

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

CCP(S) No. 445/2022 in  
CM(M) No. 178/2022  
CM No. 5093/2022

**Reserved on: 03.03.2023**

**Pronounced on: 13.04.2023**

Gull Mohammad Bhat

.... Petitioner/Appellant(s)

Through:- Mr. J. H. Reshi, Advocate.

V/s

Raj Kumar Goyal and others

.....Respondent(s)

Through:- Mr. Mohsin Qadri, Sr. AAG with  
Ms. Maha Majeed, Advocate for R-1 to R-4  
Mr. Shuja-Ul-Haq, Advocate for R-5 and R-6

**CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

01. An Application has been preferred by the applicant/respondent No. 1 (petitioner herein) under Article 215 of the Constitution of India read with Section 2 of the Contempt of Courts Act, 1971 for initiation of contempt proceedings against the respondents for allegedly causing obstruction in the administration of justice.

02. As per the stand of the Applicant, the Union Territory of J&K has preferred a petition under Article 227 of the Constitution of India which has been registered as CM(M) No. 178/2022 in which this Court vide order dated 16.09.2022 has been pleased to observe as under:

“In the meanwhile, subject to objections and till next date of hearing before the Bench, the order impugned dated 3<sup>rd</sup> September, 2022, passed by the Principal District Judge, Anantnag, in execution proceedings titled *Gull Mohammad Bhat and others vs. District Collector Land Acquisition, Anantnag*, shall remain stayed.”

03. The case of the Applicant is that the Court of Principal District Judge, Anantnag has directed the Collector to deposit the amount in Court along with interest @ 6% for the first year from the date of taking over the possession and further interest @ 10% per annum for the subsequent years and, accordingly, the Collector was asked to make the payment within a period of one month and the amount was directed to be deposited with the 'Naazir' of the Court by virtue of order dated 27.03.2010.

04. The further case of the Applicant is that the aforesaid order passed by the Principal District Judge, Anantnag, dated 27.03.2010 came to be assailed by the respondents by way of a writ petition bearing No. OWP No. 243/2016 which came to be dismissed by virtue of judgment/order dated 18.01.2019. The Applicant submits that the said judgment/order dated 18.01.2019 passed in OWP No. 243/2016 came to be challenged by way of a Letters Patent Appeal bearing LPA No. 157/2019 and the same came to be dismissed by the Hon'ble Division Bench of this Court vide detailed judgment/order dated 19.02.2021.

05. Mr. J. H. Reshi, learned counsel appearing on behalf of the applicant has strongly relied upon the undertaking which came to be furnished to the Court of Principal District Judge, Anantnag, wherein Mr. B.A. Shah who was posted as Deputy Director (Fire and Emergency Services) Command, Anantnag, affirmed and declared that, in case of failure to obtain stay in LPA before the Hon'ble High Court of Jammu and Kashmir at Srinagar and subsequently order passed by the Court dated 18.01.2019 in OWP No. 243/2016, he shall satisfy the decree under execution in his official capacity.

06. The further stand of the Applicant is that in the meantime, the matter regarding deposit of Rs. 14,16,000/- for execution of the aforesaid

order dated 27.03.2010, passed by the Principal District Judge, Anantnag, and order passed by this Court dated 02.07.2019 passed in LPA No. 157/2019 came to be taken up by the non-applicant/contemnor No. 4, i.e. the judgment debtor No. 2 with various Government functionaries vide communication dated 11.07.2019.

07. The learned counsel for the Applicant further submits that the aforesaid judgment/order dated 19.02.2021 passed by the Hon'ble Division Bench of this Court came to be assailed by the Union Territory of J&K by way of a Special Leave Petition bearing SLP No. 13206/2021 and it is a matter of record that when the aforesaid SLP came up for hearing before the Hon'ble Supreme Court on 06.09.2021, a statement was made on behalf of the respondents that the matter will be settled between the parties.

