

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.438/2024
(IA No.1194/2024)

(Arising out of the 'Impugned Order' dated 04.10.2024 in
Cont. A(IBC)/02/2024 in CP (IB) No.678/7/HDB/2018, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Hyderabad Bench, Hyderabad)

In the matter of:

Mr. Pankaj Dhanuka,
Liquidator of Lanco Kondapalli
Power Limited,
Having its Registered Address at
FE 328, Sector 3, Salt Lake City,
Kolkata – 700 106, West Bengal.
v.

...Appellant

Lanco Kondapalli Power Limited,
4th Floor, Mahaveer Radiance,
Pillar No.1708, Kavuri Hills,
Madhapur, Hyderabad – 500 081
Through its Director,
Mr. Sunil Saraf.

...1st Respondent

MCM Pacific Pte Limited,
Having its office at
911, Lorong 1 Toa Payoh,
No.25-01-Oleandder Towers,
Singapore.

...2nd Respondent

Present:

For Appellant : Mr. Ashim Sood, Mr. Abhishek Swaroop,
Mr. Anupm Prakash, Mr. Vasu Manchanda &
Mr. Ekansh Gupta, Advocates

For Respondents : Mr. Sourabh Gupta, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant to the instant Company Appeal, is an applicant to the proceedings drawn by him by invoking the provisions contained under Section 60(5) of the I & B Code, 2016, to be read with Section 425 of the Companies Act, 2013, wherein he has prayed for drawing the contempt proceedings as against the Respondent for their alleged non-compliance of the Judgment dated 02.08.2023, which was rendered in IA No.1221/2023, whereby the impugned judgment dated 04.10.2024 has been rendered, and the said contempt petition being CP No.02/7/HDB/2024 filed by the Appellant herein, has been dismissed and the Learned Adjudicating Authority has observed that owing to the fact and circumstances, which has been pleaded no apparent contempt is made out.

Under the Companies Act, 2013, the power of the contempt has been specifically contained under Section 425 of the Companies Act, 2013, which reads as under: -

“425. Power to punish for contempt – The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in the respect of contempt of themselves as the High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have the effect subject to modifications that –

- (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and*
- (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf”.*

On reading of the provisions contained under Section 425, in fact, the powers of drawing a contempt proceedings which have been granted to the Tribunal and the Appellate Tribunal as created under the Companies Act, where the jurisdiction of the Tribunal & Appellate Tribunal happens to be similar to that of the Hon’ble High Court as it may be in the exercise of its powers under the provision of the Contempt of Courts Act, 1971. The Appeal has been preferred by the applicant contending thereof, that the appeal as against the dismissal of the contempt petition, would be maintainable under Section 61 of the I & B Code, 2016, to be read with Section 19 of the Contempt of Courts Act, 1971. On a simpliciter reading of Section 425, when it refers to, the power of the contempt courts as contemplated under Section 425, would be in consonance to the power provided under the Contempt of Courts Act, 1971. Then obviously, this Appellate Tribunal, would have its Jurisdiction as against the orders passed in contempt proceedings, wherein it would be governed by Section 19 of the Contempt of Courts Act, 1971, providing for an appeal.

For the purpose of appreciating the argument extended by the Learned Counsel for the Appellant, a reference to the Appellate Jurisdiction under Section 19 of the Contempt of Courts Act, 1971, becomes relevant for consideration. Section 19 of the Contempt of Courts Act, 1971, is extracted hereunder: -

“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.”.

On a simple logical interpretation to the language used under Section 19 of the Contempt of Courts Act, 1971, as extracted above and owing to the consistent precedents laid down by various Hon'ble High Courts, as well as the Hon'ble Apex Court, no appeal under Section 19, would be maintainable as against the rejection of the contempt petition.

