

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Original Jurisdiction)

Wednesday, the Fifteenth day of December Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE PARESH UPADHYAY

AND

THE HON`BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

LPA.NOS.1 AND 2 OF 2021

1 TAMIL NADU STATE APEX [APPELLANTS IN BOTH THE APPEALS]
CO-OPERATIVE BANK OFFICERS UNION,
REG.NO.2506/MDS REP.BY ITS GENERAL SECRETARY,
NO.233, NSC BOSE ROAD, CHENNAI 600 001.

2 MR.G.VAIRAPPAN, PRESIDENT
TAMIL NADU STATE APEX CO-OPERATIVE BANK
OFFICERS UNION, SUNDARAILLAM NO.3,
VALLAR STREET, ANNAI INDRA NAGAR,
VELACHERRY, CHENNAI 600 042.

3 MR.J.VENKATESHWARAN
GENERAL SECRETARY,
TAMIL NADU STATE APEX CO-OPERATIVE BANK
OFFICERS UNION, FLAT NO. 12D, NO.3/81,
PARTHASARATHY NAGAR, THORAIPAKKAM,
CHENNAI 600 096

Vs

R.KRISHNARAJAN [RESPONDENT IN LPA.NO.1/2021]
CHIEF MANAGER, TNSC BANK,
NO.233, NSC BOSE ROAD,
CHENNAI 600 001.

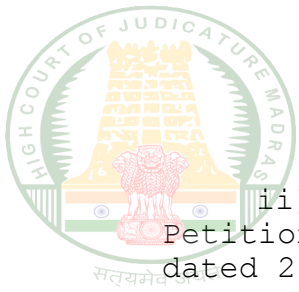
1 T.BASKARAN [RESPONDENTS IN LPA.NO.2/2021]

2 R.KRIHNARAJAN

3 R.G.SAKTHI SARAVANAN

4 V.P.CHANDRIKA

Letter Patent Appeal against common order in Contempt Petition
No.1461/2021 passed by THE HON`BLE MR.JUSTICE C.SARAVANAN, dated
23.11.2021 (in LPA.No.1/2021) and;



(ii) Letter Patent Appeal against common order in Contempt Petition No.1048/2021 passed by THE HON'BLE MR.JUSTICE C.SARAVANAN, dated 23.11.2021 (In LPA.No.2/2021)

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Order : This Appeal coming on this day for hearing on this day upon perusing the Grounds of Appeal, the orders of THE HON'BLE MR.JUSTICE C.SARAVANAN dated 23.11.2021 and made in the exercise of the Contempt Jurisdiction of the High Court in Contempt Petition No.1461 and 1048/2021 and all other material paper in this cases and upon hearing the arguments of M/S.V.PRAKASH, Senior Counsel for the Appellants in both the appeals and of MR.N.G.R.PRASAD, Advocate for M/S.ROW AND REDDY, Advocate for the Respondents in both the Appeals, the Court made the following order:-

1. These appeals are filed against the order dated 23 November 2021 recorded on Contempt Petition Nos. 1048 and 1461 of 2021.

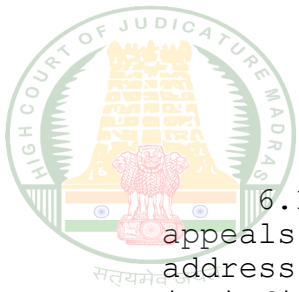
2. Heard Mr.V.Prakash, learned Senior Advocate for the appellants and Mr.N.G.R.Prasad, learned advocate for the contesting respondent. It is noted that learned Senior Advocate for the appellants has, to some extent, and learned advocate for the respondent has at great length, addressed the Court even on merits of the matter.

3. Mr.N.G.R.Prasad, learned advocate for the contesting respondent has raised an objection that these appeals are not maintainable. The objection is that, since the impugned order is disposal of contempt petitions, the only remedy available is under the Contempt of Courts Act and therefore Clause 15 of Letters Patent can not be invoked. Reliance is placed on the decision of the Division Bench of this Court dated 10.01.2013 recorded on L.P.A.Nos. 3 to 6 of 2012 in the case of K.Vijayalakshmi and another vs. B.Prakasham and another.

