



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 28, 2024

+ CONT.APP.(C) 11/2024, CM APPLs. 6057/2024, 6059/2024 &
7048/2024

MR ASHWIN NAREDNRA LODHA

..... Appellant

Through: Mr. Trideep Pias, Sr. Adv.
with Mr. Diwashish Chauhan,
Mr. Paras Mittal Mr. Dhruv
Gautam, Mr. Karan Lahiri,
Mr. Tushar Tyagi and
Mr. Anubhab Atreya Advs.

versus

THE STATE TRADING CORPORATION OF INDIA LTD
THROUGH MANAGER & ANR.

..... Respondents

Through: Mr. Madhu Sudan Bhayana,
Adv. for Trading Corporation

AND

+ CONT.APP.(C) 10/2024, CM APPLs. 5993/2024, 5995/2024 &
6305/2024

MR ASHWIN NAREDNRA LODHA

..... Appellant

Through: Mr. Trideep Pias, Sr. Adv. with
Mr. Diwashish Chauhan, Mr. Paras
Mittal Mr. Dhruv Gautam, Mr. Karan
Lahiri, Mr. Tushar Tyagi and
Mr. Anubhab Atreya Advs.

versus



THE STATE TRADING CORPORATION OF INDIA LTD
THROUGH MANAGER & ANR.

..... Respondents

Through: Mr. Madhu Sudan Bhayana, Adv. for
Trading Corporation

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

CM APPL. 6059/2024 in CONT.APP.(C) 11/2024

CM APPL. 5995/2024 in CONT.APP.(C) 10/2024

These applications have been filed by the appellant seeking condonation of 13 and 5 days delay respectively in filing the present appeals.

For the reasons stated in the applications, the same are allowed.

The applications are disposed of.

CM APPL. 7048/2024 in CONT.APP.(C) 11/2024

CM APPL. 6305/2024 in CONT.APP.(C) 10/2024

These applications have been filed by the appellant seeking permission to file additional documents on record.

For the reasons stated in the applications, the same are allowed and the additional documents filed by the appellant are taken on record.

The applications are disposed of.

CONT.APP.(C) 11/2024

CONT.APP.(C) 10/2024

1. On February 1, 2024, this Court had raised an issue of maintainability of the appeals in view of the common order dated



December 18, 2023, passed by the learned Single Judge. The operative portion of the order, reads as under:

“46. The afore-stated provision and judgment suggest that apology may be considered as a mitigating circumstance. However, the apology has to be seen with regard to the nature of disobedience and the pre and post circumstances surrounding the apology. In the present factual matrix, and the conduct of the Respondent to not make the payment as agreed between the parties and recorded as per the order dated 04.08.2014, as well as repeatedly ask for extensions in order to delay the proceedings, I am of the view that the apology of the Respondent cannot be said to be bona fide.

47. The fact that the criminal complaints under 138 NI Act are still pending does not mitigate the non-compliance of the undertaking dated 04.08.2014.

48. Respondent No. 2 is the Whole Time Director of AMPL and is responsible for the affairs of AMPL. Hence, it is the Respondent No. 2 who is responsible for non-compliance of the undertakings for and on behalf of AMPL before the learned MM.

49. For the said reasons, I am of the view that the Respondent No. 2 is guilty of contempt and must be punished accordingly.

50. The Respondent No. 2 is given 4 weeks to file a reply to show-cause as to why he should not be punished for contempt for non-compliance of the undertaking given before the learned MM on 04.08.2014.”

CM APPL. 26480/2020(Modification)

51. This application has been filed with the following prayers:

“(a) Clarify that order dated 23-09-2016 passed by this Hon’ble Court is not a direction to CBI to register a Preliminary Enquiry (PE) rather the



direction was to file a Preliminary Report regarding the settlement between the petitioner and M/s Akshata Mercantile Private Limited.

(b) Direct the CBI to quash/stop the Preliminary Enquiry (PE) bearing No. PE221/2016/E0008 dated 05-12-2016 against the respondents as the same has been registered without jurisdiction of the CBI.

