

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 536 of 2024
(CAN 1 of 2024)***

***Susanta Ghosh
-Vs-
Pralay Chakraborty & Ors.***

For the Appellant : Mr. Alok Kumar Ghosh, Adv.
Mr. Arijit Dey, Adv.

For the Respondent : Mr. Somnath Roy, Adv.
Nos. 1 to 6

Heard on : 10.06.2024

Judgment on : 10.06.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by an order dismissing the contempt petition. It is contended appellant had supplied building materials to *Bhadreswar Municipality*. He was aggrieved by the rejection of his prayer for payment of balance amount with regard to supply of building materials for construction of roads, sewerage facility and water supply at

Sarada Bustee, Hooghly under relevant schemes. He approached this court in W.P. No. 8638(W) of 2017.

2. The matter was disposed of by the learned single Judge directing as follows :-

“The respondents are directed to decide the matter afresh without being influenced by anything contained in any of the orders set aside by this Court including the impugned order and to ignore the observations made therein about the alleged disparities of the nature of challans and bills submitted and to specifically deal with the request of the petitioner to hold a fresh actual inspection on the basis of the materials supplied by the petitioner and utilised by the respondent no.1 and after fully dealing with the contentions raised in the written notes of argument. This shall not prevent the writ petitioner from being paid the amount of Rs.19855.35 which is admitted to be payable to him by the respondent No.1 under the impugned order which I have set aside; but the same shall be subject to the final result of the decision taken after completion of the exercise as I have directed above. I piously hope that the entire exercise shall be completed within a period of one month from the date of communication of this order after giving all reasonable opportunities of being heard to the petitioner. Needless to mention all consequential reliefs shall be granted to the writ petitioner in case his representation is allowed without any further order of this Court within a further period of seven days from the date of decision...The respondent No.1 shall consider its own records including the extracts from the inspection book including the measurement book and the exact cost of works.”

3. Alleging non-compliance of the aforesaid directions, appellant had instituted the contempt proceeding.

4. During its pendency the alleged contemnors upon conducting inspection and enquiry took the following decision :-

“The Petitioner (Susanta Ghosh) have no dues from the Municipality till date in respect to the raw materials supplied by him in the entire KUPS project for the years 2004-2005/2005-2006 from the CDS – 1 as well as from the Bhadreswar Municipality.”

5. Compliance report enclosing the decision was submitted before the learned single Judge. Considering the materials on record, learned single Judge was of the opinion there was no wilful and deliberate violation of the order and accordingly, dropped the proceeding.

6. Mr. Alok Kumar Ghosh, learned Advocate for the appellant submits while dropping the proceeding the learned single Judge had recorded the findings which were prejudicial to his client and beyond the scope and ambit of the contempt petition. He has assailed the said findings in appeal.

7. On the contrary, learned Advocate for the respondent nos.1 to 6 contends the observations made by the learned single Judge were for the purpose of coming to a finding that there was due compliance of the court's order and cannot be said to be alien to the subject matter of the contempt proceeding. It was also submitted though the decision was not taken within the time stipulated by the court, the alleged contemnors did not have any wilful and deliberate intention to violate the order and had substantially complied with the order.

8. An order dismissing the contempt petition is not appellable under Section 19 of the Contempt of Courts Act. However, if the said order records conclusive and binding findings with regard to rights of parties or contains directions relating to the merits of the case beyond the scope of the contempt application, the said findings/directions may be assailed as final judgment under Clause 15 of the Letters Patent. One may profitably

quote the observations in *Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.*¹

“11... (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.

(emphasis supplied)

9. I have examined the impugned order in the light of the aforesaid proposition of law.

10. In W.P. No. 8638(W) of 2017 the learned single Judge had directed the respondent authorities to conduct a fresh inspection with regard to the materials supplied by the appellant and deal with the issues raised by

¹ (2006) 5 SCC 399

the latter to ascertain whether any balance amount was due and payable for supply of building materials to the Municipality. The exercise was directed to be undertaken within a month from the date of communication of this order.

11. Though there was some delay, the impugned order records inspection and spot measurement of the construction site had been undertaken. Inspection books as well as measurement books lying with the Municipality concerned were considered and as per the books the dues of the applicant i.e. ₹30,91,855.35/- had been cleared. The applicant failed to supply bills, challans and invoices with regard to the dues to the tune of ₹14,11,826.85/- in support of his claim. In the absence of bills/invoices, learned single Judge observed inspection of the site *per se* may not tantamount to crystallisation of the claim and under such circumstances non-payment of the alleged claim cannot amount to contumacious violation.

12. I am of the view these observations were clearly germane for dealing with the issues raised in the contempt application. Accordingly, I do not find any reason to interfere with the aforesaid finding.

13. Mr. Ghosh has drawn my attention to the observations of the learned single Judge in paragraph 14 of the judgment which reads as follows :-

“In the instant case, the Municipality has relied upon the quantity of building materials supplied by the applicant reflected in the measurement book and abstract cost of the work contained in the CDS-I records and has cleared the outstanding dues of the applicant. The lack of relevant documents showing that materials

were utilised for the setting up of more structures indicate latches on part of the applicant.”

14. In the aforesaid paragraph the learned single Judge has merely observed that the dues had been cleared on the basis of the entries made in the measurement book and abstract cost of the work contained in the CDS-I records. As appellant had singularly failed to show that materials had also been utilised for other structures, his bald assertions that supplies were utilised for the structures was rejected.

15. The impugned findings recorded by the learned single Judge, in our considered view, were incidental to the disposal of the contempt application. These findings were based on the materials submitted by the respondent-Municipality in support of their plea that there was due compliance of the judicial order and lack of primary materials submitted by the appellant in rebuttal thereof.

16. Hence, we do not find any merit in the appeal and the same is accordingly, dismissed.

17. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

18. Needless to mention it is open to the appellant to seek appropriate remedy in accordance with law, if so advised.

19. There shall be no order as to costs.

20. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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