

22.09.2025
Court No.13
Item No.18
AP

MAT 1586 of 2025
With
CAN 1 of 2025
With
CAN 2 of 2025

Lions Orthopaedic Hospital and Research Centre
Vs.
Pravin Murarka and Ors.

Mr. Arindam Banerjee, Senior Advocate
Mr. Moti Sagar Tiwari
Mr. Sailendra Kumar Tiwari
Mr. Shambhu Mahato
Ms. Muskan Jalan

... For the Appellant.

Mr. Shounak Mukherjee
Mr. S.K. Poddar
Ms. Akanksha Mukherjee

... For the Writ Petitioner/
Respondent/Contempt Petitioner.

Mr. Amitabrata Roy, G.P.
Mr. Tirthankar Dey

... For the State.

Mr. Alok Kumar Ghosh
Mr. D. Chakraborty

... For the KMC.

1. The appeal is directed against a judgment and/or order dated 21st August, 2025 and leave is sought to file the same.

2. It appears from the facts that the original writ petitioner was the lessor, who had permanently settled a property situated and lying at 160, Netaji Subhash Chandra Bose Road, Kolkata-700040 in favour of the proposed appellant. The proposed appellant is a social

and charitable organization which is running a hospital already constructed thereat by the writ petitioner.

3. There was a PIL filed sometime in the year 2012 alleging unauthorized construction and user of the property by the proposed appellant. There were certain directions passed on the KMC. The PIL was subsequently abandoned. In 2023 the writ petitioner/private respondent filed a writ petition once again alleging unauthorized construction by the proposed appellant at the said property and improper use thereof. It appears that the allegation of immorality at the said premises and improper use was an exaggeration.

4. The writ petition was disposed of by an order dated 7th July, 2023 directing the KMC to consider representation of the writ petitioner claiming to be the managing trustee of the original lessor and passed appropriate orders thereon. The proposed appellant was party to the writ petition.

5. Upon KMC failing to consider the representation of the original writ petitioner/lessor, the writ petitioner filed contempt proceedings being CPAN 1607 of 2023 alleging failure to comply with the Court's order dt. 7th July, 2023 by the KMC.

6. The KMC during the pendency of the said contempt proceeding considered and disposed of the

representation of the writ petitioner/lessor. The KMC found there was indeed unauthorized construction on the premises, but was willing to regularize the same against payment of certain retention money.

7. The writ petitioner was not interested in paying such retention money. The proposed appellant sought intervention in the contempt proceedings. They had realized that the lessor would not pay such retention money and allow demolition of the unauthorized construction. Admittedly, the whole construction at the said premises was being used for providing medical facilities to the poor and marginalized in the area.

8. The application for intervention of the applicant in CAN 1 of 2025 was rejected by the Single Bench vide its order dated 26th June, 2025.

9. By the order dated 21st August, 2025 the Single Bench in the contempt application having found that the lessor/writ petitioner was not willing to pay the retention money directed demolition of the unauthorized construction.

10. Leave is sought by the appellant to prefer the instant appeal since their activities in providing medical facilities to the poor and marginalized would be seriously jeopardised if any part or portion of the construction is demolished and also on the ground that they were willing to pay the retention money to the KMC.

11. Learned counsel for the writ petitioner/private respondent challenges the maintainability of the appeal by relying upon a decision of the Supreme Court in the case of **Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor** reported in **(2023) 17 SCC 545** particularly para 117.4.

12. This Court finds that the facts under which the conclusions were arrived by the Supreme Court in Para 117.4 thereof of the judgement of **Balwantbhai Somabhai Bhandari (supra)** was rendered in a completely different context and are clearly distinguishable from the facts of the instant case.

13. Per contra, learned counsel for the proposed appellant relies upon Para 11 of the decision of the Supreme Court in the case of **Ajay Kumar Bhalla and Ors. Vs. Prakash Kumar Dixit** reported in **(2024) 12 SCC 159**. In the aforesaid decision at Para 11(V), an earlier decision of the Supreme Court in the case of **Midnapore Peoples' Cooperative Bank Ltd. Vs. Chunilal Nanda** reported in **(2006) 5 SCC 399** was relied upon, which is set out herein below:-

“(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).”

14. Having regard to the above, considering the facts of the case at hand, this Court firstly notes that the contempt application should have come to an end and run its course immediately after the KMC had filed a report considering and disposing of the representation of the writ petitioner/respondent herein. Any further orders thereafter as passed in the impugned order dated 21st August, 2025 were outside the scope of the writ petition and order passed thereunder. Admittedly the parties have statutory remedies against the order of the Municipal Commissioner.

15. The Supreme Court has repeatedly deprecated the practice of expanding scope of litigation by filing supplementary affidavits and additional pleadings and particularly in contempt proceeding, inter alia, in the case of **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Ors. Vs. M. George Ravishekar and Ors.** reported in **(2014) 3 SCC 373** particularly Para 19 thereof, which is set out hereinbelow:-

“The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience

is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v.. Tarak Nath Ganguly, V.M. Manohar Prasad v. N. Ratnam Raju, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami and Union of India v. Subedar Devassy PV.”

16. In the aforesaid paragraph, the practice of expanding scope of contempt proceedings outside the scope of the main order has been discussed in appropriate detail and deprecated.

17. In the instant case, however, this Court notes that the writ petitioner/lessor would be extremely benefited by not paying the retention money to regularize the unauthorized construction. He would be able to arm twist the lessee/the proposed appellant into any kind of settlement which may include parting with the property itself if not part or portion thereof.

18. The conduct of the writ petitioner/respondent to say the least is devious. The Single Judge has been misled into passing the order in question in its contempt jurisdiction.

19. For the reasons stated hereinabove, this Court allows CAN 1 of 2025 for leave to prefer the instant appeal. In any event the proposed appellant was a party to the main writ petition and ought to have been a proforma respondent at least, in the contempt proceedings.

20. The impugned order dated 21st August, 2025 shall stand set aside.

21. The contempt proceedings being CPAN 1607 of 2023 shall remain permanently stayed.

22. The appellant has already filed an appeal before the Municipal Building Tribunal against the order of the KMC being BT Appeal 72 of 2025. The Municipal Building Tribunal shall take expeditious steps to dispose of the said appeal in accordance with law.

23. Since the writ petitioner/respondent disputes the status of the appellant as lessee of the property and the proposed appellant lessee also disputes that the writ petitioner is the managing trustee or a trustee of the property in question or lessor of the property in question, or has any authority to file proceedings against the

appellant. The issues kept open to be decided in an appropriate proceeding in accordance with law.

24. With the aforesaid direction, MAT 1586 of 2025 is allowed and disposed of. CAN 2 of 2025 is also allowed and disposed of.

25. There shall be no order as to costs.

26. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)