

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Cont. App.(C) No.5/2010 & CM No.14846/2010

Raj Singh Gehlot

.....Appellant through
Mr.P.K. Aggarwal, Mr.Rajbir
Kapoor and Ms.Mercy
Hussain, Advs.

versus

Pardiam Exports Pvt. Ltd.

.....Respondent through
Mrs. Pratibha M. Singh and
Ms. Surbhi Mehta, Advs.

% Date of Hearing : September 28, 2010

Date of Decision : October 08, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MS. JUSTICE MUKTA GUPTA

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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. This Appeal assails the Order dated 11.9.2009 of the learned Single Judge passed on the Defendant's application under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Order XXXIX Rules 1 and 2A of the Code of Civil Procedure, 1908 (CPC for short). The learned Single Judge, after discussing threadbare the rival stands and submissions, had, *inter alia*, held as follows:-

7. In view of the report filed by the Local Commissioner on 4th August, 2009, it is apparent that marble flooring has been laid on the area specified for the shops allotted to the petitioner which is identified in colour with that of

the surrounding lobby. It is also clear that the shops in question were not demarcated by the glass doors. The Local Commissioner on 1st August, 2009 was directed to demarcate the shops allotted to the petitioner which was done by him temporarily by bricks and wires. Since the respondents admitted that the shops are demarcated in the layout plan and the partition would be put later, it is directed that the respondents demarcate the shops G-42 and G-43 allotted to the petitioner and enclose it with glass door partition. The contempt petition is hereby disposed of.

2. The first Order passed in the proceedings of the Suit before the learned Single Judge was on 9.1.2008. It restrained the Defendants as also its employees, officers, assigns, etc. from creating any third party interest, encumbering or parting with the possession or changing the Layout Plan of the Shops bearing No. G-48 and G-49 (new No.G-42 and G-43) in Ambi Mall at Plot No.2, Vasant Kunj, New Delhi till the next date of hearing. This Order has not been recalled.

3. There appears to be a typographical error in the impugned Order inasmuch as the learned Single Judge has alluded to an Order dated 28.5.2009 which, in fact, refers to the response of the Defendant/Appellant to the Contempt Petition wherein he has admitted that the shops in question can be clearly demarcated and that the partition walls can be put up without any difficulty. A Local Commissioner was appointed on two occasions and his Reports have been perused by us. Learned Counsel for the

Respondent insists that there has been a violation of the Order of the Court justifying the filing of the subject application for initiation of contempt of Court proceedings. Since no cross-appeal/Objections have been preferred, it is patent that the Respondent has no grievance in respect of the absence of any punishment being imposed on the Appellant by the learned Single Judge.

4. Learned counsel for the Adversaries before us have relied on ***Midnapore Peoples' Coop. Bank Ltd. -vs- Chunilal Nanda***, (2006) 5 SCC 399 and hence it is necessary to analyze this precedent in some detail. Three questions were formulated by their Lordships for consideration:-

(i) Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order of final judgment, whether it is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?

(iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time-bound schedule, whether the court can direct (a) that the employer shall

reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the enquiry officer shall cease to be the enquiry officer and the employer shall appoint a fresh enquiry officer; and (e) that the suspension shall be deemed to have been revoked?

5. Several decisions were thereafter perused and distilled by their Lordships in carving out the following conclusion in the context of the first point:-

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized 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 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).

6. On Point (ii), it has been opined that an Appeal would be maintainable not only against a Final Judgment but also in respect of “interlocutory judgment” which finally decides several rights and obligations.

7. With regard to Point (iii), learned counsel for the Respondent, has placed reliance on paragraph 21, but in our view mistakenly. What the Hon’ble Supreme Court was at pains to clarify was that if orders are passed which are totally outside the scope of proceedings for contempt and which amounted to adjudication of rights and liabilities not in issue in contempt

proceedings, corrective action by the Appellate Court would be called for. Contempt proceedings would invariably culminate in imposition or refusal to award punishment and not in ancillary adjudications.

8. The contention is that the learned Single Judge erred in directing the Defendant to enclose Shops G-42 and G-43 with glass partition as appears to have been done in all other shops. In this regard, reliance has been placed on the observations made in *V.M. Manohar Prasad -vs- N. Ratnam Raju*, (2004) 13 SCC 610 to the effect that “in contempt proceedings no further directions could be issued by the court. In case it is found that there is violation of the order passed by the court the court may punish the contemnor otherwise notice of contempt is to be discharged. An order passed in the contempt petition, could not be a supplemental order to the main order granting relief”. It was in this context also that reference was made to the celebrated decision in *Midnapore* in which their Lordships, in the 5th sub paragraph of paragraph 11, opined that – “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.”