(c) During the pendency of the application CBI may be restrained to convert the Preliminary Enquiry (PE) into a Regular Case (RC) as the counterblast to the present application by the Respondent no.1&2.

... ”

52. The Hon'ble Supreme Court, vide order dated 25.08.2023 was pleased to direct to hear CM APPL 26480/2020 expeditiously. Pursuant to the said direction, the hearing of the matter was preponed from 19.10.2023 to 19.09.2023 and the matter has been heard.

53. On 12.10.2015, this Court was inclined to order an independent investigation as the manner in which the Petitioner and the Respondents had entered into a settlement in proceedings under Section 138 of NI Act was seemingly 'not above board'. However, learned senior counsel for the Respondents had sought deferment of the order directing investigation and had stated that the Respondents would like to reconcile their accounts with the Petitioner and would make payments of outstanding amount, if any. On this date, the Respondent No. 2 was present in Court.

54. On 23.09.2016, this Court passed an oral judgment in which it recorded that in pursuance of the order dated 12.10.2015, the Respondents have only paid Rs.10.50 crores to the Petitioner. Further, it recorded that in the additional affidavit filed by the Respondent No. 2, the Respondents have contended that they have made excess payment to the Petitioner and have to recover a sum of



Rs. 2,28,39,832.44/-. However, the learned ASG stated that Rs. 1,041,872,755/- was still due and payable as on 30.04.2016, in pursuance to the settlement.

55. On 23.09.2016, this Court took a prima facie view that the conduct of the Petitioner and the Respondents was 'dubious' and 'not above board', and directed a CBI examination of the entire transaction between the parties. The relevant portion of the said judgment reads as under:-

“8. Keeping in view the divergent stands as well as the wide gap in the amounts due and payable between the parties and the 'vague' settlement, this Court is of the view that is not possible to amicably resolve the matter.

9. Consequently, keeping in view the order dated 12th October, 2015, this Court directs the Central Bureau of Investigation (CBI) to examine the entire transaction between the parties including the way the settlement offer was accepted by the petitioner-public sector undertaking.

10. Let a preliminary report be filed by the CBI before the next date of hearing. A copy of this order along with entire paper book shall be forwarded to the CBI by learned counsel for the petitioner within a period of one week. Both parties are directed to furnish whatever additional documents and filed the CBI asks for and to extend full cooperation to the CBI.”

56. Pursuant to the said order, the CBI conducted an inquiry and filed a preliminary enquiry registration report dated 05.12.2016. The CBI, as per its procedure, registered a Preliminary Enquiry bearing No. PE221/2016/E0008.

57. After the PE was registered, the CBI conducted inquiry and submitted report dated 31.01.2017. It found that there were serious violations regarding following of



guidelines by the officers of Petitioner-STC while sanctioning credit facility to the Respondents. The CBI also found serious irregularities amounting to commission of criminal misconduct involving officials of Petitioner-STC and the Respondents.

58. It is argued by the learned senior counsel for the Respondents that in view of the direction issued by this Court for submission of preliminary report by the CBI and subsequent submission of the same, the role of CBI ought to have come to an end. As per the preliminary enquiry bearing No. PE221/2016/E0008 dated 05.12.2016, the complainant is shown as “as per Delhi High Court order dated 23.09.2016”. The said registration of PE, it is argued, was not the direction given by this Court and the CBI misused the said direction to register a PE.

59. It is further stated that even if the preliminary enquiry is allowed to be continued, the Respondent No.1 ought to be protected from the purview of the same as the main case from which the present contempt proceedings have arisen has been quashed against Respondent No. 1, and thus, no proceedings ought to be initiated against Respondent No. 1.

60. I am of the view that the order dated 23.09.2016 is only a direction to the CBI to look into the transactions between the parties which, this Court, has found “dubious” and “not above board”. This Court has not directed or circumscribed the nature of inquiry or the manner in which the inquiry is to be conducted by the CBI. The Court, while passing the order dated 23.09.2016, was very much within its powers to flag issues which seem to be dubious and not inspiring confidence, especially when a PSU is involved dealing with government funds. The orders dated 12.10.2015 and 23.09.2016 are only the trigger points pursuant to which the CBI has conducted investigation into the transactions between Petitioner-STC and the Respondents.