08. It has been further submitted that as a consequence thereof, a High-Level Meeting came to be held under the Chairmanship of the Chief Secretary in which a decision was taken that the aforesaid statutory interest amounting to Rs. 14,16,000/- payable to the land owners will be deposited in the Court of the Principal District Judge, Anantnag, with a view to comply with the order dated 27.03.2010, *supra*.

09. Learned counsel for the Applicant further submits that accordingly, SLP No. 13206/2021 came to be withdrawn by the respondents, and accordingly, the SLP along with the pending application stood dismissed as withdrawn by virtue of order dated 18.11.2021.

10. The further stand of the Applicant is that in lieu of the dismissal of the aforesaid SLP, the execution of the order passed by the Principal District Judge, Anantnag, dated 27.03.2010 came to be revived with respect to the payment of statutory interest in terms of Section 35 of the Jammu and

Kashmir Land Acquisition Act, 1934, (hereinafter referred to as “Act”) by the Principal District Judge, Anantnag.

11. Learned counsel for the Applicant has vehemently argued that the plea of the respondents that the order passed by the Principal District Judge, Anantnag, dated 27.03.2010 has merged with the award dated 15.09.2018, passed by the reference Court under Section 18 which is under appeal before this Court in RFA No. 42/2019 is without any basis in law and grossly misconceived.

12. Learned counsel for the Applicant has further pointed out that the grounds urged by the respondents in CM(M) No. 178/2022 that the order dated 27.03.2010, passed by the Principal District Judge, Anantnag, for payment of statutory interest under the provisions of Section 35 of the Act has merged with the award dated 15.09.2018 is devoid of any merit.

13. Learned counsel for the Applicant further submits that the said stand was taken up by the respondents before the executing Court but the same was turned down by the said Court and accordingly, order dated 26.03.2022 came to be passed wherein the respondent No. 2 was once again directed to deposit the accrued statutory interest before the said Court by or before the next date of hearing, failing which, respondent No. 2 was directed to remain present in person before the said Court.

14. Learned counsel for the Applicant with a view to substantiate his claim has argued that the respondents have conveniently chosen not to challenge the aforesaid order passed by the executing Court dated 26.03.2022, but instead they have chosen to challenge the subsequent order dated 03.09.2022.

15. The further stand of the Applicant is that the respondents are guilty of suppression of material facts, abuse of process of Court and have caused obstruction in the administration of justice by trying to defeat the rights of the claimants, in spite of the fact that they have lost up to the Hon'ble Supreme Court.

16. Learned counsel for the Applicant further submits that the respondents have willfully and intentionally violated the orders and judgments passed by the various Courts and, accordingly, they are liable to be punished under the law and hence the present petition has been filed by the Applicant under Article 215 of the Constitution of India r/w Section 2 of the Contempt of Courts Act, 1971, by seeking a direction for dismissal of CM(M) No. 178/2022 alongside CM No. 5093/2022 with costs and with a further direction to Principal District Judge, Anantnag, to proceed with the execution of its order dated 27.03.2010.

17. *Per contra*, a detailed statement of facts has been filed on behalf of the respondents in which a specific stand has been taken by the respondents that on 10.10.2006, during the proceedings of the reference under Section 18 of the Act, before the Court of Principal District Judge, Anantnag, the land owners filed an Application under Section 35 of the Act seeking a direction to the Department of Fire and Emergency Services to deposit the amount payable on the award amount by way of statutory interest and the Department was then arrayed as a party respondent. However, on 18.01.2007, the Deputy Commissioner (District Collector), Anantnag, addressed a communication to the Manager, J&K Bank, T.P. Branch, Anantnag, wherein the Manager was requested to release the amount

deposited along with the interest in favour of the land owners under the intimation to the office.

