

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

**APO/190/2019**

**With**

**WPO/53/2014**

**CC/37/2018**

**SRI KHALIL AHMED AND ANR.**

**-VS**

**ANSAR AHMED AND ORS.**

**WITH**

**APO/88/2019**

**SRI KHALIL AHMED AND ANR.**

**-VS**

**SK. JAHIR AND ORS.**

**Before:           The Hon'ble Justice Arijit Banerjee**  
**&**  
**The Hon'ble Justice Apurba Sinha Ray**

For the respondents           : Mr. Srijib Chakraborty, Adv.  
                                              Mr. Aditya Mondal, Adv.  
                                              Mr. Lalratan Mondal, Adv.  
                                              Mr. Deeptangshu Kar, Adv.

For the appellants            : Mr. Alak Kumar ghosh, Adv.  
                                              Mr. Gopal Chandra Das, Adv.  
                                              Mr. Debangshu Mondal, Adv.

Judgment On                 : 21.06.2023

**Arijit Banerjee, J. :-**

1. These two appeals are directed against a judgment and order dated March 29, 2019 passed by a learned Judge of our Court in CC 37 of 2018 (**Ansar**

**Ahmed & Ors. v. Sri Sovan Chatterjee & Ors.)** and CC 39 of 2018 (**Sk. Jahir & Ors. v. Sri Sovan Chatterjee & Ors.)** arising out of W.P. 53 of 2014 and W.P. 142 of 2014 respectively.

2. The material facts of the case, very briefly stated, are that Premises No. **20B, Karl Marx Sarani, Calcutta 700 023**, was declared as a heritage building by Kolkata Municipal Corporation (in short KMC). The reason is that according to KMC, the famous Bengali poet Michel Madhusudhan Dutta was born there and/or resided in that house for a substantial period of time.

3. Two writ petitions were filed by persons who had acquired the said property in 1990 after coming to know of the declaration of the property as a heritage building. The writ petitions were disposed of by a common judgment and order dated July 11, 2016, the operative portion whereof reads as follows:-

“I think, in the circumstances, I should refer the declaration of the subject building as Heritage to the Commission, to review and reassess the view taken by the said Expert Committee and the Heritage Conservation Committee endorsed by the Corporation. This review or reconsideration should be done following the guidelines given in this judgment and upon notice to the petitioners upon hearing them or upon giving them an opportunity of hearing and by a reasoned decision within three months of communication of this order. I order, accordingly. If the decision of the Heritage Commission is that the recommendation of the Heritage Conservation Committee was correct, then that is the end

of the matter. If the decision is that it was incorrect, then the decision of the Commission will be send to the Mayor-in-Council under Section 425B of the Kolkata Municipal Corporation Act, 1980 and, thereafter, to the Corporation for final approval of the same. The Corporation should be able to take the decision, if so required within a further period of eight weeks from the date of communication of the decision of the Heritage Commission. The Corporation will not ordinarily interfere with the decision of the Commission. If it does, it has to be supported by detailed reasons.”

4. Alleging violation of the aforesaid order, two contempt petitions were filed by the owners of the said property.

5. A compliance report was filed by KMC in one of the said contempt applications. From such report it appears that the opinion of the West Bengal Heritage Commission (in short WBHC) having sought for by KMC as regards whether or not the said property deserves to be declared as a heritage building, the WBHC communicated its decision to KMC by a letter dated September 5, 2017. The final opinion of WBHC as recorded in the compliance report was to the following effect:-

“The Commission, therefore, does not find any documentary evidence to uphold the decision of the Heritage Conservation Committee of the Kolkata Municipal Corporation. The Commission considered for settlement of the issue for making some provision for installing a statuette along with a plaque inscribing the brief

history of the poet in his memory at a prominent place of the proposed project of the petitioners at 20B, Karl Marx Sarani.”

6. The compliance report then recorded as follows :-

“It is submitted that having due regard to the solemn direction of the Hon’ble Justice I.P. Mukerji as contained in the order dated 11.07.2016 the Heritage Conservation Committee held a meeting on 11.08.2018 when the Historian member of the HCC placed his report in respect of the building at 20B, Karl Marx Sarani. In the said report the Historian made a reference to a memoir written by Sibnath Shastri wherein it is mentioned that Madhusudan Dutta resided in this house for a substantial period of his student life and had his school and college education from this house. The WIKIPEDIA and other biographies also confirm the authenticity of above report. Moreover, the area is known as “KABITIRTHA” named after the three great poets of Bengal of this locality i.e. Madhusudan Dutta, Ranglal and Hem Chandra Banerjee and so, demolishing the building related to Madhusudan Dutta will not be a dignified step.

