

Court No. - 42

Case :- CONTEMPT APPEAL No. - 2 of 2024

Appellant :- International Service Fellowship Usa

Respondent :- Harendra Kumar Masih

Counsel for Appellant :- Indra Mani Tripathi

Counsel for Respondent :- Rishabh Agarwal

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

(Ref: Civil Misc. Delay Condonation Application)

1. Heard.

2. Delay in filing the present appeal is explained to the satisfaction of the Court. Delay is, accordingly, condoned. Office is directed to allot a regular number to the present appeal.

3. Application stands allowed.

Ref: Appeal

4. This contempt appeal arises out of an order passed by the learned Single Judge dated 26.4.2023, while issuing notices in the contempt petition. Learned Single Judge in addition to the issuance of notice has also clarified that the district administration shall not stop construction of those persons, who are not the party in the First Appeal From Order No.334 of 2022. It is this part of the order with which the appellant is aggrieved.

5. Learned counsel for the appellant submits that the vendees to the defendant are equally bound by the orders passed by this Court in First Appeal From Order and that various undertakings have also been given by the parties not to raise constructions.

6. A preliminary objection, however, is taken to the maintainability of the contempt appeal on the ground that against issuance of notice in contempt no appeal would be maintainable. It is also submitted that in the event appellant is aggrieved by the directions issued while issuing notices the remedy available to the appellant would to file a special appeal. Reliance is placed upon the judgments of the Supreme Court in D.N. Taneja vs. Bhajan Lal

(1988) 3 SCC 26, State of Maharashtra vs. Mahboob S. Allibhoy & Anr. (1996) 4 SCC 411 and Midnapore Peoples Co-op. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors. reported in 2006 (5) SCC 399.

7. The issue which has arisen before this Court is similar to the issue raised in the case of Midnapore (supra), wherein an order came to be passed by the High Court in contempt proceedings. After elaborate examination of the judgments operating in the field the Supreme Court ultimately laid down the position in law in para 11 of the judgment, which is reproduced hereinafter:-

"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."

8. Clause v of the judgment makes it abundantly clear that where

the High Court in exercise of contempt proceedings decides an issue or makes a direction relating to the merits of the dispute the aggrieved person is not without remedy. Such an order is open to challenge in intra-court appeal if the order under challenge is passed by the learned Single Judge and in the absence of intra-court appeal by seeking special leave to appeal, under Article 136 of the Constitution of India.

9. In view of the law settled on the issue we find substance in the objection raised on behalf of the respondents that this contempt appeal would not be maintainable, particularly as the contempt court has only issued notices in the matter so far against which admittedly an appeal would not lie. For the directions which are issued while issuing notices the remedy would lie elsewhere in terms of the observations made by the Supreme Court in Midnapore (supra). In that view of the matter, this contempt appeal is dismissed as not maintainable.

Order Date :- 9.4.2024

RA