18. Mr. Mohsin Qadri, learned Senior AAG, appearing on behalf of the respondents submits that the application of the land owners, made in terms of Section 35 of the Act, was objected by the Department by filing detailed objections but instead of considering the objections, the Court of Principal District Judge, Anantnag, took coercive measure by passing an order dated 27.03.2010 wherein the Collector was directed to deposit the amount with the Reference Court along with an interest @ 6% for the first year from the date of taking over the possession of the land and with further interest @ 10% for the subsequent years. However, aggrieved of the said order passed by the reference Court, the Department filed OWP No. 243/2016 titled '*State of J&K vs. Gul Mohammad Bhat and others*' before this Court, on the ground that the Department had deposited the awarded amount well within the time and merely because the Collector Land Acquisition, Anantnag has failed to deposit the awarded amount in the Reference Court at the time of making the reference, the Department cannot be burdened with the liability to pay the statutory interest and, accordingly, this Court stayed the operation of the order dated 06.02.2016 passed by the Principal District Judge, Anantnag.

19. It is further submitted by the respondents that the Reference Court, in the meantime, vide order dated 15.09.2018 passed the following direction:

“The applicant petitioners therefore are awarded a compensation of Rs. 74,75,000 (Rupees Seventy-Four Lakhs Seventy-Five Thousand with interest payable at the rate of 6% per annum with effect from 07.07.1999, i.e., date of taking over of possession of the land till the awarded amount is deposited in the Court”

20. It has also been submitted by the respondents that this Court by virtue of judgment/order dated 18.01.2019, dismissed the writ petition bearing OWP No. 243/2016 filed by the Department with a direction to the Department to first deposit the statutory interest in terms of Section 35 of the Act which accrued on the award amount from 27<sup>th</sup> January, 1999 till 23.02.2013 in the Reference Court, however, it was left open to the State to recover the same from the concerned Collector who had failed to follow the mandate of Section 32 of the Act by initiating appropriate proceedings.

21. It has been contended by the learned counsel for the respondents that the Department challenged the judgment and order dated 18.01.2019, passed by the learned Single Judge by way of an LPA bearing No. 157/2019 titled '*State of J&K vs. Gul Mohammad Bhat and others*' before the Hon'ble Division Bench of this Court, contending therein that the learned Single Judge, despite observing the fact that the Department had deposited the awarded compensation without unnecessary delay, was not justified in burdening the Department with the liability to pay statutory interest and the amount deposited by the Department was transferred under the directions of the Collector Land Acquisition, Anantnag, to the individual accounts of the land owners, as such, the learned Single Judge was not correct in upholding the order of award of the statutory interest in favour of the land owners.

22. It has been further contended by the respondents that during the pendency of the LPA, the Department in the meantime, also challenged the order dated 15.09.2018, passed by the Court of Principal District Judge, Anantnag, by way of an appeal bearing RFA No. 42/2019 titled '*UT of J&K vs. Gul Mohammad Bhat and others*' before this Court and, accordingly, a

direction was issued vide order dated 26.12.2019 in CM No. 7666/2019, operative portion of which is reproduced as under:

“In the meantime, subject to deposit of 50% of the award amount before the Registry by the State, the operation of the impugned judgment and decree dated 15.09.2018 shall remain stayed”

23. Mr. Mohsin Qadri, learned Senior AAG, submits that pursuant to order dated 26.12.2019, the Department deposited 50% of the awarded amount, amounting to Rs. 37,37,500/- before the Registry of this Court on 01.04.2022, however, the said Regular First Appeal (RFA) is pending adjudication before this Court.

24. He further submits that the Hon’ble Division Bench of this Court vide order dated 19.02.2021 dismissed the LPA bearing No. 157/2019 filed by the Department by observing as under:

“We do not find any ground to interfere with the findings and the conclusions drawn by the learned Single Judge in the impugned judgment, which is well reasoned and lucid. The appeal is, accordingly, dismissed.”