The Heritage Conservation Committee could not agree with the decision of the Heritage Commission upon accepting the report of the historian Committee and was of the opinion that the Grade of the building as Grade IIB was to be retained.

The resolution of the Heritage Conservation Committee dated 11.08.2018 was thereafter placed before the Mayor-in-

Council in its meeting held on 31.08.2018 under Item No. MOA-67.9 and the Mayor-in-Council duly approved the resolution of the Heritage Conservation Committee dated 11.08.2018 under Sections 425B and 425D of the KMC Act, 1980.

It may be stated that the note of the historian member on authentication of Michal Madhusudan Dutta's residence at 20B, Karl Marx Sarani with supporting information as contained therein is a part of the resolution of the Heritage Conservation Committee dated 11.08.2018 because of acceptance of the same for disagreeing with the decision of the West Bengal Heritage Commission.

It is submitted that the direction as contained in the order dated 11.07.2016 has been acted upon by taking the decision with supporting reasons as above the Hon'ble Court may be pleased to accept the same."

7. The relevant portion of the judgment and order whereby the contempt petitions were disposed of by the learned Judge reads as follows:-

"It appears from this report that only after the contempt proceedings were initiated, the Corporation proceeded to consider the decision of the West Bengal Heritage Commission according to the order of this Court dated 11<sup>th</sup> July, 2016. It is amazing to see the evidence that the historian member of the heritage Conservation Committee of the Corporation relied upon and which was apparently accepted by it; (i) memoir written by Sibnath

Shastri (ii) wikipedia and other biographies; (iii) the subject area being known as KABITIRTHA.

First of all, Sibnath Shastri was born in 1847 and died in 1919. He was 23 years younger than the poet, was only twenty six years old when the poet died and most probably wrote several decades after the poet's death. So, he could not have had any firsthand knowledge of his residence in his early days. What Shastri wrote was his opinion and of very little evidentiary value. What "other biographies were relied upon" are not even mentioned. WIKEPIDIA is a website which contains information. What was the source of this information, what was the content of the WIKEPIDIA posting have not been disclosed.

Being thoroughly dissatisfied, this Court called for a further compliance report. The second compliance report says that the recommendation of the Mayor-in-council dated 31<sup>st</sup> August, 2018 was placed as Item No. 13 under Agenda no. 43 before the Corporation in its meeting held on 4<sup>th</sup> October, 2018. The recommendation of the Heritage Conservation Committee dated 11<sup>th</sup> August, 2018 was approved. The recommendation was: "..... Hence, this Committee would like to interfere with the decision of the State Heritage Commission of demolishing the building by accepting the report of the Historian member of the Committee and opined to retain the Grade of the building as "Grade -IIB as it was."

At this point, I would like to emphasize a part of the order dated 11<sup>th</sup> July, 2016 reproduced above: “The Corporation will not ordinarily interfere with the decision of the Commission. If it does, it is to be supported by detailed reasons.”

The alleged contemnors were bound to follow this order strictly. They had no scope of going the way they desired. Even, if the decision of the State Heritage Commission was unacceptable to the Corporation, ordinarily they had to accept that decision. That is why it was provided in the said order that they would not “ordinarily interfere with the decision of the Commission.”

There was non-compliance of the said order of this Court to the extent that there was refusal on the part of the respondent Corporation to accept the decision of the Heritage Commission without the support of intelligible reasons.

Therefore, it is to be taken that they had no reasons to give to depart from the decision of the Commission.

In the ordinary course this lack of any grounds to depart from the opinion of the Heritage Commission would have provided sufficient grounds to reverse the declaration that the subject building was heritage. Regrettably the Corporation ought to have taken this decision but has not taken it. Certainly there is non-compliance with the said order of this Court dated 11<sup>th</sup> July, 2016.

