

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA

M.A.T 1102 OF 2021
WITH

IA NO: 1 of 2022

Arati Mukherjee

Vs.

The State of West Bengal & Ors.

Appearance:

For the Petitioner : **Mr. Sagar Bandyopadhyay, Adv.**
Ms. Soma Kar Ghosh, Adv.
Mr. Abhishek Banerjee, Adv.
Mr. Arabinda Pathak, Adv.

For the State : **Mr. Anirban Roy, Ld. G.P.**
Mr. Raja Saha, Adv.
Mr. Suman Dey, Adv.

Judgment On : 29.04.2022

Harish Tandon, J.:

Initially the impugned order appears to us to have been passed innocuously when a liberty was granted to the contemnor

to file an application for recalling the order complained of but on a deep scrutiny and its ramification on the contempt jurisdiction invited our attention to recapitulate the law of contempt as well as the law of limitations having overreached. The genesis of the order complained of was passed on 16th February, 2012 when a writ petition was filed for issuance of the Pensionary Payment Order in favour of the petitioner of the contempt application who attended superannuation. The direction was passed upon the Director of School Education, Government of West Bengal to take steps for issuance of the Pensionary Payment Order within four weeks from the date of the receipt of the order. The contempt application was immediately taken out alleging wilful and deliberate violation of the said order in not issuing the Pensionary Payment Order despite the specific direction having passed in this regard. Several directions were passed in the writ petition and ultimately, in 2021 more particularly, in 15.9.2021 when the said contempt application was listed before the Single Bench, the direction was passed in the form of a liberty granted to the State Respondents to file an application for recalling of the said order dated 16.2.2012 within two weeks after the ensuing puja vacation and further direction was passed to consider such application on merit within a week thereafter. The observation

made in the impugned order drew our attention when the thought process behind the issuance of such liberty is visualised that the Single Bench had a different opinion on passing a direction upon the authority to issue Pensionary Payment Order which, according to him would open a floodgate in payment of pension to a person who are not actually eligible.

The historical existence of the contempt jurisdiction can be traced since time immemorial under the common law to be understood as causing impediments and obstructions to those who are entrusted to decide the disputes by passage of time and, therefore, several discourses and the experience gained in pursuit of justice gradually developed the concept of contempt and it was thought that it should be brought in the form of a legislation not only to compel the performance and punish the defiant who had not shown any respect to the sanctity and the majesty of the court but also in act or the behaviour which tarnished the image of the system. The bill was placed in the Lok Sabha on 1st April, 1960 to consolidate the law relating to contempt of courts as the existing procedure based on a common law would somewhat uncertain, undefined and raises grey area in exercise of such powers. The Sanyal Committee was constituted in this regard and the recommendation was sought.

On the recommendation of the said committee the Contempt of Court's Act, 1971 was enacted in the Parliament with an object to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto. In ***Supreme Court Bar Association vs. Union of India reported in 1998 (4) SCC 409*** the Apex Court defined the special jurisdiction of certain courts to punish for contempt to be of unusual type and held that in fact, the court does not adjudicate upon any claim between the litigating parties and, therefore, such power has to be characterised as punitive in order to promote the integrity of the orders, officers and the process of the court. The Apex Court in case of ***High Court of Judicature at Allahabad vs. Rajkishore Yadav reported in 1997 (3) SCC 11*** highlighted the powers and jurisdiction of the High Court while exercising the original jurisdiction under the said Act in the perspective of its own order does not act as a court of review nor an appeal but must restrict its determination on the violation of its order which, per se constitute the contempt. Such being the broad aspect of the contempt the approaches are sometimes made to enlarge the scope of contempt jurisdiction usurping the power of the original jurisdiction and passing an order which virtually negates the legal right accrued

by passage of time in the guise of so-called *ex debito justitiae*. The Justice has a wide connotation and all the courts of the country travel on such terrain in imparting justice but the justice has to be imparted on the well known legal parameters and strictly within the four corners of the statutory provisions. The concept of justice should not be extended to such a height nor should travel to an unknown terrain percolating a message in the common man that the powers of the court to punish has virtually become farcical. The certainty and the uniformity in the concept of justice is the hallmark and backrock of the judicial system and should not be allowed to be undermined by exceeding jurisdiction in pursuit of rendering justice. Hierarchy of the court is in the constitutional wisdom providing the remedy to the aggrieved person to approach the higher forum or the forum provided under the law. Usurpation of the jurisdiction not vested shall overreach the constitutional wisdom and render the forum provided in the statute to be of no use or in other words to exist on paper. The Limitation Act was enacted to bring that into limitation and denying the relief to the court if the approach is made beyond the period provided therein. It does not foreclose the right of the parties but certainly has its applicability on the denial of the reliefs before the court. Granting liberty to approach

the court overlooking the substantive provision contained in the Limitation Act that too in exercise of the contempt jurisdiction in pursuit of securing justice shall render the object and purpose of the Limitation Act unworkable. The right created in the statute circumscribed by certain limitations should not be ignored by granting liberty and extending the period of limitation contrary to relevant provisions.

In the instant case, there is no ambiguity in our mind that the right to make an application to recall the order is provided in the statute but the limitation for such application is also provided therein. The unbridled opportunity granted to take out such application with categorical finding that it will be decided on merit has a far reaching effect on the right accrued to the other side by virtue of the period of limitation provided for such application. Furthermore, the Co-ordinate Bench cannot act as a court of appeal nor can exercise the review jurisdiction beyond the settled parameters provided in the statutory book merely on a change of perception nor can exercise such power in the guise of securing the justice. We are not unoblivion of the fact that while exercising the contempt jurisdiction the court can go into the aspect whether the order complained of is a nullity and, therefore, may refuse to exercise such jurisdiction. Mere change

of the opinion does not render the order a nullity nor incapable of being performed.

In view of the above the order impugned is set aside.

There shall be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)