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ECL FINANCE LTD.

v.

HARIKISHAN SHANKARJI GUDIPATI & ORS.

(Civil Appeal No. 18834 of 2017)

B

NOVEMBER 16, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

C

Contempt of Courts Act, 1971 – s.19 – Appellant filed a contempt petition alleging that the respondents had not honoured the consent decree – Single Judge of High Court admitted the contempt petition and issued notice to the respondents – Intra-Court appeal u/s.19 of the Act filed by the respondents, which was admitted by the Division Bench of High Court – Propriety of – Held: Observations made by the Single Judge, 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 –

D

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 Single Judge 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,

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that the respondents get a right to file an appeal before the Division Bench in terms of s.19(1)(a) of the Act – Such a stage having not arisen, the impugned order passed by the Division Bench set aside.

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Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others (2006) 5 SCC 399 : [2006] 2 Suppl. SCR 986 – relied on.

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R.N. Dey and Others v. Bhagyabati Pramanik and Others (2000) 4 SCC 400 : [2000] 3 SCR 172 ; Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others (2009) 2 SCC 784 : [2008] 17 SCR 85 – referred to.

Case Law Reference

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[2000] 3 SCR 172	referred to	Para 5
[2008] 17 SCR 85	referred to	Para 5
[2006] 2 Suppl. SCR 986	relied on	Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 18834 A
of 2017.

From the Judgment and Order dated 14.02.2017 of the High Court
of Bombay in Appeal (LDG.) No. 2/17.

Ms. Indu Malhotra, Sr. Adv, Prashant Singh, Tanvir Nayar, Vikas B
Mehta, Advs for the Appellant.

Ankur Mittal, Adv for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted. C

2. The appellant is before this Court aggrieved by an order dated
14th February, 2017 passed by the Division Bench of the High Court of
Bombay in Appeal (LDG.) No.2 of 2017. The said appeal was filed D
against the order dated 22nd December, 2016 in Contempt Petition No.
17 of 2016 in Suit No. 802 of 2014.

3. The appellant filed a Contempt Petition alleging that the
respondents herein had not honoured the consent decree drawn on 14th
August, 2015, and hence they are liable to be punished for contempt. It E
appears that the appellant had also initiated execution proceedings, since
in the decree, it is stated that in case the terms of the consent are violated,
the suit would stand decreed in terms of the prayer made in the plaint.
Be that as it may, we find from the order dated 22nd December, 2016 of
the learned Single Judge that the learned Single Judge has admitted the
contempt petition and has issued notice to the respondents. It is, at that F
stage that the respondents filed an intra-Court appeal under Section 19
of the Contempt of Courts Act, 1971 (hereinafter referred to as "the
Act"). The Court admitted the appeal, despite the objections regarding
the maintainability, leaving the question of the maintainability of the appeal
to be considered at the time of final hearing. G

4. It appears from the impugned order passed by the Division
Bench that, during the pendency of the appeal before the Division Bench,
a direction was issued to deposit an amount of Re. 1,00,00,000/- which
has subsequently been withdrawn by the appellant as per Order dated
21st July, 2017 passed by this Court. H

A 5. Learned counsel for the respondents has referred to two
 decisions of this Court in R.N. Dey and Others v. Bhagyabati
Pramanik and Others¹ and Tamilnad Mercantile Bank
Shareholders Welfare Association (2) v. S.C. Sekar and Others²
 B 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 (supra) was a case where the High Court declined to accept the
 C 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
 D 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 paragraph 13, the Court made it
 E clear that “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 the contempt
 proceedings were not required to be initiated at all.” In Tamilnad
Mercantile Bank (supra), this Court referred to Midnapore Peoples’
Coop. Bank Ltd. and Others v. Chunilal Nanda and Others³ and
 F took the view that though an appeal under Section 19 of the Act, may
 not be maintainable against certain orders, still the aggrieved person can
 file an intra-court appeal if in the impugned order an issue has been
 decided or a direction has been issued, relating to the merits of the disputes
 between the parties, in exercise of its contempt jurisdiction. No doubt, in
 G paragraph-39, this Court has held that an appeal would be maintainable
 even against a notice to show cause. But it has to be seen that such a
 notice is in a case where the court, preceding the notice, had decided
 some disputes raised before it. Hence this Court guardedly put a caveat
 as follows: “Thus, in a given situation, an appeal would be maintainable
 even against a notice to show cause”. In other words, notice referred in
 paragraph-39 is a notice apparently after taking decision on contempt
 and proceeding further. For the sake of completion of the discussion, we
 have extracted paragraph-39 also:-

¹(2000) 4 SCC 400

²(2009) 2 SCC 784

³(2006) 5 SCC 399

“39. We may repeat that it may be a different matter if the court while passing an order decided some disputes raised before it by the contemnor asking it to drop the proceedings on one ground or the other. Thus, in a given situation, an appeal would be maintainable even against a notice to show cause. Here even such a notice has not been issued and thus the question of satisfying the court by showing cause that the respondent contemnors had not committed any contempt did not arise. Allegations had not been made against the Chairman of the meeting. The contempt proceedings had been initiated only against the Managing Director of the Bank.”

6. In Midnapore Peoples’ Coop. Bank Ltd. and Others v. Chunilal Nanda and Others⁴ after an extensive discussion on various case laws, this Court has summarised the legal position as follows:

“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

⁴(2006) 5 SCC 399

A 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
B 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
C 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).

D The first point is answered accordingly.”

7. 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
E afraid the contention made by learned counsel for the respondents cannot
be appreciated. The observations made by the learned Single Judge in
the Order dated 22nd December, 2016, 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
F 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
G Act. Such a stage having not arisen, the impugned order passed by the
Division Bench is only to be set aside. Ordered accordingly.

8. Having said so, since it is brought to our notice that the appellant
has also initiated the proceedings for execution of the decree and since
the said matter is also before us, we request the learned Single Judge
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who has exercised the contempt jurisdiction, to consolidate the execution A
petition and the contempt proceedings and take a decision as to what
exactly would be the amount payable by the respondents in terms of the
decree. We also make it clear that nothing said by us or by the learned
Single Judge or the Division Bench shall stand in the way of the parties
settling their disputes.

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9. With these observations, the appeal is disposed of.

Ankit Gyan

Appeal disposed of.