

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NOS.9-12 & 13-16 OF 2016INSLP (C) NOS.6828-6831 OF 2016

STATE BANK OF INDIA AND ORS.PETITIONERS

VERSUS

KINGFISHER AIRLINES LTD. AND ORS. RESPONDENTS

With

I.A. NOS.1-4 OF 2016INAND WITHCONTEMPT PETITION (C) NOS.421-424 OF 2016INSLP (C) NOS.6828-6831 OF 2016**JUDGMENT****Uday Umesh Lalit, J.**

1. State Bank of India and 13 other banks¹ have filed the instant special leave petitions challenging the order dated 04.03.2016 passed by the High Court of Karnataka at Bengaluru in Writ Petition Nos.12191-12194 of 2016

¹State Bank of India, Axis Bank Limited, Bank of Baroda, Corporation Bank, The Federal Bank Limited, IDBI Bank Limited, Indian Overseas Bank, Jammu & Kashmir Bank Limited, Punjab & Sind Bank, Punjab National Bank, State Bank of Mysore, UCO Bank, United Bank of India and Oriental Bank of Commerce.

refusing to pass any ad interim order against Respondent Nos.3, 10 and 11. According to the petitioners–banks they had individually advanced to Respondent No.1 loans of thousands of crores of rupees; that by Master Debts Recast Agreement dated 21.10.2010 and other related documents the existing loans were restructured and treated as a single facility; and that Respondent Nos.2 and 3 executed a corporate guarantee dated 21.12.2010 and a personal guarantee dated 21.12.2010 respectively, guaranteeing repayment of the entire amount due. Further, since the above accounts were classified as non-performing assets, the petitioners–banks filed OA No.766 of 2013 against Respondent Nos.1 to 9 before Debt Recovery Tribunal, Bengaluru (for short “DRT Bengaluru), inter alia 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) from Respondent Nos.1 to 4. It is the case of the petitioners-banks that despite applications having been filed requiring Respondent Nos.1 to 4 to disclose details of their assets on oath, said respondents never disclosed the assets and instead, said respondents secretly tried to dispose of their assets with an intention to defeat the recovery proceedings pending before DRT Bengaluru.

2. According to the petitioners–banks, on 25.02.2016 Respondent Nos.10 and 11 disclosed to London Stock Exchange and Bombay Stock Exchange respectively that Respondent No.3 had resigned as Chairman of Respondent No.11; that Respondent No.10 would pay to Respondent No.3 a sum of US\$ 75 million; that out of said amount a sum of US\$ 40 million would be paid immediately; and that Respondent No.3 had made a statement to the press confirming said transaction and had stated that he intended to settle in London. In these circumstances, the petitioners–banks moved four interlocutory applications before DRT Bengaluru on 02.03.2016 seeking interim prayers:

- “(i) to freeze the passport of Respondent No.3
- (ii) to issue an arrest warrant against Respondent No.3,
- (iii) to issue a garnishee order against Respondent Nos.10 and 11 from disbursing US\$ 75 million, and
- (iv) to issue a direction to Respondent No.3 to disclose his assets on oath.”

3. It is the case of the petitioners–banks that DRT Bengaluru heard arguments only with respect to the Garnishee Application on 02.03.2016 and posted the matters for orders on 04.03.2016 but failed to consider the other applications. Aggrieved by such non-consideration of the interlocutory applications by DRT Bengaluru, despite the urgency and the enormous amounts involved in the matter, the petitioners–banks moved the High Court

of Karnataka by filing Writ Petition Nos.12191-12194 of 2016 seeking appropriate directions to DRT Bengaluru to hear and dispose of the applications moved by the petitioners–banks on 02.03.2016 expeditiously. Since the High Court refused to pass any ad interim direction, the aforesaid special leave petitions were filed in this Court.

4. By Order dated 09.03.2016 this Court issued notice returnable on 30.03.2016 and also permitted the petitioners–banks to serve notice on Respondent No.3 through the Indian High Commission, London or any other Embassy. The Order dated 30.03.2016 discloses that Mr. C.S. Vaidyanathan, learned Senior Advocate appeared on behalf of Respondent Nos.1 and 3 and the Order recorded his submission that a proposal was already given to the Chairperson of State Bank of India (Consortium leader of banks) for settlement of dues of Respondent Nos.1 to 4.