61. For the said reasons, I am not inclined to entertain the present application and the same is dismissed.

62. The CBI is entitled to conduct the inquiry and proceed in accordance with law.

**CONT.CAS(C) 233/2015& CM APPL. 26875/2020
(Modification)**

63. The facts in the present contempt are similar to CONT.CAS(C) 232/2015, except that the alleged contempt is of the order dated 04.08.2014 before the learned MM in CC No. 3453/1. On account of parity, and for the reasons stated hereinabove, the present contempt case is disposed of in terms of the judgment in CONT.CAS(C) 232/2015.

64. In the present case also, I am of the view that the Respondent No. 2 is guilty of contempt and must be punished accordingly.

65. The Respondent No. 2 is given 4 weeks to file a reply to show-cause as to why he should not be punished for contempt for non-compliance of the undertaking given before the learned MM on 04.08.2014.

66. For CM APPL. 26875/2020, the order of CM APPL. 26480/2020 in CONT.CAS(C) 232/2015 is to be read as the order in this application also.

67. List for further proceedings on 29.02.2024, on which date the Respondent No. 2 shall remain present in Court.”
(emphasis supplied)

2. Mr. Trideep Pias, learned Senior Counsel appearing for the appellant would primarily submit that the present appeals are maintainable in view of the words incorporated under Section 19 of the Contempt of Courts Act, 1971 (‘Act of 1971’, for short). The said Section reads as under:



“19. Appeals.— (1) *An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—*

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.”

3. According to him, the issue of maintainability of appeals in the facts of the present case, is no more *res integra*, in view of the judgment of the Supreme Court in the case of ***R.N. Dey and Others v. Bhagyabati Pramanik and Others***, (2000) 4 SCC 400, more



specifically, in terms of paragraph 10 of the said judgment, wherein, according to him, the Supreme Court has clearly held that when the court either *suo moto* or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of the proceedings for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Hence, against such an order, the appeal would surely be maintainable.

4. He also submits that the issue of maintainability of appeal under Section 19 of the Act of 1971, was also referred to a Bench of three Hon'ble Judges of the Supreme Court vide order dated September 19, 2005 in ***Dharam Singh v. Gulzari Lal***, arising out of ***SLP(C) 18852/2005***, as there were conflicting decisions of various High Courts, as also two lines of decisions by the Supreme Court. However, the reference in ***Dharam Singh (supra)*** was not ultimately decided due to the fact that the petition was later on withdrawn by the appellant therein and the same is evident from the order dated December 14, 2009, passed in the said case.

5. It is also his submission that even *de hors* the reference in ***Dharam Singh (supra)*** fructifying in a final decision, the second aspect is that two decisions of the Supreme Court carve out a rule in respect of maintainability of an appeal under Section 19 of the Act of 1971, for a Court acting under the Act of 1971 decides an issue beyond its



jurisdiction. In this regard, firstly, he has relied upon the judgment of the Supreme Court in the case of ***Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others, (2009) 2 SCC 784*** and secondly, reliance has been placed upon the judgment of the Supreme Court in the case of ***Parents Association of Students v. M.A. Khan, (2009) 2 SCC 641*** to contend that a person aggrieved by an order must have a remedy and technicalities of law should not be allowed to come on his way to move the higher courts.

6. According to him, the impugned order passed by the learned Single Judge is without jurisdiction in initiating and providing its *imprimatur* to a preliminary enquiry of the CBI. This, according to him, is not within the jurisdiction of a Court acting under the Act of 1971. Moreover, the impugned order passed by the learned Single Judge is detrimental to the appellant and the same is passed subsequent to the initiation of contempt and prior to discharge of rule and as such, the same is amenable to challenge in view of the judgment in the case of ***R.N. Dey and Others (supra)***.

