

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

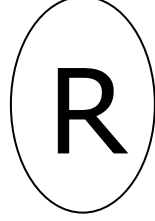
DATED THIS THE 26TH DAY OF FEBRUARY 2018

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD



CCC NOS.1427-1433/2017 (CIVIL)

BETWEEN:

1. SRI SIDDEGOWDA
S/O.NANJEGOWDA
AGED ABOUT 69 YEARS
RESIDENT OF BEECHENAHALLI VILLAGE
HALEKOTE HOBLI
HOLENARASIPURA TALUK
HASSAN DISTRICT-573 211
2. SRI HANUMEGOWDA
S/O LATE PUTTEGOWDA
AGED ABOUT 78 YEARS
RESIDENT OF GANJIGERE VILLAGE
KUNDUR HOBLI, ALURU TALUK
HASSAN DISTRICT-573 213
3. SRI RAMEGOWDA
S/O SIDDEGOWDA
AGED ABOUT 63 YEARS
RESIDENT OF BASAVANAHALLI
GANJIGERE POST
KUNDURU HOBLI, ALURU TALUK
HASSAN DISTRICT-573 213
4. SRI MALLESH
S/O BASAPPA
AGED ABOUT 62 YEARS
RESIDENT OF NIDUGANI
HALLIMYSORE HOBLI

HOLENARASIPURA TALUK
HASSAN DISTRICT-573 211

5. SMT. AKKAMMA
W/O. SOME GOWDA
AGED ABOUT 60 YEARS
RESIDENT OF BEECHENAHALLI
HOLENARASIPURA TALUK
HASSAN DISTRICT-573 211
 6. SMT. RUKMINI
W/O. MANJUNATH
AGED ABOUT 40 YEARS
RESIDENT OF BEECHENAHALLI
HOLENARASIPURA TALUK
HASSAN DISTRICT-573 211
 7. SRI NINGEGOWDA
S/O LATE RANGEGOWDA
RESIDENT OF FRONT OF VATEVALE OFFICE
HALUR POST, HALUR
HASSAN DISTRICT 573 213
- ...COMPLAINANTS

(BY SRI B.V.SHANKARANARAYANA RAO, ADVOCATE)

AND:

1. DR. E.V.RAMANA REDDY
THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
DEPARTMENT OF REVENUE
MULTISTORIED BUILDING
DR.AMBEDKAR VEEDHI
BENGALURU-560 001
2. SRI P.RAVIKUMAR
THE PRINCIPAL SECRETARY
DEPARTMENT OF FOREST, ECOLOGY
ENVIRONMENT, NO.107
4TH FLOOR, MULTISTORIED BUILDING
DR.AMBEDKAR VEEDHI
BENGALURU-560 001

3. SRI S.ZIYAULLAH, IAS
THE DEPUTY COMMISSIONER
MANDYA DISTRICT
MANDYA-571 432
 4. SRI S.DHANANJAYA
THE DEPUTY CONSERVATOR OF FOREST
MANDYA DISTRICT
MANDYA-571 432
 5. SMT.RADHIKA.G
THE SUPERINTENDENT OF POLICE
MANDYA DISTRICT
MANDYA-571 432
 6. SRI P.A.JAGADEESH
THE SPECIAL LAND ACQUISITION OFFICER
HEMAVATHI RESERVOIR
PROJECT REHABILITATION
HASSAN DISTRICT-571 102
 7. SMT.RATHNA
THE TAHSILDAR
K.R. PET TALUK
MANDYA DISTRICT-571 432
 8. SRI GIRISH K.N
THE SUB INSPECTOR OF POLICE
RURAL POLICE STATION
K.R.PET RURAL
MANDYA DISTRICT-571 432
- ...ACCUSED

THESE CCCs ARE FILED UNDER SECTIONS 11 & 12 OF THE CONTEMPT OF COURTS ACT, 1971 PRAYING TO INITIATE APPROPRIATE ACTION AGAINST THE ACCUSED FOR COMMITTING CONTEMPT OF THE ORDER DATED 04.07.2014 (ANNEXURE-A) PASSED BY THIS COURT IN WRIT PETITION NOS.44199-44208/2013

THESE CCCs COMING ON FOR PRELIMINARY HEARING, THIS DAY, **H.G.RAMESH J.**, MADE THE FOLLOWING:

ORDER**H.G.RAMESH, J. (Oral):**

1. The question that requires to be examined is, whether action under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India must be initiated within one year from the date on which the contempt of Court is alleged to have been committed? In other words, whether Section 20 of the Contempt of Courts Act, 1971 is applicable to proceedings in respect of contempt of High court and also of subordinate courts.

2. We find that there is delay in filing these contempt of Court petitions. Learned Counsel appearing for the complainants states that in view of the noting made by the Registry, he did not press the application (I.A.No.2/2017) filed for condonation of the delay in filing these petitions and accordingly, on 08.11.2017, Registrar (Judicial) dismissed I.A.No.2/2017 as not pressed. The note made by the Registry reads as follows:

“As per order dated 20.02.2017 passed in CCC 1016/2016 delay application is not necessary. (CCC is filed against the High Court orders).
Post I.A.1/17 and I.A.2/17 before R(J) for Orders
Reg: 1) I.A.1/17 for dispensation.
2) I.A.2/17 is not pressed by the counsel for complainant.”

