

06
19.04.2024
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C.P.A.N. 1490 of 2023
in
W.P.A. No. 15635 of 2022

Kanishk Sinha & Anr.
Vs.
Shri Anurag Jain & Ors.

Mr. Kanishk Sinha
... petitioner no. 1 in person

Mr. Satarup Banerjee,
Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
Ms. Shreya Deashi
...for the alleged contemnors

1. Learned counsel for the alleged contemnors, at the outset, points out that the contempt application is not maintainable, although an affidavit of compliance has been filed in deference to the order of this court.
2. Learned counsel places reliance on the order dated October 06, 2023 passed in C.P.A.N. 768 of 2022, which is also annexed to the contempt application, which was a previous instance of another contempt application being filed by the petitioners. The learned Single Judge taking up the said contempt application, vide order dated October 06, 2023, was pleased to observe at the outset that the said contempt application was not maintainable by reason of the fact that the contempt arose out of

an order passed by the court on July 19, 2022 whereby the writ petition was disposed of with a direction on the Competent Authority to consider the representation of the petitioners and grant leave under the provisions of the appropriate law within a period of three weeks from the date of the order; the relevant part of the order, it was held, clearly mentioned that the representation was made by the petitioners on May 07, 2022 and it appeared from the records that the alleged contemnors disposed of the same by an order dated July 27, 2022. It was recorded that admittedly no other representation was on record.

3. The allegation of disobedience made against the alleged contemnors was, hence, found not to be maintainable and C.P.A.N. 768 of 2022 was accordingly dismissed with costs of Rs.7,000/- on the petitioners for wasting the time of the court from July 2023 onwards. However, in a subsequent sentence, the learned Single Judge also observed: “Liberty to file afresh subject to payment of costs”.

4. Learned counsel for the alleged contemnors submits that although such liberty was given, the tenor of the entire order shows that the contempt application was dismissed on merit. By placing the prayer portion of the present contempt application, it is argued that the present application has been

filed on the self-same allegation of violation of the order dated July 19, 2022, which was dealt with in the order dated October 06, 2023 by dismissing the contempt.

5. It is further submitted in all fairness by learned counsel for the alleged contemnors that the subsequent representation of the petitioners has also been dealt with since by passing a reasoned order. If the petitioners are aggrieved, it is submitted, the petitioners are at liberty to challenge the same before an appropriate forum.

6. The petitioner no. 1, appearing in person and also on behalf of the petitioner no. 2, submits that the present contempt application has been filed pursuant to the leave granted vide order dated October 06, 2023.

7. The petitioners also point out that the same learned Single Judge, who had passed the order dated October 06, 2023 entertained the present contempt application by an order dated December 08, 2023, wherein it was recorded that the contempt arises out of an order dated July 19, 2022 and the Competent Authority was directed to consider the representation of the petitioners and grant leave under the provisions of appropriate law within a period of three weeks. Although the earlier dismissal was recorded, it was further recorded by

the learned Single Judge that the petitioners handed up a document to show that the petitioners had complied with the cost component of the order. Thus, the present contempt was apparently entertained without looking into the substance of the order dated October 06, 2023 as the same was, obviously not placed before the learned Single Judge. The order dated December 08, 2023 was not an adjudication on the maintainability of the present contempt application, nor was it passed in presence of the alleged contemnors.

8. However, at the present juncture, the contempt application is taken up for hearing on merits when it is rightly pointed out by the alleged contemnors that the self-same allegation was turned down by the order dated October 06, 2023 in the previous contempt application. Although it was recorded in the last sentence of the order dated October 06, 2023 that liberty was given to the petitioners “to file afresh” subject to payment of costs, the same, in the context of the rest of the order, cannot but be constructed to be anything else than a liberty to file a fresh challenge against the order which was passed on the representation in compliance of the order dated July 19, 2022 and not liberty to prefer the contempt application afresh.

9. Since the contempt alleged by the petitioners was turned down on merits by the previous order, the present contempt application is not maintainable.

10. However, in the event the petitioners are aggrieved on merits by the consideration of the representation of the petitioners by the Competent Authority, the petitioners will be at liberty to file a fresh challenge against the same independently, irrespective of the present dismissal and the earlier dismissal of the contempt application dated October 06, 2023.

11. Nothing in this order will prevent the petitioners from preferring such challenge on the merits of the decision of the authorities.

12. In the light of the above observations, C.P.A.N. 1490 of 2023 is dismissed.

13. It is made clear that further costs are not being imposed on the petitioners, although such costs were imposed on the last occasion on the self-same cause of action, by extending the benefit of doubt to the petitioners that the leave granted by the court on the last occasion might have been misconstrued by the petitioners. However, the petitioners shall be more careful in filing repeated contempt applications on the self-same ground in future.

(Sabyasachi Bhattacharyya, J.)