In the case at hand, the contempt proceedings were drawn by filing of an application under Section 60(5) of the I & B Code, 2016, to be read with Section 425 of the Companies Act, 2013. This Tribunal feels it apt to observe that the provisions contained under Section 60(5) of the I & B Code, 2016, is only by way of a savings clause, which could be exercised for the purposes to meet out the exigency of the procedural law, which is otherwise not contemplated or thought of by the legislature while enforcing the I & B Code or any field which remains uncovered by the provisions of the I & B Code. Provisions contained under Section 60(5) cannot be permitted to be expanded in such a manner as if, to make the judicial proceedings to be a mockery of the judicial proceedings particularly when the field which is subject of consideration, stands covered by the provisions of law prescribed under the statute in itself. It is settled law that the provisions of Section 60(5), could be attracted only when there is no other procedure contemplated under the law, either under the I & B Code or under the Companies Act where there is vacuum or grey area that is not covered under statute, where

the same could be attracted to meet out the vacuum of law, but the provisions of Section 60(5) of the I & B Code, cannot be attracted where the statute itself provides for a specific provision for dealing with contempt petitions under Section 425 of the Companies Act, 2013, which has been in the instant appeal has been attracted and it is to be read with provisions of the Contempt of Courts Act, 1971, and particularly that as contained under Section 12/14 of the Contempt of Courts Act, 1971. In that eventuality, the proceedings drawn by the Appellant by filing the contempt petition which stood rejected by the impugned order, by invocation of Section 60(5), would amount to misusing the savings clause of a statute, which otherwise could not be attracted to be made applicable once the statute itself provides for a field of law for redressal of grievance or any act or action contemplated under the I & B Code or the Companies Act, which for the instant case would be Section 425 of the Companies Act.

Almost an akin situation was considered by the Hon'ble Apex Court when invariably the provisions contained under Section 151 of CPC, which was in the shape of the akin provision of Section 60(5), was being utilised invariably in all situations irrespective of the fact that, the statute itself prescribed a procedure or a forum for redressal of the grievance this procedural aptitude of using savings provision, despite the field of being covered has been deprecated by the Hon'ble Apex Court. Hence, we are of

the view that Section 60(5), cannot be irrationally stretched to be applied, so as to abuse the process of law, particularly when the statute itself provides for a remedial forum, to a person aggrieved against an action or an order passed in the proceedings.

In the case at hand, the Appellant while filing the contempt petition, being Contempt Petition No.02/7/HDB/2024, has alleged non-compliance of the order dated 02.08.2023. The alleged contemnor was impleaded as the Respondent / Opposite Party in the proceedings and was described as under: -

*“M/s. MCM Pacific Pte Limited,
Regd Office: 911, Lorong 1,
Toa Payoh,
#25-01-Oleandder Towers,
Singapore.
Email: pareek@mcmpacific.com”.*

The opposite party which was described in the contempt petition the alleged contemnor is a juristic person which under the company law has got a right to sue and to be sued, but under the law for the purposes of the contempt proceedings to determine an Act of Contempt, it is always an act of an individual attached to the organisation, which could be brought within the purview of Section 425 to be read with Section 12/14 of the Contempt of Courts Act because organisation/juristic person cannot be punished under Section 12/14 of Contempt of Courts Act, and in the absence of the Respondent being represented by an individual who was responsible to

comply the order. No contempt proceedings would be tenable, as against the inanimate or juristic person. Hence, the contempt petition from this perspective itself was also not tenable and deserves rejection.

The contempt is alleged about the non-compliance of the order dated 02.08.2023, which is said to have been passed in IA No.1221/2023. The nature of the order of which the alleged contempt has been a complaint of reads as under: -

“14. Meanwhile, Respondent approached the Authority by filing IA 1221/2023, seeking extension of time to deposit the balance amount and the operative part of the order dated 02.08.2023 (Annexure A-5), which is claimed to have been violated by the Respondent is extracted below:

“One another issue that arises in the course of this proceedings is the payment of rent for use and occupation of the land on which the present goods are lying. The Land has been sold to a third party by the liquidator and the third

party claims rent for use and occupation. While it appears that the demand by land owners is around Rs.1.5 crore (Rupees one crore fifty lakhs only) approx. per month, the Successful Auction Purchaser/Applicant herein states that they have negotiated with the land owner/purchaser. It is open to the Successful Auction Purchaser to get the assistance of the liquidator to work out the terms of the rent for use and occupation of the land by way of separate agreement””.

