

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ Cont. Appeal (C) No.15/2009 & CM No.12865/2009

AARTI SABHARWAL Appellant through
Mr. Maninder Singh, Sr.
Adv. with Mr. Kirti Uppal,
Mr. Sanjeet Singh & Mohd.
Amanullah, Advs.

versus

JITENDER SINGH CHOPRA & ORS.....Respondent through
Mr. Sandeep Sethi, Sr. Adv.
with Mr. Kanwal Choudhary,
Adv. for Respondents 2 & 3
Mr. Jayant Bhushan, Sr. Adv.
with Mr. Ravi Shankar
Nanda, Mr. Shakil Akhtar &
Mr. Ranvir Singh, Advs. for
Respondent No.6

% Date of Hearing : November 11, 2009

Date of Decision : November 18, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. The Appellant, who has filed a Suit for Maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (HAM Act for short), has filed the present Appeal being aggrieved by the Order of the learned Single Judge, dismissing

the Contempt Petition filed by her. Her complaint was that contrary to interim orders passed by the learned Single Judge, a Sale Deed has been executed in respect of one of the properties which, according to her, belong to her husband. At the threshold, a Preliminary Objection has been taken pertaining to the maintainability of the present Appeal.

2. There is no gainsaying that keeping in view the punitive nature of orders that may be passed by the Court in contempt proceedings, which may include incarceration for a period upto six months, the Court must be fully satisfied that a party has wilfully disobeyed Court orders before punishment is delivered. Such a decision would perforce be predicated on a persuasive preponderance of evidence, as in the case of criminal proceedings. The natural sequel is that if the learned Single Judge comes to the conclusion that contempt has not been committed, it would well-neigh be impossible for the Appellate Court to reverse that finding. A person cannot be convicted for contempt of Court if one Judge finds that the case has not been sufficiently made good by the Complainant since the benefit of two opinions would invariably work in favour of the alleged contemnor. In our view, these two abiding principles of law find expression in Section 19 of the Contempt of Courts Act, 1971 which speaks in the negative, namely, that an appeal is available

only where punishment has been imposed on the contemnors and reads thus:-

19.Appeals.—(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decisions is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section(2).

(4) An appeal under sub-section(1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

3. A detailed, yet perspicuous, exposition of the law can be found in ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda***, (2006) 5 SCC 399. The decisions on this question have been discussed by their Lordships and thereafter the following digestion has been culled out:-

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of “jurisdiction to punish for contempt” and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

4. There was some debate before us as to whether or not propositions 4 and 5 above are attracted to the present case. We are of the view that a composite order has been passed by the learned Single Judge where almost the entire discussion pertaining to facts as well as the law has been rendered in respect of the contempt petition. Thereafter, applications not connected with contempt have been summarily decided obviously on the strength of discussions which preceded them. In other words, the learned Single Judge has intended the

discussion recorded in the Order dismissing the Contempt Petition to prevail upon all the applications pending before him. In doing so, he has avoided needless prolixity and repetition. For this reason, we do not think it at all relevant to delve into the intricacies and esoteric of whether the impugned Order dismissing the Contempt Petition contains reflection on the merits also. The Appellant has separately challenged, in terms of FAO(OS) No.402/2009, the findings of fact and the conclusions of law on several applications contemporaneously deciding the Contempt Petition.

5. Based on our reading of Section 19 of the Contempt of Courts Act as well as of our understanding of the law as available in ***Midnapore***, we are of the opinion that the present Petition is not maintainable. The conclusions of the learned Single Judge touching upon the merits of the dispute will, however, be dealt with in full detail as assailed in FAO(OS) No.402/2009.

6. The present Contempt Petition is not maintainable and is dismissed.

(VIKRAMAJIT SEN)
JUDGE

(SUNIL GAUR)
JUDGE

November 18, 2009/tp