

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**1) CR No.8211 of 2015(O&M)
Date of decision :18.05.2016**

M/s Indian Oil Corporation Ltd.

..... Petitioner

Versus

M/s Shiv Oil Carrier and others

.....Respondents

2)

CR No.8212 of 2015(O&M)

**Ranjan Srivastva, Chief Manager (Operation), Indian Oil
Corporation Ltd.**

..... Petitioner

Versus

M/s Shiv Oil Carrier and others

.....Respondents

3)

CR No.8213 of 2015(O&M)

**Parvesh Hooda, Deputy General Manager (O) Punjab State
Office Indian Oil Corporation Ltd.**

..... Petitioner

Versus

M/s Shiv Oil Carrier and others

.....Respondents

4)

CR No.8214 of 2015(O&M)

P.K.Dass, Executive Director, Indian Oil Corporation Ltd.

..... Petitioner

Versus

M/s Shiv Oil Carrier and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Ashish Kapoor, Advocate
for the petitioner.

Mr. S.S.Behl, Advocate
for the respondent no.1

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

1. This judgment shall dispose of four revision petitions mentioned above as the common question of law and facts are involved in all these revision petitions.

2. All these revision petitions have been preferred against the notice dated 24.11.2015 issued by Sh. Najar Singh, the then learned Additional District Judge, Chandigarh and subsequent order dated 27.11.2015 passed in petition under Section 10 and 12 of the Contempt of Courts Act, 1971 (for short Act).

3. Though, the facts in all the revision petitions are similar, for the purpose of convenience, the facts are being taken from CR No. 8211 of 2015.

4. Respondent no.1-M/s Shiv Oil Carrier has filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 against the petitioners. The said application was allowed by the learned Additional District Judge, Chandigarh, vide order dated 29.10.2015 directing that the order terminating the contract and blacklisting the transporting company/respondent no.1, shall be kept in abeyance till the decision of the arbitral proceedings.

5. Respondent no.1 filed a petition under Section 12 read with Section 10 of the Act for initiating the contempt proceedings against the petitioners. Learned Additional District Judge, took the cognizance of said petition and initiated the proceedings. Hence these petitions.

6. I have heard Mr. Ashish Kapoor, Advocate, learned counsel for the petitioner, Mr. S.S.Behl, Advocate, learned counsel for respondent no.1 and have meticulously gone through the paper book.

7. Initiating the arguments, learned counsel for the petitioners contended that the learned Additional District Judge, Chandigarh was not competent to entertain the petition under Section 10 and 12 of the Act and to initiate the proceedings as it is only the High Court which could have taken the cognizance of the contempt of the subordinate Court. He relied upon cases **ICICI Bank Vs. Kusum Aggarwal**

2014(1) PLR 306 and Mam Chand Vs. Halcyon

Pharmaceutical Ltd. 2011(1) R.C.R (Criminal) 232. Thus, he contended that the action of the learned Additional District Judge, Chandigarh was totally illegal and beyond jurisdiction. So, the impugned orders are illegal and liable to be quashed.

8. On the other hand, learned counsel for respondent no.1 fairly conceded that he is unable to repel the aforesaid legal position canvassed by the learned counsel for the petitioner.

9. I have duly considered the aforesaid contentions.

10. Section 10 and 12 of the Act read as under:-

“10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself: —Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself\:" Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

“12. Punishment for contempt of court.—

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: —(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand

rupees, or with both\:" Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person: Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other

officer.

Explanation.—For the purposes of sub-sections (4) and (5),—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

11. Section 10 of the Act makes it clear that the power to punish for contempt of the subordinate Courts vests with the High Court. Section 10 of the Act does not confer any power on any subordinate Court to initiate the action on the petition under Section 10 and 12 of the Act. So, action of the learned Additional District Judge, Chandigarh in taking the cognizance of the petition filed by the respondent no.1 under Section 12 read with Section 10 of the Act was totally unwarranted, illegal and beyond jurisdiction. This Court in **Mam Chand's case (Supra)** has laid down as under:-

“Section 10 deals with the power of High Court to punish for contempt of subordinate courts whereas Section 12 provides for punishment that may be awarded to a person found guilty of the same. **It, however, does not confer any power on subordinate court to initiate action. Accordingly no petition under Sections 10 and 12 of the Act was maintainable before the Additional District Judge, Hisar. Learned Additional District Judge, Hisar had acted totally without jurisdiction in issuing notice for securing presence of the petitioner.** Consequently, the order dated 6.4.2009, Annexure P-4, the order dated 11.5.2009, Annexure P-5, and also the petition under Sections 10 and 12 of the Act filed before the learned Additional District Judge, Hisar (Annexure P/3) are hereby quashed.”

12. Similarly in **ICICI Bank's case (Supra)**, this court

has laid down as under:-

“1. The order in challenge is one passed by the Civil Judge Senior Division, Hisar directing the ICICI Bank to produce his Chairman Mr. K.P. Kamath in person or through authorised person. **The Court was responding to a prayer under Section 10 and 12 of the Contempt of Courts Act. The Court has no power to issue any such direction to persons of party before him. The power under the Contempt of Courts Act cannot be exercised by a Court subordinate to the High Court. It has no power to call for the persons of the Chairman of the Bank in the manner which it has done. The order passed on 3.12.2010 is erroneous and it is quashed.** Indeed, it has no power to entertain a petition under Contempt of Courts Act. **It is a power that resides only with the High Court and the Supreme Court.** The civil revision is allowed.”

13. In view of the consistent rule of law laid down by this Court in the cases referred above, the learned Additional District Judge, Chandigarh was not competent to entertain the petition under Section 12 read with Section 10 of the Act as this power only vests in the High Court.

14. Consequently, the present revision petitions are hereby allowed and the impugned notice dated 24.11.2015 and order dated 27.11.2015 being illegal and without jurisdiction are hereby quashed in all the petitions.

15. Before parting with this judgment, it is pertinent to mention that this Court has called the comments from Sh. Najar Singh, the then learned Additional District Judge, Chandigarh as to under what circumstances he entertained the petition under Section 12 read with Section 10 of the Act.

Comments of the officer have been received.

16. Thus, it will be appropriate if the matter is taken up on the administrative side.

18.05.2016

S.khan

**(DARSHAN SINGH)
JUDGE**