25. However, the Department assailed the said order by filing an SLP bearing No. 13206/2021 titled ‘*UT of J&K vs. Gul Mohammad Bhat and others*’ before the Hon’ble Apex Court and in view of changed circumstances, the Department decided to withdraw the SLP filed against the aforesaid order and the same was dismissed as withdrawn by the Hon’ble Apex Court on 18.11.2021, by holding as under:

*“Learned counsel for the petitioner seeks permission to withdraw the instant Special Leave Petition (SLP).*

*Permission granted.*

*The Special Leave Petition (SLP) along with the pending application(s), if any, stand dismissed as withdrawn.”*

26. After the withdrawal of the SLP, the Court of Principal District Judge, Anantnag, revived the application moved before the said Court by the beneficiaries seeking a direction upon the Department to deposit the amount of Rs. 14,16,000/- as statutory interest from 27.01.1999 to 23.02.2013 before the Court of Principal District Judge, Anantnag, without appreciating the legal position that the order and judgment dated 27.03.2010, passed by the said Court has merged with the award dated 15.09.2018.

27. Mr. Mohsin Qadri, learned Sr. AAG, further contends that the Department raised the objection in the application pending disposal before the Court of Principal District Judge, Anantnag, and the final award was passed by the said Court on 15.09.2018, which also contains a direction for payment of interest @ 6% with effect from 1999, that too on enhanced amount, therefore, there was no occasion for the Court of Principal District Judge, Anantnag, to seek enforcement of interim order dated 27.03.2010, for payment of statutory interest in terms of Section 35 of the Act. The Court of Principal District Judge, Anantnag, failed to appreciate the legal position which left the Department with no option but to seek appropriate remedy against the orders passed by the Court of Principal District Judge, Anantnag, before this Court by filing CM(M) No. 178/2022 alongside CM No. 5093/2022 titled 'UT of J&K vs. Gul Mohammad Bhat and others' in consultation with the Department of Law, Justice and Parliamentary Affairs.

28. The further stand of the respondents is that this Court after hearing the counsel for the Department vide order dated 16.09.2022 stayed the impugned order dated 03.09.2022, operative part of which reads as under:

“In the meantime, subject to objections and till next date of hearing before the Bench the order impugned dated 3<sup>rd</sup> September, 2022, passed by the Principal District Judge, Anantnag, in execution proceedings titled ‘Gul Mohammad Bhat and others vs. District Collector Land Acquisition, Anantnag, shall remain stayed.’”

29. Heard learned counsel for the parties at length and perused the record.

### **Legal analysis**

30. The present Application filed by the Applicant is nothing but a sheer abuse of process of the Court. The Applicant has very cleverly chosen to file the present application purportedly under Article 215 of the Constitution of India read with Section 2 of the Contempt of Courts Act, 1971, for initiating contempt proceedings against the respondents for allegedly causing obstruction in the administration of justice, by way of applying pressure tactics instead of availing the legal remedies available to the Applicant against order dated 16.09.2022, passed by this Court in CM(M) No. 178/2022 alongside CM No. 5093/2022.

31. The respondents have rightly availed the remedy of challenging the orders passed by the Court of Principal District Judge, Anantnag, and availing of a remedy under law cannot be construed as an obstruction in the course of justice, as alleged by the applicant. It goes without saying that a party has a right to avail the appropriate remedy before the higher forum under law and right to avail the appropriate remedy cannot be throttled by any process whatsoever.

32. The Applicant in a way has tried to confuse this Court by projecting that since the remedy availed against the order dated 27.03.2010 passed by the learned Principal District Judge, Anantnag has been lost by the

respondents upto Hon'ble Supreme Court and therefore, order dated 27.03.2010 was executable, independent of reference proceedings which were pending disposal before the Court of Principal District Judge, Anantnag, till 15.09.2018.

33. From the perusal of the record, it is manifestly clear that when interim direction dated 27.03.2010 was passed by the Principal District Judge, Anantnag, directing the Collector to pay the statutory interest on the awarded amount @ 6%, the same was challenged by the Department by availing the remedies available under law which included filing of an LPA and SLP.