5. The matter came up on 07.04.2016 when the Counsel appearing for the petitioners–banks submitted that the offer made by Respondent Nos.1 to 4 was not acceptable though the Consortium was not against any settlement provided the respondents showed their bona fides for a meaningful negotiation. This Court observed in its Order dated 7.04.2016:-

“As a pre-condition to such steps on bona fides, it is submitted that the third respondent should first of all disclose, on oath, the details of all the properties - movable, immovable, tangible, intangible, shareholdings and any right, title or interest

including beneficial interest and those held in fiduciary capacity, in private trusts, public trusts, companies, partnerships, limited liability partnerships, and/or any other entity/ies both in India and abroad etc. in any form and there should be a substantial deposit made before this Court.....

.....

.....Mr. C. S. Vaidyanathan and Mr. Parag P. Tripathi, learned Senior Counsel appearing for Respondent Nos.1 to 4 have submitted that they may be given short time to file their response to the main petition.

Accordingly, they are granted time upto 21.04.2016 to file their response. In the response filed by the third respondent, he shall disclose the details of all his properties - movable, immovable, tangible, intangible, shareholdings and any right, title or interest including beneficial interest and those held in fiduciary capacity, in private trusts, public trusts, companies, partnerships, limited liability partnerships, and/or any other entity/ies both in India and abroad etc. in any form whatsoever and also the rights, indicated above, in the name also of his wife and children, as on 31.03.2016.

It shall also be indicated in the response as to what is the amount he is prepared to deposit before this Court so as to show his bonafide for a meaningful negotiation. Mr. C.S. Vaidyanathan and Mr. Parag P. Tripathi, learned Senior Counsel, have submitted that on the next date of hearing, specific instruction shall be obtained from the third respondent as to his probable date of appearance in person before this Court.”

6. The matter thereafter came up on 26.04.2016, by which time counter affidavit was filed by Respondent No.3 disclosing his personal assets to the tune of Rs.20,174,146,601, majority of which had been under attachment by the Income Tax Department. The details of the assets of Respondent No.3

situated outside the country and those of his wife and children were furnished in a sealed cover. This Court, in its Order dated 26.04.2016 observed:-

“.....It is also submitted that the personal guarantee executed by the 3rd respondent with the banks do not cover his assets abroad. We have no problem in recording the above submissions and we do so. However, we find that in the Order dated 7.04.2016, this Court had directed the Respondent No.3 to disclose the assets in an affidavit. The only purpose for disclosing the assets was to have a fair idea for the petitioners to go for a meaningful settlement on the proposals made by Respondent No.3. There is no petition before us for clarification or modification of Order dated 07.04.2016. In the above circumstances, we do not find any tenable objection in disclosing these assets to the petitioners.

The learned senior counsel further submits that the wife and children are American citizens and they are not the parties before this Court. Whatever protection is available to them under law, they are free to avail. This disclosure is only for the purpose of enabling the petitioners to have a fair idea for a meaningful settlement.

We are distressed to note that Respondent No.3 has not responded to our Order dated 7th April, 2016 in the letter and spirit of the said Order. He was to show us his bonafides by showing the color of money in the form of a substantial deposit towards dues in the region of 18,000 crores to arrive at a meaningful settlement. It appears there is no bonafides in his offer for settlement. Apparently, statements made by counsel on his behalf were made only as a ploy to gain time.

The Registry is directed to disclose the statement of assets furnished in the sealed cover, to the petitioners.”

7. On 28.06.2016 Respondent No.10 filed a memo in O.A. No.766 of 2013 pending before DRT, Bengaluru along with two documents stating that an

amount of US\$ 40 million was paid to Respondent No.3 on 25.02.2016. Said memo was to the following effect:-

“MEMO

The opponent 2 in the above application begs to submit the below mentioned documents:

1. Extract confirming payment of US\$ (US Dollars) 40 Million to Defendant No.3 on 25.02.2016.
2. Resignation of Defendant No.3 from the Board of United Spirits Ltd.

WHEREFORE the Opponent No.2 prays that this Memo and enclosures be taken on record in the interests of justice.”

