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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 74/2019 & CM APPLs. 5174/2019 & 5175/2019**

% **Decided on: 4th February, 2019**

SNEHA RAJPAL

..... Appellant

Through: Mr. Arjun Singh Bawa &
Mr. Vishaka Gupta, Advs.

Versus

MADHAVI GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

: **Rajendra Menon, Chief Justice (Oral)**

CM APPL. 5174/2019 (*exemption*)

Allowed, subject to just exceptions.

CM APPL. 5175/2019 (*delay*)

In view of the reasons stated in the application, delay in filing the appeal is condoned.

The application stands disposed of.

LPA 74/2019

1. Seeking exception to an order dated 19.12.2018 passed by the learned Contempt Court in Cont.Cas.(C) No.959/2018 refusing to initiate contempt of court proceedings, this appeal has been filed by the appellant under Clause 10 of the Letters Patent read with Section 10 of the Delhi High Court

Act, 1966.

2. A civil suit being CS(OS) No.3296/2011 titled *Madhavi Gupta v. Sneha Rajpal* was pending between the parties in a Court of competent civil jurisdiction. On 19.09.2016, a settlement was entered into in the pending civil suit through Mediation undertaken by the Delhi High Court Mediation and Conciliation Centre and, accordingly, a decree was passed in terms of the settlement. The High Court directed on 19.11.2016 that a decree be drawn in terms of the settlement dated 19.09.2016 which shall form part of the decree.

3. *Inter alia* contending that appellant has fulfilled her obligation in terms of the settlement agreement and executed a sale deed on 04.10.2016 pertaining to the suit property situated in B-89A/2, Kalkaji, New Delhi – 110019 in favour of the respondent, handed over physical possession thereof on 24.10.2016, a contempt application was filed by contending that the respondent has not fulfilled her obligation as per the agreement in the matter by withdrawing or seeking quashing of an FIR bearing No.435/2011 for offences punishable under Section 406/420/467/468/471/120B of the Indian Penal Code, 1860. It was the case of the appellant before the contempt Court that the respondent has given an undertaking that she will withdraw the FIR or get the same quashed and as she has not done so, a contempt has been committed. The learned Contempt Court in the proceedings initiated under Section 11 read with Section 12 of the Contempt of Courts Act, 1971 (hereafter referred to as “the Act”) went through the facts of the case, came to the conclusion that there was no undertaking given as alleged and, therefore, held no contempt is made out, accordingly, dismissed the application for contempt. Being aggrieved by dismissal of the contempt

proceedings, this appeal has been filed under Clause 10 of the Letters Patent.

4. The moot question before us today is, that in a case where a contempt court refuses to exercise jurisdiction and dismisses a contempt application when an appeal is not maintainable or permissible in view of Section 19 of the Act, can the jurisdiction of this Court be exercised under Clause 10 of the Letters Patent. Even though learned counsel, in *extensor*, relied upon a judgment of the Supreme Court in the case of ***Midnapore Peoples' Co-Operative Bank Ltd. v. Chunilal Nanda & Ors.***, (2006) 5 SCC 399 to say that in such cases a Letters Patent Appeal is maintainable, we are of the considered view that the aforesaid submission of the appellant is wholly misconceived. Section 19 of the Contempt of Courts Act, 1971 reads as under:

“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.”

5. From the aforesaid, it is crystal clear that an appeal under Section 19 of the Act is available only if a punishment is ordered by the Contempt Court. If the Contempt Court refuses to take action, an appeal under Section 19 of the Act is not maintainable before this Court. Now, if the appellant is permitted to take recourse to the remedy available by filing a Letters Patent Appeal under Clause 10 of the Letters Patent Act, this Court would be permitting the appellant to challenge the order dismissing a contempt application in total disregard to and in violation to the provisions of Section 19 of the Act.

6. This, in our considered view, would amount to acting in contravention of the legislative intent and doing something which the legislature never intended to inasmuch as we will be providing a remedy of appeal when the Contempt of Courts Act, 1971 itself does not provide a remedy of appeal in such cases.

7. As far as applicability of the law laid down in the case of *Midnapore Peoples' Co-Operative Bank Ltd.* (supra) is concerned, a perusal of the said

judgment would go to show that only in such cases an appeal under Clause 10 of the Letters Patent would be applicable or a provision for Intra-Court Appeal applicable, if in a contempt proceeding the Contempt Court issues any fresh direction which is nothing but a direction in the form of a writ or a mandate to a party to do something or not to do or act in a particular manner. A direction of the nature contemplated in the case of *Midnapore Peoples' Co-Operative Bank Ltd.* (supra) is something which is in the nature of a fresh direction or mandate, i.e., a fresh direction creating new rights or liabilities between the parties and it is only in such eventuality that when in a contempt proceeding new rights or liabilities are determined, decided created that a Letters Patent Appeal or an Intra-Court Appeal is permissible. There is nothing in the case of *Midnapore Peoples' Co-Operative Bank Ltd.* (supra) to suggest that when a contempt application is dismissed simplicitor without any further direction which is in the nature of an order or direction creating fresh rights or liabilities between the parties, an appeal is maintainable.

8. In our considered view, in the present case the law laid down in the case of *Midnapore Peoples' Co-Operative Bank Ltd.* (supra) will not apply. Once the statute, namely, the Contempt of Courts Act, 1971 debars or prohibits an appeal against an order dismissing an application for contempt or refusing to exercise jurisdiction in a contempt proceedings then no appeal against such an order is maintainable, we cannot permit such a right to be created in the form of an Intra-Court Appeal. Apart from the aforesaid, the appellant in this case wants execution of a decree passed in a civil proceedings. Once there is a remedy of execution of a decree passed by a Court, then the jurisdiction under the Contempt of Courts Act cannot be

initiated (See *Modern Food Industries (India) Ltd. v. Sachidanand Dass*, (1995) Supp. 4 SCC 465).

9. Taking note of the totality of the circumstances and the legal principle as is discussed hereinabove, we see no reason to make any indulgence into the matter.

10. The appeal is dismissed with liberty to the appellant to take recourse to such remedy as may be permissible under law in case the appellant has any grievance with regard to the issue in question.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 04, 2019

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