Reportable

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (CIVIL) NOs.2175-2178 OF 2018

IN

INTERLOCUTORY APPLICATION Nos.1-4 OF 2016

IN
AND WITH

CONTEMPT PETITION (CIVIL) NOs.421-424 OF 2016

IN

SPECIAL LEAVE PETITION (CIVIL) NOs.6828-6831 OF 2016

DR. VIJAY MALLYA …PETITIONER

Versus

STATE BANK OF INDIA & ORS. …RESPONDENTS

O R D E R

Uday Umesh Lalit, J.

1. These petitions seek review of the Judgment and Order dated 09.05.2017 passed by this Court in I.A. Nos.9-12 & 13-16 of 2016 in SLP (C) Nos.6828-6831 of 2016 with I.A. Nos.1-4 of 2016 in and with Contempt Petition (C) Nos.421-424 of 2016 in SLP (C) Nos.6828-6831 of 2016.

2. The facts leading to the passing of said judgment are set out in detail therein and for the present purposes we may set out following features.

(A) In OA No.766 of 2013 filed by the special leave petitioners ('banks', for short) before DRT, Bengaluru seeking recovery of Rs.6203,35,03,879.32 (Rupees Six Thousand Two Hundred and Three Crores Thirty Five Lakhs Three Thousand Eight Hundred and Seventy Nine and Paise Thirty Two only), an oral undertaking was given on 26.07.2013 by respondent Nos.1 to 3 that they would not alienate or dispose of their properties. One of the prayers made before DRT, Bengaluru was:-

> "(iii) to issue a garnishee order against Respondent Nos.10 and 11 from disbursing US$ 75 million,…"

(B) When the matter reached the High Court of Karnataka, two orders were passed by the High Court on 03.09.2013 and 13.11.2013, the relevant portion of the first Order being:-

> "In that view, there shall be interim order of injunction against the Respondent Nos.1 to 3 from transferring, alienating, disposing or creating third party rights in respect of movable as well as immovable properties belonging to them until further order in these petitions."

(C) Admittedly, the amount of US$ 40 million which was part of the sum of US$75 million was received in the account of respondent No.3 on 25.02.2016 and within few days, that is, on 26.02.2016 and 29.02.2016, said amount of US$ 40 million was transferred out of that account by respondent No.3.

(D) Despite repeated orders passed by this Court, no clear disclosure of his assets was made by respondent No.3, nor any details of in-flow and out-flow of said amount of US$ 40 million were disclosed by him. As a matter of fact, the existence of the concerned Bank account itself was not disclosed.

3. In the circumstances, on the issue whether he was guilty of contempt of court, it was submitted on behalf of respondent No.3 that in terms of the directions issued by this Court, he was required to disclose the assets as on 31.03.2016 and as such no direction issued by this Court was violated; and that the violation, if any, was of the orders passed by the High Court and, therefore, this Court ought not to proceed in contempt jurisdiction. After hearing learned counsel for the parties, respondent No.3 was found guilty of contempt of court on following two counts: -

> "(a) He is guilty of disobeying the Orders passed by this Court in not disclosing full particulars of the assets as was directed by this Court.

> (b) He is guilty of violating the express Orders of Restraint passed by the High Court of Karnataka in the same Cause from which the present proceedings have arisen."

4. During the course of its judgment, this Court relied upon the response filed by the banks to the "further counter affidavit" filed by respondent No.3. This response had adverted to the oral undertaking given by respondent Nos.1 to 3 before DRT, Bengaluru and to the orders dated 03.09.2013 and 13.11.2013 passed by the High Court of Karnataka.

5. It must be stated here that the order dated 11.01.2017 passed by this Court had given liberty to respondent No.3 to file reply to the aforesaid response of the banks. It appears from the record that a reply was filed by respondent No.3 on 30.01.2017. However, it was observed in Para19 of the judgment under review as under:-

> "19. Despite the aforesaid Order dated 11.01.2017 which took note of the violation of the orders passed by the High Court of Karnataka and though time was sought to file reply, nothing was filed in reply or rebuttal by Respondent No.3."

To similar effect were the observations in Para 27 of the Judgment that no reply was filed by respondent No.3:-

6. In the instant Review Petitions, it is specifically asserted in ground "V" as under:-

> "(v) FOR THAT this Hon'ble Court while passing the said judgment has erred in recording that the Review Petitioner did not file a reply or rebuttal to the response dated 8th December 2017 ("Response") filed by the Respondent Banks (Original Petitioners). Pursuant to the order dated 11.01.2017 passed by this Hon'ble Court a reply dated 30th January, 2017 was filed on behalf of the Review Petitioner to the Respondents' (Original Petitioners') Response."

7. The Review Petitions were placed in Chambers three years after the filing. Taking note of the aforesaid ground, the Review Petitions were directed to be placed in open Court. Thereafter, the concerned documents including Memo of Filing dated 30.01.2017 and copy of the reply dated 30.01.2017 were placed for our perusal.

8. From these facts it is clear that it was an error on part of this Court to have observed and proceeded on the premise that no reply was filed by respondent No.3 to the response filed by the banks.

9. Mr. Jai Munim, learned counsel appearing for respondent No.3 was therefore asked if there was anything in said reply dated 30.01.2017 *(a)* which, in any way, contradicted or contested the basic submissions of the banks that there was an oral undertaking given to DRT, Bengaluru on 26.07.2013 and orders dated 03.09.2013 and 13.11.2013 were passed by the High Court of Karnataka at Bengaluru; *(b)* whether the text and the purport of the undertaking and the orders were different from that suggested in said response of the banks; and *(c)* whether any explanation

was forthcoming in the reply of respondent No.3 to support the stand that he was not guilty of violation of said orders.

10. Mr. Munim, learned Advocate was unable to refer to any such portion from the response of respondent No.3 on aforesaid aspects but advanced submissions touching upon the questions whether the directions issued by this Court were violated and whether this Court ought to have proceeded to exercise contempt jurisdiction when the contempt, on second count, was of the orders passed by the High Court of Karnataka.

11. The Review Petitions were listed for oral hearing to ascertain whether the error on part of this Court in not taking into account the reply dated 30.01.2017 had caused any prejudice to respondent No.3. The reply dated 30.01.2017 had reiterated the submissions advanced earlier by respondent No.3 and had not in any way contradicted the factum of oral undertaking given to DRT, Bengaluru and the orders passed by the High Court of Karnataka or had offered any explanation why said oral undertaking and the orders could not be relied upon.

12. Though the scope of review was thus limited, we have carefully considered the submissions advanced by Mr. Munim. Those submissions were dealt with and rejected in the judgment under review. In our considered view, the attempt on part of the respondent No.3 to have re-

hearing in the matter cannot be permitted nor do the submissions make out any “error apparent on record” to justify interference in review jurisdiction.

13. These Review Petitions are, therefore, dismissed.

14. In Paras 30 and 31 of the judgment under review the contempt petitions were directed to be listed on 10.07.2017 for hearing respondent No.3 with regard to the proposed punishment. Now that the Review Petitions are dismissed, we direct respondent No.3 to appear before this Court on 05.10.2020 at 02:00 p.m. and also direct the Ministry of Home Affairs, Government of India, New Delhi to facilitate and ensure the presence of respondent No.3 before this Court on that day. A copy of this judgement be sent to the Ministry of Home Affairs for facility and compliance.

15. List the Contempt Petitions on 05.10.2020.

……..……..J
(Uday Umesh Lalit)

…….……J
(Ashok Bhushan)

New Delhi;
August 31, 2020.