8. On 14.7.2016 I.A. Nos.9 to 12 of 2016 were filed by the petitioners-banks stating that the disclosure statement made by Respondent No.3 and furnished to the petitioners-banks in terms of the aforesaid Order dated 26.04.2016 was vague and lacked in material particulars; that the location of the assets mentioned in the statement was so unclear that it would be impossible for any person to identify the location of the property; and that Respondent No.3 had undisputedly received a sum of US\$ 40 million as disclosed in the memo dated 28.06.2016 but there was no whisper about said amount in the disclosure statement. It was submitted:-

“18. It is therefore clear that Respondent No.3 has willfully disobeyed the directions issued by this Hon’ble Court on 7.04.2016. Respondent No.3 is therefore guilty of contempt of the Order dated 29.04.2016 passed by this Hon’ble Court. The Petitioners’ reserve liberty to initiate appropriate proceedings against the Respondent No.3 in this regards.

.....

22. In view of the above, it is just and necessary that this Application is allowed and Respondent No.3 is directed to

disclose and furnish all particulars and all descriptions of all his properties- movable, immovable, tangible, intangible, shareholdings and any right, title or interest including beneficial interest and those held in fiduciary capacity, in private trusts, public trusts, companies, partnerships, limited liability partnerships, and/or any other entity/ies both in India and abroad etc. in any form whatsoever as on 31.03.2016. If this application is not allowed as prayed for, the Petitioner and the public at large will be put to irreparable loss and injury.”

In the circumstances it was prayed that Respondent No.3 be directed to make a complete and detailed disclosure of the assets as directed by this Court in its Order dated 7.04.2016.

9. On 14.07.2016 itself the petitioners-banks filed Contempt Petition Nos. 421-424 of 2016 submitting that appropriate contempt proceedings be initiated for deliberate and willful violation of the Order dated 7.04.2016

passed by this Court. Paragraphs 20 to 24 of the petition were as under:-

“20. A reading of the Disclosure Statement made by Contemnor clearly reveals that the Contemnor has not at all obeyed the directions of this Hon’ble Court dated 07.04.2016. One of the primary directions given by this Hon’ble Court to the Contemnor was that he should disclose the proper details of all his properties-movable, immovable, tangible, intangible, shareholdings and any right, title or interest including beneficial interests and those held in fiduciary capacity, in private trusts, public trusts, companies, partnerships, limited liability partnerships, and/or any other entity/ies both in India and abroad etc. in any form whatsoever, as on 31.03.2016. However, Contemnor has not at all disclosed the details of the assets in various forms/entities such as beneficial interest, etc. and thereby intentionally concealing the information. In fact, there is no whisper regarding the said details in the Disclosure Statement.

21. The disclosure is prima facie vague and lacks any material particulars. The location of the assets mentioned in the Disclosure Statement is so unclear that it is not practically possible for any person other than the Alleged Contemnor to identify the location of the properties.

22. Further, it is stated that the Alleged Contemnor had received a sum of US\$ 40 million from Respondent No.10 pursuant to an Agreement dated 25.02.2016 entered into between Respondent No.3 and Respondent No.10.

23. It is pertinent to mention here that after disposal of the captioned Special Leave Petition, on 28.06.2016 the Respondent No.10 filed a Memo along with two documents in the DRT, stating that the above mentioned amount of US\$ 40 million was paid to alleged Contemnor on 25.02.2016. A copy of the said Memo dated 28.06.2016 is annexed herewith

24. A reading of the above documents clearly establishes that as on 26.04.2016 when the alleged Contemnor filed the Disclosure Statement in this Hon'ble Court, the alleged Contemnor had already received the above mentioned amount of US\$ 40 million before 31.03.2016. In fact the memo clearly shows that the said amount of US\$ 40 million was transferred by Citi Bank, being Respondent No.10's bank, via J.P. Morgan Chase N.A. Bank (intermediary Bank) to the account of the Alleged Contemnor being maintained with Edmond De Rothschild (Suisse) SA Geneva. However, there is no whisper of the above mentioned amount or the transaction in the Disclosure Statement. The alleged Contemnor had deliberately, willfully and contumaciously concealed the aforementioned payment/transaction which is against the letter and spirit of the Order dated 07.04.2016.”

