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HIGH COURT OF CHHATTISGARH BILASPUR**Writ Appeal No. 364 of 2020**

*(Arising out of order dated 16.09.2020 passed in Writ Petition (C)
No.1744 of 2020 by the learned Single Judge)*

M/s Niranjan Lal Agrawal A Proprietorship Firm Having Its Office
At Tulsi Marg, Korba, Through Its Sole Proprietor Raj Agrawal,
S/o Late Niranjan Lal Agrawal, Aged About 38, Years, R/o House
No. 03, Tulsi Marg, Korba District Korba Chhattisgarh

---- Appellant**Versus**

1. South Eastern Coalfields Limited A Miniratna Company
Subsidiary Of Coal India Limited, Through Its Chairman-Cum-
Managing Director, Secl Bhawan, Seepat Road, Sarkanda,
Bilaspur District Bilaspur Chhattisgarh
2. Chief General Manager South Eastern Coalfields Limited,
Bishrampur Area, Aamagaon Colliery, Tahsil Bishrampur, District
Surguja Chhattisgarh
3. General Manager South Eastern Coalfields Limited, Bishrampur
Area, Aamagaon Colliery, Tahsil Bishrampur, District Surguja
Chhattisgarh
4. Sub Area Manager/engineer-In-Charge South Eastern Coalfields
Limited, Bishrampur Area, Aamagaon Colliery, Tahsil
Bishrampur, District Surguja Chhattisgarh

---- Respondents

For Appellant	: Shri Malay Shrivastava, Advocate
For Respondents	: Shri Vivek Chopda, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, Chief Justice****12.10.2020**

1. The discretion exercised by the learned Single Judge in
declining to grant the interim relief sought for, vide Annexure P/1
order, is put to challenge in this appeal preferred by the Writ
Petitioner.

2. Heard Shri Malay Shrivastava, the learned counsel appearing for the Appellant and Shri Vivek Chopda, the learned counsel representing the Respondents.

3. The writ petition was filed with the following prayers :

“10.1 The Hon'ble Court may kindly be pleased to call for the entire records leading to passing of the impugned order Annexure P-1, for the kind perusal of this Hon'ble Court.

10.2 The Hon'ble Court may further kindly be pleased to quash the order impugned Annexure P-1 dated 09/10.04.2020 passed by the respondent No.1.

10.3 The Hon'ble Court may also kindly be pleased to direct the respondents to pay an amount of Rs.64,02,397-11 ps. along with interest at the rate of 18% per annum from the date of issuance of work order i.e. 17.08.2014 till the date of actual release.

10.4 Any other relief(s) / order(s) / directions (s) in favour of petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

10.5 Cost of the petition.”

4. Along with the writ petition, the Writ Petitioner filed I.A. No.01 as well, whereby an interim prayer was made in the following terms :

“It is therefore prayed that this Hon'ble Court may kindly be pleased to allow this application and during the pendency of the instant petition, effect and operation of the impugned order dated 09/10.04.2020 (Annexure P-1) passed by the respondent No.1 by which the respondent No.1 has imposed a recovery of Rs.6,06,13,763-96 ps. upon the petitioner may kindly stayed in the interest of justice.”

5. The writ petition was admitted by the learned Single Judge on 16.09.2020. However, considering the sequence of events, the prayer for interim relief was declined as per Annexure P/1 order passed on the same day, which is to the following effect :

“Mr. Malay Shrivastava, advocate, for the petitioner.

Mr. Vivek Chopda, advocate, accepts notice on behalf of all the respondents.

The petition is admitted for hearing.

Let response be filed within 4 weeks.

Considering the fact that the matter has travelled before the High Court on a couple of occasions and the matter has been reconsidered by the respondents on a couple of occasions as directed this Court, no strong case for grant of interim relief at this juncture is made out.

Accordingly, the application for grant of interim relief stands rejected.

Let this case be listed after the reply of the respondents is received.”

6. When the appeal came up for consideration before this Court on 06.10.2020, we doubted the maintainability of the appeal preferred against the order passed by the learned Single Judge declining to grant interim relief, particularly, in view of the statutory bar dealing with the provision for 'intra court appeal'. We also required to the learned counsel to explain the position in view of the judgment passed by Full Bench of this Court in **Ajay Gupta v. State of Chhattisgarh and Others** reported in **2017 (3) CGLJ 353**.

