

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

% Date of decision: 06th November, 2020

+ LPA 246/2020, CM APPLs. 22526/2020 & 23859/2020

MRS. JAMNA DATWANI

..... Appellant

Through: Mr. Deepak Khosla, Adv.

versus

MR. KISHIN DATWANI

..... Respondent

Through: Mr. Vivek Sharma, Adv. &
Ms. Mamta Gautam, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE ANU MALHOTRA

V. KAMESWAR RAO, J. (ORAL)

1. By this order, we shall decide the objection taken by Mr. Vivek Sharma, Advocate appearing on behalf of the respondent on the maintainability of this Intra-Court appeal. The appeal has been filed by the appellant challenging the order of the learned Single Judge dated September 24, 2014 in *Cont.Cas.(C) No. 652/2014* titled *Jamna Datwani vs. Kishin Datwani*, on the basis of a liberty granted by this Court in CCP No. 87/2020 vide its judgment dated September 02, 2020. We may state, the liberty granted was as permissible in law.

2. The allegation of contempt by the appellant in *Cont.Cas.(C) No. 652/2014* was that the Division Bench vide order dated May 02,

2014 passed in FAO (OS) No. 592/2013, had directed for certain financial maintenance arrangements for the appellant, to be complied with by the respondent. The learned Single Judge had dismissed the petition vide order dated September 24, 2014 on the ground that the contempt proceedings are not maintainable for enforcement of orders relating to payment of money. Even a review petition preferred by the appellant was dismissed by the learned Single Judge.

3. Mr. Vivek Sharma, learned counsel for the respondent had submitted that in view of the judgment of the Supreme Court in the case of *Midnapore Peoples' Cooperative Bank Ltd. and others v. Chunilal Nanda and others*, (2006) 5 SCC 399, the instant Intra-Court appeal is not maintainable.

4. In response, it was the submission of Mr. Khosla that for invocation of the Contempt of Courts Act, 1971 ('Act of 1971', for short), four ingredients are necessary; (a) there must be an order of a Court of Law that binds a party to do something or restricts him from doing something; (b) such order must be capable of only one singular unequivocal interpretation; (c) there must be lack of compliance and; (d) the lack of compliance should be willful and deliberate.

5. According to him, if any one of the ingredients are missing, there can be no punishment for contempt under the Act of 1971. He stated that by means of the impugned order, the learned Single Judge recognized the ingredients at (a), (b) and (c) above. However, for the reasons stated in para 7 of the impugned order, the

learned Single Judge was of the view that the ingredient (d) was missing.

6. Mr. Khosla stated that the said conclusion of the learned Single Judge was not only erroneous but the learned Single Judge went on to opine on questions of law that purported to decide the rights of the appellant. In other words, the learned Single Judge has passed a decision on the merits of the dispute which in contempt proceedings was not within his limited jurisdiction to do so. He stated that the order impugned gives right to the appellant to prefer an appeal under Section 19 of the Act of 1971 and also prefer an appeal under Clause 10 of the Letters Patent and it is only to avoid unnecessary controversy and / or prolixity of litigation that the appellant had chosen to prefer a consolidated appeal under Clause 10 of the Letters Patent rather than multiple appeals, piecemeal under diverse provisions of law that would be adjudicated by diverse Benches.

7. In support of the aforesaid submission, Mr. Khosla stated that the conclusion of the learned Single Judge that ingredient (d) is missing is concerned, by virtue of the ratio settled by the Supreme Court in ***Baradakanta Mishra vs. Justice Gatikrushna Misra AIR 1974 SC 2255***, which has been subsequently referred to by the Supreme Court in ***Midnapore Peoples' Cooperative Bank Ltd. and others (supra)***, even an appeal under Section 19 of the Act of 1971 is admissible when the learned Single Judge in para 7 of the impugned order agreed to consider initiation of proceedings for contempt but after due consideration and hearing, finds the alleged

contemnor not guilty of contempt or having found him guilty, declined to punish him.

8. He stated, the learned Single Judge had agreed to go forward in adjudication of the contempt petition but stopped beyond a certain point because though he found ingredients (a), (b) and (c) to be present, ingredient (d) was missing i.e. failure on the part of the respondent to pay was not willful and deliberate. Therefore, according to Mr. Khosla, the appeal under Section 19 of the Act of 1971 is clearly admissible as the learned Single Judge did agree to proceed for contempt but after due consideration and hearing found the alleged contemnor not guilty of contempt or having found him guilty, declined to punish him.

