

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**LPA no. 273/2023**

**Reserved on: 02.03.2024**  
**Pronounced on: 07.03.2024**

Bhupinder Kumar and others

.... Appellant(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG

V/s

Mohammad Ashraf Khan and others

... Respondent(s)

Through: Mr. Mian Tufail, Advocate

**CORAM:**

**HON'BLE MR JUSTICE ATUL SREEDHARAN, JUDGE**

**HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

07.03.2024

**Moksha, J, (Oral)**

1. The application for condonation of delay, for the reasons stated therein, is allowed. CM disposed of.

2. This Intra Court Appeal, for short LPA, is directed against the order passed by the learned Single Judge on 15.09.2023, for short impugned order, in a contempt petition, CCP (S) No. 331/2021 arising out of a writ petition, SWP no. 125/2016, titled Mohammad Ashraf Khan & Ors v. Mr Bhupinder Kumar and others, in terms whereof the learned Single Judge has observed that the compliance report filed in the matter is not in consonance with the judgment, therefore, directed the respondents/ appellants herein to file fresh compliance report so as to ensure that the judgment passed by the Writ Court is implemented in its letter and spirit. The appellants seek setting aside of the impugned order on the grounds taken in the memo of appeal.

3. It is stated in the memo of appeal that respondents had filed a writ petition, SWP No. 125/2016 seeking certain monetary benefits on the analogy of petitioners of SWP nos. 782/1998; 438/2001; 817/2010 and 619/2010. The said writ petition, upon consideration, came to be disposed of by the Writ Court in terms of judgment dated 03.02.2016, in the following manner:

*“This Writ Petition along with connected CMP is disposed of and respondents are directed to extend the benefit to the petitioners herein, which flows to the petitioners in SWP No. 782/1998 from the judgment dated 12<sup>th</sup> November, 1999, provided they are similarly circumstanced*

*with the petitioners therein and there is no other legal impediment in granting such benefit.*

*Respondents to consider and take decision preferably within eight weeks from the date copy of this order is served on them.*

*Disposed of along with connected CMPs.”*

4. Aggrieved of non-compliance of the judgment, the respondents filed a contempt petition bearing no. 315/2016, which was disposed of in terms of order dated 12.03.2019. The relevant portion of the order is extracted below:

*“The contempt petition is disposed of giving liberty to the petitioners to approach the present incumbents with a copy of the order, subject matter of the contempt petition, for seeking implementation of the same, of course, in case same remained unimplemented so far, further, in the event, the petitioners after availing the aforesaid liberty, is still dissatisfied as regards the implementation of the directions of the court, he shall be at liberty to file appropriate proceedings for implementation of the same in accordance with law.”*

5. Thereafter, the respondents filed yet another contempt petition bearing CCP(S) No. 331/2021. Appellants filed their compliance reflecting therein that the claim of the respondents had been rejected being devoid of merit. The court observed that the said compliance report is not in consonance with the judgment of the Writ court and directed the appellants to file fresh compliance report so as to ensure that the judgment passed by the Writ Court is implemented.

6. The appellants have *inter alia* challenged the impugned order on the ground that it is vitiated by the fact that it is a well-settled position of law that the contempt court cannot go beyond the scope of contempt by making any addition or alteration to the original direction passed in the writ petition.

7. The learned counsel for the respondents had raised a preliminary objection as regards the maintainability of the LPA in light of the Apex Court judgments as also the judgments of this court; therefore, the LPA was heard on the maintainability point only in the first instance.

8. We have heard learned counsel for the parties.

9. In a decision rendered in case titled **“State of J&K and Others v. Muhammad Sultan Mir”** passed in LPASW No. 2/2018 decided on 09.02.2018, the Hon’ble High Court of J&K and Ladakh while dealing with the issue of maintainability of the appeal under Section 19(1) of the Act and Letters Patent Appeal under Clause 12 of the Letters Patent, in paragraph Nos. 7 & 8 has held as under:-

*“7. The issue with regard to the maintainability of the appeal under Section 19(1) of the Act and letters patent appeal under Clause 12 of the Letters Patent against an order of the Contempt Court issuing Rule for contempt has already been decided by this Court in LPASW No.267/2017 (State of J&K and others v. Mohammad Tayoub Leharwal and anr.) decided on 31.01.2018. What was held by this Court in the aforesaid judgment in paragraph Nos.5 to 9 is reproduced hereunder:-*

*“5. Sub Section 1(a) & (b) of Section 19 of the Act provides as under:-*

*“19. Appeal*

*(1) An appeal shall lie as of right from any order or decision of the 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 of decision is that of bench, to the Supreme Court.*

*From a bare perusal of Section 19(1), reproduced herein above, would indicate that right of appeal would be available only against any order or decision of the High Court in exercise of its jurisdiction to punish for contempt.*

*6. Section 94 of the Constitution of Jammu & Kashmir, which is pari materia to Article 215 of the Constitution of India, provides that the 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 or of the courts subordinate to it. That being the explicit position, appeal under Section 19(1) of the Act would lie only when High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. A three-Judge Bench of the Supreme Court in the case of D.N.Taneja v. Bhajan Lal; (1988) 3 SCC 26 considered this aspect in extenso. What was held in paragraph-12 of the judgment reads thus:-*

*“12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information*

*he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court.”*

*7. The same view has been reiterated by the Supreme Court in a subsequent judgment rendered in the case of Midnapore Peoples’ Coop. Bank Ltd. V. Chunilal Nanda and others; (2006) 5 SCC 399. The Supreme Court after taking note of the several decisions rendered on the scope of Section 19(1) of the Act summarized the position of law in the following manner:-*

