

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION

CONTEMPT PETITION NOS. 130-131 OF 2019  
IN  
CIVIL APPEAL NOS. 7025-7027 OF 2008

M/S ICMC PACKAGINGS LTD.

PETITIONER(S)

VERSUS

M/S MONA PACKAGING PRODUCTS & ORS.

RESPONDENT(S)

WITH

MISCELLANEOUS APPLICATION NOS. 1033-1034 OF 2019  
IN  
CIVIL APPEAL NOS. 7025-7027 OF 2008

O R D E R

CONTEMPT PETITION (CIVIL) NOS. 130-131 OF 2019 IN CIVIL APPEAL NOS. 7025-7027 OF 2008

Application for impleadment is allowed.

The property situated in Survey No.40, New Survey No.75, Chettiar Agaram Road, Siva Bhootham Village, Vanagaram, Saidapet Taluk, Chengalpet District, Chennai, Tamil Nadu admeasuring about 7269 sq.ft with the plant and machinery of M/s. Mona Packaging Products, was auctioned in the year 2006 under Section 19(22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and purchased by the petitioner-M/s ICMC Packaging Limited in an open auction for a consideration of Rs. 55,10,000/-. The entire sale consideration was paid on 16.03.2006. The sale certificate in favour of M/s ICMC Packaging Limited was issued on 31.03.2006.

The borrower, M/s Mona Packaging Products, a partnership firm and its partners, who had mortgaged the property had challenged the auction and the sale before the Debts Recovery Tribunal<sup>1</sup> and then before the Debts Recovery Appellate Tribunal. They were successful in delaying the proceedings, but the auction and the sale were upheld. Thereupon, they had approached the High Court, but the writ petition was dismissed. Finally, they filed a petition under Article 136 of the Constitution of India, which appeal was dismissed vide order dated 12.10.2017. Paragraph '5' of this order reads:

"5. Auction of the mortgaged properties have taken place. The auction purchaser had deposited the amount tendered by him and Sale Certificate, as already noticed by us, was issued in favour of the auction purchaser on 31<sup>st</sup> March, 2006. If that is so, we must understand that the right of the borrowers to redeem the mortgaged property no longer existed inasmuch as the decree has been executed. This is what Section 60 of the Transfer of Property Act, 1882 contemplates".

The aforesaid observation was in the context of the plea by M/s Mona Packaging Products and its partners, that they had made deposits for the repayment of Rs.50,00,000/- with the Indian Bank- the lender bank, from time to time. Upon consideration of all contentions and pleas challenging the auction and sale, this Court had observed and directed :

"6. In such a situation, the appeal in which order dated 23<sup>rd</sup> May, 2007 was passed which was set aside by the High Court had become infructuous. We can, therefore, find no infirmity with the order of the High Court. Learned counsel for the appellants has vehemently contended that the appeal filed by him before the Appellate Tribunal in which the order dated 23<sup>rd</sup> May, 2007 was passed should be heard on merits. We are unable to agree. The appeal has been rendered infructuous by the auction sale that had taken place which has extinguished the right to

1 For short, 'DRT'

redemption of the mortgagor(s)/borrower(s) in the property in question.

7. For the aforesaid reasons, we find no merit in these appeals. The appeals are accordingly dismissed. However, all amounts that may have been deposited by the appellants/borrowers pursuant to the various orders passed by different forums below be returned to the appellants with interest at the rate of 9% per annum. The said amount will be paid forthwith. It will now be obligatory on the part of the appellants to handover vacant and peaceful possession of the property in question to the auction purchaser”.

Even after lapse of five years since the directions were given in the judgment dated 12.10.2017, the auction purchaser, M/s ICMC Packaging Limited, has not been able to secure and enforce compliance of the ‘obligation’ in the order of this Court dated 12.10.2017, that is, handing over of the vacant and peaceful possession of the property to the purchaser.

