

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 15 of 2016

C.L.Sidar S/o Shri Shriram Sidar, Aged About 56 Years Presently Working As Chief Executive Officer, Janpad Panchayat Gharghoda, Dist. Raigarh, Chhattisgarh(Contemner No.2)

---- Appellant

Versus

Smt. Gita Devi Agrawal W/o Late Surajbhan Agrawal, Aged About 68 Years R/o Lailunga, Dist. Raigarh, Chhattisgarh(Petitioner)

---- Respondent

M.A. No. 16 of 2016

P. L. Yadav S/o Shri Bedram Yadav, Aged About 51 Years Presently Working As Dy. Collector, Balod, Dist. Balod, Chhattisgarh(Contemnor No. 2)

---- Appellant

Versus

Smt. Gita Devi Agrawal W/o Late Surajbhan Agrawal, Aged About 68 Years R/o Lailunga, Dist. Raigarh, Chhattisgarh(Petitioner)

---- Respondent

M.A. No. 17 of 2016

A.K.Vaishnav (A.K. Baishnav Mentioned In Contempt Case No. 303/2012), S/o Late Shri Kalyan Das Vaishnav, Aged About 61 Years, Sub Divisional Officer (Revenue) Gharghoda, District- Raigarh, Presently Working As Sub Divisional Magistrate, Mungeli, District- Mungeli, Chhattisgarh(Contemner No.3)

---- Appellant

Versus

Smt. Gita Devi Agrawal W/o Late Surajbhan Agrawal, Aged About 68 Years R/o Lailunga, Dist. Raigarh, Chhattisgarh(Petitioner)

---- Respondent

M.A. No. 18 of 2016

Chandra Prakash Shrivastava (C.P. Shrivastava Mentioned In Contempt Case No. 303/2012), S/o Late Shri Chandra Kishore Shrivastava, Aged About- 51 Years, Chief Municipal Officer Nagar Panchayat- Lailunga, District- Raigarh, Chhattisgarh, R/o Vrindavaan Colony, P.S.- Raigarh, District- Raigarh, Chhattisgarh(Contemnor No. 1)

---- Appellant

Versus

Smt. Gita Devi Agrawal W/o Late Surajbhan Agrawal, Aged About 68 Years R/o Lailunga, Dist. Raigarh, Chhattisgarh(Petitioner)

---- Respondent

For Appellants	:	Dr. N.K. Shukla, Senior Advocate along with Mr. N. Naharoy, Advocate (in M.A. Nos. 15 & 16 of 2016). Mr. Vinay Pandey, Advocate (In M.A. Nos. 17 & 18 of 2016).
For Respondents	:	Mr. B.P. Sharma and Mr. Sameer Uraon, Advocates.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice P. Sam Koshy

C A V Judgment

Per P. Sam Koshy, Judge

06/04/2016

1. The present Misc. Appeals have been preferred under Section 19 of the Contempt of Courts Act, 1971 (for short, 'the Act') challenging the order dated 13.1.2016 passed by the Learned Single Bench in Contempt Case No. 303 of 2012. Vide the said order dated 13.1.2016, the Learned Single Bench having contempt roster upon appreciating the submissions of the Respondents as also upon hearing the present Appellants who are the contemnors before the Single Bench has ordered for framing of charge for an act of willful disobedience to the order dated 17.1.2012 passed by the High Court in Writ Petition (C) No. 142 of 2012.
2. The quintessential question which is being adjudicated upon by this Court is the preliminary objection raised by the Respondents of the maintainability of the present appeals in its present form by the Division Bench of this High Court under Section 19 of the Act.
3. The facts, in nutshell, for the better appreciation of the entire issue involved in the case are that the Respondents had preferred a writ petition before the High Court of Chhattisgarh registered as Writ Petition (C) No. 142 of 2012 against the demolition of the building in occupancy of the Petitioners by the Respondents in the said writ petition. The High Court hearing the petition on 17.1.2012 had passed an interim order restraining the Respondents therein from further demolishing the portion of the building in the occupation of the Petitioners till the Respondents take a final decision on the response to the notice issued by the Respondents therein dated 5.12.2011 to be submitted by the writ petitioners within 10 days and to proceed further in accordance with law after deciding reply to the notice submitted by the writ petitioners.

