

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS.13 TO 36 OF 2017, IA NO.61787/2017 AND IA NO.77072/2017
IN
CIVIL APPEAL NO(S). 4298-4299/2017

BARANAGORE JUTE FACTORY PLC. MAZDOOR SANGH (BMS) APPELLANT(S)

VERSUS

BARANAGORE JUTE FACTORY PLC. ETC. RESPONDENT(S)

WITH

CONMT.PET. (C) NOS. 824-827/2017 IN C.A. NOS. 4302-4305/2017
CONMT.PET. (C) NOS. 840-842/2017 IN C.A. NOS. 4306-4308/2017
CONMT.PET. (C) NOS. 1485-1486/2017 IN C.A. NOS.4298-4299/2017

J U D G M E N T

KURIAN, J.

Company Petition No.2 of 1987, pending before the Company Judge of Calcutta High Court has given rise to several litigations before the Company Judge, thereafter in intra court appeals and before this Court. One wonders why, despite several directions by this Court, the Company Petition itself has not been disposed of.

2. Having said that we have to deal with three set

of contempt petitions before us i.e. Contempt Pet.(C) Nos. 824-827/2017 in C.A. Nos. 4302-4305/2017, Contempt Pet.(C) Nos. 840-842/2017 in C.A. Nos. 4306-4308/2017 and Contempt Pet.(C) Nos. 1485-1486/2017 in C.A. Nos. 4298-4299/2017. These contempt petitions arise out of our order dated 21.03.2017 in Civil Appeal Nos. 4298-4299/2017 etc. The dispute is in a narrow compass as far as contempt is concerned. Paragraph 25 of our order dated 21.03.2017 reads as follows:-

"25. In the background as above of the case, the Division Bench should not have interfered with the order dated 26.06.2015 passed by the learned Single Judge. However, taking note of the fact, an amount of Rs.2,23,00,000/- has been kept in fixed deposit towards lien for issuance of bank guarantee, we make it clear that the respondents shall not operate the bank accounts of the company after 03.04.2017 without securing an amount of Rs.8,32,60,331/-. We also make it clear that without leave of the High Court, the fixed deposit of Rs.2,23,00,000/- with the Axis Bank shall not be withdrawn. However, it would be open to the respondents to apply for appropriate clarification or modification of the order dated 26.06.2015, after making the deposit as above and it will be open to the learned Single Judge to pass the appropriate orders on merits of the application."

3. It is the common ground of the petitioners that the alleged contemnors have not respected the orders passed by this Court in its true spirit and they have been trying various methods to get around the order. Shri Vikas Singh, learned senior counsel appearing for the alleged contemnors pointed out that there is no willful or deliberate violation of any of the orders passed by this Court.

4. On 25.7.2017, having regard to the submissions as to whether the alleged contemnors have actually made up the amount referred to in our order dated 21.03.2017. passed the following order:-

"We have sought the assistance of Mr. Ajit Kumar Sinha, learned senior counsel to verify as to whether the alleged contemnors have actually furnished the amount in terms of our orders dated 21.3.2017 and 8.5.2017.

List on 27.07.2017.

Additional documents, if any, may be filed in the meantime."

5. Thereafter, on 31.07.2017, this Court passed the following order:-

"The learned counsel for Respondent No. 1, on proper instruction, submits that in order to avoid all confusions, a Fixed Deposit Receipt for an amount of Rs. 10.55 Crores (Rupees Ten Crores and Fifty Five Lakhs) drawn in the name of the Registrar of

this Court will be produced before this Court on the next date of hearing.

It is made clear that in case the Fixed Deposit Receipt, as above, is not produced on that date, all the Directors of the Company shall be personally present before this Court on the next date of hearing.

We make it further clear that for enabling the company to produce the Fixed Deposit Receipt, it will be open to them to encash the earlier Fixed Deposit to the extent of Rs. 2.23 Crores (Rupees Two Crores and Twenty Three Lakhs) referred to in our Judgment.

List on 08.08.2017.

We record our appreciation for the services rendered by Mr. Gaurab Banerjee, learned senior counsel, in assisting the court".