10. On 25.07.2016 this Court issued notice in aforesaid contempt petition as well as in I.A Nos.9 to 12 of 2016.

11. On 24.08.2016 counter affidavit was filed on behalf of Respondent

Nos.1 to 4 in I.A. Nos.9 to 12 of 2016. It was submitted:-

“... it is incorrect that in the disclosures the Respondent No.3 has provided information pertaining to only a few of his overseas assets as on 31.03.2016 as alleged. The Respondent No.3 reiterates that the disclosures made to this Hon’ble Court are accurate. It is respectfully submitted that in view of what is recorded in the Order dated 26th April, 2016 as to the purpose of the disclosures, it is now not open to the Petitioners-banks to contend that in the event that the DRT allows the Original Application, the Petitioners-banks may not be able to proceed against the properties mentioned in the disclosures as alleged or for reasons alleged. In this regard, it is pertinent to mention that the Respondent No.3 had expressly submitted before this Hon’ble Court on 26th April, 2016 that “the personal guarantee executed by the 3rd Respondent with the banks do not cover his assets abroad”. It is denied that all particulars and all descriptions of the assets as contemplated by the Order dated 7th April, 2016 have not been provided, deliberately or otherwise. It is denied that there is any reason or basis for directing the Respondent No.3 to once again disclose and furnish particulars and description of his properties as alleged or in the manner alleged. It is denied that if the I.A. of the Petitioners-banks is not allowed, the Petitioners or the public at large will be put to irreparable loss or injury.”

12. Applications being I.A. Nos.1 to 4 of 2016 were also filed on behalf of Respondent No.3/Alleged Contemnor for recall of Order dated 25.07.2016 passed by this Court issuing notice in contempt petition. It was submitted by

Respondent No.3:-

“.....It is further submitted that the disclosures made by Respondent No.3/Alleged Contemnor to this Hon’ble Court were (a) pursuant to the Order dated 7th April, 2016 were made “as on 31.03.2016” and were accurate as on 31.03.2016”, and (b) far from being made under the provisions of Order 21 Rule 41(2) of

the Code of Civil Procedure, 1908, were “only for the purpose of enabling the petitioners to have a fair idea for a meaningful settlement” as observed in the order dated 26th April, 2016. It is respectfully submitted that the Petitioners are incorrectly alleging that the disclosures are inaccurate, and are now seeking to substantially alter the basis and purpose of the disclosures, as is evident from a mere perusal of the submissions in paragraphs 21 and 25 of the present Contempt Petition.

.....It is denied that Respondent No.3 has not obeyed the directions of this Hon’ble Court dated 7th April, 2016 or has not disclosed the details of the assets as alleged or in the manner alleged. It is denied that the disclosure is vague or lacks material particulars. It is denied that the location of the assets in the disclosure is unclear as alleged or in the manner alleged. The statement of assets is as on a particular date, obviously it cannot detail the day to day transactions of receipts or expenditures; nor did the order require the present respondent to do so. It is denied that the Respondent No.3/Alleged Contemnor has deliberately or willfully or contumaciously concealed the aforesaid payment against the letter and spirit of the Order dated 7th April, 2016.”

While seeking recall of the Order dated 25.07.2016 it was also prayed that the personal appearance of Respondent No.3/Alleged Contemnor in the present contempt petition be dispensed with.

13. Around this time I.A. Nos.13 to 16 were filed on behalf of B.N.P Paribas seeking impleadment in aforesaid Special Leave Petition Nos. 6828-6831 of 2016.

14. On 29.08.2016, this Court issued notice in respect of I.A. Nos.1 to 4 of 2016 seeking recall of the Order dated 25.07.2016. In their reply filed on 07.09.2016 to aforesaid I.A. Nos.1 to 4 of 2016, it was submitted by the

petitioners-banks that the alleged contemnor had not filed any reply to the contempt petition nor had he appeared in person in response to the contempt petition as required by Rule 6(1) of Rules to Regulate Proceedings for Contempt of Supreme Court 1975 and that present application for recall was a mere ruse to circumvent the law. It was submitted:-

“6. The Alleged Contemnor has received the sum of US\$ 40 million from Respondent No.10 pursuant to an Agreement dated 25-02-2016 entered into between Respondent No.3 and Respondent No.10. However, the Alleged Contemnor has suppressed the receipt of US\$ 40 million from Respondent No.10 even in the Application under reply. The non disclosure of whereabouts of US\$ 40 million received from Respondent No.10 further discredits the Alleged Contemnor.

7. The Alleged Contemnor has not denied the existence of his bank account held in Edmond De Rothschild Bank, Geneva. However, details of this bank account did not find mention in the list of his foreign assets filed before this Hon’ble Court on 26.04.2016. It is respectfully submitted that this is an act of willful concealment and the Alleged Contemnor is in violation of Order dated 07-04-2016 passed by this Hon’ble Court.”

