

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

CACP 6 of 2018

Date of decision : October 12, 2018

Mohinder Singh

..... Appellant

Versus

Sub Divisional Magistrate, Sunam & anr.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

PRESENT: Mr. Manish Kumar Singla, Advocate, for the appellant.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the digest? YES

...

A.B. Chaudhari, J.

This contempt appeal, purported to be under Section 19 of the Contempt of Courts Act, 1971 (for short 'the Act'), has been filed by the appellant to put to challenge the order dated 25.09.2018 passed by the learned Single Judge in COCP-2201-2018, by which the learned Single Judge held that order dated 04.06.2018 was violated and, therefore, ordered appointment of respondent No.1 as Receiver on the property of Gurdwara

Sahib Patshahi Nouvi, Gandhuwan, Tehsil Sunam, District Sangrur.

In support of the appeal, learned counsel for the appellant submitted that the learned Single Judge could not have made the order appointing Receiver since in the contempt proceedings, he did not possess the said jurisdiction. When this Court asked the learned counsel to show as to how the appeal under Section 19 of the Act is maintainable, he submitted that a bare reading of Section 19 of the Act itself shows that appeal would lie against any order irrespective of the fact whether any punishment order has been made or not by the learned Single Judge in the contempt proceedings.

We have considered the issue regarding maintainability of the present contempt appeal in extenso.

Section 19 of the Act reads, thus :-

“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 of 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.”

In our opinion, the issue as to the maintainability of appeal under Section 19 of the Act is no more *res integra*. In the case of Midnapore Peoples' Coop. Bank Ltd. vs. Chunilal Nanda and others, (2006) 5 Supreme Court Cases 399, the Apex Court stated thus in para-10:-

“10. Section 19 of the Contempt of Courts Act, 1971 [‘CC Act’ for short] provides for appeals. Relevant portion of sub-section (1) thereof is extracted below :

“19. "(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;"

The scope of Section 19 has been considered by this Court

in Baradakanta Mishra v. Justice Gatikrushna Misra [AIR 1974 SC 2255], Purushotam Dass Goel v. Justice B.S. Dhillon [AIR 1978 SC 1014], Union of India v. Mario Cabral e Sa [AIR 1982 SC 691], D.N. Taneja v. Bhajan Lal [1988(3) SCC 26], State of Maharashtra v. Mahboob S. Allibhoy, 1996(3) R.C.R.(Criminal) 195 : [1996(4) SCC 411] and J.S. Parihar v. Ganpat Duggar [1996(6) SCC 291]. These cases dealt with orders refusing to initiate contempt proceedings or initiating contempt proceedings or acquitting/exonerating the contemnor or dropping the proceedings for contempt. In all these cases, it was held that an appeal was not maintainable under section 19 of CC Act as the said Section only provided for an appeal in respect of orders punishing for contempt.”

It is clear from the reading of the above that the appeal is not maintainable under Section 19 of the Act as the said Section only provides for appeal in respect of orders punishing for contempt. We, therefore, categorically hold, in the light of the said decision of the Apex Court, that the present appeal under Section 19 of the Act is not maintainable.

Learned counsel for the appellant submitted that the appellant, then, is without any remedy since the order adversely affects the interest of the appellant.

As a matter of fact, this Court is not concerned as to what remedy is available to the appellant but, then, from a reading of paragraphs 15 to 18 of the judgment cited (supra), it appears that Letters Patent Appeal would be maintainable against the impugned order made by the learned Single Judge in the contempt jurisdiction. We quote paragraphs 15 to 18, which read, thus:-

“15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent.

17. The next question is whether the appeal was not maintainable because, it was filed by the Chairman and the Secretary-in-Charge of the Bank eo nomine, and not by the "Bank" itself. The order dated 20.11.1998 against which the appeal was filed, was passed by the learned single Judge in the course of contempt proceedings. The Chairman and the Secretary-in-Charge were parties to such proceedings having been impleaded eo nomine as respondents 1 and 4 respectively. The 'Bank' as such was not a party to the contempt proceedings. The learned single Judge proceeded on the basis that the Chairman and the Secretary-in-Charge represented the 'Bank' by referring to them as 'Respondent Bank' and directing them to reinstate the complainant (first respondent herein) and to pay all salary arrears to him. If the Chairman and Secretary-in-Charge were considered as representing the Bank for issuing such directions, certainly they could file an appeal against such directions. The directions were issued to them and they were the persons aggrieved.

18. The Division Bench, therefore, committed a serious and obvious error in holding that the appeal [MAT 4075/1998] was not maintainable under clause 15 of the Letters Patent. Though the order of the learned Single Judge dated 20.11.1998, by which several directions to the Bank with reference to first Respondent were issued, is not a final 'judgment', it is an 'interlocutory judgment' which finally decides several rights and obligations of the employee vis-a-vis the employer and, therefore, appealable under clause 15 of the Letters Patent."

In the result, the present appeal is dismissed, reserving liberty

in favour of the appellant to take such steps as are available in law.

(A.B. Chaudhari)
Judge

October 12, 2018
Kang

(Kuldip Singh)
Judge