

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2023:AHC-LKO:80583-DB

Judgment reserved on 30.11.2023

Judgment delivered on 08.12.2023

Court No. - 4

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 7 of 2022

Applicant :- Most Rev. Augustine

Opposite Party :- Mr. R.K. Chattree And Another

Counsel for Applicant :- Asok Pande

Counsel for Opposite Party :- Utsav Mishra, Nagendra Pratap S Chauhan, Utsav Mishra

Hon'ble Rajesh Singh Chauhan J.

Hon'ble Subhash Vidyarthi J.

(Per Hon'ble Subhash Vidyarthi J.)

1. Submissions of the learned Counsel for the applicant Sri Ashok Pande and Sri Utsav Mishra, learned counsel for the respondent no. 1 were heard on 30.11.2023, when the learned counsel for the respondent had raised three preliminary objections and the judgment / order was reserved.

2. The petitioner had filed Special Appeal No. 233 of 2015 against the judgment and order dated 28.05.2015 passed by an Hon'ble Single Judge, whereby Writ Petition No. 406 (M/S) of 2015 was allowed, a reference made to the Prescribed Authority under Section 25 (1) of the Societies Registration Act was set aside leaving it open to the opposite party no. 3 to get his rights declared in a Regular Suit and the matter of list of office bearers and members of the general body of the society was remanded to the Deputy Registrar for taking a decision afresh in light of Sections 4 and 4-B of the Societies registration Act and it was clarified that any observations made in the order dated 28.05.2015 passed in the Writ Petition shall not prejudice the rights of the parties in any proceedings. Special Appeal No. 233 of 2015 filed against the

aforesaid order was dismissed on 12.07.2022. The petitioner had challenged the order dated 12.07.2022 by filing S.L.P. (C) No. 14338 of 2022, which was dismissed by means of an order dated 09.09.2022, leaving it open to the petitioner to workout the remedies in terms of the order passed in Special Appeal. Instead of availing his remedies as observed in the order dated 28.05.2015 passed by the Hon'ble Single Judge while allowing the Writ Petition, which had been affirmed by the Division Bench in the judgment dated 12.07.2022 passed in the Special Appeal, the petitioner filed Civil Misc. Review Application No. 142 of 2022, which was dismissed on 22.11.2022.

3. The petitioner challenged the order dated 22.11.2022 by filing S.L.P. 1839 of 2023. The S.L.P. was filed *inter alia*, included the grounds on which the contempt application has been filed. The Hon'ble Supreme Court has dismissed on 10.02.2023 by the following order: -

*“The Special leave petition against the substantive order was dismissed on 09.09.2022, being SLP(Civil) No. 14338/2022. We had observed that the petitioner is left to work out any remedy in terms of the impugned order. **The petitioner has chosen to file a review application before the High Court without any liberty from this Court. In the Review application aspersions are cast on the Bench as also the methodology of hearing the original order which has been sustained in the SLP, including, jurisdiction of the learned Single Judge and matter being heard by the Division Bench with an additional Judge as a member etc. Now, once that is rejected, another SLP is filed against that order.***

*At the inception itself, we have put to the learned counsel for the petitioner that even if review is permitted and no liberty is granted to come back to this Court, a SLP cannot be filed in view of the judgment of this Court in the case of *Municipal Corporation of Delhi vs. Yashwant Singh Negi* (2020) 9 SCC 815. In the present case, not even a liberty was granted. Thus the impugned order now passed, dated 11.11.2022, only against the review order is not maintainable.*

Learned counsel refuses to listen and insist that he is entitled to argue the SLP. Thus, we have once again heard learned counsel for the petitioner for some time.

We find the endeavour made by the petitioner is a gross abuse of the process of Court, apart from being against the law qua entertainment of SLP only against the Review order.

We thus dismiss the SLP with costs of Rs. 20,000/- to be deposited with the Supreme Court Mediation and Conciliation Project Committee (MCPC) within four weeks from today.”

4. The present application under Section 15 of the Contempt of Courts Act has been filed stating that during hearing of Special Appeal No. 230 of 2015 which was filed by the petitioner, a letter addressed to the Hon’ble Chief Justice and the Hon’ble Senior Judge was allegedly placed before a Division Bench of this Court on 24.05.2018, in which it was alleged that an Advocate representing the petitioner had collected a huge amount in the name of the Hon’ble Judges constituting the Division Bench, as such the respondent had no hope to get justice from the said Division Bench. The Hon’ble Judges forming Bench recused themselves from hearing the Special Appeal.

