

236 **07.02.
2025**
Ct. No. 08

Ab

CPAN 1214 of 2023
in
WPLRT 81 of 2022

Ashima Halder
Vs.
Sri Nitish Dhali and another.

Mr. Pradip Kumar Mondal,
Mr. Arka Mondal.

... for the applicant.

Mr. Chandi Charan De, Ld. AGP,
Mr. Anirban Sarkar.

... for the alleged contemnors.

The affidavit-in-reply to the contempt application be taken on record.

This is the second contempt application at the behest of the applicant alleging violation of the order dated 2nd December 2022 passed by this Bench disposing of the writ application by extending the time to dispose of the appeal pending before the Appellate Authority.

The order of the Appellate Authority was assailed before the Tribunal and it was found that the Appellate Authority proceeded solely on stating the law without going into factual aspect. The law could not be applied in an adjunct manner but have to be taken into account in the perspective of the factual matrix, as a little difference of fact or an additional fact may not invite the ratio of law applicable thereto.

Precisely for such reason, the writ petition was disposed of affirming the order of the Tribunal where the direction was passed upon the Appellate Authority to decide the matter both on fact and law after affording an opportunity of hearing to the interested persons.

This Court did not record any observations on the merit of the case both on fact and law, but the decision was restricted on the obligation of the Appellate Authority being the fact finding authority to decide the dispute both on fact and law. Admittedly, a decision is taken by the Appellate Authority after affording an opportunity of hearing to the appellant/applicant.

The second contempt application is taken out alleging that certain facts, which germane to a cause of action having not dealt with in proper manner or have been omitted and, therefore, the alleged contemnors have exposed themselves liable to be punished under the Contempt of Courts Act.

There is a distinction between a blatant violation of the order acting absolutely in defiance to the directions passed by the Court and the fact where the compliance is made, directions are obeyed but may not be in a manner as expected by the litigant before it. In the second scenario, the contempt jurisdiction should not be stretched too far and the litigant must exhaust the remedy available in the law.

Whether the facts have been properly assimilated and/or considered by the authority is a question, which can be decided by the higher forum and does not come within the ambit of the contempt jurisdiction. Since the order has been passed; whether the Appellate Authority has taken into account all the facts, which are pleaded or produced before this Court, involve the fresh cause of action and, therefore, the contempt is misconceived,

However, in course of hearing, we are given to understand that the order of the Appellate Authority has already been challenged before the Tribunal and,

therefore, it is open to the Tribunal to decide the same on merit without being influenced by the fact that this Court has declined to entertain the application for contempt of Court.

The application for contempt is, thus, dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)