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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: February 08, 2024*

+ **CONT.APP.(C) 59/2023**

HARISH KUMAR KATHURIA & ANR. Appellants

Through: Mr. Neeraj Grover, Adv. with
Mr. Sumer Singh Boparai, Mr. Varun
Bhati, Mr. Sidhant Saraswat and
Mr. Akshat Sharma, Advs.

versus

SANJAY GUPTA & ORS. Respondents

Through: Mr. Pawanjit Singh Bindra, Sr. Adv.
with Mr. Manish Kaushik, Mr. Mishal
Johari, Mr. Ajit Singh and
Ms. Anchita, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this appeal is to an order dated November 24, 2023, passed by the learned Single Judge of this Court, wherein, the learned Single Judge has in the operative paragraphs of the judgment has stated as under:-

“38. It has been brought out by the petitioner that the respondents/contemnors are habitual offenders and there are several other cases of fraud, misdemeanours and allegations of contempt against the respondents / contemnors in several other proceedings as well. The conduct of the respondents/contemnors is egregious and



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is of a nature which tends to substantially interfere with the due course of justice.

39. In view of the above, this Court holds that respondents / contemnors are guilty of violating the directions contained in order dated 08.07.2021. They are accordingly held guilty of committing Contempt of Court under Sections 2 (b), read with Sections 10 and 12 of the Contempt of Courts Act, 1971.

40. At this stage, it has been put to the respondents/contemnors as to whether they are willing to purge their contempt by handing over the possession of the basement of the suit property to the plaintiffs.

41. Learned senior counsel for the respondents / contemnors seeks some time to take instructions.”

2. An issue of maintainability of the present appeal is raised by this Court on the ground that as punishment has not been imposed by the learned Single Judge, an appeal under Section 19 of the Contempt of Courts Act, 1971 ('Act of 1971', for short) shall not be maintainable.

3. Mr. Neeraj Grover, learned counsel appearing for the appellants submits that the present appeal is maintainable as the impugned order of the learned Single Judge is conclusive in the sense, it has held the appellants guilty of violating the directions contained in the order dated July 8, 2021 and as such, they have been held guilty of committing 'Contempt of Court' under Section 2 (b), read with Sections 10 and 12 of the Act of 1971.

4. According to him, in view of the said finding, it is only the punishment which needs to be imposed by the learned Single Judge and in view of the conclusive finding of the guilt, the appeal would surely lie before this Court in terms of Section 19 of the Act of 1971. Section 19 of the Act of 1971, is reproduced as under for ready reference:-



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“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.”

5. It is his primary submission that the impugned order passed by the learned Single Judge is in exercise of its jurisdiction to punish for contempt and hence, the same would fall within the parameters of Section 19 and as such, the present appeal is duly maintainable.



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6. Mr. Grover has relied upon the following judgments and order in support of his aforementioned submissions:-

- (i) ***Purshotam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon and Others, (1978) 2 SCC 370;***
- (ii) ***R.N. Dey and Others v. Bhagyabati Pramanik and Others, (2000) 4 SCC 400;***
- (iii) ***Midnapore Peoples' Coop. Bank Ltd. and Ors. v. Chunilal Nanda and Ors., (2006) 5 SCC 399.***
- (iv) ***Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others, (2009) 2 SCC 784;***
- (v) ***Order dated February 17, 2012, Atul Kumar Rai v. M/s Koshika Telecom Ltd. & Ors., passed in Special Leave to Appeal (Civil) No(s). 6394/2012;***
- (vi) ***ECL Finance Limited v. Harikishan Shankarji Gudipati and Ors., (2018) 13 SCC 142;***
- (vii) ***Sarojini Nagar Jhuggi Jhopri Vikas Samiti v. Suresh Kumar and Others, 2022 SCC OnLine Del 3669;***

7. On the other hand, Mr. Pawanjit Singh Bindra, learned Senior Counsel appearing for the respondents would contest the very maintainability of the appeal. In support of his submissions, he has specifically relied upon the judgment of the Supreme Court in the case of ***Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra).***

8. Having noted the submissions made by the learned counsel for the parties, we are afraid that the submissions made by Mr. Grover are unmerited in view of the settled position of law pertaining to scope of appeal under Section 19 of the Act of 1971, as laid down by the