In fact, the directions given in the order of 02.08.2023, in a nutshell, pertains to the payment of the rent for the use and occupation of the land on which the goods were said to be lying. The land is alleged to have been sold

to the third party, by the liquidator and the third party claim for rent, for use, and occupation of land was being deprived with the rent which was claimed to be entitled to be received. The nature of contempt alleged was that the Successful Auction Purchaser, the applicant to the contempt petition had submitted that, he had negotiated with the land owners and the purchasers and it was left open to the Successful Auction Purchaser, to get an assistance of the liquidator to work out for the terms of the remittance of the rent for the use and occupation of the land. If the entire directions given in the order of 02.08.2023, of which the contempt is alleged, is taken into consideration in fact, it was an act, which was supposed to be performed by the individual animate and not by an inanimate juristic person, if that be the situation then the contempt petition against an inanimate juristic person will not be tenable, until or unless the animate juristic person is representing the Respondent is made as the party to the proceedings of the contempt who could be punished under the Act, for non-compliance.

The Learned Counsel for the Appellant has submitted, that the order dated 02.08.2023, of which the contempt was alleged was considered by the Tribunal, and the Tribunal by its wrongful interpretation while recording its perverse finding in para 37 to be read along with para 43 of the impugned judgment had dismissed the contempt petition holding thereof that no

contempt is made out. Hence, the petition was dismissed. The judgment is alleged to have suffered from perversity.

As far as the proceedings of the contempt are concerned, the Applicant or the Petitioner, who initiates the proceedings of contempt simply acts as an messenger/informer to the court or tribunal, whose order has been violated for taking of an appropriate action against the alleged contemnor. After bringing the said fact, to the knowledge of the Tribunal or the Court whose order is said to have been flouted, the applicant in itself does not have any individual right as such to persist upon the contempt petition or to file an appeal against its dismissal because the judicial analysis of contempt is to be made by the Court/Tribunal where order is informed to have been flouted, which is the situation prevailing in the instant case and the logic behind it is that once the issue falls to be within the domain of the Tribunal/Court and the alleged contemnor. In that eventuality, the appeal under Section 19 of the Contempt of Courts Act, 1971, at the behest of the applicant to the contempt proceedings, will not be tenable because, after institution of the contempt proceedings it is an exclusive domain of the Tribunal to entertain or to reject the proceedings. Consequent to the said order, the appeal would only lie when the contemnor is found to have deliberately violated the order and he is punished under the provision of the Contempt Act, for such violation. Meaning thereby the appeal under Section 19 will only lie as

against the order of punishment, and it will not lie as against the order of rejection of the contempt petition. The logic which has been derived by the Learned Counsel for the Appellant to sustain the appeal preferred under Section 61 to be read with Section 19 of the Contempt of Courts Act, 1971, is on the ground, that the contempt petition as against its dismissal will still be available, which is to be preferred under Section 19 of Contempt of Courts Act, 1971. Owing to the Judgment which he has relied upon being the Judgment as reported in **2006 Volume 5 SCC Page 399, Midnapore Peoples' Coop. Bank Ltd. and others vs Chunilal Nanda and others**. The Learned Counsel for the Appellant has drawn the attention of this Tribunal for carving out an exception by reading para 11 of the said Judgment and particularly the stress has been made by the Learned Counsel for the Appellant to sub-para IV of para 11, to argue that as against the rejection of the contempt petition too, the appeal would be maintainable. Para 11 of the said Judgment is extracted hereunder: -

“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”.

If the aforesaid sub-para IV of para 11, of said Judgment is taken into consideration, where it carves out an exception of preference of an appeal, against the dismissal of the contempt its only when the decision is incidental to or inextricably connected with the order of punishment. We will have to bear in mind, while deciding the instant Company Appeal, that the ratio of the Judgment is not be extracted to be applied by an exclusive reading of one

paragraph i.e., para 11 herein. But that, it has had to be read in its totality in the context of which the Hon'ble Apex Court was dealing with the matters of *Midnapore Peoples' Coop. Bank Ltd. (Supra)*, which was arising out of the service matter, where a challenge was given to the order of suspension in a writ petition, where the direction was issued for concluding the disciplinary proceedings within the stipulated time frame. The gravity of an allegation of contempt in relation to the service jurisprudence and in relation to a corporate sector dispute is in par distinction to one another. They cannot be kept and understood at a common pedestal. The exception therein which has been carved out was not universal in its applicability in rem without considering the facts of the case involved therein. In fact, the genesis of the said dispute in the matters of *Midnapore Peoples' Coop. Bank Ltd. (Supra)*, since was relating to the suspension and prolonging of the disciplinary proceedings of inquiry and its consequential drawing of proceedings by way of Letter Patent Appeal, was based up on a different parameter altogether and it cannot be treated as to be akin in nature to the one, which we are dealing in the instant Company Appeal. The exception, which has been relied upon by the Learned Counsel for the Appellant, particularly to the expression given to the word, "incidental "To or inextricably connected to other", is not a situation, which is prevalent herein or even relevant, for the reason being, that the order of which the contempt has been sought for was quite clear in its term, which contained a direction as it has been rendered by

