court and to which meeting, fresh proxies may be allowed in accordance with the result of the enquiry to be made in these applications. Suppose, the proxies of GPA holders were not allowed to participate in the election, then no fresh proxies need be made. There is also no serious objection by anyone concerned (counsel).

6. Pursuant to or in furtherance of the said direction a meeting was held on 27th July, 2006. However, three items of Agenda, being item Nos. 3, 4 and 5 stood adjourned. Indisputably the said items of the Agenda read as under:

3. To appoint a director in the place of Thiru P.H. Arvinth Pandian who retires by rotation and being eligible offers himself for reappointment.

4. To appoint a director in the place of Thiru A. Rajagopalan who retires by rotation..

5. To appoint a director in the place of Thiru P. Prem Vetty who retires by rotation.

7. Standard Chartered Bank, Mumbai, acting as an agent of some of their clients/ investors filed applications for transfer of 95,418 (Ninety five thousand four hundred and eighteen) shares. A letter dated 30th March, 2007 issued by the Reserve Bank of India relating thereto was also placed in the meeting. A Resolution was passed by the Board of Directors on 13th May, 2007 resolving to transfer the said shares.

8. In the meantime 85th Annual General Meeting also fell due.

9. The Bank filed OA No. 23 of 2007 seeking suitable directions as regards holding of the 84th Annual General Meeting. It was inter alia averred that 84th Annual General Meeting cannot be convened unless the 83rd Annual General Meeting is held in accordance with law.

Referring to Sections 166 and 210 of the Companies Act it was contended that 84th Annual General Meeting of the Bank for the year 2006 should have been held on or before 20th September, 2006. The application (OA No. 23 /2007) came up for consideration before a learned Single of the High Court and by an order dated 27th March, 2008, it was directed :

1. That the Hon'ble Mr. Justice R. Balasubramaniam, Judge (Retd) High Court, Madras residing at No. 157/17, Greenways Road, Chennai - 600 028 be and is hereby appointed to chair the 83rd, 84th and 85th Annual General Meetings of Tamilnad Merchantile Bank Ltd., Tuticorin. 2. That the time for convening 83rd, 84th and 85th Annual General meeting shall stand extended upto 6th June, 2008.

10. In the meantime another suit, marked as C.S. No. 481 of 2008 was filed by the appellant questioning the transfer of aforementioned shares. One of the reliefs prayed for therein reads as under :

granting permanent injunction restraining the 10th-31st Defendants, their men, agents, servants and the nominees from exercising any right as a shareholders of the 2nd Defendant in relation to the abovesaid shares.

11. The question as to whether the said meeting could be postponed or not came up for consideration before the learned Single Judge on 29th April, 2008, when it was directed :

2. In the meantime, it is submitted that the Annual General Meeting is scheduled to be held on 5.6.2008. Taking into account the past history of the litigation, I do not propose to stall the meeting. Therefore, the Annual General Meeting shall go on. However, any resolution passed in the Annual General Meeting shall not be implemented until further orders of this Court.

3. Registry is directed to list the applications alongwith C.S. No. 981 of 2004 on 9.6.2008 immediately after motion list.

4. It is made clear that any matter relating to the dispute pertaining to the convening of the Annual General Meeting of the Bank, shall be dealt with only by this Court and not by any other court. The applicants shall take private notice to all the other respondents returnable by 9.6.2008

12. Indisputably a meeting was held under the Chairmanship of Justice R. Balasubramaniam on 5th June, 2008. Theretobefore, he met all the shareholders who desired to make representations on the mode and manner for conducting the Annual General Meeting on 1st June, 2008. Appellant did not submit any petition on that date. It did so, however, at a later stage.

13. Appellant filed an O.A. No. 621 of 2008 in C.S. No. 481 of 2008 seeking for an order of injunction restraining holding of election of the Directors alone. The matter was placed before the Court on 3rd June, 2008 when an adjournment was taken and the application was posted for 9th June, 2008. In the meantime Annual General Meeting was held on 5th June, 2008.

