

**B. Ramalingam, Formerly III Additional Judge, City Civil Court, Chennai
now functioning as Additional District Judge-cum-Presiding Officer,
Special Court, constituted under E.C. Act, Salem**

Court: Madras High Court

Date of Decision: Nov. 11, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) &" Order 39 Rule 3

Citation: (2006) 1 CTC 577 : (2006) 1 LW 421 : (2006) 1 MLJ 75

Hon'ble Judges: S.R. Singaravelu, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: A.L. Somayaji Assisted by C. Ravichandran, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, J.

B. Ramalingam, formerly III Additional Judge, city Civil court, Chennai, now functioning as Additional District

Judge-cum-Presiding officer, Special court, constituted under E.C. Act, Salem, is now facing the charge of contempt in the suo motu contempt

proceedings initiated by this Division Bench.

2. The circumstances under which the above proceedings were initiated against the Judicial Officer, in brief, are as follows:

(a) D. Geetha filed a suit in O.S.No. 6155 of 2001 before the XV Assistant Judge, City Civil Court, Chennai for declaration and injunction in

respect of the suit property against her own mother D. Thulasi Ammal.

(b) D. Thulasi Ammal, the mother also filed a suit against her daughter D. Geetha in O.S.No. 5798 of 2002 for the relief of injunction in respect of

the same suit property.

(c) During the pendency of these suits, both filed separate applications for interim injunction. The learned trial Judge granted interim injunction in

favour of the mother and dismissed the application for interim injunction filed by the daughter.

(d) However, the interim injunction in favour of the mother was granted only for a limited period up to 18.11.2002. The same was not extended in

the next hearing in view of the fact that Order 39 Rule 3 C. P.C. was not complied with by the mother.

(e) Against non-extension of the interim injunction, the mother filed C.R.P.No. 2112 of 2002 before the learned single Judge of this Court, who in

turn, heard both mother and daughter and allowed the civil revision petition by the order dated 24.1.2003 by extending the interim injunction in

favour of the mother as against the daughter and directed the trial Court to give final disposal to the injunction application.

(f) In the meantime, the daughter challenging the order of the trial Judge dismissing her injunction application, filed an appeal in C.M.A.No. 11 of

2003 before the III Additional Judge, City Civil Court, Chennai. The same was admitted and notice was ordered.

(g) When the C.M.A. was taken up for final disposal, the counsel for the mother, the respondent in C.M.A. brought to the notice of the III

Additional Judge that the High Court already passed an order an injunction in favour of the mother in C.R.P.No. 2112 of 2002 dated 24.1.20 03

and requested the appellate Judge to dismiss the C.M.A.

(h) However, the learned III Additional Judge by the order dated 5.3.2003 overruled the objection raised by the counsel for the mother and

disregarded the order of the High Court and granted injunction in favour of the daughter as against the mother in respect of the same property.

(i) Under those circumstances, the mother filed contempt petition against her daughter before the learned single Judge of this Court.

(j) The learned single Judge after hearing the parties found Geetha, the daughter guilty of contempt and imposed a fine of Rs. 1,000/- by the order

dated 17.7.2003. Challenging the said order, Geetha, the daughter filed contempt appeal before this Division Bench.

(k) When this Division Bench heard the matter, it noticed that the learned III Additional Judge allowed the C.M.A., in spite of the order of the

learned single Judge of this Court and granted injunction in favour of the daughter in respect of the same suit property which is a counter to the

injunction already granted by the High Court in favour of the mother.

(l) This Division Bench considered the contempt appeal on merits. Even during the pendency of the appeal, when this Bench found that the III

Additional Judge committed serious misconduct by granting injunction which runs counter to the injunction granted by the High Court, issued notice

to the learned III Additional Judge, City Civil court, calling for an explanation to enable this Court to take further action either for contempt or for

insubordination.

(m) To our shock, we received the explanation from the learned Judge who is now functioning as Presiding officer, Special Court constituted under

E.C.Act, Salem, stating that since there was no order of stay in disposing of the C.M.A., he disposed of the appeal on merits.

(n) Since this explanation would indicate the conduct of the Judicial Officer making an attempt to justify his act, this Court decided to initiate

separate contempt proceedings against the Judicial Officer.

