

05. 08.12.2023
bd. Ct.15

CPAN 838 of 2023
in
WPA 7401/2023

Smt.Nima Mukhia
-vs-
Caesar Sen

Mr. Debanjan Mukherjee
Mr. Shuvajit Bose ... for the Applicant.

Mr. Rupak Ghosh
Mr. Ayan Dutta
Mr. Abhik Chitta Kundu ... for the alleged contemnor
/writ petitioner

The contempt proceeding has arisen out of the order dated 11th April, 2023 passed by a coordinate Bench on a writ petition being WPA 7401 of 2023 whereby the coordinate Bench dismissed the writ petition with the finding that there were harassive attempts on the part of the petitioner as a result whereof a cost of Rs. 50,000/- was awarded to the CESC Limited being the respondent nos. 1 and 2 and the equivalent amount of Rs. 50,000/- was also awarded to the respondent no. 3 being the applicant in the present contempt application.

Mr. Mukherjee, learned advocate representing the applicant in the present contempt application submits that there is violation of the order dated 11th April, 2023 since the cost awarded to the applicant being respondent no.3 in the connected writ petition was not paid by the alleged contemnor/writ petitioner.

According to the applicant, notwithstanding the order of the Hon'ble Division Bench dated 10th May, 2023 the direction for payment of cost which

was fastened upon the alleged contemnor being the writ petitioner needs to be implemented and even after the order dated 10th May, 2023 passed by the Hon'ble Division Bench the part of the order of the coordinate Bench awarding cost remains. In this regard reliance has been placed by the learned advocate representing the applicant on paragraph 24 of the order of the Hon'ble Division Bench dated 10th May, 2023.

Per contra, Mr. Ghosh, learned advocate representing the alleged contemnor/writ petitioner submits that the order passed by the coordinate Bench dated 11th April, 2023 awarding cost thereby directing the writ petitioner to pay the same stands obliterated in view of the order of the Hon'ble Division Bench dated 10th May, 2023. In this regard reliance has been placed on behalf of the alleged contemnor on paragraph 23 of the order of the Hon'ble Division Bench.

For better understanding of the issue raised in this contempt application touching upon non-payment of cost as awarded by the coordinate Bench in the order dated 11th April, 2023, this Court finds it apt to quote the relevant part of the order of the coordinate Bench dated 11th April, 2023 and paragraph 23 and 24 of the order of the Appellate Court.

“However, in view of the harassive attempts made by the petitioner and the prolonged litigation which the respondents herein were compelled to suffer

due to such attempts of the petitioner, the petitioner shall pay costs of Rs. 50,000/- to the respondent nos. 1 and 2 jointly and an equivalent amount of Rs. 50,000/- as costs to the respondent no.3”.

“23. The appeal stands allowed and the impugned order as well as the Final Order of Assessment dated 22.02.2023 are accordingly set aside and quashed. Without interfering with the observation made during the inspection of the premises on 20.02.2023 as recorded in the provisional Assessment Order, this Court directs the Assessing Officer to revisit the order of provisional assessment dated 20.02.2023 with regard to the basis of assessment of unauthorised use and the ultimate assessment made by passing a fresh provisional assessment order in the light of the observations made hereinbefore and in accordance with law positively within a period of two weeks from the date of receipt of the server copy of this order and to

conclude the proceedings under Section 126 of the 2013 Act in accordance with the provisions of the 2013 Act and the regulations framed thereunder. The payments, if any, made by the 3rd respondent in terms of the final order of assessment dated 22.02.2023 shall abide by the final decision of the authority in terms of the order passed by this Court.

24. The writ petition thus, stands allowed in part with the observations and directions passed hereinbefore. The application in connection with the appeal stands disposed of accordingly. There shall be, however, no order as to costs."

(emphasis supplied)

On conjoint reading of the relevant parts of the order of the coordinate Bench as well as order of the Hon'ble Division Bench it appears that the order dated 11th April, 2023 stood quashed by the Hon'ble Division Bench by making specific observation that the appeal which was preferred by the writ petitioner was allowed and the impugned order as well as the final order of assessment dated 22nd February, 2023 were set aside and quashed.

Therefore, it appears that the order of the coordinate Bench dated 11th April, 2023 was set

aside and impliedly direction relating to awarding of cost also stood quashed. Much reliance has been placed on the observation of the Hon'ble Division Bench made in paragraph 24 that the writ petition stood allowed in part, in support of the case made out in the contempt application. In consideration of the order of the Hon'ble Division Bench in its entirety it appears that the same does not come in aid of the applicant. Allowing of the writ petition in part in effect fortifies the case of the writ petitioner and that does not support the claim of the applicant being respondent no. 3 in the writ petition albeit in the order passed by the Hon'ble Division Bench dated 10th May, 2023 explicitly cost was not made easy.

In view of the aforesaid discussion this Court does not find merit in the case made out in the contempt application and accordingly the same stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)