14. Appellant preferred an intra court appeal against the order dated 29th April, 2008. The Division Bench while observing that the order dated 29th April, 2009 sufficiently protected the interest of the appellant, dismissed the same.

15. Some other proceedings were also initiated with which we are not concerned.

16. On or about 10th June, 2008 Contempt Petition, being C.P. No. 508 of 2008 was filed. Managing Director of the Bank, Shri G. Narayanamurthy, was alone made a party-contemnor. The petition was filed for alleged disobedience of the order of the learned Single Judge dated 26th July, 2006 passed in O.A. No. 597 to 599 of 2006. In the said petition the following prayer was made:

to punish the respondent for the disobeying the orders of this Hon'ble Court dated 26.7.2006 in O.A. No. 597 to 599 of 2006 in C.S. No. 981 of 2004.

An interim injunction was also prayed for therein, which reads as under:

to declare the election of directors held at the 83rd, 84th and 85th Annual General Meeting as null and void as the same is contrary to the orders of this Hon'ble Court dated 26th July, 2006 in O.A. No. 597 of 2005 in C.S. No. 981 of

2004

17. The contempt matter came up before another learned Single Judge of the High Court. As would be noticed hereinafter no disclosure was made in the said proceeding as regards the orders passed by the learned Single Judge in the applications filed from time to time as also other proceedings taken by the parties. However, the learned Single Judge passed an ad interim ex parte injunction on 12th June, 2008 restraining the Managing Director of the Company Shri G. Narayanamurthy from implementing the resolution or item of business in relation to the election of Directors passed at the Annual General Meetings held on 5th June, 2008 till the disposal of contempt petition. The matter was directed to be posted on 21st July, 2008.

18. What is the nature of that order would be considered a little later as there exists a dispute as to whether such an order can be said to be a final order satisfying the definition of a 'judgment' or not.

19. Several proceedings were initiated by the respondents herein. On or about 24th June, 2008, the 1st respondent Shri T. Rajakumar filed an application in Civil Appeal arising out of SLP (C) No. 19379 of 2008 for impleading himself as a party and for vacating the ex-parte interim order dated 12th June, 2008 passed in the said contempt proceedings before the learned Single Judge. Shri G. Narayanamurthy, Managing Director of the Bank, also filed an affidavit praying for vacation of ex-parte interim order. On or about 26th June, 2008, Judges Summons in terms of Order XIV Rule 8 of the Original Side Rules of the High Court were also taken out by him for vacating the ex-parte ad interim order dated 20th June, 2008.

20. It is stated that the matter was fixed for hearing on 21st July, 2008.

21. However, Shri T. Rajakumar withdrew the said application and preferred an intra court appeal. Shri S.C. Sekhar, who is also said to have been elected in the said Annual General Meetings dated 5th June, 2008 also preferred an intra court appeal.

Both the appeals were preferred u/s 19(1) of the Contempt of Courts Act, 1971. A question as regards maintainability of said appeal was raised.

A Division Bench of the High Court by reason of the impugned order answered the same in the affirmative, stating:

We have gone through the said provision. Prima facie we are of the considered view that only when some orders adversely affecting any person, who makes a claim that he is intending to prefer an appeal, this Court in exercise of the power under the provisions to Sub-section (3) of Section 19 of the CC Act, 1971 may suspend such an order. We have found that the contempt appellants are the persons aggrieved by the order of the learned Single Judge of this Court and this Court has only on prima facie consideration held that the contempt appeals are maintainable and the rights of the respondents to canvas their arguments either

in the contempt petition or in the contempt appeals are still open. We therefore find that the order holding that the contempt appeals are maintainable does not in any way adversely affect the right of the second respondent. Accordingly, the submission made by the Id. Counsel for the second respondent is not acceptable and the permission sought for is consequently rejected.

It is this order which is in question before us.