(o) This Court accordingly after disposal of the appeal confirming the order of the single Judge finding the daughter guilty of contempt by the

judgment dated 18.8.2005, initiated suo motu contempt proceedings against the Judicial Officer. The Judicial Officer on issuance of show cause

notice, appeared before this Court and filed a counter affidavit on 29.9.2005.

3. Mr. A.L. Somayaji, the learned senior counsel appearing for the contemner, would fairly admit that the Judicial Officer has committed a grave

illegality and he realizes the mistake fully and as such, he has filed an affidavit tendering unconditional apology. He also sought further time to file an

additional affidavit. Accordingly, the contemner filed another affidavit dated 6.10.2005 narrating the circumstances under which he was constrained

to dispose of C.M.A. without understanding the scope of the C.M.A. and again requested this Court to accept his unconditional apology through

his affidavit.

4. We have carefully considered the submissions made by Mr. A.L. Somayaji, the learned senior counsel appearing for the contemner and also

gone through the affidavits filed by the contemner tendering unconditional apology for the act committed by him.

5. As a matter of fact, when the appeal filed by Geetha, the daughter against the finding that she is guilty of contempt, this Division Bench felt that

the act of the daughter having known about the order of the High Court granting injunction in favour of the mother insisted before the appellate

Judge, viz., III Additional Judge, for interim injunction in her favour, even though injunction was already granted in favour of the mother by the High

Court, would amount to clear contempt as correctly found by the learned single Judge.

6. This Court also felt that the act committed by the III Additional Judge in accepting the arguments of the counsel appeared for the daughter

Geetha and granted injunction in favour of Geetha, the daughter knowing fully well about the order of injunction in favour of the mother granted by

the High Court would also amount to insubordination or contempt.

7. Though initially we decided not to resort to the initiation of suo motu contempt proceedings straight away against the Judicial Officer, we thought

it fit to seek for explanation from the said Judge with reference to his act in granting injunction which runs counter to the injunction granted by the

High Court in favour of the mother in order to decide further course of action. Accordingly, notice was issued to him seeking for explanation.

8. Unfortunately, the learned III Additional Judge, who is now functioning as Presiding officer, Special Court for E.C. Act cases, Salem, has given

explanation stating that since there was no order of stay by the High Court in disposing of C.M.A.No. 11 of 2003 filed by the daughter, he

disposed of the appeal on merits, in fact, the learned single Judge, while finding Geetha, the daughter guilty of contempt, had deprecated the

conduct of the III Additional Judge in ignoring the injunction order passed by the High Court.

9. Since the explanation given by the learned Additional Judge was not satisfactory and it did not reflect his realization for the grave illegality that he

committed, this Court was constrained to initiate suo motu contempt proceedings and issued show cause notice. On receipt of the same, the

contemner, the Judicial Officer appeared before this Court and filed two affidavits on 29.9.2005 and 6.10.2005.

10. In the first affidavit dated 29.9.2005, he has stated as follows:

I respectfully submit that I should not have passed the order dated 05.02.05 in C.M.A.11/03. I regret for the same. I have got greatest regard for

the judges of this Hon"ble High Court and the orders passed by the Hon"ble Judges. I did not mean any disrespect. I feel sorry for allowing

C.M.A.No. 11/2003 in part. Further the above mistake happened due to the pressure of work and desire for disposal of the case.

I further respectfully undertake that I will not repeat such mistake in future and I will be very careful in future. In this connection, I respectfully

submit that my service is clean and blemishless.

11. In the second affidavit dated 6.10.2005, he would state as follows:

I respectfully submit that the order passed in C.R.P.No. 2112/2002 was misunderstood by me to mean that there is no prohibition to dispose off

the appeal on merits. It is this misunderstanding which had led me to pass the order in C.M.A.No. 11/2003 which runs counter to the order

passed by this Hon"ble High Court in the revision. I sincerely regret for the grave mistake committed by me in passing an order which runs counter

to the order granted in the revision. To some extent I was also carried away by the arguments advanced by the appellant's counsel in C.M.A.No.

11/2003.

It is my misfortune that I did not express regret and sorry and plead for being forgiven, when I was called upon by the Registrar General pursuant

to the directions given by Your Lordships. I honestly and sincerely regret to whatever I had said and I realised the seriousness of my mistake only

when this Hon"ble Court summoned me and when the learned senior counsel appearing for me pointed out the same.