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Supreme Court in various judgments, including the judgment passed by the bench of Three Hon'ble Judges in the case of *D.N. Taneja v. Bhajan Lal*, (1988) 3 SCC 26, wherein, the Lordships have elucidated the settled position of law qua scope of appeal in clear terms under Section 19 of the Act of 1971, in paragraph 8, which is reproduced as under:-

“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)

9. In this regard, we may also refer to the following subsequent judgments of the Supreme Court as well as of the Co-ordinate Bench of



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this Court, wherein, the settled position of law, as laid down in *D.N. Taneja (supra)*, has been reiterated with authoritative pronouncements:-

- (i) *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*;
- (ii) *Dolly Kapoor and Ors. v. Sher Singh Yadav and Ors., 2012 SCC OnLine Del 1228*;
- (iii) *ECL Finance Limited (supra)*;
- (iv) *Jamna Datwani v. Kishin Datwani, 2020 SCC OnLine Del 1533*.

10. In this regard, it is pertinent to reproduce paragraph 11 of the judgment passed by the Supreme Court in the case of *Midnapore Peoples' Coop. Bank Ltd. and Ors. (supra)*, wherein, in clear terms, it has been held by the Supreme Court after considering the authoritative pronouncement in *D.N. Taneja (supra)* as well as other judgments of the Supreme Court, that an appeal under Section 19 of the Act of 1971, 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'. The paragraph 11 of the said judgment summarizing the scope of appeal under Section 19 of the Act of 1971, is reproduced as under:-

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

1. 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.



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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.

(emphasis supplied)



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11. Insofar as reliance placed by Mr. Grover on the order passed by the Supreme Court in the case of **Atul Kumar Rai (supra)**, is concerned, the Supreme Court has *prima facie* observed that source of power to hold the contemnor guilty of contempt is no different from that which the court invokes when it actually passes an order of punishment/sentence and there is no power to punish unless the court holds contemnor guilty. Moreover, holding the contemnor guilty is in fact a step in aid of imposing a suitable punishment. However, in clear terms, the Supreme Court did not propose to express any final opinion on the question whether an order passed by the High Court holding the petitioner therein guilty of contempt but not imposing any sentence/punishment upon him was also appealable in terms of Section 19 of the Act of 1971 and as such, it was opined that it is open to the High Court to pronounce the punishment/sentence after hearing the petitioner therein and in such event, the petitioner therein was given the liberty to file an appeal in terms of Section 19 of the Act of 1971. Hence, the said order would not help the case of Mr. Grover.

12. Insofar as the judgment in the case of **Tamilnad Mercantile Bank Shareholders Welfare Association (2) (supra)** is concerned, the Supreme Court was concerned with the facts wherein the Tamilnad Mercantile Bank Ltd., ('company') was established by the Nadar Community and registered under the Companies Act, 1956. It carried out banking business *inter alia* in the State of Tamil Nadu. The Members of the Appellant-Association held large number of shares in the company. For one reason or the other, its Annual General Meetings could not be held for a number of years. The Company Law Board



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directed that Annual General Meetings for the years 1996 to 2003 be held. On December 24, 2004, i.e., the date for holding 82nd Annual General Meeting was fixed, the Appellant-Association, filed a suit which was registered as C.S. No.981/2004 in the High Court of Judicature at Madras in its ordinary original civil jurisdiction. Proceedings in contempt in respect of an order relating to the said suit came up for consideration before the Supreme Court in Civil Appeal No.3034/2006 and by an order dated July 12, 2006, the matter was remanded back to the High Court for consideration afresh. On remand, the applications being OA Nos. 597-599/2006, were filed for grant of injunction in the said suit and by an order dated July 26, 2006, the learned Single Judge passed an order of injunction in the following manner:

“Till such time, without postponing the meeting, there can be a better arrangement to conduct the annual general meeting as scheduled on 27-7-2006 so far as subject-matters 1, 2 and 6 found in the agenda (by show of hands) are concerned and regarding the other subject-matters 3 to 5 found in the agenda, the general body meeting may be adjourned until further orders of the Court and to which meeting, fresh proxies may be allowed in accordance with the result of the enquiry to be made in these applications. Suppose, the proxies of GPA-holders were not allowed to participate in the election, then no fresh proxies need be made. There is also no serious objection by anyone concerned (counsel).”

In the meantime, another suit being CS No.481/2008 was filed by the appellant questioning the transfer of certain shares. One of the reliefs prayed therein reads as under:



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“granting permanent injunction restraining the 10th-31st defendants, their men, agents, servants and the nominees from exercising any right as shareholders of the 2nd defendant in relation to the abovesaid shares”.