5. Thereafter the Special Appeal was listed before another Division Bench on 23.01.2019, when it was informed that a Transfer Application had been moved before the Hon’ble Supreme Court and the Bench adjourned the Special Appeal. Another Division Bench adjourned the Special Appeal on 27.02.2019 due to pendency of the Transfer Application. The submissions were heard by yet another Division Bench on 12.12.2019 and judgment was reserved, but the Bench passed an order on 19.06.2020 that the judgment could not be delivered due to paucity of time.

6. The Special Appeal was listed before a Division Bench on 01.07.2021, 05.07.2021, 14.07.2021 and 28.07.2021 and on the last of the aforesaid dates, one of the Hon’ble Judges constituting the Bench ordered it to be listed before another Bench, of which he was not a

member. The petitioner has stated that the opposite party no. 2, who was not a party to the Special Appeal, had moved an application alleging that a learned Counsel appearing for the other side had very good relations with the Judge and for this reason he didn't expect to get justice from the Bench. Thereafter the matter was listed before another Division Bench and another Hon'ble Judge recused himself from hearing the matter on 08.09.2021. After being listed before several Benches, the Special Appeal was ultimately dismissed on 12.07.2022.

7. The petitioner submits that by charging the Counsel for collecting money in the name of the judges and alleging that for this reason the person concerned didn't expect to get justice amounted to scandalizing the Court and lowering its authority. Further, to say that due to good relations between a Judge and some Counsel, a party didn't expect justice from the Court also amounts to committing contempt of Court.

8. Even as per the petitioner, the contempt was committed for the first time on 28.05.2018, and it was committed again on 28.07.2021.

9. Sri Utsav Mishra, the learned counsel for respondent No.1 has raised three fold preliminary objections against maintainability of the present application. His first preliminary objection is that as per the petitioner, the contempt took place on 28.05.2018 and the contempt petition is barred by the period of limitation of one year as provided in Section 20 of the Contempt of Courts Act.

10. Replying to the aforesaid preliminary objection, the learned counsel for the petitioner has submitted that the delay in filing the contempt application has sufficiently been explained in para 33 of the affidavit filed in support of the application wherein it is stated that during pendency of the special appeal, the petitioner was expecting that some Bench will suo moto take cognizance of bench hunting tactics of the respondent and will punish them but when under the

pressure created by the respondent he lost the case and he decided to come forward for necessary action.

11. Section 20 of the Contempt of Courts Act provide that 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. The petitioner himself alleges the contempt to have been committed for the first time on 28.05.2018 and again on 28.07.2021. The contempt application has been filed on 02.09.2022.

12. In **Pallav Sheth v. Custodian**, (2001) 7 SCC 549, the Hon'ble Supreme Court held that: -

“44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.”

13. **Pallav Sheth** (Supra) has been followed in **Maheshwar Peri and others versus High Court of Judicature at Alahabad**, (2016) 14 SCC 251.

14. Therefore, in view of the provision contained in Section 20 of the Contempt of Courts Act, which has been explained by the Hon'ble Supreme Court in **Pallav Sheth** (Supra), the contempt application filed by the petition is clearly barred by limitation.

15. So far as the submission of the learned Counsel for the petitioner that this Court has power to take suo moto action for its contempt, it may be noted that the contempt was allegedly committed

before two different Division Benches of this Court on 28.05.2018 and 28.07.2021, but both the Division Benches did not find it appropriate to initiate action for contempt of Court. The petitioner has sought issuance of action for contempt of court by filing an application, which is clearly barred by limitation. Merely because this Court has got the power to initiate suo moto action for its contempt, which power had not been exercised by this Court, the mere existence of this Court's power to take suo moto action for contempt of Court will not remove the bar of limitation for filing an application for initiation of proceedings for contempt of the Court.

16. Therefore, we reject the submission of the learned Counsel for the applicant that as this Court has the power to take suo moto action for its contempt, his application under Section 15 of the Contempt of Courts Act has to be entertained ignoring the bar of limitation contained in Section 20 of the Constitution of India.