22. At the outset, we may place on record that in the meantime in the O.As. filed in C.S. 481 of 2006, Ramasubramanian, J., passed an order on 23rd June, 2008, wherein it has been noticed:

8. Today, when the applications were taken up for hearing, Mr. V. Ramakrishnan, learned Counsel for the plaintiffs, fairly submitted that without his knowledge and without the knowledge of the learned Senior Counsel leading him in the matter, the plaintiffs moved a Contempt Petition in Contempt Petition No. 508 of 2006. In the said Contempt Petition, it appears that notice was ordered to the Managing Directors on 20.6.2008. Pending Contempt Petition, an interim order of injunction has also been passed in Sub Application No. 163 of 2008, on 20.6.2008, restraining the Managing Director from implementing the resolution or item of business relation to the Election of the Directors of the Bank at the 83rd, 84th and 85th Annual General Meetings, held on 5.6.2008. Mr. V. Ramakrishnan, learned Counsel appearing for the plaintiffs himself produced a copy of the interim order passed in the Sub Application in the Contempt Petition and submitted that this has happened behind his back and he felt embarrassed and very sorry about it. Therefore the learned Counsel wanted to withdraw his appearance, since he did not wish to appear for such a party any more.

23. Despite the same the learned Judge refused to adjourn the matter stating :

Under normal circumstances, I would have simply adjourned the matter to another date, to enable the plaintiffs to engage a different counsel to make submission. But my attention was drawn to the fact that Mr. R. Mathuselvam, President of the first plaintiff Association, who has verified the pleadings, is present in Court. Therefore, I questioned him, as to the circumstances under which a Contempt Petition was moved, contrary to the statement made at the Bar on 16.6.2008. He submitted that the Contempt Petition was moved, on the basis that the convening of the Annual General Meeting was in violation of the order passed on 26.7.2006, in O.A. Nos. 597, 598 and 599 of 2006 in C.S. No. 981 of 2004.

24. Taking notice of the earlier order of the court dated 26th July, 2006 in terms whereof the erstwhile Directors were directed to continue in the office and to maintain status quo until further orders of the court and furthermore taking notice of the fact that in the meantime Annual General Meetings had already been held wherein resolution had been passed electing the Directors and that the appellants having failed to obtain any interim order either in the present suit or in the previous suit C.S. No. 981 of 2004 and after having allowed the meetings

to go on, the first plaintiff has adopted a dubious method of moving a Contempt Petition and getting an interim order of injunction on 20.6.2008 contrary to the statement made across the Bar on 16.6.2008 amounted to an abuse of the process of the Court, observed:

The interim injunction which the first plaintiff has now obtained on 20.6.2008 in the Contempt Petition is the very same injunction which the plaintiffs have prayed for in the present suit and failed to get. Their attempt to get a similar injunction before the Division Bench and the Supreme Court have also failed. It appears from the answer given by Mr. P. Muthuslevam that all these orders were not brought to the notice of the learned Judge hearing the Contempt Petition was suppressed before this Court. Thus the first plaintiff has clearly taken both the Courts for a ride. Such a person is not entitled to the equitable relief of injunction.

14. The plaintiffs are guilty of abuse of the process of law and guilty of Forum Shopping. After having failed to obtain an interim order of the very same nature from this Court and after trying their luck before the Division Bench and the Supreme Court, they had gone before the other Court and obtained an interim order in a Contempt Petition. In the Contempt Petition, the first plaintiff herein does not appear to have mentioned anything about the new suit C.S. No. 481 of 2008 and the orders passed in the injunction applications. Thus the first plaintiff is also guilty of suppression of material facts. Under such circumstances, I have no alternative, except to dismiss all these applications for injunction. Hence O.A. Nos. 534, 536 and 621 are dismissed..

25. It was, however, made clear that the same arrangement, as was directed to be maintained by the court prior to 5th June, 2008 shall continue till the sub-application in the contempt petition is disposed of.

26. Indisputably intra court appeals were preferred thereagainst by the appellant which were marked as O.S.A. Nos. 274 to 277 of 2008.

