

SL.113 to 116.

March 18, 2021.
MNS

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

MAT 25 of 2021
+
CAN 1 of 2021
Col. (Retd.) Dipankar Dhar
Vs.
Kumar Krityanand Singh and other
With
MAT 26 of 2021
+
CAN 1 of 2021
Rudra Chatterjee
Vs.
Kumar Krityanand Singh and other
With
MAT 27 of 2021
+
CAN 1 of 2021
Dipankar Chatterjee and others
Vs.
Kumar Krityanand Singh and other
With
MAT 28 of 2021
+
CAN 1 of 2021
Gaurav Agarwal and others
Vs.
Kumar Krityanand Singh and other

(Through Video Conference)

Mr. S. N. Mukherjee,
Mr. A. Jain,
Mr. Subham Ghosh,
Mr. D. Sarkar

...appellants in
MAT 25 to 27 of 2021.

Mr. Pabitra Pal Chowdhury,
Mr. Subham Ghosh

...for the appellants in
MAT 28 of 2021.

Mr. Saptansu Basu,
 Mr. S. K. Mitruka,
 Mr. A. Mitruka,
 Mr. M. Bhowmick,
 Mr. Mayank Pathak

...for the respondents.

A preliminary objection has taken on maintainability of the appeals before this Court.

Learned senior counsel appearing for the respondents places reliance on the language of Sections 10 and 22 of the Contempt of Courts Act, 1971 in support of the proposition that the power of the High Court to punish contempts of subordinate courts is co-extensive with that of violations of the High Court's orders. That apart, it is argued by learned senior counsel for the respondents that Section 22 of the Act of 1971 specifically provides that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of courts. As such, it is submitted that the existence of Order XXXIX Rule 2A of the Code of Civil Procedure does not debar the High Court from issuing a Rule of contempt even for violation of an order of injunction passed by a subordinate court.

Learned senior counsel cites *Welset Engineers and another Vs. Vikas Auto Industries and others*, reported at (2015) 10 SCC 609, in support of the

proposition that the power of the High Court to issue to rules of contempt stems not only from the Contempt of Courts Act but also from Article 215 of the Constitution of India. The powers conferred by the Constitution cannot be either abridged by any legislation or abrogated or cut down, nor can there be control or limitation on the right by any statute or by any provision of the Code of Civil Procedure.

Learned senior counsel for the respondents next cites the judgment of *Midnapore Peoples' Co-op. Bank Limited and others vs. Chunilal Nanda and others* reported at AIR 2006 SC 2190. By placing particular reliance on paragraph 11 of the said judgment, learned senior counsel submits that an appeal under Section 19 was held by the Supreme Court to be maintainable only against an order of decision of the High Court passed in exercise of jurisdiction to punish for contempt, that is, an order imposing punishment for contempt. Neither an order declining to initiate proceedings for contempt, nor any order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, it was held, is appealable under Section 19 of the 1971 Act.

In support of his arguments, learned senior counsel next cites a judgment of *Renu Agarwal and others Vs. Sushila Devi Agarwal* reported at 2017(3) CLJ (CAL) 193. In the said judgment, a learned Single Judge of the principal seat of this Court had held that an application under Order XXXIX Rule 2A of the Code and one under the Contempt of Courts Act, 1971, were remedies available to the party complaining of breach of an injunction order, following *Welset Engineers* (supra). However, it was clarified that in *Samee Khan vs. Bindu Khan*, reported at AIR 1998 SC 2765, the Supreme Court felt that if the order stood discharged, the punishment for its violation when it was in force should be less severe.

Learned senior counsel further places reliance on the judgment of *Purushotam Dass Goel Vs. Hon'ble Justice B. S. Dhillon and others* reported at AIR 1978 Supreme Court 1014, where the Supreme Court held that it would appear from a plain reading of the section that an appeal shall lie to that Court as a matter of right from any order or decision of a bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the

proceeding for contempt. The proceeding is initiated under Section 17 by issuance of a notice and thereafter there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to the Supreme Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question.

