

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 186/2009**

BRIJ KISHORE PUSHP Appellant
Through: Mr. R.K. Saini, Advocate.

versus

SH. ARUN GOEL & ORS. Respondents
Through: Ms. Avnish Ahlawat, Advocate
for Respondent Nos. 1 & 2.
Mr. S.N. Chaudhary, Advocate
for Respondent No. 3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

O R D E R

% **30.04.2009**

1. The present appeal has been filed against the impugned judgment dated 27th February, 2009, passed in an application moved by the appellant in a disposed of contempt petition.

2. The learned Single Judge has come to the conclusion that there has been no willful disobedience of the orders of the Court. Accordingly, the application was dismissed but the appellant was given liberty, if so permissible and in accordance with law, to challenge the respondents' action of imposing "CENSURE" as well as of granting third time bound promotion scale from the next date of imposition of punishment of "CENSURE".

3. We do not propose to go into the merits of the matter as the

appeal itself is not maintainable. The appeal is against an order passed in an application moved in a disposed of contempt petition. In the impugned order, the learned Single Judge has declined the prayer of the appellant to proceed against the respondents under the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act').

4. As held by the Hon'ble Supreme Court of India in ***State of Maharashtra vs. Mahboob S. Allibhoy, (1996) 4 SCC 411***, a contempt proceeding is not a dispute between two parties; the proceeding is primarily between the court and the person who is alleged to have committed contempt of court. The person who informs the Court or brings to the notice of the Court that anyone has committed contempt of such court is not in the position of a prosecutor; he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case.

5. Further it has been held by the Hon'ble Supreme Court of India in ***Om Prakash Jaiswal vs. D.K. Mittal & Anr. , (2003) 3 SCC 171***, that a private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or

petitioner in the proceedings. He is just an informer or relater. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing of the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party.

6. Further as held by the Hon'ble Supreme Court of India in ***Midnapore Peoples' Cooperative Bank Ltd. vs. Chunilal Nanda & Ors., (2006) 5 SCC 399***, 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. Neither an order declining to initiate a proceeding for contempt, nor an order initiating proceeding for contempt nor an order dropping the proceeding for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the Act.

7. However, it is pertinent to mention here that the present appeal has not been filed under Section 19 of the Act but under Clause X of the Letters Patent Act, 1866. The learned Single Judge in the impugned order has not decided any issue or made any direction

relating to the merits of the dispute between the parties. The learned Single Judge has merely held that there was no willful disobedience of any specific direction given by the Court and since the issue of “CENSURE” was not raised before the Court, when it passed the orders dated 8th December, 2003 and 17th May, 2004, it could not be said that the respondents were bound in law to ignore the said punishment. In fact, the learned Single Judge has rightly granted the liberty to the appellant, if so permissible in law, to challenge the respondents’ action of imposing “CENSURE” as well as of granting third time bound promotion scale from next date of imposition of punishment of “CENSURE”. Thus, since the learned Single Judge in the impugned order has not decided any issue or made any direction relating to the merits of the dispute, the said order is not open to challenge even in an intra-court appeal (provided there was a provision for an intra-court appeal). As held by the Supreme Court in ***Midnapore Peoples’ Cooperative Bank Ltd. vs. Chunilal Nanda & Ors.***, for an intra-court appeal to be maintainable, the court must decide the issue or make any direction, relating to the merits of the dispute between the parties, in a contempt proceeding and in that case, the aggrieved person is not without remedy. However, no such decision on an issue or direction relating to the merits of the dispute between the parties has been given in the impugned order.

8. Even otherwise, we find no infirmity in the impugned order and the appeal must fail. Neither an appeal under Section 19 of the Act nor an appeal under Clause X of the Letters Patent Act, 1866 is

maintainable in the facts of the present case. The appeal is accordingly dismissed. The pending application also stands disposed of.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

APRIL 30, 2009
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