By an order dated 4th September, 2008, Prabha Sridevan, J. speaking for the Division Bench dismissed the appeals upon noticing the proceedings taken by the appellant, stating:

The facts extracted above would show that the appellants have with impunity been filing applications after applications for almost the same relief, though in each, the prayer is somewhat differently worded, in order to disguise it as a different prayer. More than one suit has been filed in this Court and we are given to understand, in Courts elsewhere. The appellants have not made out a prima facie case for grant of injunction. More than that, the conduct of the appellants, the suppression of facts and the devious methods adopted by them leave us without any doubt that the appellants are not entitled to the grant of injunction. To grant an order of injunction merely because only one of the appellants had moved the contempt petition and not the other and therefore, the other appellant was entitled to a fair hearing is something that deserves to be rejected. In fact, it may not be by chance but by design that only one of the appellants

chose to file the contempt petition and therefore, to grant any indulgence on this score would be indirectly rewarding the persons who have come to court with unclean hands. In the result, we hold that on the ground of prima facie case and on grounds of equity, the appellants are not entitled to injunction and therefore, the dismissal of the applications by the learned single Judge deserves to be confirmed.

27. Mr. T.R. Andhyarujina, learned senior counsel appearing on behalf of the appellant has raised the following three principal contentions before us.

(i) An appeal u/s 19(1) of the Contempt of Courts Act, 1977 was not maintainable against an ad interim order of injunction.

(ii) The ad interim order of injunction dated 20th June, 2008 does not satisfy the test of a 'judgment' as has been held by this Court in *Shah Babulal Khimji v. Jayaben D. Kania* (1981) 4 SCC 8 and thus the Division Bench even could not have entertained an intra court appeal.

(iii) One of the respondents T. Rajakumar as also G. Narayanamurthy, Managing Director of the Bank having filed applications for vacation of the order dated 20th June, 2008 could have waited for the outcome thereof and intra court appeals preferred by respondents amounted to an abuse of the process of the court.

28. Mr. C.A. Sundaram, Mr. Dushsyant Dave and Mr. L.N. Rao, learned senior counsel appearing on behalf of S/Shri S.C. Sekar, T. Rajkumar and G. Narayanamurthy, on the other hand, contended:

(i) As an interim order of injunction was obtained upon suppression of facts and as even the applications for vacating the stay was not being taken up for hearing immediately, an intra court appeal was maintainable both u/s 19(1) of the Contempt of Courts Act, 1977 as also under Clause 15 of the Letters Patent of the Madras High Court.

(ii) In view of the observations made by the learned Single Judge also the Division Bench of the High Court in the main proceedings, this Court should not interfere with the impugned judgment as the appellant had taken recourse to Forum Shopping.

(iii) A direction can be issued by a contempt court only in three situations, namely - a) to stop continuance of disobedience of the orders of the court ;

b) some order to maintain status quo ; and

c) an order by way of restitution after arriving at a finding that the alleged contemnor is guilty of contempt.

(iv) In any event, the appellant being guilty of the abuse of the process of the court, is not entitled to any equitable relief.

29. Appellant is an Association of shareholders of the Bank. The first suit filed by it involved the question as to whether the power of attorneys executed by the

share-holders were required to be registered or not.

The suit was filed at a point of time when 83rd Annual General Meeting of the Bank was to be held. In view of the orders of injunction passed by the learned Single of the Madras High Court, admittedly the Annual General Meeting could not be held. It is now not in dispute that in terms of the order dated 26th July, 2006 the Annual General Meeting was permitted to be held in respect of Item Nos. 1, 2 and 6 of the agenda. Item Nos. 3 to 5 of the agenda related to filling up of the posts of Directors caused as the Directors were to vacate their office.

30. Indisputably the Annual General Meetings could not be held continuously for three years for one reason or the other.

Pursuant to the order of the learned Single Judge dated 26th July, 2006, 83rd Annual General Meeting was held in respect of item Nos. 1, 2 and 6 and the same was adjourned in respect of agenda items i.e. Nos. 3 to 5.