Controverting the said arguments, learned senior counsel appearing for the appellants in MAT 25 to 27 of 2021 submits that when a question of jurisdiction is involved, an appeal is very much maintainable even against an order of issuance of a Rule of contempt, since what has to be seen is whether the learned Judge passing such order had jurisdiction to issue a Rule.

Learned senior counsel, while placing reliance on *Samir Kumar Sarkar Vs. Maharaj Singh* reported at (1982) 2 CHN 213, rendered by a Division Bench of this Court, argues that contempt of court is

essentially a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. It is not a right of a party to be invoked for the redress of his grievances. The Division Bench went on to clarify that when the matter relates to mere infringement of an order as between the rival parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order. The proper and the correct mode, it was held, was to take recourse to Order XXXIX Rule 2A of the Code of Civil Procedure. Contempt jurisdiction should not be invoked in such cases which is primarily reserved for what essentially brings the administration of justice into contempt or unduly weaken it.

Learned senior counsel for the appellants next places reliance on *Durgaprasad Gupta Vs. Sahadeb Dey and others* reported at (1998) 1 Cal LT 447 in support of the proposition that in the advent of Order XXXIX Rule 2A, Section 2C(ii)(iii) of the Contempt of Courts Act, 1971 for the nature of allegations made in the application is not maintainable, since it is not a criminal contempt. The High Court is devoid of power to initiate a contempt proceeding on the basis of the allegations made. The petitioner made an endeavour to give a

dodge to the fact in vain under the canopy of criminal contempt.

Learned senior counsel fairly submits that the said case arose from a criminal contempt. However, it is argued that the court categorically held therein that the provision of Order XXXIX Rule 2A operates as a bar to the invocation of jurisdiction by the High Court under the Contempt of Courts Act, 1971.

Learned senior counsel appearing for the appellants next cites the judgment of *Laxmi engineering Works vs. P.S.G.Industrial Institute* reported at (1995) 3 Supreme Court Cases 583. Placing particular reliance on paragraph 10 thereof, it is argued that a review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Consumer Protection Act such as District Forums, State Commissions and the National Commission are not courts, though invested with some of the powers of a civil court. Relying on such proposition, it is argued that the Rule issued by the learned Single Judge, impugned in the present appeal, was also in respect of alleged contempt of an order passed by the State Consumer Disputes Redressal Forum, which is not a subordinate court within the purview of Section 10 of the 1971 Act.

Learned senior counsel next cites the judgment of *Niranjan Todi Vs. Nandalal Todi and others* reported at *AIR 2015 Cal 283*. By placing reliance on the said judgment, learned senior counsel reiterates the proposition that the special power and jurisdiction of the High Court under Clause 15 of the Letters Patent to entertain and appeal from any judgment would remain unaffected. Where a question of jurisdiction of the court to entertain or proceed with a suit or proceeding was involved, and a decision on that question was given, such decision was a 'judgment' within the meaning of Clause 15 of the Letters Patent (Cal).

In the present case, it is submitted, since a question of jurisdiction of the learned Single Judge has been raised, there is sufficient scope to maintain the appeal, if not under the Contempt of Courts Act, under Clause 15 of the Letters Patent.

Learned senior counsel then cites the judgment of *Shah Babulal Khimji Vs. Jayben D. Kania and another* reported at (1981) 4 *Supreme Court Cases* 8 in support of the proposition that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of court's jurisdiction or the question of

limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of the Letters Patent.

Learned senior counsel next cites a Division Bench judgment of *Modi Korea Telecommunication Ltd. Vs. Appcon Consultants Pvt. Ltd.* reported at (1992) 2 CHN 107 in support of the same proposition that where a question of jurisdiction of the court to entertain or proceed with a suit or proceeding is involved and a decision on the question is given, such decision is a "judgment" within the meaning of Clause 15, Letters Patent (Cal) and is appealable.