7. An attempt is also made by Mr. Pias to distinguish the judgment of the Supreme Court in the case of ***D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26***, by submitting that the said judgment has considered the maintainability of the appeals in the context of an acquittal from the charge of contempt or where the rule is discharged against an alleged contemnor. According to him, it is no longer *res integra* and that the *ratio decidendi* in a judgment is to be construed in light of the facts of that particular case. (Ref: ***Regional Manager v.***



Pawan Kumar Dubey, (1976) 3 SCC 334 and *State of Gujarat v. R.A. Mehta, (2013) 3 SCC 1*). Therefore, the decision in *D.N. Taneja (supra)* would not apply to a case where a plea of error of jurisdiction has been taken, as in the present case.

8. Furthermore, it is his case that the Supreme Court in the case of *Midnapore Peoples' Coop. Bank Ltd. and Ors. v. Chunilal Nanda and Ors., (2006) 5 SCC 399*, has failed to notice the decision in *R.N. Dey and Others (supra)*. The latter being a prior judgment of a co-equal Bench, the Bench in *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)* ought to have noted the import of the said judgment. In the event that it disagreed with *R.N. Dey and Others (supra)*, the issue ought to have been referred to a three Judge Bench, i.e., the same Bench in *Dharam Singh (supra)* which was pending at that time.

9. He submits, in the event that this Court holds that an appeal under Section 19 of the Act of 1971 is not maintainable, specifically, in a case such as the present one, where there is a manifest error of jurisdiction, the appellant would lose one tier of appeal before this Court. This is compounded by the fact that the judgment of this Court in *Dolly Kapoor and Ors. v. Sher Singh Yadav and Ors., 2012 SCC OnLine Del 1228*, closes the door in respect of Letters Patent Appeal / Intra-Court Appeal as well. Accordingly, he prays that this Court may be pleased to uphold the maintainability of the appeals under Section 19 of the Act of 1971, especially in cases such as the present one, where the learned Single Judge has manifestly acted beyond jurisdiction, as was done in the case of *Tamilnad Mercantile Bank Shareholders*



Welfare Association (2) (supra).

10. On the other hand, Mr. Madhu Sudan Bhayana, learned counsel appearing for the respondent No.1 would contest the submissions made by Mr. Pias to submit that in view of Section 19 of the Act of 1971, the present appeal is not maintainable, as no punishment has yet been imposed by the learned Single Judge, upon the appellant / contemnor.

11. According to him, the ratio laid down by the Supreme Court with respect to scope of appeal under Section 19 of the Act of 1971 in ***D.N. Taneja (supra)*** and followed by the Supreme Court in ***Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*** is crystal clear, i.e., it is only when punishment is imposed by a Court in the contempt proceedings, the appeal would lie in terms of Section 19 of the Act of 1971.

12. He states that the plea of Mr. Pias that the appeal in ***D.N. Taneja (supra)*** being against an acquittal and it was in that context that the Supreme Court held that the same shall not be maintainable, is a misconceived argument, when the Supreme Court in the said judgment has clearly delineated the scope of appeal under Section 19 of the Act of 1971. In other words, the Supreme Court, while delineating the scope of appeal under Section 19 of the Act of 1971, has held that, it is only when punishment is imposed, the appeal shall lie. So, in that sense, the judgment of three Hon'ble Judges squarely applies to the facts of the case in hand and therefore, as no punishment has been imposed in the impugned order passed by the learned Single Judge, the present appeal *per se* is not maintainable.



13. Similar submissions have been made by Mr. Bhayana by referring to the judgment of the Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*, wherein the Supreme Court, in paragraph 11, has held as under:-

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

(emphasis supplied)

14. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether despite there being no punishment imposed by the learned Single Judge in the impugned order, the appeal shall lie before this Court in terms of Section 19 of the Act of 1971. We have already reproduced the relevant part of the impugned order passed by the learned Single Judge in paragraph 1 above. From the perusal of the same, it is clear that the learned Single Judge has only stated that, *"The Respondent No. 2 is given 4 weeks to file a reply to show-cause as to why he should not be punished for contempt for non-compliance of the undertaking given before the learned MM on 04.08.2014"*. In other words, no punishment has been imposed by the learned Single Judge upon the appellant. The issue is no more *res intergra* in view of the authoritative pronouncements of the Supreme Court in the cases of *D.N. Taneja (supra)* and *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*,



i.e., the appeal could only lie under Section 19 of the Act of 1971, when there is imposition of punishment. Therefore, we are of the view that the present appeal filed by the appellant is not maintainable.