In any case, on or about June 10, 2008, a contempt petition, being CP No.508/2008 was filed alleging disobedience of the order dated July 26, 2006. The contempt petition came up before another learned Single Judge of the High Court passed in O.A. No. 597 to 599 of 2006. However, no reference was given to the orders passed by the learned Single Judge in the applications filed from time to time and also to other proceedings taken by the parties. Be that as it may, the learned Single Judge in the contempt jurisdiction had passed an *ad interim ex parte* injunction on June 12, 2008 restraining the Managing Director of the Company from implementing the resolution or item of business in relation to the election of Directors passed at the annual general meeting held on June 5, 2008, till the disposal of contempt petition. The matter was directed to be posted on July 21, 2008. When the matter was listed on July 21, 2008, one T. Rajakumar filed an application in civil appeal arising out of SLP (C) No.19379/2008 for impleading him as a party and for vacating the *ex parte* interim order dated June 12, 2008 passed in the contempt proceedings before the learned Single Judge. T. Rajakumar, however, withdrew the said application and preferred an intra-court appeal. One S.C. Sekhar, who is also said to have been elected in the said annual general meeting held on June 5, 2008, also preferred an intra-court appeal. Both the appeals were preferred under Section 19(1) of the Act of 1971. A question regards to maintainability



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of said appeals was raised. The Division Bench of the High Court by reason of the impugned order answered the same in the affirmative, stating as under:

“We have gone through the said provision. Prima facie we are of the considered view that only when some orders adversely affecting any person, who makes a claim that he is intending to prefer an appeal (sic are passed), this Court in exercise of the power under the provisions of sub-section (3) of Section 19 of the Contempt of Courts Act, 1971 may suspend such an order. We have found that the contempt appellants are the persons aggrieved by the order of the learned Single Judge of this Court and this Court has only on prima facie consideration held that the contempt appeals are maintainable and the rights of the respondents to canvas their arguments either in the contempt petition or in the contempt appeals are still open. We therefore find that the order holding that the contempt appeals are maintainable does not in any way adversely affect the right of the 2nd respondent. Accordingly, the submission made by the learned counsel for the 2nd respondent is not acceptable and the permission sought for is consequently rejected.”

13. We may state here that one of the pleas raised on behalf of the appellant before the Supreme Court was that an appeal under Section 19(1) of the Act of 1971 is not maintainable against an *ad interim* order of injunction. The Supreme Court noted its judgments in the cases of **Purshotam Dass Goel (supra)** and **R.N. Dey and Others (supra)**. A reference was also made on behalf of the appellant to the case **D.N. Taneja (supra)**. The Supreme Court also noted the judgment of the Division Bench of the Calcutta High Court in **Ashoke Kumar Rai v. Ashoke Arora, [96 CWN 278]**. It also referred to the judgment of the



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Calcutta High Court in *Ashis Chakraborty v. Hindusthan Lever Sramik Karmachari Congress and Ors.*, MANU/WB/0341/1991. In paragraph 44, the Supreme Court has also noticed the judgment in the case of *Midnapore Peoples' Coop. Bank Ltd. (supra)*. What is important is, in paragraphs, 46 and 47, the Supreme Court has held as under:

“46. We will, however, proceed on the assumption that no appeal was maintainable. An aggrieved person cannot be left without a remedy. Access to justice is a human right. In certain situations it may also be considered to be a fundamental right. (See Tashi Delek Gaming Solutions Ltd. v. State of Karnataka [(2006) 1 SCC 442] and Arunima Baruah v. Union of India [(2007) 6 SCC 120].)

47. Concededly this Court has the jurisdiction to entertain a special leave petition. When the entire matter is before us this Court in exercise of its jurisdiction under Article 136 read with Article 142 of the Constitution of India may pass such orders which would do complete justice to the parties. (See T. Vijendradas v. M. Subramanian [(2007) 8 SCC 751].).”

(emphasis supplied)

14. So, it follows that the Supreme Court had considered the appeal in exercise of its jurisdiction under Article 136 read with Article 142 of the Constitution of India and as such, decided the same, by stating in paragraph 50, as under:

“50. This Court while deciding a matter of this nature may, in exercise of its special jurisdiction under Article 142 of the Constitution of India, not only quash the order appealed against but also in the event it is found that quashing of an illegal order gives rise to another illegality, it may also refuse to exercise its jurisdiction or quash both the orders. Apart from the fact that the order



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passed by the learned Single Judge dated 20-6-2008 is found to be illegal and without jurisdiction having been passed without any application of mind and furthermore as the same was obtained by the appellant by suppressing material facts and the proceedings between the parties, it is eminently a fit case where this Court should refuse to interfere with the impugned order of the High Court.”