15. When IA Nos.9-12 of 2016 along with Contempt Petition Nos.421-424 of 2016 came up before this Court on 25.10.2016, it was prima facie found that Respondent No.3 had not made a proper disclosure. In the premises, this Court observed and directed:-

“Having heard learned Attorney General appearing for the applicants and Shri C.S.Vaidyanathan, learned Senior Counsel appearing for Respondent No.3, we are prima facie of the view that Respondent No.3 has not made a proper disclosure in terms of our Order dated 07.04.2016. Therefore, Respondent No.3 is directed to make a complete disclosure of all his properties and

in particular, about the receipt of US\$ 40 Million. It shall be disclosed as to when this amount was received; where was it deposited and how the same has been dealt with up to date. Respondent No.3 shall also furnish the particulars of the assets abroad with full details thereof, as has been given with regard to the assets in India.”

16. Respondent No.3 thereafter filed “further counter affidavit” in aforementioned I.A. Nos.9-12 of 2016 on 23.11.2016. The affidavit enclosed letter dated 18.11.2016 issued by Edmond De Rothschild (Suisse) S.A.

Paragraph 3 of the affidavit was to the following effect:

“On a mere perusal of the letter dated 18th November, 2016 issued by Edmond De Rothschild (Suisse) S.A. (Annex. “R-2” hereto), it is evident that the US\$ 39,999,994 million paid by Diageo Plc was received on 25th February, 2016. On instructions of Respondent No.3, an aggregate sum of US\$ 39,999,993.99 was paid to the following parties on 26th and 29th February, 2016 respectively:

NAME OF PARTY	AMOUNT
S. Three Gift Settlement (a Trust the sole beneficiary of which is Siddartha Mallya, son of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ 333,331.33 (on 29.02.2016)
L. Three Gift Settlement (a Trust the sole beneficiary of which is Leena Mallya, daughter of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ 333,331.33 (on 29.02.2016)
T. Three Gift Settlement (a Trust the sole beneficiary of which is Tanya Mallya, daughter of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ 333,331.33 (on 29.02.2016)
TOTAL	US\$ 39,999,993.99

Each of the three children of Respondent No.3, who are the sole beneficiaries of the aforesaid Trusts, are majors and are

citizens of the United States of America. Respondent No.3 is neither the Settlor nor the Trustee nor the beneficiary of any of the aforesaid named Trusts, and has no control over the Trusts or the manner in which the respective corpuses of each of the aforesaid Trusts is utilized. However, the respective corpuses as they stood on 31st March, 2016 have been included in the statements of assets of the three children handed over to this Hon'ble Court in sealed envelope on 26th April, 2016.”

17. The response was thereafter filed by the petitioners-banks to the aforementioned “further counter affidavit” filed by Respondent No.3. Attention was invited to the restraint Orders passed by the High Court of Karnataka on 03.09.2013 and 13.11.2013. It was submitted that the transfer of US\$ 40 million by Respondent No.3 to his children was not only in contempt of the Orders passed by the High Court but was also an attempt to subvert the Course of Justice by diverting the funds to shield them from ongoing recovery proceedings. Paragraphs 13 to 16 of the reply were as under:

“13. Notwithstanding the above, it is respectfully submitted that pursuant to filing of O.A. No.766/2013 before the Hon'ble DRT, Bengaluru, on 26.07.2013, Respondent Nos.1 to 3 gave an oral undertaking before the Hon'ble DRT, that they would not alienate or dispose of their properties. Thereafter, since no interim order was passed by the Hon'ble DRT, Petitioners filed a writ petition bearing W.P.No.38870/2013 & W.P.No.39048-39052/2013 before the Hon'ble High Court of Karnataka, seeking a writ in the nature of Mandamus directing the Hon'ble DRT to hear and dispose of the interlocutory applications filed by the petitioners in the OA i.e. IA No. 2593/2013 to 2598/2013 & IA No.3034/2013 expeditiously. In the aforesaid writ petition, the Hon'ble High Court of Karnataka

was pleased to pass a restraint Order on 03.09.2013 against respondent Nos. 1 to 3 herein in the following terms:

“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.” (emphasis supplied)