15. Moreover, we agree with the submissions made by Mr. Bhayana that, though the Supreme Court in the case of *D.N. Taneja (supra)*, was considering the appeal against an order of the High Court dismissing the application for contempt, nonetheless, the Supreme Court by its clear exposition of law, determined the scope of Section 19 of the Act of 1971 by stating that it is only against an order imposing punishment that an appeal would lie under Section 19 of the Act of 1971. Suffice to state, the said judgment has been followed by the Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*.

16. The ratio laid down by the Supreme Court in *D.N. Taneja (supra)*, enunciating the scope of appeal under Section 19 of the Act of 1971, in paragraph 8, is reproduced as under for ready reference:-

“8. The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in



exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.”

(emphasis supplied)

17. We have already reproduced the relevant paragraph of *Midnapore Peoples’ Coop. Bank Ltd. and Ors. (supra)* in paragraph 13 above. The Supreme Court in the said paragraph has clearly held that 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*’.

18. It is also pertinent to refer to the latest judgment of ours, in the case of *Harish Kumar Kathuria & Anr. v. Sanjay Gupta & Ors.*, passed in *Cont. App. (C) 59/2023*, dated February 08, 2024, wherein, in paragraph 27, it has been held as under:-

“27. In view of the settled position of law with regard to the scope of appeal under Section 19 of the Act of 1971, as discussed above and in light of the judgments passed by the Supreme Court as well as this Court, it is clear that an appeal in terms of Section 19 of the Act of 1971, shall lie only if there is an order passed imposing the punishment. In other words, if an order impugned



under Section 19 of the Act of 1971, does not impose punishment on a contemnor, then no appeal shall lie under Section 19 of the Act of 1971. Admittedly, that is not the position here. Therefore, the present appeal preferred before us under Section 19 of the Act of 1971, being premature stands dismissed. It is ordered accordingly. Liberty is with the appellants to seek such remedy as available in law. No Costs.”

19. Having said so, insofar as, the judgment relied upon by Mr. Pias in the case of *Parents Association of Students (supra)* is concerned, the issue which arose before the Supreme Court was whether a special appeal from an interim order passed by the Court in exercise of its contempt jurisdiction would be maintainable. It was the case wherein the contempt proceedings were initiated against a party who was not even arrayed as a party in the original writ petition and as such a basic issue was raised whether such a party may be proceeded against, under the Act of 1971. The Supreme Court though assuming that the Division Bench had no jurisdiction to entertain the appeal has in paragraphs 11, 12, 13, 19 and 23 held as under:

“11. The controversy as regards exercise of jurisdiction of the appellate court under Section 19 of the Contempt of the Courts Act is a vexed one. Whereas one line of decisions beginning from Baradakanta Mishra v. High Court of Orissa [(1975) 3 SCC 535 : 1975 SCC (Cri) 99] till Midnapore Peoples' Coop. Bank Ltd. [(2006) 5 SCC 399] is that an appeal would be maintainable only when an order of punishment has been made, in R.N. Dey v. Bhagyabati Pramanik [(2000) 4 SCC 400] it has been held to be maintainable if the jurisdiction is exercised by any court under the Contempt of Courts Act.



12. The question, we may notice, has been referred to a three-Judge Bench in Dharam Singh v. Guljari Lal [SLP (C) No. 18852 of 2005 decided on 19-9-2005.] . We, therefore, need not decide the larger question, namely, maintainability of the appeal under Section 19 of the Contempt of Courts Act, 1971 vis-à-vis maintainability of the special appeal under the Letters Patent of the High Court, since the matter has been referred to a larger Bench.

13. We, however, wish to deal with the basic issue. The appellant filed the writ petition, inter alia, for a direction upon the State to regulate professional education so far as it, inter alia, relates to fixation of fee. The first respondent admittedly runs a professional institution. It, subject to any law, would be bound by the decision of this Court in T.M.A. Pai [(2002) 8 SCC 481]. The contemnor or the institution which he represents, however, was not a party. If he was not a party, subject to statutory interdict, only in exceptional cases, he may be proceeded against under the Contempt of Courts Act, 1971.