9. This above extracted passage has also been extracted in *Parents Association of Students -vs- M.A. Khan*, (2009) 2 SCC 641

and has been applied. The Court, on being *prima facie* satisfied of the commission of contempt of Court, had issued notice to the alleged contemnor. However, in the very same order interim orders relating to the operation of a Government order had also been passed. Their Lordships opined in paragraph 19 that if the concerned party “cannot be punished for commission of contempt of the High Court, an interim order should not have been passed”. We must, however, clarify that the Court is empowered and competent to pass orders which are necessary for preserving the directions which the contemnor has either failed to follow, overreach or contumaciously violated. In *Mohammad Idris –vs- Rustam Jehangir Bapuji*, AIR 1984 SC 1826 the Court found the commission of “a clear breach of the undertaking given by the petitioners and we are of the opinion that the Single Judge was quite right in giving appropriate directions to close the breach”. The Division Bench of the Calcutta High Court has made similar observations in ***Sujit Pal*** –vs- *Prabir Kumar Sun*, AIR 1986 Calcutta 220. It is important to underscore that in both these cases the commission of contempt of Court had been concluded upon and hence the directions, apart from punishing for contempt, were with the view to implementing orders that had been violated by the contemnor. This distinction must be kept in mind so far as the present case is concerned. On a careful reading of the impugned Order, we have failed to find any opinion that the Appellant was

guilty of contempt of Court. The interim Orders that had been passed had not been found to have been violated, *inter alia*, because the flooring had been laid such that it conformed to the other flooring in the area.

10. We have also analysed the legal position so far as Order XXXIX Rule 2A of the CPC is concerned. In *Vidya Charan Shukla – vs- Tamil Nadu Olympic Association*, AIR 1991 Madras 323 one of the questions that had been argued before the Full Bench concerned the legal propriety of passing interim mandatory injunction for restoring *status quo ante*. **Sujit Pal** was favourably viewed. The Full Bench rejected the argument that it would be inappropriate to issue a mandatory injunction. Instead, they were of the opinion that “any restriction upon the jurisdiction of the Court in this regard will render the constitutional protections under Articles 215 and 225 of the Constitution afore quoted and afore discussed ineffective and unenforceable. The object of such an order being to safeguard the rights of a party against a threatened invasion by the other party, if in disobedience of the order of injunction, such rights are invaded during the pendency of the suit, the inherent power under Section 151 of the Code can be invoked and a mandatory injunction can be granted. The Courts have also to take notice of the larger and higher interests of the administration of justice which is a public interest and this should

receive the first priority in considering whether the Court's special or inherent power should be exercised or not".

11. On the first date of hearing, an objection had been raised as to the maintainability of the Appeal before us. In view of the discussion above, especially of ***Midnapore***, it seems to us that the Appeal is maintainable despite the fact that the Appellant has neither been found guilty of commission of contempt of Court nor has been punished for it. The grievance of the Appellant is that the learned Single Judge has transgressed its jurisdiction by passing orders extraneous to the alleged violation of Court Orders. To this extent, an Appeal is facially available, since the impugned Order has civil obligations also.

12. The learned Single Judge was avowedly in control of the pending suit at the time when the impugned Order came to be passed. The Court was, therefore, fully empowered to pass whatever orders it considered expedient and just so far as the equities or legalities demanded. If the directions vis-à-vis erection of glass door partition relating to Shop Nos.42 and 43 were to have been passed *de hors* the disposal of the Contempt Petition, they would certainly not be devoid of jurisdiction. It seems to us that in the interest of justice these directions could be severed from the impugned Order. This is not a case where there was no material before the learned Single Judge to have come to conclusion which stands challenged before us. A neat technicality, however, arises,

namely, whether the learned Single Judge intended to charter this course. Without setting aside the impugned directions, which have been impugned before us on technicalities, we think it proper to remand the case to the learned Single Judge who had passed the impugned Order.

13. In these circumstances, parties shall appear before our esteemed learned Brother, Justice Manmohan Singh on 29.10.2010.

14. Appeal is disposed of in these terms. Pending application is also disposed of.

(VIKRAMAJIT SEN)
JUDGE

(MUKTA GUPTA)
JUDGE

October 8, 2010
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