

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CONTEMPT APPEAL NO.1 OF 2013

IN

CONTEMPT PETITION NO.377 OF 2012

IN

WRIT PETITION NO.2545 OF 2012

The Ahmednagar District Certified
Auditors Association,
'Raj Yog', Plot No.42, Shahunagar,
Kedgaon, ahmednagar,
Tq. & Dist-Ahmednagar,
Through its: Secretary,
Shri Dattatraya s/o Vitthalrao Bomble,
Age-38 years, Occu:Certified Auditor,
R/o-Shahunagar, Kedgaon, Ahmednagar,
Tq. & Dist-Ahmednagar.

...APPELLANT
(Orig. Petitioner)

VERSUS

- 1) The State of Maharashtra,
Through: The Secretary,
(Shri Anil s/o Uddhavrao Diggikar),
Animal-Husbandry-Dairy Development
& Fisheries Department, Extension,
Mantralaya, Mumbai-32,
- 2) The Commissioner,
(Shri Madhukar s/o Sukhadev Chaudhari),
Co-operation & Registrar,
Co-operative Societies,
Maharashtra State, Central Building,
Pune-1,

- 3) The Commissioner,
(Shri Jaywant s/o Yeshwant Gaikwad),
Dairy Development, Warali Sea Face,
Mumbai-18,
- 4) The Officer on Special Duty,
(Shri Daudkha s/o Bilawal Shaha Tadwi),
Co-operative Societies,
(Animal-Husbandry-Dairy Development
& Fisheries Department),
Audit Board, Maharashtra State,
Warali, Administrative Building,
3rd Floor, A.G. Khan Road,
Sea Face, Mumbai-18,
- 5) The District Special Auditor,
(Shri Arun s/o Madhukar Gir),
(Animal-Husbandry-Dairy Development
& Fisheries Department)
Class-II, Ahmednagar,
Tq. & Dist-Ahmednagar.

...RESPONDENTS
(Orig. Respondents)

...

Mr. R.D. Bhalerao Advocate for Appellant.
Mr. S.G. Sangle, A.G.P. for Respondents.

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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATE : 17TH MARCH, 2015

ORAL ORDER :

1. The Appellant assails the order passed by
the learned Single Judge, thereby dismissing the

Contempt Petition No.377 of 2012, filed by the present Appellant.

2. Mr. Bhalerao, learned counsel for the Appellant states that the present Appeal under Section 19 of the Contempt of Courts Act, 1971 is perfectly tenable in view of the phraseology embodied under Section 19 of the Contempt of Courts Act. The Appeal is provided to the Division Bench against the order of the learned Single Judge from any order or decision in the exercise of its jurisdiction to punish for contempt. The learned counsel submits that wider interpretation has to be given to the said provision and the interpretation cannot be confined to the narrow limits. Learned counsel submits that said provision was subject matter of interpretation before the Division Bench of this Court in **Clough Engineering Ltd., Australia vs. Oil and Natural Gas Corporation, Mumbai, 2009(3) Mh.L.J. 553.** Learned counsel submits that on the face of it,

Respondents are guilty of disobeying the orders passed by this Court in as much as this Court has stayed the circular, still the Respondents implemented the said circular. After the stay was granted by Division Bench of this Court staying effect of the impugned circular, other proceedings were initiated before Principal Seat at Bombay where Appellant was not party, wherein Respondents failed in their duty by not bringing to the notice of the Division Bench at Principal Seat at Bombay the order of stay passed by the Division Bench of this Court at Aurangabad Bench. Respondents are guilty of willful disobedience of this Court.

3. Mr. Sangle, learned A.G.P. states that there were two orders of Competent Courts in force, one passed by the High Court, Bench at Aurangabad and another by the Principal Seat at Bombay. If the Respondents would have followed the orders of the High Court, Bench at Aurangabad, that would have amounted to contempt of orders of

Principal Seat at Bombay. The order passed by the Bombay High Court (Principal Seat), is subsequent in point of time. According to the learned A.G.P., there is no willful or deliberate disobedience of the order passed by this Court.