I once again tender unconditional apology to the contents of the explanation submitted by me.

After realising the grave mistake committed by me in passing the order in C.M.A.No. 11/03, I have filed the counter affidavit tendering

unconditional apology for my above said grave mistake.

I once again tender my unconditional apology for my above said grave mistake.

12. In view of the admission made by the Judicial Officer, there is no difficulty for this Court to conclude that the Judicial Officer has committed the

act of serious insubordination and contempt. Though he admitted that he has committed a grave mistake in granting injunction in favour of the

daughter as against the mother which runs counter to the injunction granted by the High Court, he tried to explain the situation by stating that he

was carried away by the arguments advanced by the counsel in C.M.A.No. 11 of 2003. He also submitted in the counter that the above mistake

happened due to the pressure of work and desire for disposal of the case.

13. So, these statements made by the Judicial Officer would indicate that he was not careful enough while disposing the appeal, especially when

there is an order of the High Court granting injunction in favour of the mother and blindly accepted the arguments of the counsel for the daughter

and allowed the appeal without understanding that it would nullify the order of the High Court.

14. In this context, it would be appropriate to refer to the observation in the judgment rendered by him in C.M.A.No. 11 of 2003 dated 5.3.2003,

while dealing with the order of the High Court passed in C.R.P.No. 2112 of 2002, which is as follows:

(Tamil portion deleted)

15. The above observation would indicate that the Judicial Officer had not only granted injunction which runs counter to the injunction already

granted by the High Court, but also accepted the arguments of the counsel for the daughter that the High Court's order need not be considered as

it has passed only interim order without considering the merits of the case and as such, the daughter alone would be entitled to injunction in respect

of the suit property and on that basis, the Judicial Officer allowed the appeal which would virtually nullify the effect of the High Court's order.

16. There are two important sad features. One is, knowing fully well that the High Court already granted injunction in favour of the mother, the

Judicial Officer has passed the order of injunction in favour of the daughter. Another is, the Judicial officer has gone to the extent of accepting the

arguments of the counsel for the daughter that the order of the High Court did not contain the reasons and therefore, it cannot be said that the same

was passed on merits and allowed the appeal.

17. AS indicated above, the learned single Judge, on noticing the said conduct of the Judicial Officer, though did not think it fit to initiate any

proceeding against him, would strongly condemn the said act in his order as given under:

In spite of the fact that the injunction granted by this Court was in force on the date of disposal of C.M.A.11/2003 i.e. on 5.3.2003, it is

unfortunate that the learned III Additional Judge, City Civil Court by ignoring the injunction order knowing fully well that the subject matter of the

properties are one and the same in both the matters, allowed the appeal and granted an order of injunction in favour of the appellant therein-first

respondent herein against the applicant herein. As rightly argued by the learned Counsel for the applicant, the said order of the III Addl. Judge,

City Civil Court dated 5-3-2003 in C.M.A.No. 11/2003 is a counter injunction to the injunction order of this Court in C.R.P. 2112/2002 dated

24-1-2003. Though the learned Judge has expressed that there could not be any impediment in disposing of the injunction application filed by the

respondent herein-D. Geetha in her suit, virtually the injunction order passed by the learned Judge runs counter to the injunction granted by this

Court. ... The procedure adopted and the action of the III Additional Judge in allowing the appeal and granting injunction knowing well that it

would run counter to the order of this Court dated 24-1-2003 in C.R.P.No. 211 2/2002 is also to be deprecated.

18. The above order of the learned single Judge has been confirmed by this Division Bench in the judgment in Contempt Appeal No. 9 of 2003

dated 18.8.2005. However, in the explanation given by the Judicial Officer before initiating the contempt proceedings, he did not choose to

express regret nor indicate realisation about the grave misconduct committed by him. However, after receipt of show cause notice in the suo motu

contempt proceedings, on getting suitable advice from Mr. A.L. Somayaji, the learned senior counsel appearing for the contemner, the contemner

has now filed two affidavits tendering unconditional apology.

19. Taking into consideration of the above facts and the two affidavits filed by the contemner, this Court has to arrive at the irresistible conclusion

that the Judicial officer has committed a grave illegality, misconduct and insubordination by disregarding the High Court's order, thereby committed

the contempt.

