
Hindustan Unilever Ltd. Vs Procter and Gamble Home Products Ltd.

G.A. No. 1309 of 2011 and A.P.O.T. No. 200 of 2011

Court: Calcutta High Court

Date of Decision: Aug. 5, 2011

Acts Referred:

Constitution of India, 1950 – Article 134, 136, 215#Contempt of Courts Act, 1971 – Section 17, 19, 19(1), 20, 23

Citation: (2012) 1 CHN 607

Hon'ble Judges: Soumen Sen, J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: Sudipto Sankar, M. Bhattacharya, Soorja Ganguli and Soumita Datta, for the Appellant; S.K. Kapur, S.N. Mukherjee, Ranjan Buchawat, Ravi Kapur, Sayan Roy Chowdhury, Rohitendra Chandra Deb and Meghajit Mukherjee, for the Respondent

Judgement

Pinaki Chandra Ghose, J.

An interesting point has arisen in this appeal, namely, the appeal ability of an order directing issuance of rule

after holding that the explanation given in the affidavit on behalf of the alleged contemner respondent company cannot be accepted. The learned

Single Judge directed issuance of the rule against the company and its officers who are associated with the advertisement and media department. A

rule was also issued against the alleged contemner respondent No. 2 being the other appellant on the ground that the said alleged contemner has

admitted in his affidavit that the subsequent advertisement is in keeping with the Court's Order. When the aforesaid appeals were moved, the

respondents have raised a preliminary objection as to the maintainability of the said appeal. It is being urged that the said appeal is not maintainable

u/s 19 of the Contempt of Courts Act, 1971. It is being further urged that the order under challenge only directs issuance of the rule and it is not

appealable even under Letters Patent.

2. Since the question of maintainability has been urged we propose to decide the said issue first before considering the appeals on merit.

3. The contempt application has been filed by the respondents for alleged violation of an order dated 5th March, 2010.

4. A suit was filed by the respondents for malicious slander of goods that is disparagement and infringement of Trade Marks Act, 1999 and

Copyright Act.

5. In the said proceeding an application was filed for interim reliefs. In the said application after contested hearing an order was passed in terms of

Prayer (d) for a period of twelve weeks. The said Prayer (d) is reproduced hereinbelow:

(d) The respondents or its servants, agents, employees, officers, contractors or assigns or otherwise howsoever be restrained from publishing by

telecasting or broadcasting or otherwise howsoever the impugned advertisement being Annexure ""B"" hereto in any television channels in English or

in Hindi or in any other regional or vernacular language in this country or from howsoever otherwise disparaging the petitioners' product ""Tide"" or

the petitioners in any manner whatsoever;

6. The appellant herein appears to have preferred an appeal but the said appeal was ultimately dismissed.

7. The respondents filed the contempt application on the ground that in spite of existence of the order dated 5th March, 2010 and the fact that the

appeal was dismissed, a second advertisement was sought to be aired and/or televised in violation of the order dated 5th March, 2010. The

respondents in their contempt application gave particulars of the alleged Acts of Contempt and contended that in view of such violation, the

respondents should be hauled up and held guilty of contempt. It appears that in the said application at the admission stage an order was passed on

8th April, 2010, relevant portion whereof is reproduced hereinbelow:

In this contempt application although an interim order is sought no such interim order can be passed at this stage. Accordingly, the alleged

contemners/respondents are directed show cause by filing affidavit why a rule ought not to be issued. Such affidavit be filed by 16th April, 2010;

reply thereto, if any, by 20th April, 2010, matter to appear in the list on 21.4.2010 at 10.30 a.m.

8. Thereafter affidavits have been filed by the alleged contemners. For the purpose of appreciating the order under challenge it is necessary to refer

to some of the averments made by the respondents in their affidavit in answer to such show cause.

9. Gopal Vittal who is the Executive Director of Home and Personal Care Division of the alleged contemner No. 1, inter alia, made the following

averments:

8. In the facts stated above, I say that the question of any disregard deliberate or otherwise of the order passed by this Hon"ble Court cannot and

does not arise. I state and submit that the petition implicating me as the Contemner No. 2 being in gross abuse of the process of the Hon"ble Court

should be dismissed in limine with costs.

24. With reference to paragraphs 19, 20, 21 and 22 of the said petition, the allegations contained therein are irrelevant to the present proceeding

and are, in any event, categorically denied and disputed. It is a matter of record that the respondent company discontinued the earlier television

commercial before the impugned order became effective. The petitioners are fully aware that there was no order of injunction against the telecast of

the earlier advertisement before 5th March, 2010 and as such the first respondent company was fully entitled to telecast the same. The allegations

with regard to the Respondent having intensified the telecast of the advertisement or otherwise is, therefore, completely without basis and irrelevant

for the purpose of the instant proceedings. I further say that none of the allegations made in the paragraphs under reference have any relevance in

the present context.

26. It is in this regard, I say that the reasons given by the petitioners for linking the two commercials and to construe the new advertisement which

is currently being aired by the first respondent as a continuation of or as an adjunct to its earlier commercial, are completely exaggerated, far

fetched and unsubstantiated. There is absolutely no similarity or connection between the two commercials as would appear from the following:

i) The new advertisement refers to an "ordinary detergent" without naming any particular product.

ii) The consequences of events is entirely different. The earlier advertisement started with two women waiting at a school bus stop. The new

advertisement opens with an aerial shot of the Rin Research Tower and a helicopter approaching.

iii) In the earlier advertisement the effectiveness of the first respondent's product is shown by way of shirts worn by two school-going boys, while

in the current advertisement, the effect is reflected as the clothes are pulled out of the buckets after washing.

iv) The presence of the celebrity "Kajol" flagging-off the demonstration and the "Rin Whiteness Challenge" is wholly absent in the earlier

commercial. Kajol is the central character in the new advertisement.

v) There is no representation of a dull shirt of a particular product placed on it in the new advertisement.

vi) In the new advertisement, no connection has been drawn or reference made between a dull shirt with a particular product.

vii) The new advertisement is different; primarily that of the "Rin Safedi Challenge" an invitation and not directed to any specific Brands or products

far less the petitioners product.

viii) That the usage of the same models, which is alleged to seemingly suggest the respective brands, is unfounded, baseless and mere conjunctures

and surmises.

