

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5100 OF 2011

A.K. Mitra

... Appellant

Versus

C.N. Mallikarjunappa & Ors.

... Respondents

O R D E R

This appeal has been preferred against the order of the High Court of Karnataka recording a finding that *prima facie* the appellant had committed wilful disobedience of the direction of the High Court dated 31.05.2007 in W.P. No.19363 of 2006.

The respondents were employed as Constables in the Border Security Force and had tendered resignation. Thereafter, they sought to rejoin in the light of certain developments. On a writ petition being filed by the respondents, the High Court, vide order dated 31.05.2007, directed the representations of the respondents to be considered.

The appellant, after consideration of the representations passed an order dated 26.09.2007. According to the respondents, the said order amounted to contempt, while the stand of the appellant is that the said order has been passed on the *bona fide* understanding of the appellant about the rights of the respondents.

It is submitted on behalf of the appellant that even an erroneous *bona fide* view is not at par with wilful disobedience amounting to

contempt. Thus, instead of filing a contempt petition, the respondents should have, either filed a substantive petition or converted the contempt petition itself into a substantive writ petition, if so permissible under the Rules. The option of contempt of court was available only if there is wilful disobedience. In the present case, direction was to decide the representation which was duly decided. There is a debateable issue whether the representation should have been accepted or not. The said issue requires adjudication for which forum of contempt was not appropriate one.

We find merit in the submission. While court's order has to be faithfully complied, whether or not there is wilful disobedience has to be determined from case to case. Contempt jurisdiction is not a substitute for adjudication. It can be exercised only when there is clear disobedience. In the instant case, while deciding the representation, an interpretation has been taken which may or may not be correct but it is difficult to say that there is wilful disobedience.

Under these circumstances, we allow this appeal, set aside the impugned order and permit the respondents to move the High Court for appropriate relief either by way of a substantive petition or by filing an appropriate application to convert the contempt petition into a writ petition, if permissible. The respondents may move the High Court within eight weeks from today. We make it clear that we have not expressed any opinion on the merits of the controversy arising from the order dated 26.09. 2001 and all

contentions of the parties are left open to be gone into by the High court.

The appeal is allowed accordingly in above terms..

.....,J.
(Adarsh Kumar Goel)

.....,J.
(A.M. Khanwilkar)

New Delhi;
June 23, 2016

ITEM NO.112

COURT NO.3

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5100/2011

A.K.MITRA

Appellant(s)

VERSUS

C.N.MALLIKARJUNAPPA & ORS.

Respondent(s)

Date : 23/06/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE A.M. KHANWILKAR
(VACATION BENCH)

For Appellant(s) Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Soheb Hussain, Adv.
Ms. Anil Katiyar, Adv.
Ms. Sushma Suri, AOR

For Respondent(s) Mr. C.B. Gururaj, Adv.
Mr. S.S. Gill, Adv.
Mr. V.N. Raghupathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)