34. However, in the meantime, the reference proceedings were finally decided by the Principal District Judge, Anantnag, in terms of order dated 15.09.2018, and all the interim orders including order dated 27.03.2010, passed during the pendency of the reference proceedings merged with the final order dated 15.09.2018, by directing the Department to pay enhanced compensation to the land owners, relevant portion of order dated 15.09.2018 is reproduced as under:

***“The petitioners, therefore, are awarded a compensation of Rs. 74,75,000/- with interest payable at the rate of 6% per annum w.e.f. 07.07.2019, i.e., the date of taking over of possession of the land till the awarded amount is deposited in the Court.”***

35. The reference Court under Section 18 of the Act, disposed of the reference vide judgment dated 15.09.2018. Pursuant thereto, the learned Single Judge of this Court by virtue of judgment dated 18.01.2019, directed the appellants (respondents herein) to first deposit the statutory interest in terms of Section 35 of the Act which accrued on the award amount from 27<sup>th</sup>

January, 1999 till 23.02.2013 in the reference Court, however, it was left open to the state to recover the same from the concerned Collector who had failed to follow the mandate of Section 32 of the Act by initiating appropriate proceedings and, accordingly, the writ petition filed by the appellants (respondents herein) was dismissed.

36. The record further reveals that the Court of Principal District Judge, Anantnag, again directed the Fire and Emergency Services Department, J&K to deposit an amount of 14,16,000/- as statutory interest with effect from 27.01.1999 to 23.02.2013, in terms of the judgment passed by a Coordinate Bench of this Court dated 18.01.2019 in pursuance to the application moved by the beneficiaries.

37. Feeling aggrieved of the judgment dated 15.09.2018, passed by the reference Court, the Union Territory of J&K filed an appeal before this Court which was registered as RFA No. 42/2019 for setting aside order dated 15.09.2018, passed by the Principal District Judge, Anantnag, in which this Court vide order dated 26.12.2019 was pleased to stay the impugned judgment/decree dated 15.09.2018, passed by the Principal District Judge, Anantnag, subject to deposit of 50% of the awarded amount.

38. The stand of the respondents is that in compliance to the directions passed vide order dated 26.12.2019, in RFA No. 42/2019, the respondents deposited 50% of the awarded amount to the tune of Rs. 37,37,500/- before the Registry of this Court against a proper receipt dated 01.04.2022.

39. The respondents availed yet another remedy under Article 227 of the Constitution of India before this Court, by way of filing a petition which was registered as CM(M) No. 178/2022, whereby the challenge was made to the reference Court's orders dated 21.04.2022 read with order dated

03.09.2022, passed by the Principal District Judge, Anantnag, and the Court after appreciating all the material facts available on record, passed the interim order, the operative portion of which is reproduced as under:

***“In the meanwhile, subject to objections and till next date of hearing before the Bench, the order impugned dated 3<sup>rd</sup> September, 2022, passed by the Principal District Judge, Anantnag, in execution proceedings titled Gull Mohammad Bhat and others vs. District Collector Land Acquisition, Anantnag, shall remain stayed.”***

40. The applicant instead of agitating the matter in the aforesaid petitions, has chosen the remedy of filing the present contempt petition with a view to apply pressure tactics by seeking a prayer in the present contempt petition with regard to the dismissal of CM(M) No. 178/2022 alongside CM No. 5093/2022.

41. The directions passed by this Court in CM(M) No. 178/2022 alongside CM No. 5093/2022, are explicit and the applicant under mistaken belief and legal advice has approached this Court by filing the present petition, styled as contempt petition, for initiating contempt proceedings against the respondents by suppressing the material facts.

42. From the perusal of record, it appears that the Court of Principal District Judge, Anantnag, has passed several orders in the execution petition wherein the Department was directed to deposit the amount of statutory interest before the Court below, unmindful of the fact that the final orders passed in the reference proceedings have already been stayed by this Court in RFA No. 42/2019 on 26.12.2019. Once the final order passed in the reference proceedings has already been stayed by this Court in RFA No. 42/2019 on 26.12.2019, then the Principal District Judge, Anantnag, by no

stretch of imagination could have proceeded with the execution proceedings against the interim order dated 26.03.2019, which has finally been culminated by the reference Court, i.e., the Court of Principal District Judge, Anantnag, vide order dated 15.09.2018, which was subsequently stayed by this Court in RFA No. 42/2019 on 26.12.2019.

