

Present :- Hon'ble Justice Amrita Sinha

Jayoti Banerjee

Mr. Sunil Satpati

Judgment on :- 03.02.2023

Learned advocate representing the petitioner submits that the contempt application will be maintainable before this Bench. In support of the said

submission, the petitioner relies upon the decision passed by the Full Bench of this Hon'ble Court in ***Arun Kumar Gupta & 11 other appeals Vs. Jyoti Prasanna Das Thakur & Ors.; (1996) 2 CHN 445*** paragraph 16.

Reliance has also been placed on the judgment delivered by a learned Single Judge of the Andhra Pradesh High Court in ***K.K.R. Nair Vs. Mohan Das & Anr.; 1989 SCC Online AP 241*** paragraph 9.

Reliance has also been placed on the Contempt of Court Rules framed by this Court. It has been submitted that as the initial order was passed by this Bench, accordingly, this Bench will certainly have jurisdiction to entertain the contempt application.

The issue whether the learned Single Judge will have the jurisdiction to take up the contempt application if the order passed by the learned Single Judge is carried in appeal and affirmed by the Hon'ble Division Bench has been decided by this Court in the matter of ***M/s. Tetulia Coke Private Limited Vs. P.S. Bhattacharjee; (2012) 4 WBLR (Cal) 494***.

The Hon'ble Supreme Court in ***Kunhayammed vs. State of Kerala*** reported in ***(2000) 6 SCC 359*** held that when a decree or order passed by an inferior court is subjected to a remedy available under the law before a superior forum, then though the decree or order under challenge continues to be effective and binding, nevertheless, its finding is put in jeopardy. Once the superior court has disposed of the lis before it either way, whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court which is final, binding and operative.

In the present case, the order passed by the learned Single Judge was carried in appeal and the Hon'ble Division Bench scrutinized and examined the judgment passed by the learned Single Judge and after hearing both the parties delivered the judgment. The appeal being a continuation of the proceeding, the lis ultimately came to an end by the judgment passed by the Hon'ble Division Bench

and in view of the judgment passed by the Hon'ble Supreme Court in Kunhayammed (supra) the order passed by the Hon'ble Division Bench is final, binding and operative in between the parties. The order passed by the learned Single Judge stood merged with the order passed by the Hon'ble Division Bench.

In ***Gojer Bros. Pvt. Ltd. Vs. Ratan Lal Singh*** reported in (1974) 2 SCC 453 a three Judge Bench of the Hon'ble Supreme Court held that the judgment of an inferior court if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated to have been superseded by the judgment of the superior court. The judgment of the inferior court loses its identity by its merger with the judgment of the superior court.

The petitioner relies upon K.K.R. Nair (supra) wherein the learned Single Judge, after discussion of quite a number of judgments of the Hon'ble Supreme Court, took the view that the doctrine of merger is not a rigid one and the rules of procedure are only step in aid or hand-maid for rendering substantial justice and the procedure would be not an end in itself but be tailored to meet the requirement of the law. The Court was of the opinion that despite the operation of the doctrine of merger, proceedings for contempt could be initiated before either the Single Judge or the Division Bench whose orders are disobeyed or wilful breach is committed.

This Court most respectfully disagrees with the views taken in K.K.R. Nair (supra) and relies upon the several judgments cited and discussed in K.K.R. Nair (supra) and opines that for maintaining judicial discipline, the order passed by the Hon'ble Division Bench on the self same issue in between the parties has to be treated as final, binding and operative in between the parties and a party is required to approach the superior forum in the event of contempt or wilful breach of the same.

A similar view was expressed by this Court in the matter of M/s. Tetulia Coke Plant (P) Ltd. & Ors. (supra).

The reason for filing a contempt application is not only to punish the party guilty of not complying the Court's order, but at the same time to ensure compliance of the order passed by the Court. There may be a situation where two different parties to a proceeding may complain of contempt or wilful violation of the order passed by a learned Single Judge affirmed by the Hon'ble Division Bench. It may happen that, one of the parties approach the learned Single Judge for execution of the order and the other approaches the Hon'ble Division Bench.

If the principle of merger is not applied then two different proceeding may be initiated for execution of the order. There will be multiplicity of proceedings for execution of the same order. There may be conflict of opinions which may lead to judicial anarchy and chaos. To avoid such a scenario and maintain judicial discipline, it has to be taken that it is the order of the superior forum which will be executable and accordingly the contempt proceeding will lie before the superior forum and not before the Trial Court which passed the initial order.

In Arun Kumar Gupta (supra) the Full Bench of this Court was deciding the issue regarding the necessity of personal service of a mandatory order as distinct from prohibitory order. In the present case, the issue is whether the contempt application will be maintainable before the Court which passed the initial order or before the appellate Court which ultimately affirmed the order passed by the initial Court. The issue to be decided in the present writ petition is completely different to the facts and issues in Arun Kumar Gupta (supra). Accordingly, the decision arrived at by the Full Bench cannot be made applicable in the facts and circumstances of the present case.

In view of the discussions made herein above, this Court is of the opinion that, in the present case, the contempt proceeding will be maintainable before the Hon'ble Division Bench and not before the learned Single Judge whose judgment stood merged with the judgment passed by the Hon'ble Division Bench.

Contempt application stands dismissed.

It will, however, be open for the petitioner to approach the Hon'ble Division Bench for relief, if so advised.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)