Further reliance is placed on a Division Bench judgment of this court in *Baranagor Jute Factory Pic. (in Liqn) and others Vs. O/L, High Court, Calcutta*, reported at 2018(2) CHN (Cal) 63, wherein it was held, inter alia, that directions passed by the learned Single Judge do not prejudice any of the parties and as such do not give rise to any cause of action at that stage. The Division Bench was of the opinion that the learned Single Judge till then had not decided on any issue and postponement of other issues as indicated in the impugned order did not amount to a "judgment" as contemplated in Clause 15 of the Letters Patent and accordingly no appeal lay therefrom.

However, in this present case, it is contended, breach has been caused inasmuch as the Rule issued is a preliminary adjudication, at least at the prima facie stage, as regards the violation having been allegedly committed by the appellants, and, as such, the present appeals are maintainable.

Learned counsel appearing for the appellants in MAT 28 of 2021 argues, apart from adopting the arguments of learned senior counsel appearing for the appellants in the other matters, that the appellants in the said appeal were not parties to the proceeding in respect of which the Rule of contempt was issued and as such, their personal presence, as directed by the learned Single Judge, ought to have been dispensed with. It is further submitted that there was a material suppression by the applicants in the contempt application in so far as a proceeding under Section 27 of the Consumer Protection Act has already been initiated by the applicants.

Hence, it is submitted that, for the same alleged violation, the appellants cannot be vexed twice.

Upon considering the arguments of the parties on the question of maintainability, it appears that the impugned order issuing a Rule of contempt has two components.

The first allegation in the contempt application was in respect of violation of a civil court's order and the second, a violation of an order passed by the State Consumer Redressal Forum.

Even if it were to be held that the contempt application is not maintainable regarding the order passed by the Tribunal upon accepting such contention of the appellants, the other question as to whether the alleged violation of the civil court's order could invite such a Rule being issued, remains. As such, the question as to whether the contempt lay in respect of the violation of the consumer forum's order was maintainable is rendered academic, since the appellants have to satisfy this Court as to the maintainability of the other alleged violation of the civil court's order as well.

The ratio as laid down in the judgment cited by the respondents, in *Welset Engineers* (supra), that the power conferred on the High Courts under Article 215 of the Constitution of India is unbridled and cannot be fettered by any provision of a statute which is subordinate to the Constitution.

However, it is seen that the said judgment was rendered in the context of Chapter 58 of the Bombay High Court (Original Side) Rules and the Contempt of Courts (Bombay High Court) Rules, 1994 which

pertain to proceeding for contempt under Article 215 of the Constitution of India as well as Contempt of Courts Act, 1971.

It was held that those rules lay down the specific procedure for dealing with a case under the Contempt of Courts Act. The provisions of Order XXXIX Rule 2A of the Code do not override the provisions of those rules. As such, although the principle that the powers conferred under Article 215 of the Constitution of India cannot be curtailed by subordinate legislation applies to the present case, the specific reference to Order XXXIX Rule 2A of the Code was in a different context in the said case and, as such, is not directly applicable here.

Regarding *Midnapore Peoples Co-op. Bank* (supra), the Supreme Court categorically held that 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. Neither an order declining to initiate proceeding for contempt nor an order initiating proceeding for contempt was appealable under Section 19 of the 1971 Act. Although such judgment is relevant in the context of an appeal under Section 19 of the 1971 Act, in view of this

Court being a Chartered High Court and the applicability of Clause 15 of the Letters Patent, such fetter may be diluted in the event it is found that there is scope of maintainability of the appeal under Clause 15 of the Letters Patent. As such, although the question of maintainability of an appeal under Section 19 of the 1971 Act is doubtful, it has to be otherwise considered whether the present appeal is maintainable under Clause 15 of the Letters Patent.

In *Purushotam Dass Goel* (supra), it was held that an appeal shall lie to the Supreme Court as a matter of right from any kind of order or decision of the High Court if the order had been made in exercise of jurisdiction to punish for contempt. As such, the said judgment, as reflected from the ratio laid down therein, pertains to a proceedings initiated under Section 17 by issuance of a notice and, as such, is relevant in the present context, since, by the present impugned order, a Rule of contempt had been issued.

However, since the said judgment also was rendered in connection with the maintainability of an appeal under the 1971 Act, Clause 15 of the Letters Patent was not taken into consideration as such.

