

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CACP No.16 of 2014 (O&M)

Date of Decision: September 16, 2014.

Anil Kumar Goswami and another APPELLANT (s)

Versus

Sinder Kaur RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Karminder Singh, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

S.S. SARON, J.

This contempt appeal has been filed by the appellants against the order dated 20.01.2014 passed by the learned Single Judge in COCP No.712 of 2012. Along with the appeal CM No.18979-CII of 2014 has been filed seeking condonation of 86 days in filing the appeal and CM No.18978-CII of 2014 seeking condonation of 67 days in refiling the appeal.

The grievance of the respondent – Sinder Kaur was against the non-compliance of the order, which according to the respondent, was required to be complied with by the appellants by releasing the pension payable to her within a period of six weeks from the date of receipt of copy of the order passed on 07.12.2011. As the same had not been complied with, the contempt petition was filed by the respondent.

Learned counsel appearing for the appellants submits that the entire pensionary dues have been released to the respondent – Sinder Kaur, which fact has not been disputed by her. It was, however, stated by her that the pension had been released from the date of the order and not with effect from the date when it became due. It was held by this Court in the impugned order dated 20.01.2014 that there would be no contempt of this Court as the order dated 07.12.2011 passed by the writ court was silent in this regard. Learned counsel for the respondent in all fairness had stated that a prayer for clarification of the order had already been made. The learned Single Judge held that if that be so and since the pension had been released in terms of the order dated 07.12.2011, which did not bind the appellants to a specific date, there was justification to the explanation offered by the appellants in the instant proceedings, which the court was persuaded to accept. The petition was, accordingly, disposed of leaving the respondent with a liberty to seek clarification before the writ court.

It was, however, held that the appellants could not escape from the fact that ample delay had been caused in releasing the benefits due to the respondent. The delay was compounded by the fact which the previous order of the Court had demonstrated. The previous order which the learned Single Judge in all probability meant is the order dated 28.5.2012 (which has been filed with the paper book) wherein it was observed that despite sufficient opportunities already granted, the respondents (now appellants) had not complied with the order. While granting one more but last opportunity, it was directed that if the needful was not done before the adjourned date, respondent No.2 (now appellant No.2) shall remain present in

Court to show cause as to why exemplary cost be not imposed upon him. Accordingly, the appellants were burdened with compensatory costs of Rs.50,000/-, which were ordered to be paid to the respondent.

The appellants aggrieved against the said order dated 20.01.2014 to the extent that Rs.50,000/- as compensatory costs had been imposed have filed this appeal.

During the course of hearing, Sh. Karminder Singh, Advocate appearing for the appellants accepts the position that in the contempt proceedings, the appellants have been discharged. Admittedly, no punishment for committing a contempt has been imposed on the appellants.

Therefore, it is to be considered whether a contempt appeal would be maintainable where the contemner has not been punished for contempt.

In terms of Section 19 of the Contempt of Courts Act, 1971 (for short – the 'Act'), an appeal lies as of right from any order or decision of this Court in the exercise of its jurisdiction to punish for its contempt. An appeal would, therefore, be maintainable against an order where an order of punishment is passed for contempt. This aspect has been considered by a Division Bench of this Court in **R.P. Bhardwaj and another v. Smt. Kiran Aggarwal and others, 1989 Cri.L.J. 481**, wherein it has been held as follows:-

“Uniformly, the Supreme Court has been taking the view that under Section 19 of the Contempt of Courts Act, an appeal could be preferred only if the High Court has exercised its jurisdiction to punish for contempt, which was interpreted by the Supreme Court as punishing the

contemner finding him guilty. Learned Counsel sought to distinguish the decisions of the Supreme Court reported in AIR 1974 Supreme Court 2255; (1975 CriLJ 1), AIR 1978 Supreme Court 1014: (1978 Cri.L.J. 772), and (1988) 3 SCC 26 and on the grounds that these related to (1) criminal case and (2) dismissal of an application for punishing the contemner at the notice stage itself. We are of the view that no distinction can be made whether the petition is dismissed without hearing the respondent or whether it is dismissed after hearing the respondent. In both the cases, as held by the Supreme Court, the Court does not exercise its power to punish and therefore, no appeal lies, Section 19 also does not make any distinction between a criminal and civil contempt. It relates to every order made by the High Court in exercise of its jurisdiction to punish for contempt. Therefore, the appeal is not maintainable and is dismissed.”

Besides, in **Midnapore Peoples Coop. Bank Ltd. and others v. Chunilal Nanda and others, (2006) 5 SCC 399** the Hon'ble Supreme Court while dealing with regard to appeal against an order punishing for contempt, has held 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 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).”

The abovesaid decision shows that in terms of proposition IV, an exception has been carved out where such direction or decision is incidental or inextricably connected with the order punishing for contempt, in which event an appeal under Section 19 of the Act can also encompass the incidental or inextricably connected directions. The said exception again is to be incidental to or inextricably connected with the order punishing for contempt. In the present case, admittedly, no order punishing for contempt has been passed. Therefore, an appeal under Section 19 of the Act would not be maintainable. The appellants may, if so advised, avail other remedies in accordance with law.

The appeal is accordingly dismissed as not maintainable.

However, the delay of 86 days in filing and 67 days in refiling the appeal are only academic, in any case the same are condoned.

**(S.S. SARON)
JUDGE**

**(LISA GILL)
JUDGE**

September 16, 2014.
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