The pleas taken by M/s Mona Packaging Products and its partners are three-fold. First, the sale certificate dated 31.03.2006 is faulty and defective, as it does not refer to and include the constructions made by them on the mortgaged property for which they had also taken a loan of Rs.50,00,0000/- from one K.M. Kannan. K.M. Kannan has filed an application for impleadment before us, which we have allowed. The second plea is that the order passed by this Court dated 12.10.2017 is conditional and that M/s Mona Packaging Products are entitled to return of Rs.50,00,000/- with interest @ the rate of 9% per annum. Lastly, it is submitted that this Court should not entertain the contempt petition in view of the judgment of this Court in *“Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Others. vs. M. George Ravishekharan and Others”*, (2014)

3 SCC 373.

The first contention has to be rejected, as it was open to M/s Mona Packaging Products to raise that plea at the time when they had preferred objections against the auction and sale before the authorities, and then in the writ petition and the special leave petition before this Court. The sale certificate was issued on 31.03.2006, and it relates to the mortgaged and pledged properties. Auction notice included land, building and even plant and machinery. It is *ex facie* to difficult to accept that the parties, including M/s Mona Packaging Products and its partners, were in doubt and unaware that the auction was for the land and building constructed thereon. The sale certificate, in fact, refers to the plant and machinery, which as accepted, has been removed and is no longer available. The constructions referred to by M/s Mona Packaging Products, it is stated by them, were made between 1993 and 1996. The property was auctioned and sold with the constructions made thereon. Further, in our opinion, M/s Mona Packaging Products and its partners should not be allowed to challenge the sale certificate, once they had questioned and disputed the auction and sale. The writ petition and proceedings before this Court were post the issue of sale certificate. The principle and salutary objective behind constructive *res judicata* and Order II, Rule 2 of the Code of Civil Procedure, 1908, are attracted. There must be finality and end to litigation, and therefore the law enjoins a party/petitioner to raise and include the whole or all claims in respect of the cause of action. Split up or second ground cannot form foundation for initiating subsequent

proceedings.

The second contention also does not appeal to us. The Indian Bank, which had given the loan, was required to refund Rs.50,00,000/- along with interest @ 9% per annum. It is the stand and stance of the Indian Bank that they have been trying to return the money with interest, which has not been accepted by M/s Mona Packaging Products and its partners.

We would not go into the said controversy as it is open to M/s Mona Packaging Products to enforce the decree passed by this Court in accordance with law. It is also open to M/s Mona Packaging Products to accept part payment as offered by the Indian Bank and press their claim for the balance amount. In any case, the purported non- payment to be made by the Indian Bank cannot be a good ground and justification for M/s Mona Packaging Products for not complying with the order dated 12.10.2017, in so far as the auction purchaser is concerned. This is not a case of reciprocal promises. The direction issued to the Indian Bank to refund the money with interest, was not conditional.

On the third contention, normally, we would not have entertained the present contempt petition as we do not find that there is any specific direction for compliance or undertaking to this Court that the possession of the property should be handed over to M/s ICMC Packaging Limited. However, the facts of the present case, do reveal that M/s Mona Packaging Products and its partners have, in fact, parted with possession and given it to a third party(K.M.Kannan). This is was concealed and therefore a matter of grave concern as it indicates deliberate and willful

misconduct to obstruct and avoid compliance with the obligation. However, without dwelling deeper into these aspects, we are inclined to do complete and substantial justice by exercising our power under Article 142 of the Constitution of India by directing that the possession of the property must be handed over and given to the auction purchaser. This is a typical case of abuse of judicial proceedings to stall execution of the sale certificate that has attained finality. The auction purchaser has not been able to execute and get possession of the property, for which it had paid money 16 years back, and after it had succeeded in the decade long litigation right up to this court. Even after the order of this court in 2017, for last five years vacant and peaceful possession has not been given. This litigation must come to an end.

During the course of hearing before us, the learned Counsel appearing for the impleader, K.M. Kannan, has stated that he would vacate the premises and hand over the possession of the same to M/s ICMC Packaging Limited on or before 30.01.2023. They shall file an affidavit/undertaking in this regard before this Court within 15 days from today. The impleader, K.M. Kannan, will be bound by the said affidavit/undertaking. In case of violation, he will be proceeded under the Contempt of Courts Act, 1971.