Could it be said that there was wilful disobedience of the said order? The respondents have tried to comply with the

statutory procedure for declaration of a building as heritage by circulating the decision of the Heritage Commission amongst the Mayor-in-Council and the Corporation. But the Corporation could not advance the required reasons, to depart from it. The reasons sought to be advanced by the historian member only strengthens the case of the petitioner and does not strengthen case of the Corporation. Nevertheless, it would be difficult to hold that this disobedience was wilful and that the alleged contemnors are in contempt of the said order of this Court and that they should be punished for it. This Court in the exercise of this jurisdiction does not have the power to declare that since the Corporation did not have any grounds to contradict the decision of the Heritage Commission, it could be assumed that they have accepted it and that on that basis they should reclassify the building as non-heritage.

Perhaps on the basis of these findings the petitioners will be able to seek redress in a proper Court having the jurisdiction to pass the necessary order. With those observations, these two identical contempt applications i.e. CC 37 of 2018 and CC 39 of 2018 are disposed of, without issuance of any Rule.”

8. The learned Judge therefore held that there was non-compliance of His Lordship’s order on the part of KMC but such non-compliance was not wilful. Accordingly the two contempt applications were disposed of without issuance of Rule. However, in the process the learned Judge made

observations which pertain to the merits of the decision of the Heritage Conservation Committee of KMC to retain the heritage status of the aforesaid property. The grievance of the appellants in these appeals is that the learned Judge has for all practical purposes held that the Heritage Conservation Committee (HCC) ought not to have differed from the opinion of WBHC and that the material on the basis whereof the HCC has come to a different opinion, is not reliable or credible. The learned Judge has in effect decided that the property in question cannot be declared as a heritage property although no such declaration has been made by the learned Judge considering that in a contempt application no such order could be passed. However, the learned Judge should not have made such observations while deciding the contempt applications. The learned Judge ought to have restricted himself to decide whether or not the alleged contemnors are guilty of contempt of Court. The observations of the learned Judge pertaining to the merits of the decision of the HCC are beyond the scope of the contempt proceedings and ought to be expunged from the judgment and order under appeal. Otherwise, such observations may be relied upon by the writ petitioners in any future litigation pertaining to the heritage status of the building in question before any competent forum.

9. On the question of maintainability of the appeals which are admittedly not appeals under Section 19 of the Contempt of Courts Act, 1971, learned Counsel for the appellants relied on two decisions:-

(i) ***J.S. Parihar v. Ganpat Duggar & Ors., reported in (1996) 6 SCC***

**291.** Learned Counsel relied on paragraph 6 of the reported judgment which reads as follows:-

“6.The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S. K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be

in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

(ii) ***Midnapore Peoples’ Coop. Bank Ltd. & Ors. v. Chunilal Nanda & Ors., reported in (2006)5 SCC 399.*** In this case on a contempt petition, a learned Single Judge passed certain substantive directions pertaining to the merits of the case. Being aggrieved, the respondents in the contempt petition preferred an appeal before a Division Bench of the High Court. The Division Bench dismissed the appeal as not maintainable on the grounds that neither the order of the learned Single Judge punished any contemnor and hence there could be no

appeal under Section 19 of the Contempt of Courts Act, nor, the impugned order was a judgment within the meaning of clause 15 of the Letters Patent. The matter being ultimately carried to the Hon'ble Supreme Court, the following Questions were framed by the Hon'ble Supreme Court for consideration:-

“(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?

(iii) In a contempt proceeding initiated by a delinquent employee (against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time-bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension shall be deemed to have been revoked ?”

10. Having considered various earlier decisions of the Hon'ble Supreme Court, in the above case, on issue no. (i), at paragraph 11 of the judgment , the Hon'ble Court held as follows:-

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

Re : Point No. (ii)”

11. On Issue No. (ii) the Hon’ble Supreme Court held, at paragraphs 12, 15, 16 and 18 as follows:-

“12. We will next consider as to whether an intra-court appeal under clause 15 of the Letters Patent was available against the interlocutory order dated 20.11.1998 containing the directions on merits of the dispute. Clause 15 of the Letters Patent provides for an appeal from a “judgment” of a Single Judge in exercise of original jurisdiction to a Division Bench. In *Shah Babulal Khimji v.*

Jayaben D. Kania & Anr. [AIR 1981 SC 1786], the scope of clause 15 of the Letters Patent was considered. This Court held:

"The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of section 2 cannot be physically imported into the definition of the word 'judgment' as used in Clause 15 of the Letters Patent because the Letters Patent has advisedly not used the term 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds :

(1) A final Judgment. \_\_\_\_ \* \* \*

(2) A preliminary Judgment. \_\_\_\_ \* \* \*

(3) Intermediary or interlocutory judgment. - Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the

meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. (SCC pp. 55-56, para 113)

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... in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. (SCC P. 57, para 115)

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... any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate Court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. ...