4. It is submitted that this interim order passed by the High Court dated 17.1.2012 in spite of it being brought to the notice of the contemnors they showing sheer disregard to the order of the High Court and in an act of willful disobedience to the order of restraint passed by the High Court the contemnors brushing aside the order of the High Court continued with the demolition work leading to the filing of the Contempt Case No. 303 of 2012. Notices were issued to the contemnors. However, as the reply given by the contemnors was not satisfactory, the Contempt Court initiated contempt proceedings against them and on 13.1.2016 i.e., the impugned order the Learned Single Bench has framed a charge against the Appellants herein for having acted in a manner showing willful disobedience to the order of this High Court and got the house of the Respondents herein demolished. The present Appellants and the other contemnors denied the charges and took an opportunity to lead evidence. It is this order of framing of charge which has been subjected to challenge in the present Misc. Appeals and the Respondents herein after entering appearance have raised a preliminary objection that Misc. Appeal under Section 19 would not be maintainable before the Division Bench of this Court.
5. According to the Respondents an appeal under Section 19 of the Act would be entertainable only of an order and decision of the High Court exercising its contempt jurisdiction punishing a person and not otherwise. According to the Respondents, the impugned order under challenge in the Misc. Appeals is not an order punishing the contemnors but is only a proceeding drawn in a contempt proceedings and is nothing but only framing of charge which would not be an order appealable under Section 19 of the Act. The contempt Court is yet to arrive at a conclusion whether the Appellants have to be punished or have to be discharged from the contempt proceedings. According to the Respondents, Section 19 of the Act would not come into play unless there is an order or decision of the High Court in exercise of its contempt jurisdiction to

punish a person for committing a contempt of the Court. That is to say any or every order of the Judge hearing the contempt proceedings cannot be put to appeal invoking Section 19 of the Act. It is only an order whereby the contempt Court would pass an order to punish the contemner for contempt which could be challenged in an appeal.

6. Per contra, learned Senior Counsel appearing for the Appellants submitted that in fact Section 19 of the Act envisages that an appeal can be preferred by a person against any order proceeded against for contempt. According to the learned Senior Counsel it is not that only the order of punishment which can be subjected to challenge under Section 19 rather it is a case where any effective order passed by the contempt Court which can be questioned before the Division Bench under Section 19 of the Act. As per the learned Senior counsel, the present order under challenge is also one such effective order where the learned Single Judge exercising the contempt jurisdiction has framed a charge against the Appellants and he would have to undergo the entire ordeal of facing the trial in a contempt proceedings.
7. In support of his contentions, learned Senior Counsel for the Appellants emphasised that even a proceedings of framing of charge by a contempt Court can be put to challenge in an appeal before the Division Bench under Section 19 of the Act and stressed hard that the appeal is maintainable and deserves to be heard on its merit relying upon the following judgements:
 - (i) AIR 1978 SC 1014 (Purshotam Das Goyal v. Hon'ble Mr. Justice B.S. Dhillon & Others)
 - (ii) 1996 (4) SCC 411 (State of Maharashtra v. Mahboob S. Allibhoy & Another)
 - (iii) 2000 (4) SCC 400 (R.N. Dey and Others v. Bhagyabayti Pramanik & Others)
 - (iv) 2006 (5) SCC 399 (Midnapore Peoples' Co-op. Bank Ltd. & Others v. Chunilal Nanda & Others)
 - (v) 2007 (1) SCC 373 (Municipal Corporation, Jabalpur v. Om Prakash Dubey)
 - (vi) AIR 2008 SC 944 (Special Deputy Collector (L.A.) v. N. Vasudeva Rao & Others)
 - (vii) 2009 (2) SCC 784 (Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others)

8. For proper appreciation of the issue involved in the case it would be trite at this juncture to reproduce Section 19 of the 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.”