Mr. Deepak Prakash, learned counsel appearing for M/s Mona Packaging Products and its partners, states that the principal amount and the interest amount may be paid to K.M. Kannan. It is open to the Indian Bank to make the said payment to K.M. Kannan and obtain a receipt for the payment received. This payment would be without prejudice to the rights and contentions of M/s Mona

Packaging Products and its partners that the amount paid is less and not in terms of the decision of this Court dated 12.10.2017.

Recording the aforesaid, the present contempt petition is disposed of, and all pending applications are also disposed of.

MISCELLANEOUS APPLICATION NOS. 1033-1034 OF 2019 IN CIVIL APPEAL NOS. 7025-7027 OF 2008:

These applications are disposed of in terms of the order passed in the above contempt petitions.

..... J.  
(SANJIV KHANNA)

..... J.  
(M.M. SUNDRESH)

NEW DELHI;  
DECEMBER 01, 2022

(REVISED)

ITEM NO.30

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CONMT.PET.(C) No. 130-131/2019 in C.A. No. 7025-7027/2008

M/S ICMC PACKAGINGS LTD.

PETITIONER(S)

VERSUS

M/S MONA PACKAGING PRODUCTS & ORS.

RESPONDENT(S)

(IA No. 162364/2022 - CLARIFICATION/DIRECTION, IA No. 162363/2022 - INTERVENTION/IMPLEADMENT, IA No. 162365/2022 - RECALLING THE COURTS ORDER)

WITH

MA 1033-1034/2019 in C.A. No. 7025-7027/2008 (XII)

(IA No. 84334/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 84323/2019 - CLARIFICATION/DIRECTION, IA No. 84335/2019 - INTERVENTION/IMPLEADMENT)

Date : 01-12-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. J. James, Adv.  
Mr. S.D. Dwarakanath, Adv.  
Ms. Manju Jetley, AOR

For Respondent(s)  
Mr. Deepak Prakash, AOR  
Mr. Pawan Kr. Dabas, Adv.  
Mr. Subhash Chaudhary, Adv.  
Mr. Nachiketa Vajpayee, Adv.  
Ms. Divyangna Malik, Adv.  
Ms. Vishnu Priya, Adv.  
Ms. Disha Gupta, Adv.  
Mr. Vardaan Kapoor, Adv.  
Mr. Shyam Nair, Adv.  
Mr. Deepak Prakash, Adv.

Mr. Himanshu Munshi, AOR

Mr. M. Yogesh Kanna, Adv.

Mr. Raghunatha Sethupathy B , AOR

Mr. Karupppaiah Meyyappan, Adv.

Ms. Kanika Kalaiyarasan, Adv.

Ms. Pariksha, Adv.

Ms. Priya R., Adv.

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

These petitions and miscellaneous applications are disposed of  
in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)  
COURT MASTER (SH)

(KAMLESH RAWAT)  
COURT MASTER (NSH)

(Corrected signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION

CONTEMPT PETITION NOS. 130-131 OF 2019  
IN  
CIVIL APPEAL NOS. 7025-7027 OF 2008

M/S ICMC PACKINGS LTD.

PETITIONER(S)

VERSUS

M/S MONA PACKAGING PRODUCTS & ORS.

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MISCELLANEOUS APPLICATION NOS. 1033-1034 OF 2019  
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O R D E R

CONTEMPT PETITION (CIVIL) NOS. 130-131 OF 2019 IN CIVIL APPEAL NOS. 7025-7027 OF 2008

Application for impleadment is allowed.

The property situated in Survey No.40, New Survey No.75, Chettiar Agaram Road, Siva Bhootham Village, Vanagaram, Saidapet Taluk, Chengalpet District, Chennai, Tamil Nadu admeasuring about 7269 sq.ft with the plant and machinery of M/s. Mona Packaging Products, was auctioned in the year 2006 under Section 19(22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and purchased by the petitioner-M/s ICMC Packaging Limited in an open auction for a consideration of Rs. 41,87,600/-. The entire sale consideration was paid on 16.03.2006. The sale certificate in

favour of M/s ICMC Packaging Limited was issued on 31.03.2006.