9. The next submission of Mr. Khosla was by referring to para 9 of the impugned judgment whereby by deciding / restricting the remedy, the appellant could pursue, the learned Single Judge in effect, delivered the judgment on the merits of the dispute.

10. Alternatively, he heavily relied upon para 11(iii) and / or para (v) of the judgment of the Supreme Court in *Midnapore Peoples' Cooperative Bank Ltd. and others (supra)* to contend that the Supreme Court did not overrule any of the judgments cited in para 10 including *Baradakanta Mishra (supra)*.

11. That apart, his alternative argument is, even if it is to be argued against the appellant that the impugned order was not passed in exercise in contempt jurisdiction and therefore, no appeal under Section 19 of the Act of 1971 lies then it follows that the impugned order was not passed on a contempt petition but in a petition

proposing action for contempt meaning a petition that when filed ought to have been classified, rightly as, say OMP and only in the event, the Court proceeds to exercise its contempt jurisdiction, it ought to have directed the Registry to convert into a contempt case. That being so, the impugned order being a judgment within the meaning of the word, as used in Clause 10 of the Letters Patent, it is amenable to the Intra-Court appeal under the aforesaid provision. In substance, the submission of Mr. Khosla is that the present appeal is maintainable before this Court.

12. On the other hand, the submission of Mr. Vivek Sharma has already been noted above and needs no repetition.

13. Having heard the learned counsel for the parties, the issue, which has been raised by Mr. Sharma is no more *res-integra* and the same is covered by the judgment of the Supreme Court in ***Midnapore Peoples' Cooperative Bank Ltd. and others (supra)*** and of the Division Bench of this Court in the case of ***Dolly Kapoor & Anr. vs. Sher Singh Yadav, LPA 164/2012 decided on February 28, 2012***, wherein the Division Bench has held that the intra-court appeal shall lie only when the order is of punishing for contempt and not when the order of the Single Judge is of declining to initiate or drop proceedings for contempt or of acquitting or exonerating the contemnor. The Division Bench in paras 3, 4, 5, 7 & 8 has held as under:-

“3. We are however unable to agree. It has been held in *Fuerst Day Lawson Vs. Jindal Exports Ltd. JT (2011) 7 SC 469* that where a special self contained statute, as the

Arbitration Act in that case, does not provide for Intra-Court appeal, the provision of Letters Patent cannot be invoked to negate the statute to maintain such appeal. It was further held that a right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation – the express provision need not refer to Letters Patent; but if on a reading of the provision it is clear that all further appeals are barred, then even Letters Patent would be barred. We are of the view that the Contempt of Courts Act, 1971 promulgated to “define and limit the powers of certain Courts in punishing contempts of Court and to regulate their procedure in relation thereto” is a self contained Code and the same having provided for appeal only against order of punishment for contempt and not against the order refusing to issue notice of contempt has taken away the right if any of appeal under the Letters Patent.

4. As far as the order in the instant case is concerned, it is not of dismissal of contempt petition, after having initiated contempt proceedings, but of refusal to exercise contempt jurisdiction. The Supreme Court in Baradakanta Mishra v. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court (1975) 3 SCC 535 held that the exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemnor, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt, it is only when the

Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt; the exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. It was further held that where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. The same view was reiterated in *Purshotam Dass Goel v. Hon'ble Mr. B.S. Dhillon* (1978) 2 SCC 370. Again in *D. N. Taneja v. Bhajan Lal* (1988) 3 SCC 26 it was held that when the High Court acquits a contemnor, the High Court does not exercise its jurisdiction for contempt.

5. We are of the view that an order refusing to entertain a contempt petition and / or to issue notice thereof is not a judgment for the same to be appealable under Letters Patent or under Section 10 of the Act. We are also of the view that the policy enshrined in Section 19 of the Act of limiting appeals only to cases where punishment for contempt is made out is in public interest. It intends to curtail vexatious litigation. If a party to a litigation could pursue applications in Courts of appeal to commit his opponents to contempt of Courts, when the trial Court whose process, it was alleged to have disobeyed was of the opinion that no vindication of its own order was necessary, would amount to encouraging

