

2024:PHHC:122104-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(119)

LPA-2233-2024(O&M)
Decided on: 16.09.2024

CT Institute of Hotel Management & Catering Technology & others
.....Appellant (s)

Versus

Raji P Srivastava, IAS & others
....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.B.S.Rana, Sr.Advocate
with Ms.Niharika Singh, Advocate, for the appellants.

Mr.Anurag Chopra, Addl.A.G., Punjab.

G.S. Sandhawalia, J. (Oral) :

CM-5325-LPA-2024

1. Application for condonation of delay of 119 days in refiling the appeal is allowed, in view of the averments made in the application, duly supported by affidavit of the counsel. Delay of 119 days in refiling the appeal is hereby condoned.

2. CM stands disposed of.

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3. Consideration in the present appeal is to the judgment dated 07.03.2024, passed by the Learned Single Judge in COCP-1162-2021 whereby the contempt petition was dismissed and the petitioner was given liberty to avail any other alternate remedy, in accordance with law, qua its outstanding grievance in the matter.

4. The Learned Single Judge, thus, did not initiate contempt proceedings for non-compliance of the order dated 13.08.2013 (Annexure P-1) passed in CWP-16210-2013 in terms of the liberty granted in CWP-4483-2017 vide order dated 06.03.2017 (Annexure P-2).

5. Thus, apparently the appeal is not maintainable in view of the law laid down by a Three Judge Bench of the Apex Court in **B.N.Taneja (IFS) Vs. Bhajan Lal, 1988 (3) SCC 26**. Relevant portion of the judgment read as under:

“11. It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will not be without any remedy. Even though no appeal is maintainable under [section 19\(1\)](#) of the Act, the petitioner in such a case can move this Court under [Article 136](#) of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under [section 19\(1\)](#), as there is no exercise of jurisdiction or power by the High Court to punish for contempt. The view which we take finds support from a decision of this Court in [Paradakanta Mishra v. Mr. Justice Gatikrushna Mishra](#), [1975] 1 SCR 524.

12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the [Contempt of Courts Act, 1952](#). It is for the first time that under [section 19\(1\)](#) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still

assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under [section 19\(1\)](#) can only be the contemnor who has been punished for contempt of court.

13. For the reasons aforesaid, there is substance in the preliminary objection raised as to the maintainability of the appeal. In our view the appeal is incompetent and is, accordingly, dismissed. There will, however, be no order as to costs.”

6. The said view was noticed by the Co-ordinate Bench in **Subhash Chander Sethi Vs. Sh.B.R.Kakkar, Commissioner, Municipal Corporation of Ludhiana, 1990 (2) PLR 46. In Midnapore Peoples' Co-op. Bank Ltd. & others Vs. Chunilal Nanda & Others, 2006 (3) SCT 115**, the same issue was further crystallized. Relevant portion of the judgment reads as under:

“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.”

7. Counsel for the appellants is not in a position to cite law to the contrary.
8. Resultantly, once the appeal is not maintainable, the attempt to gloss as to whether the order was justified or not, fails. Resultantly, in view of the above discussion, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

16.09.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No