31. Indisputably when an adjourned meeting was to be conducted, it must be for the adjourned agenda, i.e., item Nos. 3 to 5. Appellant knew thereabout. It not only filed an application for injunction but also raised objections before the Chairman appointed by the Court in terms of the order dated 27th March, 2008. Reports of the Chairman show that consultative process had been taken recourse to.

32. Appellant had participated in the election. The three reports submitted by the Chairman in sealed covers were read over and opened by the learned Judge, copies whereof were also handed over to the parties. It is in that situation a limited order of injunction, namely that no effect to the said Resolution be given, was passed on 29th April, 2008.

33. Although at one point of time contentions had been raised before us that election had not been held as the adjourned agenda items were not taken up or even could not have been taken up in 83rd Annual General Meeting as it was held simultaneously with 84th and 85th Annual General Meetings, it is now clear from the records that election of the Directors had in fact been held.

34. Appellant sought for an injunction. It moved an application before the Vacation Bench but the same was not pressed. However, before the matter could be taken up for hearing on 9th June, 2008 a petition for initiation of proceedings for contempt of court for alleged disobedience of the order of the learned Single Judge dated 26th July, 2006 was filed.

35. The chain of events noticed by us heretobefore clearly show that although in the subsequent orders it was not expressly stated that it is in continuation of the earlier order dated 26th July, 2006, there cannot be any doubt whatsoever that agenda item nos. 3 to 5 were allowed to be taken up in the 83rd Annual General Meeting resulting in the election of the Directors.

36. The High Court evidently appointed Mr. Justice R. Balasubramaniam to chair

the meeting with a view to see that elections for the years 2004- 2005, 2005-2006 and 2006-2007 are conducted in accordance with law and in a peaceful manner. Strangely enough the contempt petition was filed against the Managing Director alone who had no role to play in the matter of holding of the meeting.

Allegations were, however, made against the Managing Director in the said contempt petition in the following terms:

14. I state that in spite of receipt of the above said written intimation requesting the Chairman to conduct the Annual General Meeting as per the directions of this Hon'ble Court dated 26.7.2006 the election of Directors was conducted at the Annual General Meeting.

15. I state that the conduct of the Chairman of the bank to proceed with the election of Directors is contrary to the specific directions given in the order dated 26.7.08, since the above applications O.A. No. 597 - 599 of 2006 in C.S. No. 981 of 2004 are pending till date before this Hon'ble Court and the agendas referred to and adjourned in the above cited order cannot be taken for considerations at the Annual General Meeting without deciding the said pending.

16. I state that in the above circumstances, the Chairman of the Bank has committed contempt of court by disobeying the orders of this Hon'ble Court dated 2.6.7.2006 in O.A. No. 597 - 599 of 2006 in C.S. No. 081 of 2004 and is liable to be punished or contempt.

The prayer made in the said application contained in the affidavit reads :

It is therefore prayed that this Hon'ble Court may be pleased to declare the election of directors held at the 83rd , 8th and 85th Annual General Meeting as null and void as the sasme is contrary to the orders of this Hon'ble Court dated 26.7.2006 in O.A. No. 597 of 2006 in C.S. No. 981 of 2004 and pass any orders or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

37. Action of the court was not sought for against Mr. Justice R. Balasubramaniam who acted as an officer of the court. The Directors representing the Reserve Bank of India were not made parties in the contempt petition. Full disclosure as regards the subsequent proceedings was not made therein. The contempt petition was taken up by a learned Judge who was not acquainted with the fact of the matter.

The question is as to whether in such a situation the purported ad interim order passed by the learned Single Judge in contempt proceeding should have been interfered with or not by the Division Bench.

38. Mr. Andhyarujina would submit that T. Rajkumar and S.C. Sekar being not a party to the contempt proceeding could not have maintained an appeal. This argument, if accepted, shall lead to a strange situation. Admittedly they were not

parties to the suit. They were elected during the pendency of the suit, whether legally or otherwise. The order granting injunction against the Managing Director had affected their valuable right. They were elected for a limited period. The principle of corporate democracy demands that the Bank functions through its elected Directors. The endeavour on the part of the appellant had been to see that old Directors may continue despite the expiry of their tenure. When, however, day to day affairs of the Bank were left at the hands of the Managing Director and the two representatives of the Reserve Bank of India, an attempt was made to see that the newly elected Directors do not assume their office. In this attempt the appellant has succeeded so far by adopting measures which amount to an abuse of the process of the Court.

