

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 671 of 2024

Appellant :- Suresh Kumar

Respondent :- Kareem

Counsel for Appellant :- H.N. Singh (Sr.Adv), Dinesh Tiwari

Counsel for Respondent :- Ved Prakash Pandey

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This appeal is directed against the order dated 23.07.2024 passed in Second Appeal Misc. Case No. 4 of 2021, wherein on an application filed under Section 12 of Contempt of Courts Act, 1971 (hereinafter referred to as 'Act, 1971'), which was ordered to be treated as an application under Order 39 Rule 2-A C.P.C., learned Single Judge has come to the conclusion that the appellant has deliberately violated the interim order dated 02.09.2015 and has been directed to appear before the Court for framing of charges in contempt proceedings.

2. The application for contempt/disobedience of interim order was filed with the allegations that the interim order dated 02.09.2015 was passed in second appeal directing maintenance of *status quo* with regard to nature and possession of suit property till the next date of listing, the interim order was extended from time to time, however, on 28.11.2018 the appeal was dismissed for want of prosecution. The appeal was restored to its original number on 17.02.2020. It was claimed that interim order revived while restoring the appeal but the appellant herein, committing violation of the interim order dated 02.09.2015, executed a registered sale-deed on 12.09.2021, which was in violation of the interim order and, therefore, he was liable to be punished for contempt.

3. A response was filed contending that on 20.01.2016 and 30.04.2018, the interim order was not extended and when the appeal

was dismissed for want of prosecution on 28.11.2018, there was no interim order in force and, therefore, when the appeal was restored on 17.02.2020, the interim order did not get restored automatically.

4. Learned Single Judge, with reference to the judgment in **Vareed Jacob Vs. Sosamma Geevarghese and others 2004 (6) SCC 378**, came to the conclusion that as while restoring the appeal, the Court had restored the interim order though with the stipulation 'if any', the same revived the interim order of *status quo* and execution of sale-deed was in teeth of the said interim order and consequently passed the order, as noticed hereinbefore.

5. Learned counsel for the appellant made submissions that though interim order was granted on 02.09.2015, the same was limited till the next date of listing and during pendency of the appeal, the same was not extended by order dated 20.01.2016 and the appeal came to be dismissed for non prosecution on 28.11.2018. It was submitted that on the date when the appeal was dismissed, there was no interim order in currency and as the order dated 17.02.2020 restoring the appeal indicated 'interim order, if any, stands revived', as there was no interim order on the date of dismissal of the appeal, the said order of restoration with the caveat 'if any', did not revive the interim order. Further submissions have been made that reliance placed on judgment in **Vareed Jacob (supra)** has no application to the present case wherein on the date of dismissal, there was no interim order in currency and, therefore, the order impugned passed by learned Single Judge deserves to be set aside.

6. Learned counsel for the respondents submitted that the appeal under Chapter VIII Rule 5 of Allahabad High Court Rules is not maintainable as under Section 19 of the Act, 1971, the appeal can only be filed against the order of conviction and, therefore, the appeal deserves to be dismissed.

7. Further submissions have been made that even if the interim order was not extended beyond 20.01.2016, once while restoring the

appeal, orders were passed for revival of interim order, the appellant was bound to follow the said interim order of *status quo* and on that count also, the appeal deserves to be dismissed.

8. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. So far as maintainability of the appeal is concerned, Hon'ble Supreme Court in **Midnapore Peoples' Cooperative Bank Limited and Others Vs. Chunilal Nanda and others (2006) 5 SCC 399**, while dealing with the aspect of maintainability of the appeal against an order passed in contempt jurisdiction, *inter alia*, came to the following conclusion:

"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 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."

10. The nature of order, which has been passed by learned Single Judge, would be covered by circumstance indicated in clause-V, wherein it has been provided that if the High Court decides an issue or makes any direction relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved party is not without remedy. Such an order is open to challenge in an intra-Court appeal.

11. In the present case, learned Single Judge has decided the issue relating to merits of the dispute between the parties and, as such, the present appeal would be maintainable.

12. Coming to the merits of the case, it is not in dispute that in the second appeal, on 02.09.2015 till the next date of listing the parties were directed to maintain *status quo* with regard to nature and possession over the suit property. The said order was extended on 05.11.2015 till the next date of listing and was further extended on 19.11.2015 till the next date of listing. On 20.01.2016, the matter was passed over for the day, however the interim order, which was being extended till the next date, was not extended and ultimately on 28.11.2018, the appeal was dismissed for want of prosecution and it was ordered that the interim order, if any, stands discharged. On an application seeking restoration of the appeal, on 17.02.2020 the application was allowed, the order dated 28.11.2018 dismissing the appeal was recalled and the appeal was restored to its original number. The Court then ordered 'interim order, if any, stands revived'. The very

fact that learned Single Judge, while restoring the appeal, ordered that, 'interim order, if any, stands revived' necessarily means that in case on the day the appeal was dismissed for non prosecution, the interim order was in currency, the same would stand revived. The said order passed by the learned Single Judge, while restoring the appeal, cannot be read to revive an order which was not extended beyond 20.01.2016 and in those circumstances, it cannot be said that on 12.09.2021, when the sale-deed was executed by the appellant, there was any interim order in currency so as to bring the action within the parameters of Section 12 of the Act, 1971 of Order 39 Rule 2-A C.P.C. The action, of course, would be governed by provisions of Section 52 of Transfer of Property Act, 1882.

13. So far as judgment in the case of **Vareed Jacob (supra)** is concerned, the same would have no application to the facts of the present case as Hon'ble Supreme Court, though observed that when appeal is restored to its original number, the interim order would be deemed to have been revived, unless the Court expressly or by implication excludes the operation of interlocutory order passed during dismissal of the proceedings and their restoration. The very fact that the Court while restoring the appeal used the phrase 'if any', the same was essentially to exclude a situation wherein there was no interim order in currency at the time of dismissal of the appeal and, therefore, even in terms of the judgment of Hon'ble Supreme Court, the interim order on restoration of the appeal did not revive on its own.

14. In view of the above discussion, the appeal is allowed. The order dated 23.07.2024 passed by learned Single Judge is set aside. The Second Appeal Misc. Case No. 4 of 2021 shall stand dismissed.

15. No order as to costs.

Order Date :- 23.9.2024

P.Sri.

(Vikas Budhwar, J) (Arun Bhansali, CJ)