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N.A.Kumar, and anr. Vs. Pankaj Kumar Jha the Chief Executive Officer,

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Court : Chennai

Decided On : Jun-17-2010

Judge : K.Chandru, J.

Acts : Contempt of Courts Act - Section 11

Appeal No. : Cont.P.No.788 of 2009

Appellant : N.A.Kumar, and anr.

Respondent : Pankaj Kumar Jha the Chief Executive Officer,

Advocate for Def. : Mr.T.P.Manoharan, Adv.

Advocate for Pet/Ap. : Mr.S.Meenakshi, Adv.

Judgement :

1. This petition is filed for punishing the respondent for having disobeyed the orders of this Court in W.P.No.18514 of 1998 dated 08.07.2008.

2. Notice was directed to be issued to the learned Special Government Pleader (Puducherry). Further notice was also ordered to the respondent to appear before this Court on 12.11.2009. The respondent also appeared and his presence was dispensed with.

3. Today when the matter came up, Mr.T.P.Manoharan, learned Special Government Pleader (Puducherry) states that the matter has been taken on

Appeal being W.A.No.350 of 2010 and it is seized by a Division Bench. They have also filed a stay application along with the writ appeal and arguments over there were were being heard.

4. When an order is appealed against and the higher forum is seized of the matter it is not proper for this Court to proceed with the contempt to deprive the right of the respondents to question the order of this Court. In this context, it is necessary to refer to two decisions of the Supreme Court which may have a bearing on this issue. The Supreme Court vides its decision in State of J & K v. Mohd. Yaqoob Khan reported in (1992) 4 SCC 167, in paragraph 7 has observed as follows:-

"7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the court was in a position to consider the objections and record a finding, prima facie in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put in execution when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute, therefore, will be covered by Section 47 of the Code of Civil Procedure. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being premature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court." 5.The Supreme Court once

again in Modern Food Industries (India) Ltd. v. Sachidanand Dass reported in 1995 Supp (4) SCC 465 in paragraphs 4 and 5 has held as follows:-

"4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judges order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judges order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K v. Mohd. Yaqoob Khan.

5. In the present case, under the threat of proceedings of contempt, the appellants had to comply with the order of the learned Single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is virtually rendered infructuous by the steps they had to take on threat of contempt."

6. In view of the above legal position, this Court is not persuaded to pursue the contempt. Hence, the contempt petition stands closed. It is made clear that depending upon the outcome of the writ appeal, the petitioners can work out their remedy.

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