7. Today, when the matter came up for consideration, the learned counsel for the Appellant submits that the order under challenge is virtually having finality in all respects and hence, appeal is maintainable. Reliance is sought to be placed on paragraph-20 of the verdict passed in **Ajay Gupta** (supra).

8. The appeal is a statutory remedy and as such, the right of appeal depends upon the provision available under the statute. Appeal from the verdicts passed by the learned Single Judge to the Division Bench (Intra-Court Appeal) is governed by Section 2(1) Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'the Act of 2006'). The said provision reads

as follows :

“2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction.-(1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

9. The proviso to Section 2(1) of the Act of 2006 says that no appeal shall lie from a judgment or order passed by a Single Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court. Granting or rejecting of the interim prayer happens to be an interim order and as such, no appeal is normally maintainable as per the mandate in the statute.

10. The question is whether the order under challenge passed by the learned Single Judge declining to grant interim relief could be treated as 'final order' and whether it comes within the exception carved out by the Full Bench in **Ajay Gupta** (supra). It is to be noted that any interim relief is only to sub-serve the main relief. Granting of interim relief depends upon the merit involved and merely for the reason that the Court has not granted interim relief while exercising the discretionary jurisdiction does not mean that the matter has attained finality, which is still to be decided in view of the fact that the writ petition has been admitted for considering the merits.

11. The scope of the above provision had come up for consideration before a Full Bench of this Court and after analysis of

the relevant provisions of law, finding was rendered to the effect that appeal will be maintainable only if the interim order is having the effect of finality i.e. it has otherwise decided the issue finally, leaving nothing else to be considered.

12. The observation made by the Full Bench in **Ajay Gupta** (supra) as sought to be relied upon by the Appellant (paragraph 20) is to the following effect :

“However, the matter cannot end here. Though, this matter has not been specifically referred, we are of the view that the Full Bench must also answer the question as to what are interlocutory orders because the second part of the question referred to the Full Bench deals with the scope of the orders and whether the orders have decided the rights of the parties and have an element of finality attached to them. During the course of proceedings, a Single Judge may pass many orders. Some may be procedural in nature which may not affect the rights of the parties, some may marginally affect the rights of the parties but they will still be interlocutory orders. Only those orders would not be interlocutory order which decide matters of moment, have an element of finality, or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. There may be orders which though passed at the interim stage decide material issues and which have great bearing on the final order to be passed. Some of these orders may have an element of finality attached to them. In our view, such orders cannot be termed to be interlocutory orders. Every order passed during pendency of the proceedings may be an interim order but every interim order may not necessarily be an interlocutory order.”

13. From the above, it is clear that to sustain an appeal against the interim order, the *lis* between the parties should have attained finality. Unless this requirement is satisfied, no appeal is maintainable against the interim order.

14. The reference to the Full Bench has been answered in the concluding paragraph, as given below :

“We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

15. It is quite evident that filing of appeal against the interim order can only be an exception; i.e. where it amounts to a final order; deciding the *lis* between the parties. Applying the law to the given facts and circumstances of the case, the challenge raised by the Appellant against the Annexure P/1 order is still under consideration. The learned Single Judge has only declined to grant interim relief. It is quite possible for the learned Single Judge to grant relief to the Writ Petitioner by moulding the same in an appropriate manner, if he succeeds in the writ petition.

16. In the said circumstance, we do not require any second thought to hold that the idea and understanding of the Appellant as to the maintainability of the appeal is quite wrong and misconceived. By virtue of the clear mandate of the proviso to Section 2(1) of the Act of 2006 and the scope of the said proviso, as explained by the Full Bench of this Court in **Ajay Gupta** (supra), the present appeal is not maintainable under any circumstance. It is dismissed accordingly.

17. However, considering the nature of grievance projected by the Appellant, we are of the view that the interest of justice would be satisfied, if the merit of the writ petition is considered and decided as expeditiously as possible. It is for the Appellant to move the learned Single Judge for getting the case listed and finalized accordingly.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Anu