

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LETTERS PATENT APPEAL NO. 773/2010**

% **Reserved on: 14th January, 2011**
Date of Decision: 30th March, 2011

SYLVANIA & LAXMAN EMPLOYEES WELFARE UNION

....Appellant

Through Mr. N.S. Dalal & Mr. Devesh Pratap
Singh, Advocates.

VERSUS

SHYAMA AGGARWAL & OTHERS Respondents

Through Mr. Harish Malhotra, Sr. Advocate
with Dr. Saif Mahmood, Advocate.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.

The appellant, Sylvania and Laxman Employees Welfare Union, by the present appeal under Chapter X of the Letters Patent Act has assailed the order dated 3rd March, 2010 passed by the learned single Judge in Cont. Cas. (C) Nos. 219/2004

and 221/2004 declining and holding that interest @ 12% per annum is payable only to workers who have submitted their affidavits prior to 15th April, 1998 but had not been paid their dues before August, 1999. Learned single Judge has held that interest is not payable to any other category of workmen in terms of the order dated 19th August, 2002 as modified by the order dated 9th September, 2002 in W.P. (C) No. 1624/2001, ***Sylvania and Laxman versus Labour Commissioner.***

2. At the outset, we may examine the preliminary objection raised by the respondent that the present appeal is barred and is hit by Section 19 of the Contempt of Court Act, 1971. It is submitted that the appellants herein had earlier filed Contempt Appeal No. 14/2010 but in view of the settled legal position that an appeal does not lie against an order discharging the contempt, the appellant withdrew the said appeal seeking liberty to initiate appropriate proceedings vide order dated 8th September, 2010. It is submitted that Letters Patent Appeal is not the appropriate proceedings.

3. The preliminary objection of the respondent does not merit acceptance in view of the law laid down by the Supreme Court in the case of ***Midnapore Peoples' Cooperative Bank Limited versus Chunilal Nanda***, (2006) 5 SCC 399, wherein in paragraphs 11 and 15, the Supreme Court has opined as under:-

“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).

The first point is answered accordingly.

X X X X

15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.”

4. The aforesaid judgment was referred to in ***Tamilnad Mercantile Bank Shareholders Welfare Association (2) versus S.C. Sekar and Others***, (2009) 2 SCC 784 and it was observed as under:-

“45. Assuming that an appeal under Section 19 was technically not maintainable, having regard to the fact that the interim injunction was granted till disposal of the contempt application, in our opinion, it was a judgment within the meaning of Clause 15 of the Letters Patent of the Madras High Court.

5. As the facts delineated below would exposit, the present case falls under the exceptions carved out by the Supreme Court in the case of ***Midnapore Peoples' Cooperative Bank Limited*** and ***Tamilnad Mercantile Bank Shareholders Welfare Association (2)*** (supra) as the impugned order finally

decides an issue or makes an adjudication relating to the merits of the dispute between the parties.

6. The appellant is a registered trade union and had submitted an application for issuance of recovery certificate and payment of wages, which was allowed by the Labour Commissioner against the respondent company. Action of the Labour Commissioner was made subject matter of challenge by the respondent in W.P. (C) No. 3375/1996. During the pendency of the writ petition, the management entered into an agreement with one of the trade unions on 16th August, 1997, but this was not accepted by the majority of the workers. Thereafter, another settlement dated 28th August, 1999 which was more favourable with the workers was executed. As the workers had not been paid, the Writ Court intervened and efforts were made to settle the matter as it was noticed that the pending litigation was causing prejudice to all parties. Order dated 19th August, 2002 records that broad parameters of a settlement were worked out with some modification. The said order has a chart, the relevant portion of which reads as under:-

“

S. No.	Topic	Settlement as per law	Settlement 16.08.1997 and 26.08.1999	Desired
1-9	X	X	X	X
10.	Interest on dues	No provision	Interest to be paid upto 31/Aug/99 to workers who have submitted their affidavit prior to 15/Mar/98. No interest after 31/Aug/99	As per 1997 settlement.
11-13	X	X	X	X

”

7. Thereafter, the order records as under:-

“The interest on dues shall be at the rate of 12% p.a. as per 1997 settlement and as per modification of settlement subsequently entered into by the management as well as the welfare union. The interest shall be paid upto 31.08.1999 to the workers who have submitted their affidavits prior to 15.03.1998.

CWP No. 6755/2001 is a writ petition which, according to the Petitioner is represented by a separate union which is representing about 200 those workers who have not filed their affidavits in terms of the 1997 settlement or 1999 settlement. They shall file their affidavits before the management and they shall also be paid interest on the same rate as has been given to other workers who have earlier filed their affidavits. The interest payable under the settlement and modified settlement is from 16.12.1997 to 31.08.1999.”

(emphasis supplied)

8. The next material order is dated 9th September, 2002. The Court referred to the earlier order dated 19th August, 2002 and had stated that this order was in continuation of the earlier order. The order records that management has filed an affidavit-cum-undertaking and states that one Mr. Ashok Aggarwal would be bound by the said undertaking. It records that paragraph 7 of the affidavit would not come in the way and be a ground not to make payment. The order further states that the undertaking filed by Mr. Suresh Shukla, General Secretary, Sylvania and Laxman Employees Welfare Union, i.e., the present appellant, was accepted by the Court. In the operative portion of the order, it is recorded as under:-

“ The District Collector is directed to immediately remove the seal of the premises and hand-over the property to the management forthwith.