(emphasis supplied)

15. From the aforesaid, it is clear that the Supreme Court has observed that technically an appeal under Section 19(1) of the Act of 1971 is not maintainable and then proceeded in exercise of its jurisdiction under Article 136 read with Article 142 of the Constitution of India to decide the appeal in the manner it did, which we have already reproduced above and as such, this judgment shall also not help the case of Mr. Grover.

16. Suffice to state, though, Mr. Grover has relied upon the conclusion drawn by this Court in ***Sarojini Nagar Jhuggi Jhopri Vikas Samiti (supra)***, wherein, in paragraph 8, this Court has stated as under:

“8. In view thereof, for an appeal to be maintainable under Section 19 of the Act there has to be a definite finding against a contemnor, or else there cannot be any right to appeal under Section 19 of the Act. The law of contempt is very clear. A plain reading of the Act reveals that the provision of appeal is extremely limited and according to us “regulated”. The availability and maintainability of an appeal under Section 19 of the Act is dependent upon a contemnor being guilty or being punished under the Act and in no other case. The present case is not of that kind.”

17. The aforesaid conclusion of this Court is *per incurium*, where one of us (Saurabh Banerjee, J.) is a member, as in the said case, this



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Court did not consider the judgments of the Supreme Court as referred by us in paragraphs 8 and 9 above.

18. Insofar as the judgment in the case of *R.N. Dey and Others* (*supra*) is concerned, the Supreme Court in *ECL Finance Limited* (*supra*), in paragraph 4, has clearly 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



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the contempt proceedings were not required to be initiated at all.”

(emphasis supplied)

19. Similarly, in paragraph 5, the Supreme Court has dealt with ***Tamilnad Mercantile Bank Shareholders Welfare Association (2)*** (*supra*) and in paragraph 6, it also refers to ***Midnapore Peoples' Coop. Bank Ltd. (supra)*** and finally, after considering the ratio laid down in ***Midnapore Peoples' Coop. Bank Ltd. (supra)***, the Supreme Court in paragraph 7, has held as under:-

“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.”



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(emphasis supplied)

20. Perusal of paragraph 7 of the said judgment would reveal that the Supreme Court has clearly held that it is only when a decision is taken by the High Court for punishing the respondents, it is at that stage, the respondents get a right to file an appeal before the Division Bench in terms of Section 19(1) of the Act of 1971 and not at any stage prior thereto, be it the stage of issuance of notice or notice to show cause later. Hence, the said judgment of the Supreme Court shall also not help the case of Mr. Grover.

21. It is stated that Mr. Grover has also relied upon paragraph 11 of the judgment in the case of *Midnapore Peoples' Coop. Bank Ltd. (supra)*, which has already been reproduced in paragraph 10 above. Suffice to state, the situations as summarized by the Supreme Court in the said case, shall have no applicability in the facts of this case inasmuch as, paragraph 11(I), clearly says that an appeal under Section 19, is maintainable only against an order or decision of the High Court imposing punishment for contempt. Similarly in Para 11 (IV), it is also stated that any direction issued or decision made by the High Court on the merits of a dispute inter se the parties, will not be in the exercise of “jurisdiction to punish for contempt” and therefore not appealable under Section 19. Thereafter, in para 11(V), it is also clearly laid down that the High Court 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 remediless and has the remedy of intra-court appeal, in case of availability of such provisions or otherwise. In any



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case, it has been clearly held in terms of Section 19 of the Act of 1971, that if there is no order imposing any punishment, then an appeal under Section 19 would not be maintainable.

22. Even in the judgment of the Supreme Court in the case of *Sujitendra Nath Singh Roy v. State of West Bengal and others*, (2015) 12 SCC 514, in paragraph 5, the Supreme Court has made the following observation:-

“5. There is no caveat to the proposition of law that under Section 19 of the Contempt of Courts Act, 1971 an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping or refusing to initiate contempt proceedings. This was clearly laid down in State of Maharashtra v. Mahboob S. Allibhoy [State of Maharashtra v. Mahboob S. Allibhoy, (1996) 4 SCC 411 : 1996 SCC (Cri) 675] . This view was also followed in several cases including in Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda [Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda, (2006) 5 SCC 399] .”