20. The learned senior counsel Mr. A.L. Somayaji, as pointed out in the counter, has advised the Judicial Officer to be careful in future. The

learned senior counsel, while making submissions on behalf of the contemner, would fairly admit that he would not defend the act of contempt

committed by the Judicial Officer. However, he brought to the notice of this Court that his record of service is without blemish and as such, his act

can be condoned in view of his affidavit tendering unconditional apology as also his undertaking that he would not commit the same in future.

21. We also called for the Annual Confidential Report relating to the Judicial Officer and on a perusal of the same, we do not find any adverse

remarks against him so far. Therefore, it would be appropriate to let him off with a warning, while holding that he is guilty of contempt.

22. Before parting with this case, it would be appropriate to issue suitable directions to all the subordinate Courts indicating the guidelines given by

various High Courts as well as the Supreme Court to subordinate judiciary for the judicial discipline to be maintained by the subordinate judiciary,

while dealing with those orders with reference to the subject matter.

23. The guidelines have been laid down in the following decisions:

- 1) Tobacco Manufacturers (India) Ltd. Vs. The Commissioner of Sales-tax, Bihar, Patna, ;
- 2) A.M. Mathur Vs. Pramod Kumar Gupta, ;
- 3) Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, ;
- 4) Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, ;
- 5) A. Haleem and others Vs. M.S. Tajudeen and others, ;
- 6) Shafi Ahmed Khudabux Kazi (Deceased by LRs) and others Vs. Hashmatbi Hajjumiya Mogal, ;
- 7) Sessions Judge, Meerut Vs. F.S. Fanthome, City Magistrate, Meerut, .
- 8) Sompal Singh Vs. Sunil Rathi and Another, ;
- 9) C.N. Rudramurthy Vs. K. Barkathulla Khan and Others, .

24. The following are the directions:

(I) When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the

least, for the subordinate Courts to ignore the settled decisions rendered by High Courts and the Supreme Court and then to pass a judicial order

which is clearly contrary to the settled legal position. Such judicial adventurism should be avoided.

(II) Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of

restraint, the humility of function should be a constant theme of Judges. Judicial restraint in this regard might better be called judicial respect; that is,

respect by the judiciary.

(III) If subordinate judiciary refuses to carry out the directions given to it by the superior judiciary in the exercise of its appellate or revisional

powers, the result will be chaos in the administration of justice. The appellate jurisdiction inherently carries with it a power to issue corrective

directions binding on the forum below. Failure on the part of latter to carry out the directions or show disrespect to the propriety of such directions

would be destructive hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both. The

subordinate judiciary must bear in mind for ever.

(IV) Any discourtesy shown by the subordinate Courts to a superior Court is bound to involve them in proceedings for contempt. No subordinate

Court is entitled to demand of the superior Court the law under which the order has been passed before complying with it. They should strictly

comply with the order of High Court and Supreme Court both in letter and spirit. It must be understood by all concerned that any discourtesy or

disobedience shown to the orders of superior courts will be visited by this Court with the severest penalties.

(v) In the hierarchical judicial system, it is not for any subordinate court to tell a superior court as to how a matter should be decided when an

appeal is taken against its decision to that superior court. Such a course would be subversive of judicial discipline on the bedrock of which the

judicial system is founded and finality is attached and orders are obeyed.

(VI) Judicial system requires that clear pronouncements by the High Court, about what the law on a matter is, must be treated as binding on all the

subordinate courts. Where the High Court has stated that the law laid down in a particular case is the applicable law, it is not open to the

subordinate court to consider or rely on any supposedly conflicting decisions from any other High Court, our High Court's decision is binding on

all the subordinate judiciary in Tamil Nadu and Pondicherry.

25. The Registry is directed to send the copy of this order to all the subordinate Judicial Officers so that the subordinate judiciary would be careful

in future so as to see this embarrassing situation would not arise for the High Court to initiate suo motu contempt proceedings against the Judicial

Officers. Place it before the Hon"ble the Chief Justice to get administrative order to circulate the order copy to all the Judicial Officers of Tamil

Nadu and Pondicherry.

26. While concluding, this Court records its appreciation for the fairness shown by Mr. A.L. Somayaji, the learned senior counsel appearing for

the contemner.