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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 25, 2009
Date of Order: February 09, 2010

+ Cont. Cas(C) 174/2009

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09.02.2010

**The Readymade Garments Export
Employees Union (Regd.)**

Through: Ms. Deepika, Advocate

...Petitioner

Versus

S.K. Singh & Ors.

Through: Mr. R.V. Sinha, Advocate for R-1,2 and 4.
Mr. R.C. Chawla and Mr. Darpan Wadhwa, Advocates

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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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 judgment should be reported in Digest? | Yes. |

JUDGMENT

1. The contempt petition has been preferred by the petitioner alleging violation of the directions given by this Court in judgment dated 21st February 2007. The judgment in question was passed in W.P. (C) 17671-73 of 2004 and this Court had directed the Commissioner of Provident Fund to initiate legal action against all those who were involved in the fraud and departmental action should be taken against those personnel of the department who were involved in the fraud. The Ministry of Labour was also asked to consider referring the case for thorough investigation to a competent investigating agency. Against this judgment, an LPA was preferred by the respondent and in LPA, the Division Bench of this Court directed the appellant to deposit Rs.1 crore with PPF Appellate Tribunal and the Court stayed the operation of notices dated 3rd March 2007 and 5th March, 2007 and directed that no coercive action shall be taken. The LPA was finally disposed of on 12th August 2008 after observing that since the order of deposit of Rs.1 crore has been complied with, this amount constituted approximately 50% of the amount required to be deposited by the appellant, the Appellate Tribunal was directed not to insist upon for making further deposit for hearing the appeals and the appeals were to be heard

and disposed of on merits without being influenced by the observations made by the learned Single Judge or by the Division Bench.

2. The counsel for the petitioner contended that the directions given by learned Single Judge regarding initiation of inquiry and taking action against those involved in the fraud were not being complied with. Learned counsel for the respondent on the other hand argued that since an appeal was preferred against the decision of learned Single Judge, the decision of learned Single Judge merges with the decision of the Appellate Court and the decision of Appellate Court became final decision and no contempt would lie in view of the fact that decision of learned Single Judge was no more executable and only the decision of Appellate Court was executable. The respondent relied upon *Smt. A Shanthi Kumari IAS Secretary A.P. Social Welfare Residential Educational Institutions Society v K. Ravi & Another 2003 Cr.L.J 1596* wherein a Division Bench of High Court of Andhra Pradesh had observed that once an intra court appeal is preferred, the judgment given by Single Judge merges into the judgment rendered by the Appellate Court and the contempt would not lie before the Court in respect of violation of the order of learned Single Judge. The Andhra Pradesh High Court observed as under:-

"34. The question that falls for consideration is as to what is the effect of merger of the order passed by a learned Single Judge in the Writ Petition into that of the judgment of the writ appellate Court in the Writ Appeal referred to hereinabove?"

35. In Kunhyammed v. State of Kerala, Manu SC 432/2000, the Supreme Court observed that "the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system". It is further observed that "logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge

continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way- whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below”.

36. *The Supreme Court, however, observed that “the doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or capable of being laid shall be determinative of the applicability or merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it”.*

37. *It is no doubt that an appeal under clause 15 of the Letters Patent Act against the judgment of a learned Single Judge before a Division Bench cannot be equated to that of a decree or order passed by an inferior court, tribunal or authority. It is only an intra court appeal. Nonetheless, the jurisdiction under Clause 15 of the Letters Patent Act is capable of reversing, modifying or confirming the order put in issue before it. Under Clause 15 of the Letters Patent Act, the Division Bench may reverse, modify or affirm the judgment-decree or order appealed against while exercising its Letters Patent jurisdiction.*

38. *In Shankar Ramchandra Abhyankar v. krishnaji Dattatraya Bapat, Manu SC 456 1969, the Supreme Court has emphasized three pre-conditions attracting applicability of doctrine of merger. They are: the jurisdiction exercised should be appellate or revisional jurisdiction; (ii) the jurisdiction should have been exercised after issue of notice; and (iii) after a full hearing in presence of both the parties. It is in such a situation, the appellate or revisional order would replace the judgment under appeal and constitute the only final judgment.*

39. *It is thus clear that once an appeal is entertained in exercise of the jurisdiction under Clause 15 of the Letters Patent Act the order impugned before the Division Bench becomes an order appealed against.*

Any order passed thereafter would be an appellate order and would undoubtedly attract the applicability of doctrine of merger. The fact whether the order passed by the appellate Court is one of reversal or of modification or of dismissal affirming the order appealed against would not make any difference. Once the appellate Court applies its mind to the order put in issue before it and exercises its Letters Patent jurisdiction after issue of notice and disposes of the appeal after full hearing in presence of both the parties and such order would be an appellate order and would attract the applicability of doctrine of merger.”

3. I am in complete agreement with the decision of Andhra Pradesh High Court. I consider that since an intra court appeal was preferred against the order of Single Judge to the Division Bench, the Division Bench did not give any directions for taking any action against any of the officials, the contempt would not lie on the basis of directions given by the leaned Single Judge. The petitioner was at liberty to obtain directions from the Division Bench in respect of action against those employees who were involved in the fraud. Since no such clarification or order was obtained from the Division Bench, the contempt qua directions of Single Judge would not lie.

4. In the result, I find no force in this contempt petition. The petition is hereby dismissed with no orders as to costs.

February 09, 2010
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SHIV NARAYAN DHINGRA J.