6. When the matters were taken up on 8.8.2017, a Fixed Deposit Receipt for a sum of Rs.10,55,60,331/- drawn in the name of Registrar Supreme Court of India was produced. The Fixed Deposit Receipt, as above, had been taken on record on that day.

7. Mr. Krishnan Veugopal and Mr. R. Basant, learned senior counsel, submit that there is blatant violation of the order dated 21.03.2017 passed by this Court on many aspects and in particular, in the matter of the alleged Fixed Deposit of Rs.2.23 Crores in Axis Bank and in operating the accounts in Axis

Bank. As far as Fixed Deposit of Rs.2.23 Crores in Axis Bank is concerned, we find that our order was based on the order of the High Court.

8. Be that as it may, Mr. Vikas Singh, learned senior counsel, submits that as a matter of fact, there were Fixed Deposits in Syndicate Bank and Karur Vysya Bank to the tune of Rs.2.23 Crores and a bit more in case the interest was added on to it. However, unfortunately, it was noted to be a deposit in Axis Bank but, even after the judgment, grace was not shown in bringing to the notice of this Court that there was no fixed deposit in Axis Bank, despite several rounds of arguments with regard to the implementation of our order dated 21.3.2017. As far as operation of the accounts in Axis Bank is concerned, it is submitted that there was an inadvertent withdrawal of an amount of Rs.3.20 Lacs. According to Mr. Vikas Singh, learned senior counsel, it is because the Bank had not taken note of the instruction. But the fact remains that the order of the Court was not produced before the Bank, apparently because in that order it was made clear that no account should be operated without making up the required amount.

9. Mr. Dhruv Mehta, learned senior counsel appearing for the Bank, however, submits that immediately on coming to know of the transaction for an amount of

Rs.3.46 Lacs, being in violation of the order dated 21.3.2017 passed by this Court, the same had been reversed and status quo ante with regard to the operation had been restored by the Bank. Mr. Vikas Singh, learned senior counsel, submits that the same was on account of instruction by the alleged contemnors as well.

10. Be that as it may, the Manager of the Bank has tendered unconditional apology, despite a plausible explanation offered for the operation of the accounts. We see no reason to refuse the apology by the Manager of the Axis Bank. Accordingly, accepting the explanation and apology by the Manager of the Bank, further proceedings against the Manager of the Axis bank are dropped and the rule is discharged as against the Manager.

11. Though there are also allegations against the alleged contemnors that attempts have been made to circumvent the orders passed by this Court by even forming a new company, these allegations also have been sought to be explained by Mr. Vikas Singh, learned senior counsel, who submits that the decision to lease out the property had already been taken as early as on 16.03.2017. However, Mr. R. Basant, learned senior counsel, points out that though the decision had allegedly been taken on 16.3.2017 the same had been uploaded only on 19.04.2017.

12. Be that as it may, having regard to the conduct of the alleged contemnors and in the background of the various orders passed by this Court it is clear that their conduct was not graceful before this Court and whether for such a conduct this Court should initiate proceedings for contempt is the question to be decided.

13. As we have already noted hereinabove, since various other cases are pending before the Company Judge in the High Court of Calcutta and having regard to the three decades long fight on the management of the Company, we are of the view that the apology tendered by the alleged contemnors for the inconvenience caused to the Court should be accepted subject to imposition of appropriate costs.

14. As far as the submission made by the learned senior counsel for the petitioners based on the interlocutory applications, we are of the view that those are matters for the Company Judge to deal with appropriately. Therefore, we express no opinion on the merits of those applications. It is for the petitioners, if so advised, to move the Company Judge at the appropriate stage.

15. Dr. Kylashnath Pillay, learned senior counsel appearing for some of the Unions submits that they may also be heard before this Court.

16. We find it difficult to appreciate this

submission, since the main matter had already been disposed of and what survives are only the contempt petitions before this Court. We do not find any need for intervention/impleadment. In case, those unions have any grievance it is for them to approach the Company Judge, in which case the Company Judge may pass appropriate orders.