(emphasis supplied)

23. In this regard, it is also important to highlight the judgment passed by the Co-ordinate Bench of this Court in the case of *Dolly Kapoor* (*supra*), wherein, in the concluding paragraph, i.e., in paragraph 8, in clear terms, it has been held as under:-

8. It would thus be seen that it was categorically held that appeal to a Division Bench from an order of the Single Judge lies only when the order is of punishing for contempt and not when the order is of declining to initiate proceedings for contempt or dropping the proceedings for contempt or of acquitting or exonerating the contemnor. It was further held by the Apex Court that the appeal under the Letters Patent as distinct from under Section 19 of the Contempt of Courts Act



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may lie also against orders incidental to or connected with the contempt proceedings. However in the instant case the order declining to initiate contempt proceedings cannot be said to be incidental or connected to the contempt proceedings and cannot thus be held to be appealable. It may also be noted that the proceedings, of order wherein contempt is averred, were under Article 227 of the Constitution of India; no appeal under letters patent lies against the order in such proceedings.”

(emphasis supplied)

24. So, it follows that in terms of the conclusion drawn by the Coordinate Bench of this Court, an appeal to a Division Bench from an order of the Single Bench would lie only when the order is of punishing for contempt and not when the order is of declining to initiate proceedings for contempt or dropping the proceedings for contempt or of acquitting or exonerating the contemnor.

25. There can be no *qualem qua* the fact that an order issuing “show cause notice” is different from an order imposing “punishment”. A bare reading of the provisions of Section 19 clearly reflects that an appeal is only maintainable under an order whereby someone like the appellants, has been *punished for contempt*. In fact, the very essence of Section 19 contemplates that an appeal is only maintainable when the High Court has exercised “....its jurisdiction to punish for contempt....”. The same is undoubtedly missing in the present case. Thus, under the present circumstances, where there is no such order imposing punishment on the appellants, this Court cannot assume the order under challenge to be one of that kind, moreover, when the contempt itself is still pending before the learned Single Judge. Therefore, there was no occasion for



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the appellants to file the present appeal. In view thereof, the present appeal per se is pre-mature and does not lie at this stage.

26. Moreover, the ratio culled out in the case of **Dolly Kapoor** (*supra*), is followed by another judgment passed by this Court in the case of **Jamna Datwani** (*supra*), in which, one of us (J. V. Kameswar Rao) was the member, wherein, in paragraphs 13 and 17, it has been held as under:-

“13. Having heard the learned counsel for the parties, the issue, which has been raised by Mr. Sharma is no more res-integra and the same is covered by the judgment of the Supreme Court in Midnapore Peoples' Cooperative Bank Ltd. (*supra*) and of the Division Bench of this Court in the case of Dolly Kapoor v. Sher Singh Yadav, LPA 164/2012 decided on February 28, 2012, wherein the Division Bench has held that the intra-court appeal shall lie only when the order is of punishing for contempt and not when the order of the Single Judge is of declining to initiate or drop proceedings for contempt or of acquitting or exonerating the contemnor. The Division Bench in paras 3, 4, 5, 7 & 8 has held as under:—

“3. We are however unable to agree. It has been held in Fuerst Day Lawson v. Jindal Exports Ltd. JT (2011) 7 SC 469 that where a special self contained statute, as the Arbitration Act in that case, does not provide for Intra-Court appeal the provision of Letters Patent cannot be invoked to negate the statute to maintain such appeal. It was further held that a right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation the express provision need not refer to Letters Patent; but if on a reading of the provision it is clear that all further appeals are barred, then even Letters Patent would be barred. We are of the view that the Contempt of Courts Act, 1971 promulgated to “define and limit the powers of certain Courts in punishing contempts of Court and to regulate their procedure in relation



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thereto” is a self contained Code and the same having provided for appeal only against order of punishment for contempt and not against the order refusing to issue notice of contempt has taken away the right if any of appeal under the Letters Patent.