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19. The question as to whether a person, although not a party in the original writ proceedings, could be proceeded against, is a debatable one. Such a question, therefore, was required to be determined at the threshold. If prima facie two views are possible and unless it is firmly held that Respondent 1 not only was bound by the directions issued by the High Court but he had also defied it wilfully and deliberately, he cannot be punished for commission of contempt. If, prima facie, the appellant (sic Respondent 1) cannot be punished for commission of contempt of the High Court, an interim order also should not have been passed. We draw inspiration in this regard from a decision of this Court in State of Bihar v. Rani Sonabati Kumari [AIR 1961 SC 221] which has since been



followed in a large number of cases.

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23. As indicated hereinbefore, the matter is pending before a three-Judge Bench. In a case of this nature, this Court is also not precluded from taking into consideration the subsequent events. **Having regard to the subsequent events, and in particular, as the decision as to the Committee's power to fix fees is justiciable or not is pending consideration, it would not be fair to allow the interim order passed by the learned Single Judge to continue, assuming that the Division Bench had no jurisdiction to entertain the appeal and consequently pass the interim order staying the operation of the order of the learned Single Judge. While, therefore, quashing both the orders, we would request the learned Single Judge to consider the merit of contempt matter only after disposal of Writ Petition No. 2117 (M/S) of 2006.**

(emphasis supplied)

20. Suffice to state, in the aforesaid case, the judgment rendered by three Hon'ble Judges of the Supreme Court in ***D.N. Taneja (supra)*** was not brought to the notice of the Bench. Hence, the same was not considered. Moreover, in paragraph 12, the Supreme Court after noticing the fact that the question regarding the scope of appeal under Section 19 of the Act of 1971, having already been referred to the Larger Bench in ***Dharam Singh (supra)***, did not decide the larger question of maintainability of appeal under Section 19 of the Act of 1971, vis-à-vis maintainability of the appeal under the Letters Patent of the High Court. Thereafter, in paragraphs 13 and 19, it decided to deal with the basic issue, i.e., can a contemnor despite not being made party to the original writ petition (wherein, directions said to have been



violated, were passed), be proceeded against under the Act of 1971. Finally, in paragraph 23, after noting the fact of reference being pending in *Dharam Singh (supra)* and also after assuming that the Division Bench did not have the jurisdiction to entertain an appeal preferred against an interim order passed by the learned Single Judge exercising its jurisdiction under the Act of 1971, it quashed both the orders passed by the learned Single Judge as well as the Division Bench of the High Court.

21. Therefore, it is crystal clear that the issue of delineating the scope of appeal under Section 19 of the Act of 1971 was not gone into, and as such, this Judgment shall not aid the pleas of Mr. Pias.

22. Insofar as reliance placed by Mr. Pias on the judgments of the Supreme Court in the cases of *R.N. Dey and Others (supra)* and *Tamilnad Mercantile Bank Shareholders Welfare Association (2) (supra)* are concerned, the Supreme Court in the case of *ECL Finance Limited v. Harikishan Shankarji Gudipati and Ors., (2018) 13 SCC 142*, more specifically, in paragraph 4 to 7, has held as under:

“4. The learned counsel for the respondents has referred to two decisions of this Court in *R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400]* and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784]* and made a persuasive submission regarding the maintainability of the appeal. We are afraid that the decisions relied upon by the respondents do not further their case, in the given facts and circumstances. *R.N. Dey [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400]* was a case where the High Court declined to



accept the unconditional apology tendered by the contemnor. It was in that context that this Court held that the contemnor could file an appeal since he was otherwise entitled to be discharged in case the unconditional apology had been accepted. In other words, this Court was of the view that the decision to reject the unconditional apology and proceed further was an order or decision to proceed to punish the contemnor. Hence, it was held that such a decision or order was appealable. That is not the situation in the present case. And in any case, at para 13, the Court made it clear that: (R.N. Dey case [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400], SCC p. 405)

“13. In the present proceedings the question whether appeal under Section 19 is maintainable or not is not required to be decided finally as, in our view, facts of this case are grossly inadequate and the contempt proceedings were not required to be initiated at all.”