43. Accordingly, I am of the view that the order passed by the Principal District Judge, Anantnag, dated 26.03.2022, which has been placed on record as Annexure-VIII to this petition, is contemptuous and is flagrant violation of the order passed by this Court in RFA No. 42/2019 dated 26.12.2019.

44. The applicant has not come to this Court with clean hands and has suppressed the material facts by deliberately choosing not to place on record the order passed by this Court in RFA No. 42/2019 dated 26.12.2019, wherein the final order passed in the reference proceedings was stated by this Court with a view to mislead this court.

45. The Applicant has filed the instant petition purportedly under Article 215 of the Constitution of India r/w Section 2 of the Contempt of Courts Act, 1971, for initiation of contempt proceedings against the respondents who have availed the legal remedies against order dated 03.09.2022 passed by the Court of Principal District Judge, Anantnag, and such act on the part of the respondents, by no stretch of imagination could tantamount to causing obstruction in the administration of justice as alleged by the applicant.

46. The act of the respondents does not fall within the definition of civil contempt or criminal contempt as defined under Section 2(b) and 2(c) of the

Contempt of Courts Act, 1971, and thus the instant petition which has been filed with a view to apply pressure tactics deserves to be dismissed.

47. For the facility of reference Section 2(b) and 2(c) of the Contempt of the Courts Act, 1971 are quoted as under:

“2(b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

2(c). “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

48. The contempt jurisdiction exercised by the Courts is only for the purpose of upholding the Majesty of judicial system that exists. While exercising this power, the Courts must not be hyper sensitive or swung by emotions, but must act judicially.

49. In the instant case the respondents have availed the legal remedies and have got the interim orders in their favour which continues to be operative as on date and the applicant instead of contesting his right before the appropriate proceedings has chosen to file the present petition by way of camouflage with a view to apply pressure tactics and by seeking dismissal of the petition filed under Article 227 of the Constitution of India by respondents which has been listed as CM(M) No. 178/2022

50. I am fortified by the view of the Hon'ble Apex Court in '**R.N. Dey and others vs. Bhagyabati Pramanik and others, (2000) 4 SCC 400**, wherein it was held that:

*"7. We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for."*

51. Similarly, in '**Sudhir Vasudeva vs. M. George Ravishekarana, (2014) 3 SCC 373**, the Hon'ble Supreme Court held as under:

*"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above."*

52. In the peculiar facts and circumstances of the case, the present application for seeking initiation of contempt proceedings against the respondents is totally an abuse of process of Court, more particularly, when

the Applicant has a remedy of contesting in both the petitions pending before this Court in RFA No. 42/2019 and CM(M) No. 178/2022 filed under Article 227 of the Constitution of India by the Union Territory of Jammu and Kashmir.

53. The Applicant was aware of both the petitions pending before this Court, yet instead of contesting the same, the Applicant has adopted the present course of filing a petition for initiation of contempt proceedings seeking dismissal of CM(M) No. 178/2022 in contempt proceedings.

54. The Applicant has failed to make out a case that how the Contempt Court can enlarge the scope of contempt jurisdiction by directing dismissal of a petition filed under Article 227 of the Constitution of India, in which the Applicant has already appeared and his presence was recorded vide order dated 21.04.2022 passed in RFA No. 42/2019 and yet the same was not placed on record which tantamount to suppression of a material fact.

55. The Applicant has appeared before this Court in RFA No. 42/2019 which is apparent from a bare perusal of order dated 21.04.2022, and yet instead of contesting the aforesaid proceedings, the applicant has filed the present contempt petition which is a total abuse of process of the Court in which the applicant has sought the following reliefs:

“It is, therefore, prayed that the aforesaid CM(M) No. 178/2022 r/w CM No. 5093/2022 may please be dismissed with heavy costs and the PDJ, Anantnag, may please be directed to proceed with execution of its order dated 27.03.2010, upheld by this Hon’ble Court as well as Hon’ble Supreme Court with whatever coercive measures at its command.