3. The order dated 20.02.2017 in CCC No.1016/2016 referred to in the note extracted above reads as follows:

"Order on I.A.No.3/16

Heard learned counsel for the parties with regard to the application filed seeking condonation of delay. On perusal of the judgment of the Apex Court in the case of *Welset Engineers & another vs. Vikas Auto Industries & others [(2015) 10 SCC 609]* especially the observations made at paragraph 5, we are of the view that there cannot be any objection with regard to the delay in filing the contempt petition when the contempt petition has been filed under Article 215 of the Constitution of India. Hence, the application is allowed.

2. We may also, at this stage, refer to the Full Bench decision of this court in the case of *M/s.A.V.Kowdi & Co. vs. R.V. Lakshmiddevamma [ILR 1990 Kar. 4355]*, wherein in paragraph No.15 the Full Bench has held that limitation period of one year prescribed in Section 20 of the Contempt of Courts Act was applicable only in respect of contempt of subordinate courts and had no application for contempt of High Court. The Full Bench has opined that power under Article 215 of the Constitution of India is absolute and unfettered. It has been however, observed that in a given case, the court may decline to take action due to delay, but that could be in exercise of the jurisdiction and the discretion vested in the court.

3. In light of the above, we are of the view that as the present contempt petition has been filed complaining non-compliance of the direction of this court, question of declining the relief on the ground of delay does not arise.

4. Learned counsel for the respondent/accused files a memo of calculation and submits that the respondent/accused is prepared to pay compensation as per the calculation made.

5. Counsel for the complainant seeks time to respond to the same.

6. Re-list next week."

4. In the above order, the Hon'ble Division Bench has referred to para 5 of a **two judge** bench decision of the

Hon'ble Supreme Court in *Welset Engineers v. Vikas Auto Industries* [(2015) 10 SCC 609]. It appears that a **three judge** bench decision of the Hon'ble Supreme Court in *Pallav Sheth v. Custodian* [(2001) 7 SCC 549] was not brought to the notice of the Hon'ble Division Bench which rendered the order dated 20.02.2017 in CCC No.1016/2016. In *Pallav Sheth*, the Supreme Court has laid down the law with regard to limitation to initiate action for contempt of Court as follows:

"44.....
 In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

(Underlining supplied)

The aspect of limitation for initiating action for contempt of Court was also considered by a Division Bench of this Court in *Mohammed Aziz Ahamedkhan vs. The D.C.Koppal & Anr.*, [ILR 2016 KAR 4519] wherein it was held as follows:

"9. In the light of the law laid down by the Supreme Court in *Pallav Sheth (supra)* which is extracted above, the law laid down by the Full Bench of this Court in *M/s.A.V.Kowdi & Co. (supra)* is impliedly overruled. Accordingly, we are of the view that action under the Contempt of Courts Act, 1971 or/and under Article 215 of the Constitution of India must be initiated within one year from the date on which the contempt of Court is

alleged to have been committed. Section 20 of the Act is applicable to proceedings in respect of contempt of High Court and also of subordinate Courts. As this contempt of Court Petition was presented after expiry of one year from the date on which the contempt of this Court is alleged to have been committed, it is barred by limitation under Section 20 of the Contempt of Courts Act, 1971, and, hence, it is dismissed.”

(Underlining supplied)

It appears that the above Division Bench decision was also not brought to the notice of the Hon'ble Division Bench which rendered the aforesaid order dated 20.02.2017 in CCC No.1016/2016. In the context, it is also relevant to notice the following observations made by the Supreme Court in *Maheshwar Peri v. High Court of Judicature at Allahabad* [(2016) 14 SCC 251]:

“10. We are afraid, the contentions advanced by the learned counsel for the appellants cannot be appreciated. Be it an action initiated for contempt under Article 129 of the Constitution of India by the Supreme Court or under Article 215 of the Constitution of India by the High Court, it is now settled law that the prosecution procedure should be in consonance with the Act, as held by this Court in *Pallav Sheth case*.

11. And thus, the dispute boils down to the question of limitation only.

15.
Thus, the impugned article, having been published on 10-11-2008 and the High Court having initiated the *suo motu* action only on 28-4-2015, the same is hit by the limitation of one year prescribed under the Act.”

(Underlining supplied)

5. In view of the above, the order dated 20.02.2017 in CCC No.1016/2016 is *per incuriam* as it was rendered without noticing the law laid down by the Supreme Court in *Pallav Sheth* [(2001) 7 SCC 549]. In the light of the law laid down in *Pallav Sheth*, we hold that action under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India must be initiated within one year from the date on which the contempt of Court is alleged to have been committed as Section 20 of the Contempt of Courts Act, 1971 is applicable to proceedings in respect of contempt of High court and also of subordinate courts.

6. At this stage, learned Counsel for the complainants prays for restoration of I.A.No.2/2017 filed for condonation of the delay in filing these petitions. In the interest of justice, it is restored to file. List I.A.No.2/2017 for orders on 05.03.2018.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

\ Prs*