5. In Tamilnad Mercantile Bank [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784] , this Court referred to Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda [Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda, (2006) 5 SCC 399] and took the view that though an appeal under Section 19 of the Act, may not be maintainable against certain orders, still the aggrieved person can file an intra-court appeal if in the impugned order an issue has been decided or a direction has been issued, relating to the merits of the disputes between the parties, in exercise of its contempt jurisdiction. No doubt, in para 39, this Court has held that an appeal would be maintainable even against a notice to show cause. But it has to be seen that such a notice is in a case where the court, preceding the notice, had decided some disputes raised before it. Hence this Court guardedly put a caveat as follows:



(Tamilnad Mercantile Bank case [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784] , SCC p. 800)

“39. ... Thus, in a given situation, an appeal would be maintainable even against a notice to show cause.”

In other words, notice referred in para 39 is a notice apparently after taking decision on contempt and proceeding further. For the sake of completion of the discussion, we have extracted para 39 also: (Tamilnad Mercantile Bank case [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784] , SCC p. 800)

“39. We may repeat that it may be a different matter if the court while passing an order decided some disputes raised before it by the contemnor asking it to drop the proceedings on one ground or the other. Thus, in a given situation, an appeal would be maintainable even against a notice to show cause. Here even such a notice has not been issued and thus the question of satisfying the court by showing cause that the respondent contemnors had not committed any contempt did not arise. Allegations had not been made against the Chairman of the meeting. The contempt proceedings had been initiated only against the Managing Director of the Bank.”

6. In Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda [Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda, (2006) 5 SCC 399] after an extensive discussion on various case laws, this Court has summarised the legal position as follows : (SCC pp. 410-11, para 11)

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised 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 the 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. The learned counsel for the respondents submits that before issuing notice, the learned Single Judge had considered the merits of the case and had already made his mind to punish the respondents and, therefore, an appeal would lie, in view of the decisions referred to above. We are afraid the contention made by the learned counsel for the respondents cannot be appreciated. **The observations made by the learned Single Judge in the order dated 22-12-2016 [ECL Finance Ltd. v. Harikishan Shankarji Gudipati, 2016 SCC OnLine Bom 15898] , while issuing notice in the contempt petition, is only for the prima facie satisfaction as to whether the contempt petition needs to be considered on merits. Only after such a preliminary stage, notice can be issued. Now, it is open to the respondents to file their reply and after considering the defence, the learned Single Judge will have to take a call as to whether it is a case to be proceeded against for punishing the respondents. In case such a decision is taken by the High Court, it is, at that stage, that the respondents get a right to file an appeal before the Division Bench in terms of Section 19(1)(a) of the Act. Such a stage having not arisen, the impugned order [Harikishan Shankarji Gudipati v. ECL Finance Ltd., 2017 SCC OnLine Bom 3949] passed by the Division Bench is only to be set aside. Ordered accordingly.”***

(emphasis supplied)

23. Therefore, these judgments shall also have no applicability in the facts of the present case.



24. In view of the settled position of law with regard to the scope of appeal under Section 19 of the Act of 1971, as discussed above and in light of the judgments passed by the Supreme Court as well as this Court, it is clear that an appeal in terms of Section 19 of the Act of 1971, shall lie only if there is an order passed imposing a punishment. In other words, if an order impugned under Section 19 of the Act of 1971, does not impose punishment on a contemnor, then no appeal shall lie under Section 19 of the Act of 1971. Admittedly, that is not the position here. Therefore, the present appeals preferred before us under Section 19 of the Act of 1971, being premature stand dismissed. It is ordered accordingly. Liberty is with the appellants to seek such remedy as available in law. No Costs.

CM APPL. 6057/2024 in CONT.APP.(C) 11/2024
CM APPL. 5993/2024 in CONT.APP.(C) 10/2024

In view of the order in the appeals, these applications are also dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 28, 2024/aky