In V.R. Dalal and Others Vs. Yogendra Naranji Thakkar and Another, this Court held :

16. When a proceeding is found to be an abuse of the process of court, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may not allow it to continue. For the said purpose, the fact of the matter can be looked into.

Forum Shopping, it is well settled, is not encouraged by the Court. {See Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, }

39. Apart from the fact that the appellant did not approach the Court with clean hands and was thus not entitled to any equitable relief, we are surprised to see the manner in which the interim order was passed by the learned Single Judge in the contempt proceedings, which reads :.

1. That G. Narayanamurthy, the respondent herein, be and is hereby restrained by an ad- interim injunction till 21.07.2008 not to implement the resolution of item of business relating to the election of Directors of the respondent bank at the 83rd , 84th and 85th Annual General Meeting held on 05.06.2008 till disposal of the contempt application.

2. That the notice of this Sub Application No.163 of 2008 returnable by 21.07.2008 be served on the respondents herein; and

3. That the Sub Application No. 163 of 2008 be posed on 21.07.2008.

40. The suit related to 83rd Annual General Meeting. The contempt application related to election of Directors of the Bank at the 83rd, 84th and 85th Annual General Meetings. Although the sub-application was directed to be posted for 23rd July, 2008 the order of injunction was not limited to that date. It was directed to continue till disposal of the contempt application; though it was stated earlier that the ad interim injunction was till 21.7.2008.

It does not contain any reason. There is no finding as regards existence of a prima facie case. There is no finding that G. Narayanmoorthy had prima facie

committed the contempt.

The order is not a speaking one. Ordinarily a direction cannot be issued in contempt proceedings without arriving at a finding as to how the Managing Director of the Bank can be said to have flouted the order.

In *Municipal Corporation, Jabalpur Vs. Om Prakash Dubey*, , this Court held:

21. We are in this case not called upon to consider the implication of the awards, which might have been passed in favour of the workmen. The Division Bench, by reason of the impugned judgment had issued directions in exercise of its jurisdiction u/s 12 of the Contempt of Courts Act, 1971, without arriving at a finding as to how the Corporation has violated its order. It issued directions which are contrary to or inconsistent with the directions issued by a learned Single Judge by an order dated 27-2-2003.

22. The judgment of the Division Bench is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also u/s 19 of the Contempt of Courts Act.

The said decision applies in all force to the fact of the present case.

41. Indisputably in view of the interim order dated 20th June, 2008 respondents of were prejudiced. They were, thus, 'persons aggrieved'. As persons aggrieved they could move the higher court. If an interim order was passed wholly without jurisdiction, an appeal would lie thereagainst.

In *Purshotam Dass Goel Vs. Hon'ble Mr. B.S. Dhillon and Others*, , this Court held:

He submitted that initiation of the proceeding by the High Court will be without jurisdiction if it is in violation of Section 20. It may be so. If the alleged contemner in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred u/s 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court u/s 19 from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an order, but we merely mention this type of order by way of an example to show that even orders made at some intermediate stage in the proceeding may be appealable u/s 19...

42. Mr. Andhyarujina submitted that such observation was made by this Court having regard to a situation where the contempt proceedings had been entertained by a court beyond the period of limitation as prescribed u/s 20 of the Act.

43. We may repeat that it may be a different matter if the court while passing an order decided some disputes raised before it by the contemnor asking it to drop the proceedings on one ground or the other. Thus, in a given situation, an appeal would be maintainable even against a notice to show cause. Here even such a notice has not been issued and thus the question of satisfying the court by

showing cause that the contemnors/respondents had not committed any contempt did not arise. Allegations had not been made against the Chairman of the meeting. The contempt proceedings had been initiated only against the Managing Director of the Bank.

