

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) No.471/2009 and CM No.14201/2009
SHENZEN KONKA TELECOMN. Appellant
Through: Mr. Rajiv Mehra, Sr. Adv.
with Ms.Rajdipa Bihura &
Mr. Narendra Singh Bisht,
Advs.

versus

\$ A2VP DISTRIBUTORS P. LTD. Respondent
^ Through: Mr. Ashvini Mata, Sr. Adv.
with Ms. Deepali Chandhoke,
Ms. Kamal Preet Kaur Rana
& Mr.Manmeet Arora, Advs.
for Respondent Nos.1 and 2.

WITH

FAO(OS) No.577/2009 and CM No.16868/2009

INDRAJIT GHOSH Appellant
Through: Mr. Rajiv Mehra, Sr. Adv.
with Ms.Rajdipa Bihura &
Mr. Narendra Singh Bisht,
Advs.

versus

A2VP DISTRIBUTORS P. LTD. Respondent
Through: Mr. Ashvini Mata, Sr. Adv.
with Ms. Deepali Chandhoke,
Ms. Kamal Preet Kaur Rana
& Mr.Manmeet Arora, Advs.
for Respondent Nos.1 and 2.

Date of Hearing : December 10, 2009

% Date of Decision : December 17, 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. Both these Appeals assail the Order dated 28.8.2009 of the learned Single Judge which ostensibly allows an application under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short) filed by the Petitioner in CCP No.59/2006 but, in actual legal effect, merely issues notice to the freshly mentioned alleged contemnors. Behind the smoke screen of the application for impleadment of parties, avowedly created by the Respondent, the prayers in the application is for the issuance of notices to the newly added parties to show cause as to why contempt proceedings be not initiated against them. If the Appeal were to be allowed, it would tantamount to mandating that a notice to show cause as to why contempt proceedings should not be initiated against a party should precede or be a prelude to the issuance of a notice to show cause as to why contempt proceedings should not be initiated. This is a tautological situation and, therefore, the Objections of the Appellant defy logic.

2. In ***Purshotam Das Goel -vs- B.S. Dhillon***, AIR 1978 SC 1014 the main question which had fallen for decision was

whether an order merely initiating contempt proceedings by issuance of a notice under Section 17 of the Contempt of Courts Act, 1971 ('Contempt Act' for short) could be assailed by way of an Appeal. The contention that had been canvassed was that that Appeal was barred by limitation by virtue of Section 20 of the Contempt Act after the expiry of one year from the date on which the contempt was alleged to have been committed. It was in that context that the law was enunciated in the following passage:-

It would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated Under Section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide

any question. This Court, for the first time, cannot be asked in such an appeal to decide whether the person proceeded against has committed contempt of the High Court or not. The matter has to be decided either finally or, may be even at an earlier stage an order is made, which does decide a contention raised by the alleged contemner asking the High Court to drop the proceeding. It is neither possible, nor advisable, to make an exhaustive list of the type of orders which may be appealable to this Court under Section 19. A final order, surely, will be appealable. Our attention was drawn by Mr. Mohan Behari Lal, to Section 20 of the Act which provides :

No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

He submitted that initiation of the proceeding by the High Court will be without jurisdiction if it is in violation of Section 20. It may be so. If the alleged contemner in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an order, but we merely mention this type of order by way of an example to show that even

orders made at some intermittent stage in the proceeding may be appealable under Section 19. **In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right under Section 19.** In a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceeding. But that is entirely a different matter. What we are deciding in this case is that the present appeal filed under Section 19(1) of the Act does not lie and is incompetent. (Emphasis supplied)

3. The same conclusion has been arrived at in *Union of India -vs- Mario Cabral e Sa*, AIR 1982 SC 691 and *Midnapore Peoples' Coop. Bank Ltd. -vs- Chunilal Nanda*, (2006) 5 SCC 399.

4. The endeavour of Mr. Rajiv Mehra, learned Senior Counsel appearing on behalf of the Appellants, is to traverse the merits of the case so as to commend to us that the Appellants are not necessary parties to the *lis*. We think it necessary to immediately clarify that the *lis* before the learned Single Judge at the stage when the impugned Order was passed, was not to finally adjudicate upon the rival contentions but merely to issue notice to the alleged contemnors in order to provide them with an opportunity of being heard. In doing so the Judge who has been petitioned in the matter, should delve into the dispute only

to the extent of satisfying himself that a case had been made out by the Petitioner indicating *prima facie* that the persons arrayed as Respondents may have violated a particular Order of the Court.

5. A conundrum has been created primarily because the Respondents had predicated their application under Order I Rule 10 of the CPC and thereby imparted to their prayer the incorrect complexion of the impleadment of a party. We reiterate that at the stage at which the impugned Order was passed, only a show cause notice had been issued. On the appearance of the alleged contemnors, including the Appellant before us, their Objections, nay defence, to the charge of having committed contempt of Court, brought to the notice of the Court by the Petitioner would be considered. In ***Purshotam Das Goel***, the main plank of the argument did not even touch upon the merits of the case but rested on Section 20 of the Contempt Act viz. that the action having been brought after one year of the commission of the alleged contemptuous act was barred. Since that Objection did not touch upon the factual matrix, it could have been decided as a Preliminary Issue by the Appellate Court, but their Lordships nonetheless directed the parties to revert to the Court that had issued the notice.

6. It is trite that the Court is not bound to apply only the law or the provisions cited by a Petitioner/Applicant in the caption to the application. The Court is duty-bound to apply the correct law. The law is settled that an order will not become bad in law if while making it a wrong provision of law was invoked, though the power to make the same lay in another provision (See *P. Balakotaiah -vs- UOI*, AIR 1958 SC 232, *State of Karnataka -vs- Muniyalla*, 1985 (1) SCC 196, *B.S.E. Broker's Forum -vs- SEBI*, AIR 2001 SC 1010 and *Dinesh Dalmia -vs- CBI*, 2007 (8) SCC 770). Shorn and reduced to its basics, the endeavour of the Respondent was to bring the circumstances to the notice of the learned Single Judge in order to prevail upon the Court to issue a show cause notice. A holistic and correct reading of the impugned Order cannot but lead to the conclusion that this is what the learned Single Judge has done. As in ***Purshotam Das Goel***, it is for the Appellants to appear before the learned Single Judge and plead facts, as well as the law, in an effort to convince the Court that the show cause notice issued to them should be recalled or discharged. It is not for the Appellate Court to enter upon this controversy.

7. We have brought it to the notice of learned Senior Counsel for the Appellants that all the parties before the learned Single Judge have not been impleaded in the present Appeal, thereby

rendering it not maintainable. Since we have already heard arguments, we think it expedient to address the entire controversy squarely so that multiplicity of proceedings may be avoided. Therefore, we have ignored this technical transgression.

8. For the reasons adumbrated above, we are of the opinion that the Appeals are devoid of merit. We have taken pains not to articulate any observations on the merits of the case since the proper stage and forum for this exercise is before the learned Single Judge.

9. The Appeals are dismissed, but we desist from imposing costs. Pending applications also stand dismissed.

(VIKRAMAJIT SEN)
JUDGE

December 17, 2009
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(SUNIL GAUR)
JUDGE