... the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. (SCC p. 58, para 119)"

15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but **also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to**

**some collateral matter, which will affect the vital and valuable rights and obligations of the parties.** Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, “judgments” for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments” for the purpose of filing appeals provided under the Letters Patent.

18. The Division Bench, therefore, committed a serious and obvious error in holding that the appeal [MAT 4075 of 1998] was not maintainable under clause 15 of the Letters Patent. Though the order of the learned Single Judge dated 20.11.1998, by which several directions to the Bank with reference to first Respondent were issued, is not a final “judgment”, it is an “interlocutory judgment” which finally decides several rights and obligations of the employee vis-a-vis the employer and, therefore, appealable under clause 15 of the Letters Patent.” (The emphasis is ours).

12. On Issue No. (iii), the Hon’ble Court, in paragraphs 20 and 21 of the reported judgment, held as follows:-

“20. In the circumstances, the High Court ought to have proceeded to consider whether there was any wilful disobedience of the order dated 9.4.1997, on the part of S.K. Das and, if so, punish him for contempt. As S.K. Das was nowhere in the picture when the order dated 9.4.1997 was passed in the writ petition, and as he was appointed as an independent Enquiry Officer only by an order

dated 5.1.1988 and as there was a complaint about the non-cooperation by the first respondent, (delinquent employee), it is doubtful whether there was any case for even issuing a show-cause notice to him. Be that as it may. We are not concerned with the issue of show-cause notice to S.K. Das in this appeal. What is relevant to be noticed is that the learned Single Judge could not have made an order in the contempt proceedings, that Sri S.K. Das had, by his conduct, disqualified himself to be the Enquiry Officer and that he shall cease to be the Enquiry Officer and that another Enquiry Officer shall be appointed.

21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the Court to issue such directions, even

assuming that such directions could be issued in the course of the contempt proceedings. Hence, Directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.”

13. Mr. Chakraborty, learned Advocate representing the respondents, argued that the appeals are not maintainable. The appeals have not been filed under Section 19 of the Contempt of Courts Act, 1971 since they are not appeals against an order or decision of the High Court in exercise of its jurisdiction to punish for contempt. No punishment has been imposed on the alleged contemnors. In fact, no Rule was issued.

14. Learned Counsel further submitted that the judgment and order under appeal is also not a judgment within the meaning of Clause 15 of the Letters Patent. The judgment and order under challenge has decided nothing on merit. In this connection learned Advocate relied on the decision of the Hon’ble Supreme Court in the case of **Midnapore Peoples’ Coop. Bank Ltd. & Ors. v. Chunilal Nanda & Ors., (supra)** which was also relied upon by learned Advocate for the appellant.

15. Mr. Chakraborty then submitted that a mere observation in an order which does not amount to a decision against a party to the lis, cannot be challenged by way of appeal. In this connection learned Advocate relied on the decision of **Arun Kumar Aggarwal v. State of Madhya Pradesh & Ors., reported at (2014) 13 SCC 707**. In particular reliance was placed on paragraphs 13, 37 and 38 of the reported judgment which read as follows:-

“13. We have heard the learned Counsel for the parties before us. The short point in issue before us is based on the nature of the order passed by the learned Special Judge whether it amounts to a direction issued by the Court to the authority concerned or mere observation of the Court.

37. The wordings of this order clearly suggest that it is not in the nature of the command or authoritative instruction. This order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this order can be considered or treated as the direction issued by the learned Special Judge. The holistic reading of this order leads to only one conclusion, that is, it is in the nature of “obiter dictum” or mere passing remark made by the learned Special Judge, which only amounts to be expression of his personal view. Therefore, this portion of the order dealing with the challan proceedings, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the judgment of the learned Special Judge.