4. Before the merits of the appeal are gone into, it needs to be ascertained whether these appeals are maintainable.

5. Learned Senior Advocate for the appellants has submitted that these appeals would be maintainable, since what is decided by learned Single Judge by the impugned order is beyond the dismissal / disposal of contempt petitions. In support of his submissions, learned senior advocate for the appellants has taken this Court extensively through the observations / finding of learned Single Judge as contained in the impugned order vis-a-vis the pleadings on record. Reliance is placed on the decisions of the Supreme Court of India in the cases of (i) V.Senthur and Ors v. M.Vijayakumar and Ors. Reported in MANU/SC/0759/2021 and (ii) Midnapore Peoples' Coop. Bank Ltd and others v. Chunilal Nanda and others reported in (2006) 5 SCC 399.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:



6.1 As noted above, the point at issue is whether these appeals would be maintainable under Clause 15 of Letters Patent. To address this issue, it needs to be first ascertained (i) in which jurisdiction, the impugned order was passed by learned Single Judge and (ii) whether what is challenged in these appeals can be said to be appealable invoking provisions of Clause 15 of Letters Patent.

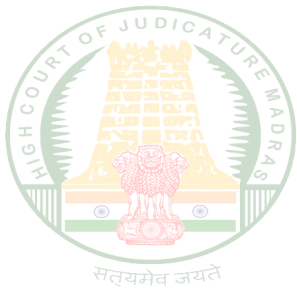
6.2 It is not in dispute that the impugned order is passed by learned Single Judge on contempt petitions being Contempt Petition Nos. 1048 and 1461 of 2021. The present appellant(s) was / were the petitioner(s) in the said petitions. The operative part of the said order reads as under:-

"36. Cont.P.No.1048 of 2021 is dismissed and Cont.P.No.1461 of 2021 is disposed of with the above directions. No cost."

6.3 Mr.N.G.R.Prasad, learned advocate for the contesting respondent is right in his submission to the extent that the remedy to challenge the order passed by learned Single Judge under the Contempt of Courts Act, would be as provided under the Contempt of Courts Act itself, with specific reference to Section 19 thereof. He is also right in his contention to the extent that, on plain reading of that Section, coupled with the decision of this Court in the case of K.Vijayalakshmi (supra) an appeal would be maintainable when any person is held guilty of having committed contempt of the Court, that too as provided under Section 19 of the Contempt of Courts Act. Further, if the contempt petition is dismissed, even that remedy is not available. In the present case, no one is held guilty and therefore even Section 19 remedy would not be available. While recording this, we may not be understood to have opined that, since nobody is held guilty and therefore the appeal does not lie under Section 19 of the Contempt of Courts Act, therefore these appeals need to be entertained under Clause 15 of Letters Patent. No - that can not be the reason. The argument of learned advocate for the contesting respondent therefore is accepted even to this extent.

7. In spite of what is noted above, it also needs to be kept in view that the grievance voiced before us by the appellants in these appeals is not that the respondent(s) should have been held guilty. The grievance voiced is that, whatever happens to the contempt petitions, the decision recorded by learned Single Judge in the impugned order is adjudicating and deciding much more than deciding the contempt petitions. Attention of this Court is invited to the following observations / findings recorded in the impugned order:-

"17. It is submitted that so called disqualification / suspension of the second respondent (R.Krishnarajan) in Cont.P.No.1048 of 2021/ the sole respondent in Cont.P.No.1461 of 2021 in 2019 and others



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by the contempt petitioners is of no consequence. It is also submitted that last election of first contempt petitioner Union was held on 24.10.2018. Therefore, the decision taken thereafter by the second and third contempt petitioners to oust any of the members was and non est in law.

x x x

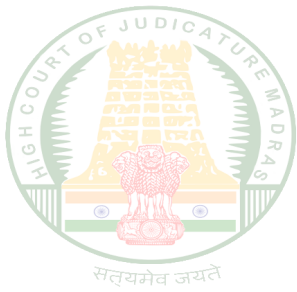
22. Disqualification of the second respondent (R.Krishnarajan) in Cont.P.No.1048 of 2021 / the sole respondent in Cont.P.No.1461 of 2021 and others by the office bearers (the second and third contempt petitioners) was clearly illegal. These contempt petitioners themselves had no power to hold office as their so called election was not in accordance with the Bye-Laws. The manner in which the affairs of the first contempt petitioner Union are conducted by them raises serious doubts regarding their bona fide.