44. Although we need not go into the larger question of maintainability of the appeal in view of the fact that the matter has been referred to the Three Judge Bench in *Dharam Singh v. Gulzari Lal and Ors.* SLP (Civil) No. 18852 of 2005, but prima facie, in view of the decision of this Court in *Purshottam Das (supra)* there cannot be any doubt that in a situation where order has been passed adverse to the interest of the alleged contemnor an appeal would be maintainable particularly where a judgment has been passed by a court which is beyond its jurisdiction.

45. This aspect of the matter has also been considered in *R.N. Dey and Others Vs. Bhagyabati Pramanik and Others*, wherein it was opined :

In our view the aforesaid contention for the learned Counsel for the respondents requires to be rejected on the ground that after receipt of the notice, officers concerned tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the rule issued for contempt action. When the court either suo motu or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable.

46. But we do not find it necessary to express our opinion on the correctness thereof in one way or the other.

47. We may, however, notice that according to Mr. Andhyarujina, in view of the Three Judge Bench decision of this Court in *D.N. Taneja Vs. Bhajan Lal*, , the appeal was not maintainable.

We may place on record that a Division Bench of the Calcutta High Court in *Ashoke Kumar Rai Vs. Ashoke Arora and Another*, :

The right of appeal will be available under Sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie u/s 19(1) of the Act

only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemner, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.

Punishment in our opinion is not confined only to detention of a person or imposition of fine. A direction to do a particular thing in a particular way would come within the purview of the said terminology. A statute has to be read reasonably. Effort must be made to give effect to every word employed therein. In any event curtailment of a right of appeal cannot be presumed.

48. A similar view had been taken in *Sri Ashis Chakraborty and Others Vs. Hindustan Lever Sramik Karmachari Congress and Others*, , by the Calcutta High Court, stating :

We are, however, not oblivious of the fact that Section 19(1) does not merely speak of an appeal lying only against punishment for contempt but uses the expression that an appeal lies from any 'order or decision' passed in exercise of the jurisdiction to punish for contempt. As regards the meaning of the expression "any order or decision" we understand a variety of orders and decisions that may be passed by a court in exercise of its jurisdiction to punish for contempt. Our own High Court in 1981 (2) CHN page 97 *Ranjit Chatterjee v. Rambadan Choubey* held that if the order or decision prejudicially affects a party, he has indeed a right of appeal. If no other order except punishment would have been appealable, there would have ' been no necessity of using the words "any order or decision" in the expression "the execution of the punishment or order appeal against" as used in Section 19(2)(a) of the Act. If the scope of appeal u/s 19 is restricted only to punishment imposed u/s 12 and nothing beyond, then a person who is ex facie found guilty of contempt u/s 14 and is detained in custody pending the hearing on the charge of contempt and is refused bail, would have no right of appeal against such refusal of bail pending the decision on the charge of contempt which will amount to deprive the alleged contemner of the right of appeal in such circumstances. If in case of such an exigency, where he is directed to be released on a particular bond which is found to be much excessive, his right is to be defeated to a large extent and the very purpose of making provision for appeal to give relief in appropriate cases will be lost. We are of the clear view that while the contemner is detained in custody u/s 14 pending determination of the charge, there is no punishment imposed on him as yet u/s 12. The contention of Mr. Mukherjee is that the detention in such circumstances would also be a form of punishment u/s 12 is really untenable. The legislature in

its wisdom does not use surplus words but obviously uses such words which would advance its object and would remove the mischief of ambiguity. We have exhaustiibly dealt with all the contingencies in this regard over appealability or otherwise of an order or decision in Ashoke Kumar Rai v. Ashoke Arora F.M.A.T. No. 2146 of 1991 decided by us on 17.12.91 to hold that even though it was Stated in D.N. Taneja Vs. Bhajan Lal, that unless a punishment is imposed, no appeal lies against it, at best relates to a case of criminal contempt and nothing beyond and if any order or decision is arrived at deciding any bone of contention or any issue in the controversy, an appeal lies.

