

D/L
Item No. 117
04.08.2026
KOLE
266045

**MAT 1132 of 2026
With
CAN 1 of 2026
With
CAN 2 of 2026**

**Md. Shadab Alam & Ors.
-Vs.-
Naima Siddique & Anr.**

*Mr. Mainak Bose,
Mr. Goutam Das,
Mr. A. Kabir,
Mr. D. Sharma,*

...for the appellants.

*Mr. Alok Kr. Ghosh,
Mr. Gopal Ch. Das,*

.... For the KMC.

*Mr. Sarwar Jahan,
Mr. S. Chowdhury,
Mr. S. Das,
Ms. S. Parveen
Ms. A. R. Dutta Roy,*

...for the respondent no. 1/writ petitioner

Dictated by Arijit Banerjee, J:-

By consent of the parties the appeal and the connected applications are taken up for hearing together.

The present appellants occupy various portions of a building. Alleging that the building was put up illegally, without due sanction, a writ petition was filed before a learned Judge of this Court. By an order dated January 10, 2024, the learned Judge directed the Executive Engineer of the concerned Borough “to take prompt necessary steps to deal with the unauthorized construction in accordance with law at the earliest, but positively within a period of 12 weeks from the

date of communication of this order”. The present appellants were not parties to that writ petition.

Alleging violation of the aforesaid order, the writ petitioner filed a contempt application before the learned Single Judge who had passed the order dated January 10, 2024. On that contempt application, the learned Judge passed an order which reads as follows:-

“1. Despite detection of two unauthorized floors over the sanctioned G+3 storied structure at 29/1A, Miajan Ostagar Lane, Ward-65, Borough-VII, the same has not been demolished till date. Report of the Executive Engineer (Civil/Building/Borough-VII), KMC mentions that the building is fully occupied for which the same cannot be demolished.

2. The Deputy Commission of Police, South East Division is directed to provide adequate assistance to the Officer-in-Charge, Karaya Police Station for removing the occupants of the unauthorizedly constructed structure in aid of demolition of the same.

3. Hearing of the contempt application stands adjourned till 6th August, 2026.

4. The unauthorized construction shall be demolished and an affidavit of compliance shall be placed before this Court on the returnable date.

5. An affidavit of compliance shall be made ready and circulated prior to the adjourned date.

6. It is made clear that the police shall be responsible for vacating the occupants of the portions constructed unauthorizedly in aid of demolition by using reasonable force.

7. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.”

Being aggrieved, the present appellants, who are occupants of the building in question, have come up by way of

this appeal. They have sought leave to prefer this appeal since they are not parties to the contempt application which is pending before the learned Single Judge.

Mr. Ghosh, learned Senior Counsel, representing the KMC raises a point of maintainability of this appeal filed under Section 19(1)(a) of the Contempt of Courts Act, 1971. He says that no punishment was imposed on the appellants or anybody. Hence, an appeal under Section 19 of the 1971 Act would not lie. A mandamus appeal may lie against the order in question, under Clause 15 of the Letters Patent.

Mr. Bose, learned Senior Counsel, representing the appellants referred to a Division Bench judgment of this Court in the case of **Ashoke Kumar Rai-vs.-Ashoke Arora & Anr.** reported in **1996 CWN 278**, in support of his contention that this appeal is maintainable.

However, in his usual fairness, Mr. Bose, also referred to the decision of the Hon'ble Apex Court in the case of **Midnapore Peoples' Coop. Bank Ltd. & Ors.-vs.-Chunilal nanda & Ors.**, reported at **(2006) 5 SCC 399**. In particular we may notice paragraph 11 of the said judgment which reads as follows:-

“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 F the Act, can also encompass the incidental or inextricably connected G 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.”

The aforesaid judgment was referred to and followed by the Hon'ble Apex Court in its decision in the case of **Ajay Kumar Bhalla & Ors.-vs.-Prakash Kumar Dixit**, reported at **(2024) 12 SCC 159**. In paragraph 11 of the

reported judgment, the Hon'ble Apex Court noted the observations of the Apex Court in the earlier case of **Midnapore Peoples' Coop. Bank Ltd. & Ors. (supra)**.

We, therefore, see that the appellants may have a remedy by way of a mandamus appeal under Clause 15 of the Letters Patent in so far as their grievance against the learned Single Judge's order dated June 18, 2026 is concerned. That order does not impose any punishment on the appellants in exercise of contempt jurisdiction as is contemplated under Section 19 of the 1971 Act. Therefore, in our opinion, this appeal under Section 19(1) of the 1971 Act is not maintainable against the order dated June 18, 2026.

However, it appears that the said order dated June 18, 2026 has adverse consequences for the present appellants. They will be at liberty to challenge the order before the appropriate court in accordance with law. We have not applied our mind to the merits of the case. We merely hold the present appeal to be un-maintainable and leave the appellants to approach the appropriate forum in accordance with law.

The appeal and the connected applications are disposed of.

Since we have permitted the appellants to approach the appropriate forum by way of an appropriate proceeding in accordance with law, purely on humanitarian grounds we direct that for a period of 15 days from date no coercive steps be taken against the building in question.

We further clarify that if within 15 days, the appellants are unable to obtain a protective order from a competent forum, the learned Single Judge's order dated June 18, 2026, shall be forthwith implemented.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)