17. As we have noted above, the Company Court is in seisin of the matter for about three decades in Company Petition No.2/1987. This Court, we find at least on three occasions (on 27.10.2014, 12.03.2015 and 4.3.2016), had issued directions to the Company Court to dispose of all the applications and also the main petition.

18. All the parties appearing before us submit that they will extend full cooperation to the Company Judge to dispose of the applications and the Company Petition itself without any delay.

19. In the above circumstances, we request the Company Judge, High Court of Calcutta to take up the Applications and Company Petition on a day to day basis and dispose of the same expeditiously, preferably within a period of four months. Any adjournment by any party, shall be granted only on the imposition of cost of Rs.10,00,000/- (Rupees Ten Lacs) and that too only for a short period, be it on any reason.

20. Yet with all these safeguards, in case the Company Judge is not in a position to dispose of the applications/petition on account of non-cooperation on the part of the respondents herein, it will be open to the Company Judge to make a Report to this Court, in which case, this Court will think of appropriate steps even by appointing a Receiver for the Company.

21. Subject to the final disposal of the Company Petition it will be open to the Company Judge to pass appropriate orders with regard to the Fixed Deposit made in the name of the Registrar, Supreme Court of India.

22. We also direct the Company Judge, not to entertain any fresh application in Company Petition No.2/1987, without leave of this Court.

23. However, liberty is granted to the applicants who have already filed applications for directions/intervention/impleadment before this Court to approach the Company Judge, if they are so advised.

24. In view of the persuasive submission made by the learned senior counsel in the matter of costs, we reluctantly refrain from passing any further orders.

25. The contempt petitions and I.As are, accordingly, disposed of.

26. Pending applications, if any, shall stand disposed of.

27. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

NEW DELHI;
AUGUST 30, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. NOS.13 TO 36 OF 2017, IA NO.61787/2017 AND IA NO.77072/2017

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VERSUS

BARANAGORE JUTE FACTORY PLC. ETC. RESPONDENT(S)

WITH

CONMT.PET.(C) NO. 824-827/2017 IN C.A. NO. 4302-4305/2017 (XVI)
(AND IA NO.57442/2017-APPROPRIATE ORDERS/DIRECTIONS AND IA
NO.57848/2017-IMPLEADING PARTY AND IA NO.57856/2017-APPROPRIATE
ORDERS/DIRECTIONS)

CONMT.PET.(C) NO. 840-842/2017 IN C.A. NO. 4306-4308/2017 (XVI)
CONMT.PET.(C) NO. 1485-1486/2017 IN C.A. NO. 4298/2017 (XVI)
(FOR ADMISSION)

Date : 30-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MRS. JUSTICE R. BANUMATHI

For the parties

Mr. R. Basant, Sr. Adv.
Mr. Sunil Fernandes, AOR
Ms. Astha Sharma, Adv.
Ms. Nupur Kumar, Adv.

Mr. Krishnan Venugopal, Sr. Adv.
Mr. Pankaj Jain, Adv.
Mr. Ashok Kumar Jain, Adv.
Mr. Satish Vig, AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr. Sanjay Bhatt, Adv.
Mr. Naveen Kumar, Adv.
Mr. Dushyant Kumar, Adv.
Mr. Rabin Majumder, AOR

Mr. Vikas Singh, Sr. Adv.
Ms. Pallavi Langar, AOR
Mr. R.K. Mohit Gupta, Adv.

Mr. Shakeel Ahmad, Adv.
Ms. Deepika, Adv.

Dr. Kylashnath Pillay, Sr. Adv.
Mr. Farrukh Rasheed, Adv.

Mr. Gopal Shankar Narayan, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Ms. Ruchi Kohli, AOR
Mr. Saurav Kejriwal, Adv.
Mr. Lal Pratap Singh, Adv.

Dr. Kailash Chand, AOR

Mr. R.C. Kohli, AOR

Mr. Niraj Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The contempt petitions and I.As are disposed of in terms of
the signed judgment.

(NARENDRA PRASAD)
COURT MASTER

(RENU DIWAN)
ASST. REGISTRAR

(Signed "Non-Reportable" Judgment is placed on the file)