14. The said order was further confirmed by the order dated 13.11.2013 passed in the above mentioned writ petitions, whereby the said writ petitions were disposed of. Copy of the orders dated 03.09.2013 and 13.11.2013 passed by the Hon’ble High Court of Karnataka in W.P.No.38870/2013 & W.P. No.39048-39052/2013 are annexed

15. Therefore, it is clear that the Respondent No.3 has clearly and flagrantly violated the orders of the Hon’ble High Court of Karnataka and is guilty of contempt of Court. It is stated that by transferring the US\$ 40 million to his children, the Respondent No.3 has not only acted in contempt of the Hon’ble High Court, but has also tried to subvert the course of justice by diverting the funds offshore to shield it from the recovery proceedings on going before the Hon’ble DRT. Therefore, it is essential that the said US\$ 40 million be brought back by the Respondent No.3 and be deposited with this Hon’ble Court, or the Hon’ble DRT, pending the disposal of the recovery proceedings. It is further submitted that it is settled law that this Hon’ble Court has the power to punish for contempt of its subordinate Courts. Therefore, it is prayed that this Hon’ble Court hold the Respondent No.3 guilty of contempt of the Hon’ble High Court of Karnataka.

16. It is further pointed out that even the statement that the Respondent No.3 has transferred the said US\$ 40 million to his children does not hold water. On perusal of the further counter affidavit of the Respondent No.3, the explanation provided by the Respondent No.3 regarding the disbursal of US\$ 40 million prima facie does not correlate with the statements given on behalf of his children. The Respondent No.3 has failed to

explain why the US\$ 40 million was disbursed to his children despite an oral undertaking to the contrary given before the Hon'ble DRT on 26.07.2014, and despite being injuncted by way of orders dated 03.09.2013 and 13.11.2013 passed by the Hon'ble High Court of Karnataka in W.P. No.38870/2013 & W.P. No.39048-39052/2013. The said orders injuncting the Respondent No.3 from alienating his assets has attained finality as it was never challenged by the Respondent No.3 till date.”

18. I.A. Nos.9-12 of 2016 along with Contempt Petition Nos.421-424 of 2016 thereafter came up before this Court on 11.01.2017. Having gone through the response filed by the petitioners-banks to “further counter affidavit” filed by Respondent No.3 which inter alia referred to the orders dated 03.09.2013 and 13.11.2013 passed by the High Court of Karnataka, this Court passed the following Order:

“In the affidavit filed on 10.12.2016, the petitioners have brought to the notice of this Court that the transfer of US\$ 40 Million in favour of the children of Respondent No.3 is in flagrant violation of the orders passed by the High Court of Karnataka. Therefore, it is prayed that appropriate orders may be issued to secure the deposit of the said amount of US\$ 40 Million before this Court or the DRT forthwith, pending disposal of the further recovery proceedings.

The learned senior counsel appearing for Respondent No.3 seeks three weeks' time to file reply to the submission.”

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.

20. When the aforesaid IA Nos.9-12 of 2016 along with Contempt Petition Nos.421-424 of 2016 with application IA Nos.1-4 of 2016 seeking recall of the Order dated 25.07.2016, came up for hearing, Mr. Mukul Rohtagi, learned Attorney General for India and Mr. Shyam Divan, learned senior advocate appeared on behalf of the petitioners-banks while Mr. C.S. Vaidyanathan, learned senior advocate appeared for Respondent No.3. It was submitted by the learned Attorney General that Respondent No.3 had made no honest disclosure and in fact there was a deliberate attempt to flout the Order of this Court. In his submission, Respondent No.3 must first of all be directed to deposit US\$ 40 million which he had transferred in violation of the Orders of the Courts, before he could be heard in the matter. Mr. Divan, learned senior counsel submitted that the orders dated 3.9.2013 and 13.11.2013 were clear and unambiguous. He further submitted that the breach on part of Respondent No.3 was willful and deliberate and that it was a clear attempt in overreaching the Court and putting the amounts beyond the reach of the Court.

