

R. K. ARORA GENERAL MANAGER & ANR.

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v.

M/S ACE ENTERPRISES

(Civil Appeal No. 1820 of 2018)

FEBRUARY 07, 2018

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**[KURIAN JOSEPH AND
MOHAN M. SHANTANAGOUDAR, JJ.]**

Contempt of Court – Contempt petition – Maintainability of – On facts, allegation of violation of injunction order – Application by respondent for initiating contempt – Dismissal of the application by the trial court holding that there was no contempt – High Court held that Sub-Judge assumed a jurisdiction, not vested in it under law – On appeal, held: Though an application for contempt was filed before the trial court, it was, in fact, a petition for taking action u/Or. XXXIX, r.2A of the 1977 Act – It is not a case for initiating contempt on the face of it – These are two different jurisdictions, which has been clarified by the High Court – Application filed by the respondent for initiating contempt to be treated as an application for taking action u/Or. XXXIX, r. 2A of the 1977 Act – Jammu and Kashmir Code of Civil Procedure Act, 1977 – Or. XXXIX, r. 2A

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Disposing of the appeal, the Court

HELD: 1.1 Though an application for contempt was filed before the trial court, it was, in fact, a petition for taking action under Order XXXIX Rule 2A of Jammu and Kashmir Code of Civil Procedure Act, 1977. It is not a case for initiating contempt on the face of it. These are two different jurisdictions. That is all that has been clarified by the High Court. It is directed that the application filed by the respondent for initiating contempt would be treated as an application for taking action under Order XXXIX Rule 2A of the 1977 Act. The trial court would first see whether there is any disobedience of the order of injunction and in case there is a finding of disobedience, the rest u/Or. XXXIX r. 2A alone shall follow.[Para 7][495-F-H; 496-A]

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1.2 The submission made by the appellants regarding separate contracts and pending application under Section 8 of

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A **the Jammu and Kashmir Arbitration Act etc. are open to the appellants to canvas before the trial court at the appropriate stage. Being a matter pending since long, the trial court is directed to decide the application expeditiously. [Para 8][496-B-C]**

B CIVIL APPELLATE JURISDICTION: Civil Appeal No.1820 of 2018.

From the Judgment and Order dated 16.12.2015 of the High Court of Jammu and Kashmir at Srinagar in OWP No.377/2014.

C Tushar Mehta, ASG, Rahul Narayan, Ms.Mala Narayan, Sushant Goel, Advs. for the Appellant.

Ms.Aishwarya Bhati, Adv. for the Respondent.

Respondent-in-person.

The Judgment of the Court was delivered by

D **KURIAN, J.** 1. Leave granted.

2. On 22.06.2011, the Court of Small Causes, Srinagar, passed an order of injunction in the following terms :-

E *“The application in hand will not be allowed, there are chances that the suit of the applicant will become infructuous. So in the interests of justice the application in hand is allowed and the proceedings before the arbitration with regard to matter titled M/s ACE Enterprises Vs. Union of India and ors is stayed till the objections from the other side is filed. Put up this file on 26-07-11.”*

F 3. Alleging violation of the above order, an application was filed for initiating contempt proceedings. The prayer reads as follows :-

G *“It is therefore prayed that the contempt proceedings may please be initiated and the contemnors be punished according to law and the order of revival passed by the Arbitrator may please be stayed.”*

H 4. The Court of Small Causes treated the application filed by the respondent as an application for contempt without mentioning any provision. It is also significant to note that even the applicant had not mentioned any provision for initiating contempt. The Court passed an order dated 06.11.2013 by entering a finding that there is no contempt

and that there is no violation of the order dated 22.06.2011. The operative A
portion of the order, to the extent relevant, reads as follows :-

*“The proceedings of the arbitration continued by the
Arbitrator, is based on the understanding of the Arbitrator
and the learned counsel for the defendants as to the correct
import of the order dated 22-06-2011. The said understanding B
arrived at, though is borne out from the facts and
circumstances pertaining to the controversy, cannot be
construed as willful and deliberate attempt on the part of
counsel for parties involved, to flout the order of the court
dated 22-06-2011. The arbitration proceedings is an C
independent and statutory remedy available under the
provisions of Jammu and Kashmir Arbitration Act, 2002. The
provisions of said Act have overriding effect over the general
laws. Exercise of statutory remedy and proceedings under
the special act, cannot be scuttled in ordinary course of events.
Only if the statute provides for such exercise of power by the D
civil court, the civil court can enter into the domain of such
jurisdiction, that too in limited sphere.*