*“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized 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 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).”*

*8. Viewed through the prism of aforesaid settled position of law, we do not find that the order impugned is the one passed by the Contempt Court in exercise of jurisdiction to punish for contempt, rather it is an order putting appellant No.3 on notice to show cause as to why he be not punished for contempt. Needless to say that the appellants would have ample opportunity to put forth their stand before the Contempt Court and explain that there was no deliberate or wilful disobedience of the order alleged to be violated. It is for the Contempt Court to consider the plea, if any, taken by the appellants in response to the show cause notice and decide the same in accordance with law. Suffice it to say that the preliminary objection raised by respondent No.1 on the maintainability of this appeal is well founded and deserves to be accepted.*

*9. This takes us to another plea raised by the learned counsel for the appellants that even if it is assumed that the appeal against the order impugned is not maintainable under Section 19(1) of the Act, yet the same would be maintainable under Clause 12 of the Letters Patent. We have given thoughtful consideration to this aspect of the matter also but do not find any merit in the submission made by the learned counsel for the appellants-State. Clause 12 of the Letters Patent provides for an appeal from a judgment of the learned Single Judge passed in exercise of original jurisdiction to the Division Bench. What would be the judgment in terms of Clause 12 of the Letters Patent, has been well explained in series of judgments rendered by Hon'ble the Supreme Court as well as this Court. The word “Judgment” is undoubtedly a concept of finality in broader sense. The judgment could either be a final judgment, preliminary judgment or intermediary judgment or interlocutory judgment but it would be a judgment only if it decides some issue or right between the parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between the parties cannot be said to be the judgment amenable to the appellate jurisdiction of the Division Bench under Clause 12 of the Letters Patent. It is not the case of the appellants that by virtue of the order impugned the Contempt Court has issued directions which go beyond the scope of the judgment alleged to be violated by the appellants.”*

8. *In that view of the matter, the preliminary objection raised by the respondent with regard to the maintainability of this appeal succeeds. Accordingly, this appeal is found to be not maintainable, hence dismissed. However, before parting, we would like to observe that in response to the Rule issued, the appellants have already submitted their reply and have apparently taken a stand that the directions issued by the learned Writ Court on 01.04.2016 have been complied with and consideration order passed which would furnish fresh cause of action to the respondent to challenge the same and that no case for contempt was made out. The contempt Court is yet to decide on the aforesaid aspect. The appellants, therefore, would have ample opportunity to raise the aforesaid issue and also those which have been raised by them in this appeal, before the Contempt Court. Needless to say that the Contempt Court would consider the stand taken by the appellants and pass appropriate orders thereon as warranted under law. There shall, however, be no order as to the costs.”*

10. In an another decision delivered in case titled “Union Territory of JK v. Shahnaza Parveen & Ors” passed in LPA No. 20/2021 decided on 24.08.2021, the Hon’ble High Court of J&K and Ladakh in paragraph Nos. 13 & 14 has held as under:-

*“13. In State of J&K & Ors vs. Mohd. Tayoub Leharwal and Anr. 2018 (1) JKJ 627 (HC) a Division Bench of this court held that under Section 19 of the Contempt of Courts Act 1997 Right to Appeal is available only against an order or decision of the High Court to punish for contempt. It has further relied upon a decision of the Supreme Court in the case of Midnapore People’s Cooperative Bank Ltd. Vs. Chuni Lal Nanda 2006 (5) SCC 399 to hold that under Clause 12 of Letters Patent, an appeal would lie to the Division Bench only from the “judgment” of the learned Single Judge passed in exercise of original jurisdiction. The word “judgment” in terms of Clause 12 is undoubtedly a concept of finality in broader sense. It would either be a final judgment, a preliminary judgment or intermediary judgment or interlocutory judgment, but it should be a judgment in the sense that it decides some issue or right between thte parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between*

*the parties cannot be said to be a “judgment” amenable to available jurisdiction of the Division Bench under Clause 12 of the Letters Patent.*

*14. In view of the above decision of the Coordinate Bench of this Court, as in the case at hand, all the orders passed in proceedings for contempt are of interlocutory nature which does not determine any right or issue between the parties finally, we are of the considered opinion that the Letters Patent Appeal under Clause 12 of the Letters Patent is not maintainable.”*

11. Supreme Court of India in a judgment rendered in the case of ***Midnapore Peoples’ Coop. Bank Ltd.*** reported as (2006) 5 SCC 399 has held as under:-

*16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:*

*(i) Orders which finally decide a question or issue in controversy in the main case.*

*(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.*

*(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.*

*(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.*

*(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.*

*The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the*

*Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent."*

12. The impugned order does not in any way appear to be exceeding jurisdiction or enlarging the scope of the contempt petition so as to convince this court to exercise its appellate jurisdiction as pleaded by the appellants. The learned Single Bench has also not made any addition or alteration to the original directions sought to be implemented through the contempt petition in which the order impugned has been passed.

13. This Court while dealing with a similar issue in LPA No. 71/2021 titled Saurabh Baghat and others v. Abid Nazir of which incidentally I am the author, has held that that the LPA against the orders of such nature, is not maintainable.

14. In the above background, the preliminary objection raised by the learned counsel for the respondents is sustained. The appeal is held to be not maintainable, therefore, dismissed at its threshold.

15. No order as to costs.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

**(ATUL SREEDHARAN)**  
**JUDGE**

Srinagar  
07.03.2024  
Amjad Lone, Secretary

Whether the judgment is reportable: Yes/ No.