The borrower, M/s Mona Packaging Products, a partnership firm and its partners, who had mortgaged the property had challenged the auction and the sale before the Debts Recovery Tribunal<sup>2</sup> and then before the Debts Recovery Appellate Tribunal. They were successful in delaying the proceedings, but the auction and the sale were upheld. Thereupon, they had approached the High Court, but the writ petition was dismissed. Finally, they filed a petition under Article 136 of the Constitution of India, which appeal was dismissed vide order dated 12.10.2017. Paragraph '5' of this order reads:

"5. Auction of the mortgaged properties have taken place. The auction purchaser had deposited the amount tendered by him and Sale Certificate, as already noticed by us, was issued in favour of the auction purchaser on 31<sup>st</sup> March, 2006. If that is so, we must understand that the right of the borrowers to redeem the mortgaged property no longer existed inasmuch as the decree has been executed. This is what Section 60 of the Transfer of Property Act, 1882 contemplates".

The aforesaid observation was in the context of the plea by M/s Mona Packaging Products and its partners, that they had made deposits for the repayment of Rs.50,00,000/- with the Indian Bank- the lender bank, from time to time. Upon consideration of all contentions and pleas challenging the auction and sale, this Court had observed and directed :

"6. In such a situation, the appeal in which order dated 23<sup>rd</sup> May, 2007 was passed which was set aside by the High Court had become infructuous. We can, therefore, find no infirmity with the order of the High Court. Learned counsel for the appellants has vehemently contended that the appeal filed by him before the Appellate Tribunal in which the order dated 23<sup>rd</sup> May, 2007 was passed should be heard on merits. We are unable to agree. The appeal has

<sup>2</sup> For short, 'DRT'

been rendered infructuous by the auction sale that had taken place which has extinguished the right to redemption of the mortgagor(s)/borrower(s) in the property in question.

7. For the aforesaid reasons, we find no merit in these appeals. The appeals are accordingly dismissed. However, all amounts that may have been deposited by the appellants/borrowers pursuant to the various orders passed by different forums below be returned to the appellants with interest at the rate of 9% per annum. The said amount will be paid forthwith. It will now be obligatory on the part of the appellants to handover vacant and peaceful possession of the property in question to the auction purchaser”.

Even after lapse of five years since the directions were given in the judgment dated 12.10.2017, the auction purchaser, M/s ICMC Packaging Limited, has not been able to secure and enforce compliance of the ‘obligation’ in the order of this Court dated 12.10.2017, that is, handing over of the vacant and peaceful possession of the property to the purchaser.

The pleas taken by M/s Mona Packaging Products and its partners are three-fold. First, the sale certificate dated 31.03.2006 is faulty and defective, as it does not refer to and include the constructions made by them on the mortgaged property for which they had also taken a loan of Rs.50,00,0000/- from one K.M. Kannan. K.M. Kannan has filed an application for impleadment before us, which we have allowed. The second plea is that the order passed by this Court dated 12.10.2017 is conditional and that M/s Mona Packaging Products are entitled to return of Rs.50,00,000/- with interest @ the rate of 9% per annum. Lastly, it is submitted that this Court should not entertain the contempt petition in view of the judgment of this Court in *“Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation*

*Limited and Others. vs. M. George Ravishekharan and Others"*, (2014)  
3 SCC 373.

The first contention has to be rejected, as it was open to M/s Mona Packaging Products to raise that plea at the time when they had preferred objections against the auction and sale before the authorities, and then in the writ petition and the special leave petition before this Court. The sale certificate was issued on 31.03.2006, and it relates to the mortgaged and pledged properties. Auction notice included land, building and even plant and machinery. It is *ex facie* to difficult to accept that the parties, including M/s Mona Packaging Products and its partners, were in doubt and unaware that the auction was for the land and building constructed thereon. The sale certificate, in fact, refers to the plant and machinery, which as accepted, has been removed and is no longer available. The constructions referred to by M/s Mona Packaging Products, it is stated by them, were made between 1993 and 1996. The property was auctioned and sold with the constructions made thereon. Further, in our opinion, M/s Mona Packaging Products and its partners should not be allowed to challenge the sale certificate, once they had questioned and disputed the auction and sale. The writ petition and proceedings before this Court were post the issue of sale certificate. The principle and salutary objective behind constructive *res judicata* and Order II, Rule 2 of the Code of Civil Procedure, 1908, are attracted. There must be finality and end to litigation, and

therefore the law enjoins a party/petitioner to raise and include the whole or all claims in respect of the cause of action. Split up or second ground cannot form foundation for initiating subsequent proceedings.