This order in no way deals with the strength of the unions. It will be open for the workers unions to move appropriate machinery under the industrial law or appropriate forum for getting their disputes, in relation to their recognition or strength, if any, redressed.

The workers who have got their benefits under the settlements, shall not be entitled to get benefit under the modified settlement, as agreed before this Court.

All the worker unions undertake to withdraw all the cases/proceedings pending in court/tribunals against the company.

In CWP No. 1624/2001 certain interim orders have been passed and pursuant to that a sum of Rs.47 lakhs was deposited by the management in this Court. Counsel for 37 workers have not been paid salary from April, 1995 till 31st March, 1996. The management shall make payment of the salary due to said 37 lakhs which has been deposited by the management in this Court.

All the parties shall be bound by the undertaking given to the Court in view of the matter having been settled amicably between the parties. In terms

of the undertakings filed by the respective parties, all the interim orders in CWP No. 6755/2001, CWP No. 3375/96 and CWP No. 1624/2001 stand vacated. All the pending applications stand disposed of in terms of settlement arrived between the parties.”

9. A perusal of the aforesaid orders expositis that various aspects including monthly wages, bonus, gratuity, compensation, notice pay etc., were discussed and examined and were part of the broad parameters of settlement worked out as recorded in the order dated 19th August, 2002. As the workers had not been paid, question of interest on dues was also relevant. Under the heading ‘settlement as per law’, it was recorded that there was no provision for payment of interest but under the heading ‘settlement 16th August, 1997 and 26th August, 1999’ it was recorded that interest would be paid upto 31st August, 1999 to workers who had submitted their affidavits prior to 15th March, 1998 but no interest would be payable after 31st August, 1999. Under the heading ‘desired’ it was recorded that interest would be as per 1997 settlement. This obviously means that the parties felt and had agreed that interest should be paid in terms of 1997 settlement, i.e., @ 12% per annum upto

31st August, 1999. As per the appellant, interest is payable to all employees whether or not they had furnished their affidavits prior to 15th March, 1998 but as per the respondent, interest is payable to workers who had submitted affidavits upto 15th March, 1998. This is a disputed question but it finds answer in the subsequent underlined portion of the order dated 19th August, 2002, which is quoted above. The said paragraph clearly states that interest on dues @ 12% per annum as per 1997 settlement and as per the modified settlement shall be paid by the management to the 200 workers of the appellant union. The last sentence in the first paragraph quoted above is merely explanatory or clarificatory in nature and states that even as per the 1997 settlement, workers who had submitted affidavits prior to 15th March, 1998 would be paid interest. Even if there was any doubt or ambiguity, the said gets clarified in the second paragraph quoted above. The said paragraph relates to the workers union i.e. the present appellant, who had filed Writ Petition (Civil) No. 6755/2001, but had not submitted affidavits in terms of 1997 settlement or 1999 settlement. They too were given right to file affidavits with the management and accordingly

would be paid interest at the same rate as was given to other workers who had filed affidavits. Accordingly, the last sentence in second paragraph records interest was payable under the settlement and modified settlement from 16th December, 1997 to 31st August, 1999. The words “The interest payable under the settlement and modified settlement is from 16th December, 1997 to 31st August, 1997”, are clearly illustrative of the intention to give benefit to the workers of the appellant union. Obviously, the Court did not want to create any artificial discrimination and distinction between the workers who had entered into a settlement earlier in 1997/1999 and those who had entered into the settlement later as a result of efforts of the Court. The two paragraphs have to be read together to find out the intention and purport behind the wordings. In case, interest was not to be paid to the workers who had not filed affidavits till 15th March, 1998, there was no need to make the aforesaid observations.

10. As noted above, the last sentence in the first paragraph quoted above is only to elucidate the existing position and not to deny benefit of interest to workers who had not submitted affidavits prior to 15th March, 1998. The said sentence cannot be

read in isolation as to negate the right of the workers to get benefit under the modified settlement agreed before the Court, terms of which as were understood clearly mean that interest would be paid from 16th December, 1997 to 31st August, 1999 to the workers irrespective of whether they had filed their affidavits prior to 15th March, 1998.

11. Another contention raised by the appellant is regarding the delay in payment, which was to be made within eighteen months from the date of settlement. It is alleged that the payment has not been made in terms of the settlement. This aspect has not been adverted to and does not appear to be a subject matter of the contempt proceedings and rightly so, as it is a disputed and debatable/factual issue. Allegations and counter allegations have been made as to who is responsible and liable for the delay in making payment in terms of the settlement. It also appears that Writ Petition (Civil) No. 9488-89/2004 was filed before this Court and certain orders have been passed, copy of which have not been placed on record. We are not examining the said issue and question and the same is left open. It is open

to the parties to take appropriate proceedings or steps in accordance with law on the said aspect.

12. The appeal is accordingly allowed to the extent indicated above. However, in the facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

MARCH 30th, 2011
VKR