

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2499 of 2023

Applicant :- Triloki Nath Tewari

Opposite Party :- Tribhuwan Nath Tewari, And 3 Others

Counsel for Applicant :- Vinod Kumar Upadhyay, Santosh Kumar Upadhyay

Counsel for Opposite Party :- Sanjay Kumar Pandey

Hon'ble Rohit Ranjan Agarwal, J.

A compliance affidavit has come from State side which is taken on record.

In para no. 6 of affidavit, it has been stated that no trees have been cut from plot of the applicant. The status report has been brought on record as Annexure-1 to compliance affidavit.

As the second appeal is still pending and there are allegations from applicant side of cutting the trees which has been denied by opposite party, the said disputed question of fact cannot be decided in proceedings under Section 12 of Contempt of Courts Act as has been held by Apex Court in case of **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101**. Para 8 of the judgment reads as under:-

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to

decide the original proceedings."

In view of aforesaid fact, the contempt application is misconceived and stands dismissed.

Order Date :- 21.11.2023
V.S.Singh