The second contention also does not appeal to us. The Indian Bank, which had given the loan, was required to refund Rs.50,00,000/- along with interest @ 9% per annum. It is the stand and stance of the Indian Bank that they have been trying to return the money with interest, which has not been accepted by M/s Mona Packaging Products and its partners.

We would not go into the said controversy as it is open to M/s Mona Packaging Products to enforce the decree passed by this Court in accordance with law. It is also open to M/s Mona Packaging Products to accept part payment as offered by the Indian Bank and press their claim for the balance amount. In any case, the purported non-payment to be made by the Indian Bank cannot be a good ground and justification for M/s Mona Packaging Products for not complying with the order dated 12.10.2017, in so far as the auction purchaser is concerned. This is not a case of reciprocal promises. The direction issued to the Indian Bank to refund the money with interest, was not conditional.

On the third contention, normally, we would not have entertained the present contempt petition as we do not find that there is any specific direction for compliance or undertaking to this Court that the possession of the property should be handed over to M/s ICMC Packaging Limited. However, the facts of the present case, do reveal that M/s Mona Packaging Products and its

partners have, in fact, parted with possession and given it to a third party(K.M.Kannan). This is was concealed and therefore a matter of grave concern as it indicates deliberate and willful misconduct to obstruct and avoid compliance with the obligation. However, without dwelling deeper into these aspects, we are inclined to do complete and substantial justice by exercising our power under Article 142 of the Constitution of India by directing that the possession of the property must be handed over and given to the auction purchaser. This is a typical case of abuse of judicial proceedings to stall execution of the sale certificate that has attained finality. The auction purchaser has not been able to execute and get possession of the property, for which it had paid money 16 years back, and after it had succeeded in the decade long litigation right up to this court. Even after the order of this court in 2017, for last five years vacant and peaceful possession has not been given. This litigation must come to an end.

During the course of hearing before us, the learned Counsel appearing for the impleader, K.M. Kannan, has stated that he would vacate the premises and hand over the possession of the same to M/s ICMC Packaging Limited on or before 30.01.2023. They shall file an affidavit/undertaking in this regard before this Court within 15 days from today. The impleader, K.M. Kannan, will be bound by the said affidavit/undertaking. In case of violation, he will be proceeded under the Contempt of Courts Act, 1971.

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open to the Indian Bank to make the said payment to K.M. Kannan and obtain a receipt for the payment received. This payment would be without prejudice to the rights and contentions of M/s Mona Packaging Products and its partners that the amount paid is less and not in terms of the decision of this Court dated 12.10.2017.

Recording the aforesaid, the present contempt petition is disposed of, and all pending applications are also disposed of.

MISCELLANEOUS APPLICATION NOS. 1033-1034 OF 2019 IN CIVIL APPEAL NOS. 7025-7027 OF 2008:

These applications are disposed of in terms of the order passed in the above contempt petitions.

..... J.  
(SANJIV KHANNA)

..... J.  
(M.M. SUNDRESH)

NEW DELHI;  
DECEMBER 01, 2022

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HON'BLE MR. JUSTICE M.M. SUNDRESH

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Mr. S.D. Dwarakanath, Adv.  
Ms. Manju Jetley, AOR

For Respondent(s) Mr. Deepak Prakash, AOR  
Mr. Pawan Kr. Dabas, Adv.  
Mr. Subhash Chaudhary, Adv.  
Mr. Nachiketa Vajpayee, Adv.  
Ms. Divyangna Malik, Adv.  
Ms. Vishnu Priya, Adv.  
Ms. Disha Gupta, Adv.  
Mr. Vardaan Kapoor, Adv.  
Mr. Shyam Nair, Adv.  
Mr. Deepak Prakash, Adv.

Mr. Himanshu Munshi, AOR

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UPON hearing the counsel the Court made the following  
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COURT MASTER (SH)

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COURT MASTER (NSH)

(Signed order is placed on the file.)