17. The title of the application mentions "CONTEMPT PETITION U/S 15 OF THE CONTEMPT OF COURTS ACT READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA". However, the mere mention of Article 215 of the Constitution of India would also not make any difference on the applicability of the bar of limitation, as in **L. P. Misra (Dr) v. State of U.P.**, (1998) 7 SCC 379, the Hon'ble Supreme Court has held that "*It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law.*"

18. In **Ashok Kumar Aggarwal v. Neeraj Kumar**, (2014) 3 SCC 602, after placing reliance of the judgment in the case of **L. P. Misra (Dr)** (Supra), the Hon'ble Supreme Court held that "*the High Court was required to examine as to whether the proper procedure has been adopted in bringing the petition under Article 215 of the Constitution and as to whether the limitation as prescribed under Section 20 of the 1971 Act was attracted in the case.*"

19. Therefore, even while entertaining a petition filed under Article 215 of the Constitution of India, the bar of limitation provided under Section 20 of the Contempt of Courts Act will apply and the present application having been filed beyond the limitation period of one year, is clearly time barred and cannot be entertained for this reason.

20. The second preliminary objection raised by the learned Counsel for the respondent no. 1 is that the application has been filed without obtaining the consent of the learned Advocate General in writing.

21. The relevant part of Section 15 (1) of the Contempt of Courts Act provides that a motion for criminal contempt can only be made by any person with the consent in writing of the Advocate General.

22. In **Biman Basu v. Kallol Guha Thakurta**, (2010) 8 SCC 673, the Hon'ble Supreme Court has held that the petition to take action against the appellant under Section 15 without the written consent of the learned Advocate General would not be maintainable in law.

23. The learned counsel for the petitioner has submitted that an action for punishment of a criminal contempt is purely a judicial matter and he did not want to invite interference of the learned Advocate General in a judicial matter and, therefore, he has not sought consent of the learned Advocate General.

24. It is settled law that when the law prescribes a manner for doing a thing, the thing has to be done in that manner alone and the other modes of doing the thing are necessarily forbidden. When the law provides that an application under Section 15 of the Contempt of Courts Act can only be filed after obtaining written consent of the learned Advocate General, this requirement of prior written consent of the Advocate General cannot be waived merely because the learned Counsel for the petitioner does not want the Advocate General's interference in a judicial matter. Therefore, the application is not maintainable for want of written consent of the Advocate General.

25. The learned Counsel for the applicant has next submitted that Section 15 of the Contempt of Court Act empowers this Court to take *suo moto* cognizance of the criminal contempt conducted by the petitioner and, in such circumstance, absence of written consent of Advocate General would not make any difference.

26. As has already been noted above, the Division Bench hearing the Special Appeal, before which the letter dated 24.05.2018 was placed, did not take any *suo moto* action for its contempt. The Division Bench, a member whereof had recused himself from hearing the matter on 28.07.2021, did not also take any action for contempt. The present proceedings have also not been initiated either *suo moto* or on a motion made by the learned Advocate General. Therefore, the application moved by the petitioner without obtaining written consent of the learned Advocate General cannot be entertained merely because this Court has the power to take *suo moto* action for its contempt, which power has not been exercised in the present case.

27. Therefore, we are of the considered view that the application for initiating action for the alleged commission of criminal contempt of Court is not maintainable for the reason that the applicant had not obtained consent of the learned Advocate General as mandated by Section 15 (1) of the Contempt of Courts Act.

28. The 3rd preliminary objection raised by learned counsel for respondent No.1 is that the petitioner has filed an S.L.P. (Civil) No.1839 of 2022 challenging the validity of the judgment and order dated 22.11.2022 passed by this Court in Civil Misc. Review Application Defective No.142 of 2022 and several of the grounds taken before the Hon'ble Supreme Court in the aforesaid S.L.P. are a mere reproduction of the averments made in the affidavit filed in support of this application. The Hon'ble Supreme Court has already adjudicated and rejected the petitioner's claim on the basis of aforesaid pleadings and has dismissed the S.L.P. with the costs of Rs.20,000/-,

after observing that the endeavor made by the petitioner is a gross abuse of the process of the Court.

29. The learned counsel for the respondent No.1 has submitted that after the aforesaid pleadings has been adjudicated and rejected by the Supreme Court, this Court should not adjudicate the claim based on the same set of pleas as it would be against the judicial propriety.

30. As this Court has come to a conclusion that the application is not maintainable for the aforesaid two reasons, there is no need to go into any other question based on the averments made in the contempt application or the affidavit filed in its support, as after holding the application to be not maintainable, we need not examine the merits of the averments made in the application or the affidavit filed in its support. Therefore, this objection of the learned Counsel for the respondent no. 1 is not being adjudicated.

31. Accordingly, the application is **dismissed** as not maintainable.

(Subhash Vidyarthi, J.) (Rajesh Singh Chauhan, J.)

Order Date - 08.12.2023

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