49. It is also relevant to notice that a Division Bench of this Court in Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, , opined as under :

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

XXX XXX XXX 15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) to (iii) ...

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

50. Assuming that an appeal u/s 19 was technically not maintainable, having regard to the fact that the interim injunction was granted till disposal of the contempt application, in our opinion, it was a judgment within the meaning of Clause 15 of the Letters Patent of the Madras High Court.

51. We will, however, proceed on the assumption that no appeal was maintainable.

An aggrieved person cannot be left without a remedy. Access to justice is a human right. In certain situations it may also be considered to be a fundamental right. (See Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others, and Arunima Baruah Vs. Union of India (UOI) and Others,).

52. Concededly this Court has the jurisdiction to entertain a special leave petition. When the entire matter is before us this Court in exercise of its jurisdiction under Article 136 read with Article 142 of the Constitution of India may pass such orders which would do complete justice to the parties. [See - T. Vijendradas and Another Vs. M. Subramanian and Others, .

53. The orders of the High Court speak in two voices. Doctrine of amity or comity requires that different courts exercising separate jurisdiction pass similar orders.

In Lewis & Spelling's - "The Law of Injunctions" at page 10 it is stated:

Where a court having general jurisdiction and having acquired jurisdiction of the subject-matter has issued an injunction, a court of concurrent jurisdiction will usually refuse to interfere by issuance of a second injunction.

It is also well settled that even an irregular order can be set aside by the same court or by a higher court.

In Isaacs v. Robertson (1984) 3 All. E.R. 140, it has been held:

Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are 'void' in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are 'voidable' and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions 'void' and 'voidable' respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in *Marsh v. Marsh* [1945] AC 271 at 284 and *MacFoy v. United Africa Co. Ltd.* [1961] 3 ALL ER 1169 : [1962] AC 152; but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceeding to have them set aside. The case that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind: what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make. The judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts *ex debito justitiae* the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice.

The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentions litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies.

54. If this Court while deciding a matter of this nature may, in exercise of its special jurisdiction under Article 142 of the Constitution of India, not only quash the order appealed against but also in the event it is found that quashing of an illegal order gives rise to another illegality, it may also refuse to exercise its jurisdiction or quash both the orders. Apart from the fact that the order passed by the learned Single Judge dated 20th June, 2008 is found to be illegal and without jurisdiction having been passed without any application of mind and furthermore as the same was obtained by the appellant by suppressing material facts and the proceedings between the parties, it is eminently a fit case where this Court should refuse to interfere with the impugned order of the High Court.

55. The superior courts of this country must discourage the forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of the process of the court.

56. If two views are possible, as held by this Court, a contempt petition would not lie.

In *Sushila Raje Holkar Vs. Anil Kak (Retd.)*, , relying upon the decision in *The State of Bihar Vs. Rani Sonabati Kumari*, , this Court held :

19. It may be true that this Court upon hearing the parties, by the order dated 1.5.2007 granted the respondent 15 days' time to deposit all arrears of rent at the rate of Rs. 50,000/- per month including the rent for the month of April 2007. We are not concerned with the implementation of the said order as violation thereof is not the subject matter of the contempt proceedings pending before us.

The order of this Court properly construed, therefore, would mean that the admitted lease would cover only 16,000 square feet of land. Different phraseologies like "entire" and "admitted" have been used by this Court. Construction of the said order, therefore, must be resorted to upon reading the same in its entirety. It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable.

57. It is furthermore well settled that this Court does not exercise its jurisdiction only because it is lawful to do so. (See *Tanna and Modi Vs. Commissioner of Income Tax* , *Mumbai XXV and Others*, and *C.K. Prahalada and Others Vs. State of Karnataka and Others*,

58. For the reasons aforementioned we are of the considered opinion that it is not a fit case wherein we should exercise our jurisdiction under Article 136 of the Constitution of India. The appeals are dismissed with costs. Counsel fee assessed at Rs. 50,000/- in each case.