4. We have considered the submissions canvassed by the respective parties. Before we advert to the contentions canvassed by the respective parties, it would be appropriate to refer Section 19 of the Contempt of Courts Act:

"19. Appeals.- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that-

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench or the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

. Reading the said provision, it lays down that where an order or decision is that of a Single Judge, an appeal can be filed to a Bench of not less than two Judges of the Court, however the said appeal would lie only against an order or

decision of High Court in the exercise of its jurisdiction to punish for contempt. The said terminology was subject matter of interpretation before the Apex Court in a case of **Midnapore Peoples' Co-op. Bank Ltd. and others vs. Chunilal Nanda and others, (2006) 5 S.C.C. 399**. The Apex Court, after framing the questions for consideration, has held that 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. It is further unequivocally laid down that 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. In special circumstances, it may be open to challenge under Article 136 of the Constitution.

5. The Division Bench of this Court in the case of **Clough Engineering Ltd.**, referred supra, relied on the observations of the Apex Court in a case of **Municipal Corporation, Jabalpur vs. Om Prakash Dubey**, reported in (2007) 1 S.C.C. 373, wherein the Apex Court had referred to the observations in a case of **R vs. Serumaga**, 2005(2) All ER, 160, and the Apex Court reproduced the observations thus:

"23. Recently in R. v. Serumaga it was opined:

"Section 13 of the 1960 Act provides as follows:

'(1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.

(2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an

application for committal or attachment, at the instance of the applicant; and the appeal shall lie(bb) from an order or decision of the Crown Court to the Court of Appeal....

(3) The court to which an appeal is brought under this section may reverse or vary the order or decision of the court below; and make such other order as may be just....'

We have considered two interpretations of Section 13(1). The narrow interpretation is to the effect that it is not triggered until the contemnor has been convicted of, and sentenced for, the contempt. The broad interpretation is that the language 'any order or decision... in the exercise of jurisdiction to punish for contempt' is sufficiently wide to relate also to orders or decisions made in the course of proceedings which may result in a conviction of and sentence for contempt. But we have come to the conclusion that the broad interpretation is the correct one. The statutory language permits it. It provides a remedy in a case of unjustifiably prolonged custody, and it does so without impinging on cases where the allegation is of an offence other than contempt of court. Moreover, there are exceptional features which surround summary proceedings for contempt which, as the authorities make clear, demand an enlarged process of judicial scrutiny.""

. The Apex Court in the said Judgment, before reproducing the above observations, has

observed that the Judgment of Division Bench is subject to correction by Apex Court under Article 136 of the Constitution of India so also under Section 19 of the Contempt of Courts Act. The Apex Court in that matter of **Municipal Corporation, Jabalpur** was dealing with Division Bench Order of High Court vide which High Court had issued directions in exercise of its jurisdiction under Section 12 of the Contempt of Courts Act, 1971.

6. In the case of **Clough Engineering Ltd.**, referred supra, the contempt proceeding was pending and continued against the original Respondent No.4 and the original Respondent No.1 was directed to disclose names of the officers who were concerned with sale of goods and material etc. on 15th October 2007 and further order was passed that the Court may consider of additionally proceeding against the other named officers of Respondent No.1 company with contempt action, if it is warranted. It was this order i.e. the

directions given during the pendency of the contempt proceedings against original Respondent No.1, which was challenged by the original Respondent No.1 in an appeal before the Division Bench invoking Section 19 of the Contempt of Courts Act. It was not the discharge of the two respondents which was subject matter of challenge in an appeal before the Division Bench but the directions given in the said contempt petition against original Respondent No.1 to disclose the names of the officers who were concerned with the sale of goods and the further order that the Court may consider of additionally proceeding against other named officers of Respondent No.1 company with contempt action, if it is warranted, which was a subject matter of challenge.

7. The present case is on altogether different premise. In the present case, the Court declined to initiate contempt proceedings itself. The proceedings initiated for taking action of

contempt have been dismissed. Meaning thereby, the learned Single Judge declined to initiate contempt proceedings.

8. In such a case, Judgment of the Apex Court in a case of **Midnapore Peoples' Co-op. Bank Ltd.**, referred supra would squarely apply. In the case of **Municipal Corporation, Jabalpur**, referred supra, the facts were different and the provision of appeal referred, was a different provision. In the said case the Apex Court was referring to Section 13 of the Administrative of Justice Act 1960 of England, wherein the phraseology of the said provision is quite distinct and the same is not pari materia with Section 19 of the Contempt of Courts Act. Thus the said Judgment is not helpful to Appellant.

9. In light of the above, the present Appeal is not tenable. As such the Appeal is dismissed. No costs.

10. It is made clear that we have not given any findings about the merits of the contentions.

[A.I.S.CHEEMA, J.]

asb/MAR15

[S.V. GANGAPURWALA, J.]