4. As far as the order in the instant case is concerned, it is not of dismissal of contempt petition, after having initiated contempt proceedings, but of refusal to exercise contempt jurisdiction. The Supreme Court in Baradakanta Mishra v. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court (1975) 3 SCC 535 held that the exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemnor, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt, it is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt; the exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. It was further held that where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. The same view was reiterated in Purshotam Dass Goel v. Hon'ble Mr. B.S. Dhillon (1978) 2 SCC 370. Again in D.N. Taneja v. Bhajan Lal (1988) 3 SCC 26 it was held that when the High Court acquits a contemnor, the High Court does not exercise its jurisdiction for contempt.

5. We are of the view that an order refusing to entertain a contempt petition and/or to issue notice thereof is not a judgment for the same to be appealable under Letters Patent or under Section 10 of the Act. We are also of the view that the policy enshrined in Section 19 of the Act of limiting appeals only to cases where punishment for contempt is made out is in public interest. It intends to



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curtail vexatious litigation. If a party to a litigation could pursue applications in Courts of appeal to commit his opponents to contempt of Courts, when the trial Court whose process, it was alleged to have disobeyed was of the opinion that no vindication of its own order was necessary, would amount to encouraging vexatious litigation. Refusal to exercise contempt jurisdiction does not determine any right and hence is not a judgment. As aforesaid, such refusal is in the exercise of discretionary powers and refusal of such exercise does not constitute a judgment as defined in Shah Babulal Khimji v. Jayaben D. Kania (1981) 4 SCC 8. A complainant or a relator in a contempt proceeding, who moves the machinery of the Court for punishing an alleged contemnor, only brings to the notice of the Court certain facts which, in his opinion, constitute a contempt. He has no other role. The proceedings thereafter are between the Court and the alleged contemnor and if the Single Judge, of whose order contempt is alleged, is of the opinion that no case for entertaining contempt is made out, the Single Judge does not determine any right of the complainant/relator. We are supported in this view by the Full Bench of the Bombay High Court in The Collector of Bombay v. Issac Penhas 1947 SCC OnLine Bom 46 (followed recently in The Bombay Diocesan Trust Association Pvt. Ltd. v. The LPA 164/2012 Page 5 of 8 Pastorate Committee of the Saint Andrews Church 2008 SCC OnLine Bom 566) as also by the Division Bench of the Madras High Court in Shantha V. Pai v. Vasanth Builders, Madras 1990 SCC OnLine Mad 389. We may notice that a Division Bench of this Court in Inderjeet Singh (Since Deceased) v. R.K. Singh LPA No. 577 of 2006, order dated 20-1-2009 (Del) also, after noticing Midnapore Peoples' Co-op. Bank Ltd. (supra) held the Intra-Court appeal against the order discharging the contempt notice to be not maintainable. The High Court of Punjab & Haryana also, in Sh. A.S. Chatha v. Malook Singh 1994 SCC OnLine P&H 505 has held the order in a contempt petition, taking a lenient view



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and giving another chance to comply with the order, to be not a “judgment” and appeal under letters patent to be not maintainable thereagainst. To the same effect is the view of the High Court of Himachal Pradesh in Kundan Ram v. Darshan 1994 SCC OnLine HP 75

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7. As far as the judgment cited by the counsel for the appellant is concerned, we are unable to cull out any such proposition therefrom rather the Apex Court in the said judgment framed the following questions as arising for consideration therein:—

“(i) Where the High Court, in a contempt proceedings, 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?”

and answered the same as under:—



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“I. An appeal under section 19 is maintainable only 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



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provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).”

8. It would thus be seen that it was categorically held that appeal to a Division Bench from an order of the Single Judge lies only when the order is of punishing for contempt and not when the order is of declining to initiate proceedings for contempt or dropping the proceedings for contempt or of acquitting or exonerating the contemnor. It was further held by the Apex Court that the appeal under the Letters Patent as distinct from under Section 19 of the Contempt of Courts Act may lie also against orders incidental to or connected with the contempt proceedings. However in the instant case the order declining to initiate contempt proceedings cannot be said to be incidental or connected to the contempt proceedings and cannot thus be held to be appealable. It may also be noted that the proceedings, of order wherein contempt is averred, were under Article 227 of the Constitution of India; no appeal under letters patent lies against the order in such proceedings.”

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17. In view of the above, we are of the view that the objection taken by Mr. Sharma on the maintainability of the Intra-Court appeal needs to be accepted and the appeal filed by the appellant laying a challenge to the order dated May 02, 2014 of the learned Single Judge under Clause 10 of the Letters Patent is not maintainable and as such, is dismissed.”

(emphasis supplied)

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.



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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.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 08, 2024/aky