38. In the light of the above discussion, we are of the opinion that, the portion of the order of the learned Special Judge which deals with the challan proceedings is a mere observation or remark made by way of aside. In view of this, the High Court had grossly erred in considering and treating this mere observation of the learned

Special Judge as the direction of the Court. Therefore, there was no occasion of the High Court to interfere with the order of the learned Special Judge.”

16. Learned Counsel then submitted that the appellants are not and cannot be parties aggrieved since the contempt proceedings were decided in their favour. Hence, no appeal would lie at their instance. In this connection, reliance was placed on the observation of the Hon’ble Supreme Court at paragraph 11 of the judgment in ***Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay, reported in (1970) 2 SCC 484***. The relevant portion of the said paragraph reads as follows:-

“11. From these cases it is apparent that any person who feels disappointed with the result of the case is not a ‘person aggrieved’. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits someone who he thinks ought to be convicted does not by itself give rise to a legal grievance.....”

17. Learned Advocate finally submitted that since the impugned order is not appealable before a Division Bench either under Section 19 of the Contempt of Courts Act, 1971, or under Clause 15 of the Letters Patent, the only remedy of the appellants is to approach the Hon’ble Supreme Court by way of a special leave petition under Article 136 of the Constitution of India.

18. In reply learned Advocate for the appellants submitted that the portion of the impugned order by which the appellants are aggrieved does not contain mere observations. It constitutes a conclusive finding that the material relied upon by Kolkata Municipal Corporation/the Heritage Conservation Committee, for declaring the building in question as a heritage property, are not authentic. The HCC could not have taken the decision to classify the concerned building as heritage property relying on such material. Since there is a conclusive finding of facts which may adversely affect the appellants and/or Kolkata Municipal Corporation, the appeals are maintainable.

19. I have given my anxious consideration to the rival contentions of the parties.

20. Although there are 21 grounds enumerated in the memorandum of appeal, essentially ground nos. XVII and XVIII summarise them all. Those grounds XVII and XVIII read as follows :-

“XVII. For that the learned Single Judge completely fell in error in going into the merits of the matter and has assumed the role of expertise while dealing with the contempt matter.

XVIII. For that the learned Judge while dealing with the contempt matter was only concerned as to whether the alleged violation of the order of the Hon’ble Court was deliberate and wilful or not and once it comes to the conclusion that the violation was not deliberate or wilful, the contempt proceeding comes to the end and there could be no occasion to make any observation and/or

express any opinion, which would affect the decision taken by the authority and the same would act as an impediment in the future proceedings.”

21. Let me first deal with the preliminary objection raised by the respondents as regards maintainability of the appeal. It is not in dispute that these appeals have not been filed under Section 19 of the Contempt of Courts Act, (the said CC Act) 1971. The order assailed in the appeals is not an order passed in exercise of jurisdiction to punish for Contempt of Court. In fact, the learned Single Judge having held that although there was violation of the order in question, such violation was not wilful. Hence the Contempt proceedings were closed.

22. Will this appeal be then maintainable under clause 15 of the Letters Patent? Would the judgment and order impugned in the appeal qualify as a judgment within the meaning of Clause 15 of the Letters Patent? I think it would. I have extracted above relevant paragraphs from decisions of the Hon’ble Supreme Court on the point as to what would amount to a judgment within the meaning of Clause 15 of the Letters Patent. If an order decides the rights of any of the parties to a *lis* and such decision has the trappings of finality i.e., the order may adversely affect a valuable right of the party or decide an important aspect of the matter in an ancillary proceeding, the same would be a judgment within the meaning of Clause 15.

23. In the present case, the issue before the learned Single Judge was whether or not there was wilful violation of the judgment and order dated July 18, 2016, whereby two writ petitions were disposed of, so as to amount

to contempt of Court? The learned Judge held that technically there was violation of the order but the same was not intentional. In the course of so holding, the learned Judge dilated on the merits of the decision of Kolkata Municipal Corporation to declare the property in question as a Heritage property. The learned Judge for all practical purposes held that the decision of KMC was based on insufficient evidence the authenticity whereof was highly doubtful. In other words, the learned Judge came to a finding that the declaration of the concerned property as heritage was erroneous. However, the learned Judge observed that since in the contempt proceedings His Lordship could not nullify such declaration, the respondents/property owners could reap benefit of such findings in future proceedings.