Mr. Vaidyanathan, learned senior advocate on the other hand submitted that Respondent No.3 was not asked or called upon to disclose all transactions

but to disclose the status as it obtained on 31.03.2016 and as such the disclosure by Respondent No.3 was consistent with the tenor of the order passed by this Court. In his submission the amount of US\$ 40 million was pursuant to Non-Compete agreement with Diageo Plc and was received after the orders passed by the High Court of Karnataka on 03.09.2013 and 13.11.2013. He further submitted that the width of those orders did not cover or include any moneys which the respondents would receive in future and as such there was no violation of those orders at all. He relied upon the decision of this Court in *Indian Airports Employees' Union v. Ranjan Chatterjee and Another*² and submitted that since the matter involved interpretation of the orders at 3.09.2013 and 13.11.2013 it cannot be said that there was any willful disobedience of the orders. He further submitted that the violation if any, was that of the orders passed by the High Court of Karnataka and as such this Court ought not to take cognizance of such alleged violation inasmuch as it would deny Respondent No.3 the opportunity to place the matter before the High Court.

21. The orders passed by this court were clear and unambiguous and Respondent No.3 was called upon to make complete disclosure of his assets. Whether the assets to be so disclosed were covered by the personal guarantee

² (1999) 2 SCC 537

given by Respondent No.3 or not was immaterial. He was called upon to make a complete disclosure and was bound to comply with the directions. The assertion made by the petitioners-banks that the details of the bank account held in Edmond De Rothschild Bank were never disclosed by Respondent No.3 is correct. In fact, no details of any bank account with overseas banks were given by Respondent No.3. The violation by Respondent No.3 could not be termed as a mere infraction. The violation by Respondent No.3 regarding non-disclosure becomes more pronounced because it is this very account held in Edmand De Rothschild Bank that was utilized to transmit funds to the tune of US\$ 40 Million.

22. We now turn to the alleged violation of orders dated 03.09.2013 and 13.11.2013 passed by the High Court of Karnataka. It is not disputed that such orders were passed restraining the concerned respondents including Respondent No.3 and that the orders were passed in proceedings arising from O.A. No.766 of 2013 before DRT Bengaluru. The present proceedings before this court have also arisen from the very same O.A. No.766 of 2013. The orders of restraints passed by the High Court were therefore in the very same proceedings with which we are presently concerned. Said orders bound the concerned respondents including Respondent No.3 and restrained them from transferring, alienating, disposing or creating third party rights in respect of

movable as well as immovable properties belonging to them till further orders in the proceedings. A question has been raised by Mr. Vaidyanathan learned senior advocate whether the orders would be restricted only so far as the properties which were in the hands of the concerned respondents as on the date when those orders of restraint were passed. In other words, whether any properties which in future or subsequent to the Orders had come in the hands or control of the concerned respondent would be covered by such orders or not. On plain reading of the Orders, in our view, whether the properties were in the hands of the concerned respondents on the date when the orders of restraint were passed by the High Court or had come in their hands or under their control at a later point in time, regardless of such qualification all properties whether movable or immovable were governed by the orders of restraint. There is no ambiguity of any sort and the Orders of restraint are quite clear. Consequently, funds amounting to US\$ 40 million which came to be under the control of and in the hands of Respondent No.3 were completely covered and governed by said orders of restraint.

23. The memo dated 28.06.2016 filed by Respondent No.10 in said O.A. No.766 of 2013 annexed, "Extract confirming payment of US\$ (US Dollars) 40 Million to Defendant No.3 on 25.02.2016". It is thus beyond any doubt that the payment of US\$ 40Million was received by Respondent No.3 on

25.02.2016. These facts are admitted by Respondent No.3 in Paragraph 3 of his “further counter affidavit”. The explanation that the funds now stand transferred in favour of the trusts over which Respondent No.3 has no control at all, in fact aggravates the extent of violation. It is clear that the funds which were in control of Respondent No.3 have now been sought to be put beyond the reach of processes of court, which is reflective of the intent.

24. The applications moved by the petitioners-banks on 02.03.2016 themselves had made clear reference to the fact that as disclosed by respondent Nos.10 and 11 to London Stock Exchange and Bombay Stock Exchange respectively Respondent No.10 would pay to Respondent No.3 a sum of US\$75 million and accordingly petitioners-banks had moved four interlocutory applications for orders against respondent Nos.10 and 11 for disbursing said amount of US\$ 75 million. The amount of US\$ 40 Million so received by Respondent No.3 was therefore subject matter of the present controversy. The least that was expected of Respondent No.3 was to disclose relevant facts pertaining to receipt and disbursement of US\$ 40 million. The violation on that count is thus not only against the directions issued by this court but also against express mandate of orders dated 03.09.2013 and 13.11.2013 passed in the proceedings in question.