23. The conduct of these contempt petitioners speaks volume and show that theses contempt petitioners are latching on to the post and have been successfully scuttled all the known tenets of democratic process of holding election and are attempting to unfairly oust members who have been questioning the method of running the first contempt petitioner Union.

x x x

33. Though the second and the third contempt petitioners are themselves liable for being punished for contempt of court, however, the Court is not inclined to punish them for contempt of Court and to impose cost on second and the third contempt petitioners even though precious time of the Court has been wasted by them by seeking extension. As there is no merit in the respective Contempt Petitions, they are therefore liable to be dismissed.

34. On the other hand, this is a fit case for appointing an election officer to conduct the election of the first contempt petitioner Union as the second and the third contempt petitioners and others who have been given power to hold election have



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demonstrated by their conduct that they are unwilling to hold election with sincerity and in letter and spirit of this Courts orders dated 22.03.2021, 06.09.2021 and 08.11.2021."

(emphasis supplied)

8. A copy of the plaint is also on record.

9. This Court has considered the pleadings as it stand in the plaint, counter, subsequent application(s) and contents put forward by both the parties against each other. What is held by learned Single Judge, part of which is as quoted above, decides the rights of parties which would have bearing on the pending civil suit and to some extent even beyond the suit. At this stage, reference needs to be made to the decision of the Supreme Court of India in the case of V.Senthur (supra). Para 14 thereof reads as under:-

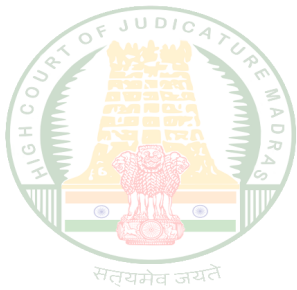
"14. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order."

10. In the case of Midnapore Peoples' (supra), the Supreme Court, while holding what is impermissible has further provided what remedy is available to the aggrieved party. Relevant part of the said decision reads as under:-

"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.



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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.

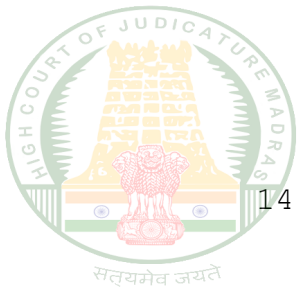
V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned 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)."

(emphasis supplied)

11. If the order impugned in these appeals, with specific reference to what is quoted in para : 7 above is weighed vis-a-vis the judgments of the Supreme Court of India as referred / quoted above, we find that what is decided in the impugned order was not only beyond the scope of contempt petitions, the said part of the order is amenable to the jurisdiction of this Court under Clause 15 of Letters Patent.

12. For the above reasons, we hold that these appeals are maintainable. The preliminary objection against maintainability of these appeals is rejected. These appeals therefore need to be heard on merits.

13. While holding as above, we make it clear that the only question decided by this order is that the appeals need to be heard on merits and we may not be understood to have rejected any of the submissions made on behalf of the respondent, as to why no interference is required in the impugned order.



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14. List for hearing on 21.12.2021.

-sd/-
15/12/2021

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUB ASSISTANT REGISTRAR
ORIGINAL SIDE, HIGH COURT,
CHENNAI-104

COPY TO:

THE SECTION OFFICER
CONTEMPT SECTION, HIGH COURT,
CHENNAI-104

Order
in
LPA.NOS.1 AND 2 OF 2021

Date :15/12/2021

From 26.2.2001 the Registry is issuing certified
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PM(07/12/2021)
PM(16/12/2021)