A Rule Nisi may please be framed as against the above-named non-applicant contemnors and punish them in accordance with the law.”

56. On the aspect of suppression, equity, unclean hands and fraud, the law is well settled in the following decisions:-

- (i) In '**Prestige Lights Ltd., vs. State Bank of India, (2007) 8 SCC 449**', in paragraphs 33, 34 and 35, the Hon'ble Supreme Court held as follows:

*“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.*

*34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement.*

*35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are*

*suppressed or are distorted, the very functioning of the writ courts would become impossible.”*

57. In ‘**Udyami Evam Khadi Gramodyog Welfare Sanstha and another vs. State of Uttar Pradesh, (2008) 1 SCC 560,**’ at in paragraphs 16 and 17, the Hon'ble Apex Court, held as follows:

*“16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M.P. Khair Industries[(1980) 3 SCC 311], this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.”*

58. Thus, from the aforementioned pronouncements, the law has been settled that suppression of a material fact with a view to mislead the Court amounts to abuse of process of law.

59. In the present case, the Applicant with a view to mislead this Court and to apply pressure tactics has filed the present contempt petition for initiation of contempt proceedings instead of contesting the petitions which are pending before this Court and in which the interim orders have been passed and the applicant being aware of the proceedings has chosen not to contest the aforesaid petitions and instead has filed the present contempt petition with a view to apply pressure tactics.

60. Since the applicant has already appeared before this Court in RFA No. 42/2019 and this was precisely the reason that the applicant has deliberately suppressed the aforesaid order and has not placed on record the same in the present petition.

61. After having failed to get the interim order vacated before this Court in the aforesaid proceedings, the Applicant has approached this Court

by filling the present contempt petition on false and flimsy grounds which is nothing but a sheer abuse of process of Court and the contempt petition, as such, is not maintainable and is liable to be dismissed.

**Conclusion:**

62. For all what has been stated hereinabove and in the light of the settled position of law, I hold that:

- (i) Present contempt petition is not maintainable and is liable to be dismissed, as the same is sheer abuse of process of Court as the applicant by no stretch of imagination can seek dismissal of a petition filed under Article 227 of the Constitution of India, which is pending before this Court, registered as CM(M) No. 178/2022 in the present contempt petition, more particularly, when the respondents have availed the legal remedies as available under law.
- (ii) Since the Applicant, instead of availing legal remedies against order dated 16.09.2022, has filed the instant petition styled as contempt petition and prayed therein for initiation of contempt proceedings against the respondents for causing obstruction in the administration of justice with a further prayer for seeking dismissal of the petition filed under Article 227 of the Constitution of India, is without any provision of law and no contempt is made out against the respondents, as such, the contempt proceedings initiated against the respondents are dropped as the respondents have availed the legal remedy of challenging the order passed by the Principal

District Judge, Anantnag, which by no stretch of imagination can be construed as an obstruction in the course of justice, as the right to avail the appropriate remedy as envisaged under law cannot be throttled by any process whatsoever.

- (iii) Since the Applicant has abused the process of law by filing the present petition on false and flimsy grounds by suppressing the material facts and made conscious effort to mislead the court by invoking jurisdiction of this Court under Article 215 of the Constitution read with Section 2 of Contempt of Courts Act, accordingly, it is a fit case where costs can be imposed upon the applicant to deprecate such practice, as such, costs of Rs. 25,000/- is imposed upon the Applicant which shall be payable and deposited by the applicant in the Advocates' Welfare Fund within a period of four weeks from today.
- (iv) Accordingly, the present contempt petition is **dismissed** with costs as quantified above and the contempt proceedings initiated against respondents are dropped.
- (v) Rule, if any, shall also stand discharged.

63. **Disposed of** accordingly.

(Wasim Sadiq Nargal)  
Judge

**Jammu:**  
13.04.2023  
Michal Sharma

Whether the judgment is speaking : Yes  
Whether the judgment is reportable : Yes