the Learned Tribunal on 02.08.2023, which exclusively pertains to the rights of the Successful Auction Purchaser, to get an assistance of the liquidator limited to, to work out the terms for determination of the rent for the use and occupation of the land. Thus, the said Judgment is of no relevance as far as nature of the instant dispute is concerned. The inferences drawn in para 11 of the said Judgment of ***Midnapore Peoples' Coop. Bank Ltd. (Supra)***, cannot be exclusively read in the context of sub para IV and we cannot exempt to read sub-para 1 of para 11, which exclusively mentions that an appeal under Section 19 of the Contempt of Courts Act is maintainable only against an order or a decision of punishment of contempt, which is not the case at hand and hence the appeal itself would not be maintainable under Section 61 of the I & B Code, 2016, to be read with Section 19 of the Contempt of Courts Act, 1971. Thus, the argument extended by the Learned Counsel for the Appellant in the context of the aforesaid Judgment of ***Midnapore Peoples' Coop. Bank Ltd.,. (Supra)***, may not be attracted in the instant case, except for the clause, which has been sought to be applied. It has always been a contention, that in those situations which was considered, that where there happens to be no order of punishment what remedy would be available to the applicant whose petition under Section 12/14 has been dismissed, but it not a ratio in rem, to be applied under the circumstances of the instant case.

The Hon'ble Apex Court in a larger bench Judgment of three judges vide its Judgment of 29.07.2024, as rendered in **Civil Appeal Nos.8129-8130/2024, Ajay Kumar Bhalla and Ors. vs Prakash Kumar dixit**, has considered the aforesaid controversy, about the sustainability of the appeal and while making reference to **Midnapore Peoples' Coop. Bank Ltd. Judgment** has dealt with, it in its para 11, where exclusively it has been observed that appeal would lie as against the order of punishment only. At this juncture, we feel it apt to observe, that the Judgment of **Midnapore Peoples' Coop. Bank Ltd.**, was rendered by the bench of two judges, and the same has been considered and elaborated by the bench of three judges as dealt in the **Ajay Kumar Bhalla case**. Hence, the strict principles of para 11(V) which have been considered by the Hon'ble Apex Court in the Judgment of 29.07.2024, has been distinguished in its applicability in para 14 & 18 of the said Judgment, and the same is extracted hereunder: -

“14. Following the decision in Midnapore People's Coop. Bank Ltd., it is a settled principle that an appeal under Section 19 lies only against an order imposing punishment for contempt.

18. The Division Bench has lost sight of this aspect. The Division Bench, the paragraph 52, noted the submission of the respondent that the Judgment of the Single Judge should not be construed as crystalizing any right in favour of the respondent and should only be confined to the question as to whether the appellants herein had committed a willful disobedience of the order of the Division Bench dated 24 December 2019. The Division Bench accepted this submission and observed that "in view of our understanding of the impugned judgment, as noted above, the

learned Single Judge has not decided any dispute regarding the rights and obligations of the parties" other than adjudicating on the issue of contempt. The judgment of the Division Bench lost sight of the fact that whether the appeal was maintainable would have to be construed on a plain reading of the judgment of the Single Judge. Two aspects were covered by the judgment of the Single judge:

Firstly, a finding that the appellants were guilty of contempt of the order dated 24 December 2019; and

Secondly, that the respondent was entitled to promotion to the rank of IG.

The first aspect is not amenable to an appeal under Section 19 at the present stage. The finding that the respondent was entitled to promotion to the rank of IG would be amenable to an appeal in terms of the law laid down by this Court in Midnapore Peoples' Coop. Bank Ltd. (supra), more particularly in paragraph 11(V) which has been extracted above".