24. Learned Judge therefore finally decided a collateral issue which was not the subject matter of the contempt petition. Such decision may well adversely affect KMC's rights in any future legal action that the property owners may initiate before a competent forum assailing the heritage status of the property in question. Hence, in my considered opinion, the order assailed in this appeal to the extent it holds that the concerned property cannot be assigned heritage status, is a judgment within the meaning of Clause 15 of the Letters Patent and is open to challenge in an intra-court appeal.

25. The decision in the case of **Arun Kumar Aggarwal v. State of Madhya Pradesh & Ors., (supra)** relied upon by the learned Advocate for the respondents, the relevant portions whereof have been extracted above, has no manner of application to the facts of the present case. It is true that

if an order is wholly in favour of a party to a *lis*, that party cannot maintain an appeal against such order. However, if in the course of passing such order, a learned Single Judge of the High Court records certain findings on issues which are not subject matter of the proceedings, and if such findings adversely affect or are likely to affect in future rights of the party in whose favour the order is passed, in my view, that party would be entitled to assail the order, although in its favour, for deletion of the remarks which are adverse to that party's interest. Otherwise, in any future proceedings, that party may suffer prejudice and may have to face the argument that not having challenged the adverse observations in the earlier order, that party is bound by the same. For the same reason, the decision in ***Adi Pheroazshah Gandhi v. H. M. Seervai, Advocate General of Maharashtra, Bombay, (supra)*** relied upon by learned Advocate for the respondents, is also not germane to the present facts. In our view, the appellants rightly claim to be aggrieved parties – aggrieved by the observations of the learned Single Judge leading to the finding that the property in question is not liable to be declared as a heritage property.

26. For the reasons aforesaid, I decide the issue of maintainability of the appeal in favour of the appellants. In my view, the appeal is maintainable under Clause 15 of the Letters Patent.

27. The only other question is whether or not the order impugned or any portion thereof warrants interference by the appellate Court. Naturally the entire order is not required to be interfered with since by the order the

learned Judge has dismissed the contempt applications which were instituted against the present appellants.

28. However, the portions of the order pertaining to the merits of the dispute between the parties that was the subject matter of the two writ petitions, i.e. whether or not KMC was justified in assigning heritage tag to the property in question, need to be expunged. The finding of the learned Judge that KMC/HCC wrongly classified the concerned property as heritage, was beyond the scope of the two contempt petitions resulting in these two appeals. The only issue before the learned Judge was whether or not the alleged contemnors were guilty of wilful violation of the relevant order passed in the two writ petitions. His Lordship's conclusion was that there was violation, but not wilful. In my view, the learned Judge should have stopped there. The observations pertaining to the merits of the case were not called for and strictly speaking, was beyond the jurisdiction that the learned Judge was exercising under the Contempt of Courts Act read with Article 215 of the Constitution of India. In this connection reference may be had to the decision of the Hon'ble Supreme Court in the case of **J. S. Parihar v. Ganpat Duggar & Ors., (supra)** the relevant paragraph whereof has been extracted hereinbefore.

29. In the result, these appeals succeed. The observations/findings of the learned Single Judge in the impugned judgment and order, pertaining to the correctness of KMC's decision to declare the property in question as heritage property stand expunged. The impugned judgment and order shall not be construed as having made any observation/finding on the justifiability of

KMC declaring the concerned property as heritage property, in any future proceedings, before any legal forum or otherwise. I hasten to clarify, as I think I ought to, that this judgment of ours shall not be construed as having put a stamp of approval on the decision of KMC/HCC to classify the property in question as a heritage one. I have not gone into that aspect of the matter, nor we were required to or competent to do so. This judgment only decides that the learned Single Judge should not have made any pronouncement in the impugned judgment and order, passed in contempt proceedings, on the correctness or otherwise of the decision of KMC/HCC to declare the building in question as a heritage property. Accordingly we have directed expunction of the observations/findings of the learned Single Judge which pertain to the merits of the decision of KMC/HCC to declare/retain the heritage status of the concerned property.

30. The appeals being **APO/190/2019 with APO/88/2019** are disposed of accordingly without any order as to costs.

31. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

**(ARIJIT BANERJEE, J.)**

**I agree.**

**(APURBA SINHA RAY, J.)**