25. Having thus found that the actions on the part of Respondent No.3 in disbursing the amount of US\$ 40 million was against the text and tenor of the orders passed by the High Court of Karnataka, the question then arises whether this Court can take cognizance of such violation or should it leave it to be decided by the High Court of Karnataka itself in a properly instituted legal proceeding.

26. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and others*³, a question arose whether the power and jurisdiction of this Court under Article 129 of the Constitution is confined to “the contempt of this Court” alone. Submissions advanced in that behalf were noted in paragraph 14 of the judgment which sets out the submission of the learned Attorney General:

“...The Supreme Court as the Apex Court is the protector and guardian of justice throughout the land, therefore, it has a right and also a duty to protect the courts whose orders and judgments are amenable to correction, from commission of contempt against them.”

The subsequent paragraphs of the judgment namely paragraph 26 onwards show that the contentions so advanced by the learned Attorney General were accepted by this Court. It is true that the discussion was in the context of the contempt of a subordinate court. However, the nature of

³ (1991) 4 SCC 406

power exercisable by this Court was considered in the backdrop that this Court has supreme appellate jurisdiction over all courts and tribunals in the country which is clear from the observations in paragraph 31 of the judgment. We must say that Mr. Vaidyanathan did not seriously contend to the contrary but his submission was that if the jurisdiction is so assumed and cognizance is taken by this Court, Respondent No.3 would lose one opportunity of having the matter assessed at the level of the High Court. In our considered view, since we are dealing with the very same cause in which the orders of restraint were passed by the High Court and since it is coupled with the violation of orders of this Court as well, the matter can and ought to be dealt with by this Court.

27. The record shows that by order dated 11.01.2017 the violation of those orders for restraint passed by the High Court of Karnataka was taken note of by this Court and the Counsel appearing for respondent had sought time to file an appropriate reply. However, no such reply was filed. Respondent No.3 was thus put to clear notice about the violation of those orders of restraints passed by the High Court of Karnataka. As such, no prejudice has been caused or visited upon Respondent No.3.

28. We find that the allegations against Respondent No.3 of committing of contempt are on two counts, in that -

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.

Though the contempt on the second count is theoretically of the orders passed by the High Court of Karnataka since those orders pertain to the very same Cause and the actions on part of Respondent No.3 in not disclosing the account in question through which the transfers were affected also fall with respect to contempt on first count, we proceed to exercise our contempt jurisdiction even with regard to the second count. As stated above, Respondent No.3 was adequately put to notice and no prejudice has been caused as a result of such assumption of jurisdiction by this court.

29. Having considered the entirety of the matter, we find that Respondent No.3 is guilty of having committed contempt of court on both the counts. At this stage it must be stated that in terms of Rule 6 (1) of Rules to Regulate Proceeding for Contempt of Supreme Court 1975, Respondent No.3 was

obliged and duty bound to appear in person in response to the notice issued by this Court in Contempt Petition. Instead, he chose to file application seeking recall of the orders issuing notice. Having considered the matter, we see no reason to recall that order and dismiss I.A. Nos.1 to 4 of 2016 preferred by Respondent No.3 in Contempt Petition Civil No.421-424 of 2016. Respondent No.3 is therefore duty bound to appear in person in the present contempt proceedings.

30. Since Respondent No.3 has not filed any reply to the Contempt Petition nor did he appear in person, though we have found him guilty of having committed contempt of court, we deem it necessary to give him one more opportunity and also hear him on the proposed punishment. We therefore adjourn matter to 10.07.2017 for hearing Respondent No.3 in person on matters in issue including one regarding the proposed punishment to be awarded to him for contempt of court. The instant contempt petitions and connected cases shall now be listed at 2 o'clock on 10.07.2017. Respondent No.3 may keep his affidavit ready to be tendered on the same day by stating mitigating circumstances, if any and any other submissions he chooses to advance.

31. We direct the Ministry of Home Affairs, Government of India, New Delhi to secure and ensure presence of Respondent No.3 before this Court on 10.07.2017. A copy of this Judgment be sent to the Ministry of Home Affairs for compliance.

.....J.
(Adarsh Kumar Goel)

.....J.
(Uday Umesh Lalit)

New Delhi,
May 09, 2017



JUDGMENT