The aspect of sustainability of an appeal though in the said case under altogether a different context, but it is based upon almost the same principle that was considered in the matters of ***State of Maharashtra vs Mahboob S. Allibhoy and Another***, in a Judgment as reported in ***1996 Volume 4 SCC Page 411***, where an appeal was filed as against the Interlocutory Order passed in a contempt proceedings. The Hon'ble Apex Court in its para 3 as observed, that any order which is passed and it is of an interlocutory in nature, passed during the proceedings of the contempt would not be amenable to an appeal under Section 19 and an appeal under Section 19 would only be tenable as against the final order of punishment, as it has been observed in para 3 & 4 of the said Judgment which is extracted hereunder: -

“3. The preliminary question which has to be examined is whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. Section 19 of the Act says:

“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.”

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words “any order” has to be read with the expression ‘decision’ used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. “Any order” is not independent of the expression ‘decision’. They have been put in an alternative form saying ‘order’ or ‘decision’. In either case, it must be in the nature of punishment for contempt. If the expression “any order” is read independently of the ‘decision’ then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed contempt of such court is not in the position of a

prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of *Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C. [(1975) 3 SCC 535: 1975 SCC (Cri) 99 : AIR 1974 SC 2255 : (1975) 1 SCR 524]* , said: (SCC p. 542, para 7)

“... 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. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision.”

Again in the case of *D.N. Taneja v. Bhajan Lal [(1988) 3 SCC 26 : 1988 SCC (Cri) 546]* it was said: (SCC pp. 29-30, para 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.”

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate court may order that—

(a) the execution of the punishment or the 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.

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court”.

A similar view was taken by the Hon’ble Apex Court, in the Judgment reported in **2020 SCC Online Ker 2139**, where the division bench of the Hon’ble High Court of Kerala in the matters of **T.R. Anil Kumar and Others vs Premkumar V.R.**, in its para 15 has almost dealt with the similar issue about the sustainability of the appeal, as against the order of dropping the contempt proceedings and rather it could be said that, the initiator of the contempt proceedings is not litigant rather an informer and if any contempt proceedings is dropped, no personal right of the applicant is affected because, its exclusively the domain of the court to determine as to whether,

its order has been followed and given its full compliance. The relevant para 15 of the aforesaid Judgment is extracted hereunder: -

“15. Thus, it is trite law that contempt is between the court and the alleged violator. It is the consistent view of the Court that contempt appeal is maintainable only if, there is punishment imposed by the court or any order or decision, passed in contempt petition, leading to exercise of powers under the Contempt of Courts Act, 1971 or Article 215 of the Constitution of India, to impose punishment. An appeal does not lie under sub section (1) of Section 19 of the Contempt of Courts Act, 1971 against an order or decision declining to initiate proceedings under the provisions of the Act or an order or decision dropping the proceedings or exonerating the alleged contemnor”.

The Hon’ble Apex Court as back as on 1988 in the Judgment reported in **1988 Volume 3 SCC Page 26, D.N. Taneja vs Bhajan Lal**, in its para 8 has dealt with and observed that the appeal would lie as only against the decision of the Hon’ble High Court, where a person is directed to be punished. Relevant para 8 is extracted hereunder: -

“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”.

Since that not being a situation in the instant appeal, the same would not be tenable. Even otherwise also, if the impugned judgment is taken into consideration though it was attempted to be argued by the learned counsel for the appellant, as if the version was not considered is contrary to the observations made by the Learned Tribunal in the impugned Judgment under challenge, while arriving at a conclusion whether the Judgment dated 02.08.2023, has been complied with or not. The findings recorded after para 42 onwards, in the impugned Judgment the Tribunal did consider the respective case as agitated before the Tribunal, for the alleged non-compliance of the order dated 02.08.2023, and its then only after considering the rival contentions and the finding recorded in para 43 of the Impugned Order, the court has dismissed the contempt petition holding, that no deliberate or intentional contempt is made out against the alleged contemnor. Hence, the dismissal of the contempt petition, apart from the fact it does not suffer from any judicial or procedural vices, coupled with the fact that owing for the reasons as already recorded above, that only appeal will not lie against

the order of the dismissal of the contempt petition. The Appeal would stand dismissed as the same lacks merit.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

20.12.2024
VG/TM/MS