

\$~6 [2021]

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

% Date of decision: 17.09.2021

+ **CONT.APP.(C) 2/2020**

PUSHPA SINGH

..... Appellant

Through: Mr. Sanjay Mani Tripathi, Adv.

versus

S.N SINGH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Court Hearing]

RAJIV SHAKDHER, J.

1. This is an appeal preferred under Section 19 of the Contempt of Courts Act, 1971 [in short, “1971 Act”] against the order dated 23.01.2020, passed by the learned single judge in an application i.e., CM No.2906/2019, filed in a contempt petition i.e., CONT. CAS. (C) No.601/2015, which was disposed of, on 11.01.2018

1.1. We may note that, the aforementioned contempt petition was disposed of, vide order dated 11.01.2018.

2. Via the impugned order, the learned single judge, in the operative part, has observed as under:

“...By the instant application, the applicant - petitioner however seeks to agitate the issues which were earlier agitated when the contempt petition came to be filed in April, 2017. In the event, the applicant - petitioner is having a fresh cause of action, he would be at liberty to agitate any of the issues on the fresh cause of action.

In view of the above, the application filed is considered to be misconceived and is rejected accordingly.”

3. In our opinion, the appeal under Section 19 of the 1971 Act would, not lie.

3.1. In this context, the observations contained in paragraph 11 of the judgment rendered by the Supreme Court in ***Midnapore Peoples' Co-op. Bank Ltd. and Ors vs. Chunilal Nanda and Ors.*** (2006) 5 SCC 399, being apposite, are extracted hereafter:

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

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 the 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).

The first point is answered accordingly.”

3.2. A perusal of the judgment rendered in *Midnapore Peoples' Co-op. Bank Ltd.* case would show that, it summarized the position of law after adverting to a whole host of judgments, including one of the first judgment on the issue, rendered by the Supreme Court in *Baradakant Mishra vs. Justice Gatikrushna Misra* (1975) 3 SCC 535.

3.3. In the instant case, as noticed hereinabove, the learned single judge has rejected an application, which was filed in a disposed of contempt petition. Therefore, the principle articulated in sub-paragraphs (I) and (II) of paragraph 11 of *Midnapore Peoples' Co-op. Bank Ltd.* case would apply.

4. We may, however, observe, that (if the appellant is to be believed) it is a hard case. The respondents, we are told have not fulfilled their obligations, as recorded in the order dated 11.01.2018 passed by the learned Single Judge in the contempt case. However, in view of what has been indicated hereinabove, the appellant, it appears, is deprived of the fruits of her labour because she has not taken recourse to an appropriate remedy.

5. The appeal is, accordingly, dismissed with liberty to the appellant to take recourse to an appropriate remedy, albeit, as per law.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

SEPTEMBER 17, 2021/pmc [Click here to check corrigendum, if any](#)