vexatious litigation. Refusal to exercise contempt jurisdiction does not determine any right and hence is not a judgment. As aforesaid, such refusal is in the exercise of discretionary powers and refusal of such exercise does not constitute a judgment as defined in Shah Babulal Khimji v. Jayaben D. Kania (1981) 4 SCC 8. A complainant or a relator in a contempt proceeding, who moves the machinery of the Court for punishing an alleged contemnor, only brings to the notice of the Court certain facts which, in his opinion, constitute a contempt. He has no other role. The proceedings thereafter are between the Court and the alleged contemnor and if the Single Judge, of whose order contempt is alleged, is of the opinion that no case for entertaining contempt is made out, the Single Judge does not determine any right of the complainant / relator. We are supported in this view by the Full Bench of the Bombay High Court in *The Collector of Bombay v. Issac Penhas* MANU/MH/0027/1947 (followed recently in *The Bombay Diocesan Trust Association Pvt. Ltd. v. The LPA 164/2012* Page 5 of 8 *Pastorate Committee of the Saint Andrews Church* MANU/MH/0520/2008) as also by the Division Bench of the Madras High Court in *Shantha V. Pai v. Vasanth Builders, Madras* MANU/TN/ 0147/1990. We may notice that a Division Bench of this Court in *Inderjeet Singh (Since Deceased) v. R.K. Singh* MANU/DE/0064/2009 also, after noticing *Midnapore Peoples' Co-op. Bank Ltd. (supra)* held the Intra-Court appeal against the order discharging

the contempt notice to be not maintainable. The High Court of Punjab & Haryana also, in Sh. A.S. Chatha v. Malook Singh MANU/PH/0192/1994 has held the order in a contempt petition, taking a lenient view and giving another chance to comply with the order, to be not a “judgment” and appeal under letters patent to be not maintainable thereagainst. To the same effect is the view of the High Court of Himachal Pradesh in Kundan Ram v. Darshan MANU/HP/0080/1994

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7. As far as the judgment cited by the counsel for the appellant is concerned, we are unable to cull out any such proposition therefrom rather the Apex Court in the said judgment framed the following questions as arising for consideration therein:-

“(i) Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under section 19 of the Contempt of Courts Act, 1971 ? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits, is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?

(iii) *In a contempt proceeding initiated by a delinquent employee (against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer-Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension shall be deemed to have been revoked ?”*

and answered the same as under:-

“I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

8. *It would thus be seen that it was categorically held that appeal to a Division Bench from an order of the Single*

Judge lies only when the order is of punishing for contempt and not when the order is of declining to initiate proceedings for contempt or dropping the proceedings for contempt or of acquitting or exonerating the contemnor. It was further held by the Apex Court that the appeal under the Letters Patent as distinct from under Section 19 of the Contempt of Courts Act may lie also against orders incidental to or connected with the contempt proceedings. However in the instant case the order declining to initiate contempt proceedings cannot be said to be incidental or connected to the contempt proceedings and cannot thus be held to be appealable. It may also be noted that the proceedings, of order wherein contempt is averred, were under Article 227 of the Constitution of India; no appeal under letters patent lies against the order in such proceedings.” (Emphasis supplied)

14. In the case in hand, vide the impugned order, the learned Single Judge has refused to entertain the contempt petition on the ground that the appellant has an alternate efficacious remedy seeking execution of the order of the Division Bench dated May 02, 2014 under the provisions of the CPC. Suffice would it be to state that this conclusion of the learned Single Judge amounts to declining to initiate proceedings for contempt. If that be so, the case of the appellant is squarely covered by the judgment of the Supreme Court in **Midnapore Peoples' Cooperative Bank Ltd. and others** (*supra*) and the Division Bench in **Dolly Kapoor & Anr.** (*supra*).

15. The submission of Mr.Khosla based on the judgment of the Supreme Court in the case of *Baradakanta Mishra (supra)* is concerned, the same is also not tenable as the Division Bench has also referred to the said judgment, in para 4 of its judgment, while coming to the conclusion as reflected above.

16. The plea of Mr. Khosla that the learned Single Judge has by deciding / restricting the remedy, has delivered the judgment on the merits of the dispute by relying upon *Shah Babulal Khimji vs. Jayaben D. Kania, (1981) 4 SCC 8* is concerned, the same is also not tenable as the Division Bench has held that the refusal to exercise contempt jurisdiction does not determine any right, hence is not a judgment, as defined by the Supreme Court in *Shah Babulal Khimji (supra)*.

17. In view of the above, we are of the view that the objection taken by Mr. Sharma on the maintainability of the Intra-Court appeal needs to be accepted and the appeal filed by the appellant laying a challenge to the order dated May 02, 2014 of the learned Single Judge under Clause 10 of the Letters Patent is not maintainable and as such, is dismissed.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

ANU MALHOTRA, J

NOVEMBER 06, 2020/ak