*The exercise of jurisdiction by the Arbitrator, available under
the provisions of Jammu and Kashmir Arbitration Act, advise
rendered by the learned counsel representing the defendant E
in the court or before the Arbitrator, and proceedings initiated
by any party in exercise of statutory right, cannot be
construed as flouting of the order of the civil court or willful
or deliberate violation of the order, unless the violation is
clear, emphatic and apparently willful and deliberate, aimed F
at defeating the order passed by the court. From the nature
of the order passed by the court of Sub-Judge/Judge Small
Causes Court, Srinagar, and the facts and circumstances
pertaining to the case, I find no flouting or violation of the
order dated 22.06.2011, by the persons named in the contempt
application. No justifiable and sufficient ground exists for G
proceedings against the said named persons for contempt of
court. Accordingly, the contempt proceedings are dropped
against the said named persons. Application is dismissed.
Record of application be made part of suit file on completion.”*

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A 5. That order was challenged by the respondent before the High Court. The High Court has considered the matter in extenso. At paragraphs 11, 13 and 17, the High Court has entered its findings as follows :-

B *“11. Admittedly, the impugned order has been passed by the learned Sub-Judge in a contempt petition filed by the petitioner. The Jammu and Kashmir Contempt of Courts Act, 1997 (Act No. XXV of 1997) (for short, Contempt of Courts Act) was enacted to define and limit the power of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. There is no provision in this*
C *Act to empower a subordinate court to punish contempt of itself. However, Section 10 of the Contempt of Courts Act vests with the High Court the power to punish contempts of subordinate courts. It says that the High Court shall have and exercise the same jurisdiction, powers and authority in*
D *accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself; provided that the High Court shall not take cognizance of a contempt alleged to have been*
E *committed in respect of a court subordinate to it where such contempt is an offence punishable under the Ranbir Penal Code, 1989. Thus, the law provides that if there is contempt of any court subordinate to the High Court, it is the High Court alone which has the power to punish for such contempt. Essentially, therefore, a court subordinate to the High Court cannot take cognizance and initiate proceedings to punish*
F *for contempt of itself, the question of conducting trial of an application for contempt and taking a decision thereon is far remote.*

G *13. Since the subordinate courts do not have the jurisdiction to take cognizance of contempt of itself, or initiate proceedings on a contempt petition or try it, it cannot proceed to decide it finally. In the instant case, the learned Sub-Judge has not only taken cognizance but has proceeded to initiate, and conducted, proceedings thereon and finally decided it. Thereby the learned Sub-Judge has assumed a jurisdiction, not vested in it under law.*
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17. During the course of arguments of this case, the learned counsel for the petitioner brought it to the notice of the Court that the Arbitrator appointed in violation of the ad-interim orders of the trial court has ultimately concluded the proceedings and passed the final award against the interests of the petitioner. Pending decision in the contempt petition in terms of applicable laws, there shall be stay of final award. It hardly needs a mention here that in the event it is found that there has been a violation of the interim order of the trial court, the appointment of the Arbitrator and the proceedings conducted by him together with any award passed by him would be rendered non-est in the eyes of law.”

6. When the matter came up before this Court, the following order was passed on 18.04.2016 :-

“Though we do not have any quarrel with the settled position of law, as held by the High Court that the trial court does not have any jurisdiction to initiate proceedings under the Jammu and Kashmir Contempt of Courts Act, 1997, we find that the High Court has omitted to take note of the fact that there are two separate proceedings under different contracts.

In that view of the matter, issue notice.

In the meantime, there shall be stay of further proceedings pursuant to the impugned order.”

7. Having heard Mr. Tushar Mehta, learned Additional Solicitor General, and Mr. Abdul Rehman, representing the respondent on permission, we do not feel it necessary to refer to any other factual details. Though an application for contempt was filed before the trial court, it was, in fact, a petition for taking action under Order XXXIX Rule 2A of Jammu and Kashmir Code of Civil Procedure Act, 1977. It is not a case for initiating contempt on the face of it. These are two different jurisdictions. That is all that has been clarified by the High Court. The appeal is, hence, disposed of with the following directions :-

i) The application filed by the respondent for initiating contempt shall be treated as an application for taking action under Order XXXIX Rule 2A of the Jammu and Kashmir Code of Civil Procedure. It shall be renumbered accordingly.

A ii) The trial court shall first see whether there is any disobedience of the order of injunction and in case the court enters a finding of disobedience, the rest under Order XXXIX Rule 2A alone shall follow.

8. The submission made by the appellants regarding separate contracts and pending application under Section 8 of the Jammu and Kashmir Arbitration Act etc. are open to the appellants to canvas before the trial court at the appropriate stage. It will also be open to the respondent to take all available contentions before the trial court. Being a matter pending since long, we direct the trial court to take a decision accordingly on the application expeditiously and preferably within a period of three months from the date of receipt of a copy of this Judgment.

C No costs.

Nidhi Jain

Appeal disposed of.