9. A plain reading of the provisions of Section 19 of the Act would make it evidently clear that though the term **any order** has been referred to but it definitely does not mean any order even in the nature of a procedural order which could be subjected to appeal invoking Section 19 (1). Any order has to be conjointly read with decision of the High Court to punish for contempt. In other words, only those orders or decisions are appealable under Section 19(1) in which the Court adjudicates or records a finding to punish for contempt. It is not each and every order passed during the contempt proceedings that becomes appealable. So far as the judgements referred to by the learned Senior Counsel in support of his submissions relying upon the cases of **R. N. Dey** (supra), **Midnapore Peoples' Co-op. Bank Ltd.** (supra), **Municipal Corporation, Jabalpur** (supra), **Special Deputy Collector** (supra) and **Tamilnad Mercantile Bank Shareholders Welfare Association** (supra), the ratio laid down in these judgements would not apply in the instant cases for the reason that these judgements have been pronounced under entirely different factual background and neither do these judgements deal with Section 19 (1) or for that matter deal with the issue whether an appeal against any order passed by the contempt Court would be appealable under Section 19 or not.
10. So far as the other judgments referred to by the learned Senior Counsel rather has decided the matter against the Appellants herein inasmuch as in **Purshotam Das Goyal** (supra), in very clear terms the Supreme Court referring to the provision of Section 19 held that :

“it would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt: The proceeding is initiated under s. 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance, of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right under S. 19.”

11. Likewise, in the case of **Mahboob S. Allibhoy** (supra) in para 3 the Supreme Court has held that :

“On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.”

12. At this juncture, it is also trite to refer to a decision of the Rajasthan High Court reported in **1983 Cri.L.J. 1426 (S.P. Wahi and another v. Surendra Singh)** wherein also the similar issue under Section 19(1) of the Act was considered and adjudicated upon. The Division Bench of the Rajasthan High Court in para 11 in its judgement considering and relying upon the decision of the Supreme Court in the case of Purshotam Das Goyal (supra) has held as under:-

“11. ...As stated above, the orders or decisions envisaged under S. 19 (1) of the Act are those orders or decisions which are passed in exercise of the court's jurisdiction to punish for contempt. The direction to the appellants to attend the Court, in our considered opinion, is merely an interlocutory order and it does not decide any contention raised by the alleged contemnors....The direction to the appellants to attend the court cannot be said to be an order passed by the Court in exercise of its jurisdiction to punish for contempt.... The appellants have no right to appeal and it is not competent and, therefore, not maintainable. We, therefore, uphold the first preliminary objection viz., that the order dated December 3, 1982 directing the appellants (alleged contemnors Nos. 2 and 3) to attend the court on the next date i.e. Jan. 3, 1983 is not appealable under Section 19(1) of the Act.”

13. In the light of the afore given judicial pronouncements it can be safely concluded that an appeal under Section 19 would lie only from an order or a decision imposing a punishment for contempt. Unless there is an order or decision on punishment the appeal under Section 19(1) would not be competent. So long as no punishment is imposed by the Single Bench it could not be said to be exercising its jurisdiction or power to punish for contempt. If the facts of the present case are taken note of it is evidently clear that the order which has been appealed is not in any manner a conclusive order or an order by which some proceedings has been adjudicated upon or has been finally decided. Rather, it would be a case where on the basis of the pleadings made by the parties the Court has only framed charge and ordered for further recording of evidences so as to reach to a conclusion whether an act of willful disobedience has been committed by the contemner or not. That if the Applicants are able to satisfy to the Court, there is all possibility of them being discharged. Thus, the field is open and no adjudication, or decision or an order of final nature has not been passed. Thus, it is evidently clear that the order under challenge in the appeal is not an order in exercise of the jurisdiction of the High Court punishing the contemner and therefore we are of the opinion that based upon the decision in Purshotam Das Goyal (supra) as well as that in the case of Mahboob S. Alibhoy (supra), the present appeals also are not maintainable under Section 19 of the Act.

14. The view of this Court further gets fortified from the decision rendered by the Supreme Court in **1996 (6) SCC 291 (J.S. Parihar v. Ganpat Duggar & Others)** wherein it was held that an appeal under Section 19 would lie against an order in exercise of contempt jurisdiction punishing the contemner has been passed and since in that case the High Court had not made any order punishing the Respondent it was held that the appeal would not be maintainable.

15. For the foregoing reasons, the present Misc. Appeals are not maintainable and they are dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(P. Sam Koshy)
JUDGE