However, even if the ratio relied on by learned senior counsel appearing for the appellants that an appeal was maintainable under Clause 15 of the Letter Patents on the ground of absence of jurisdiction, the next question to be considered is whether there was, on the face of it, lack of jurisdiction of the learned Single Judge to issue a Rule of contempt in the matter.

The primary line of argument on that score, advanced by the appellants, is that in view of the existence of order XXXIX Rule 2A of the Code, the contempt jurisdiction should not be invoked in such cases which is primarily reserved for what essentially brings the administration of justice into contempt or unduly weaken it.

At least two Division Bench judgments have been cited on such score by the appellants.

However, as discussed above, it has been categorically laid down by the Supreme Court in *Welset Engineers* (supra) that the power flowing from Article 215 of the Constitution cannot be curtailed by subordinate legislation. Order XXXIX Rule 2A of the Code cannot be held to be an absolute bar, being the creature of the Code of Civil Procedure which is a legislation subordinate to the Constitution.

That apart, even in *Renu Agarwal* (supra) a learned Single Judge of this Court followed the principle laid down in *Welset Engineers* (supra), although it was indicated that, as per *S. Khan* (supra) if the order stood discharged, the punishment for its violation when it was in force should be less severe. In the present case, although it has been contended that the orders were not subsisting on the date when the contempt Rule was issued, the alleged contemnors are not absolved of contempt for contumacious acts committed during the period of subsistence of such order.

A plain reading of Section 10 in conjunction with Section 22 of the Contempt of Courts Act categorically confers power on the High Court co-extensive with that of the power to punish contempt of its own orders also to orders of subordinate courts. Even if it were to be held that the Consumer forum was not a court within the contemplation of the 1971 Act, the alleged violation of the civil court's order still remains, thereby conferring validity to the jurisdiction of the learned Single Judge. Moreover, it is evident from the order impugned in the present appeals that merely a Rule was issued and no direct prejudice was caused and/or any right or interest of the parties were decided finally.

As such, at this juncture, this Court cannot go into the question as to whether the learned trial Judge had jurisdiction to entertain the contempt application itself. Such question can very well be canvassed at the juncture when the contempt application itself is taken up for hearing by the learned Single Judge.

Apart from the above considerations, it is evident that the learned Single Judge recorded that the alleged contemnors had not appeared before the court despite previous service of notice, which cannot be ignored in the present case.

Be that as it may, even without going into the merits of the impugned order, it can safely be held on the basis of the judgments cited by the respondents that the High Court has ample jurisdiction under the 1971 Act to entertain a contempt application despite the availability of the alternative remedy under Order XXXIX Rule 2A of the Code. Moreover, since Article 215 of the Constitution also confers similar jurisdiction on the High Court, it cannot be held that Order XXXIX Rule 2A of the Code would be an absolute bar to the exercise of jurisdiction, so as to vitiate the impugned order issuing a Rule of contempt on the ground of jurisdiction.

Hence, although the appeals might have been maintainable otherwise under Clause 15 of the Letters Patent, although not under Section 19 of the 1971 Act, in view of our observations that the learned Single Judge did not lack jurisdiction, at least *prima facie*, to entertain the contempt application, the objection with regard to maintainability of the appeals has to be upheld.

The plinth of the arguments of the appellants on maintainability was the lack of jurisdiction of the learned Single Judge, which conclusion cannot be arrived at in view of the discussions above.

Accordingly, MAT 25 of 2021, MAT 26 of 2021, MAT 27 of 2021 and MAT 28 of 2021, along with all connected applications, are dismissed as not maintainable without any order as to costs.

It is made clear that the observations on jurisdiction of the learned Single Judge to punish the alleged contemnors have been made in this order only on a tentative basis, for the limited purpose of considering whether an appeal would be maintainable under Clause 15 of the Letters Patent (Cal).

It will be open to the parties to raise any objection as to jurisdiction and for the present respondents to controvert such allegations on their

own merits, if raised at the time of final hearing before the learned Single Judge.

The learned Single Judge will be free to proceed independently without being influenced in any manner by the observations on such question made in this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Kausik Chanda, J.)