In view of the above, the present commercial cannot be construed An extension of the earlier commercial of the first respondent in any manner

whatsoever and in seeking to do so, the petitioners are trying to mislead this Hon"ble Court.

31. With reference to paragraphs-35, 36, 37 and 38 of the said petition, the allegations contained therein are denied and disputed as if set out

seriatim and specifically traversed. It is categorically denied that the respondents have acted in willful, deliberate or contumacious violation of the

order dated 5th March, 2010 in the manner as alleged. I reiterate that the current advertisement has no connection whatsoever with the earlier

advertisement which has been discontinued with effect from 7th March, 2010. The current advertisement is not a continuation of or sequel to the

earlier advertisement, reasons whereof have been stated in the paragraph above. The respondent has taken particular care to comply with the

order and directions passed by this Hon"ble Court in creating the new advertisement and this would be evident from the fact that no specific

product or manufacturer has been named in the new advertisement, let alone the petitioners or its product. It is evident that the petitioners are

seeking to build a case against the respondent, which is based on conjecture and surmise being completely unsubstantiated and wholly devoid of

merit. It is specifically denied that there is any disparagement of any products far less the petitioner"s product. The fact that the Petitioners have

instituted contempt proceedings in relation to an advertisement/commercial which has no connection with the earlier advertisement and has been

specifically created keeping the order passed by this Hon"ble Court in mind, shows that it is the petitioners who are unfairly taking advantage of the

impugned order and distorting it to their advantage. The Petitioners are treating the new advertisement as a "sequel" in order to create a cause of

action against me when none exists or can exist. It is categorically denied that the respondents is making capital or taking undue advantage of the

"Recall Value" of the average consumer with the aim of discrediting the product of the petitioners or that the respondents are guilty of contempt or

should be suitably punished as alleged or at all. In support of the contentions stated above with regard to the advertisements, I crave leave to refer

to and rely upon the affidavits of Brand Managers as and when produced during the hearing.

32. With reference to the paragraphs 39, 40, 41, 42, 43 and 44 of the said petition I state and submit that the Respondents would never have

acted in willful deliberate and contumacious violation of any order or has done any act in violation of the order passed by the Hon"ble High Court

at Calcutta or any other Hon"ble Courts. In this connection I crave leave to refer to and deal with the alleged acts of violation of the order dated

5th March, 2010 if necessary. I say that the contempt proceedings and more particularly against me are an abuse of process of the Hon"ble Court.

33. It is reiterated that each and every one of the Respondents including myself being the respondent No. 2, have the highest regard for this

Hon"ble Court and the orders passed by this Hon"ble Court. The directions and order dated 5th March, 2010 passed by this Hon"ble Court have

been meticulously complied with and there cannot be any question of any violation or contempt committed by any of the Respondents including

myself. I say that the instant proceedings are vexatious and completely devoid of merit. It is evident that the Petitioners being motivated by

extraneous considerations are seeking to obtain orders, which they are not entitled to in contempt proceedings. The object of the petitioners in

filing the instant proceedings is wholly mala fide, and the instant proceedings should be dismissed in limine, with exemplary costs, awarded in favour

of the respondents.

34. I say that the instant petition has been filed by the petitioners with ulterior motive to harass the respondent, its directors and officers which

include myself. I say that the instant contempt proceeding is an abuse of the process of the Hon"ble Court. The instant petition does not disclose

any act of contempt, nor does it disclose any willful, deliberate or contumacious act on the part of the respondent. I say that the instant proceedings

have been conceived with malicious intention and for collateral purposes to create unethical pressure on the respondents. The instant petition is not

tenable in law as well as in fact.

35. In view of the above, I respectfully submit that this Hon"ble Court may be pleased to dismiss the instant petition with exemplary costs.

10. In so far as the alleged contemner No. 1 is concerned while dealing with the said contempt petition, the said alleged contemner made the

following averments:

3. At the outset, and before dealing with the said allegations made in the said Contempt Application, I submit that the said Contempt Application

stated to be made in G.A. No. 614 in C.S. No. 43 of 2010 is not maintainable and should be dismissed in limine on the following grounds or any

of them:

a) The said Contempt Application discloses no act of contempt or grounds of violation of the Order dated March 5, 2010. The advertisement

which has been subject matter of G.A. No. 614 of 2010 and C.S. No. 43 of 2010 and which has been restrained by the Order dated March 5,

2010, has been discontinued and have not been telecast or in other way published on and from 7th March, 2010 in compliance with the said order

of march 5, 2010.

e) The instant contempt application purports to be in respect of a new advertisement issued subsequently in respect whereof no suit has been filed

by the petitioner. The reasons given by the petitioners for linking the two commercials and to construe the new advertisement which is currently

being aired by the first respondent as a continuation of or as an adjunct to its earlier commercial, are completely exaggerated, far fetched and

unsubstantiated. There is absolutely no similarity or connection between the two commercials.

f) In this application for contempt of Court, the questions whether new advertisements issued on 26th March, 2010 amounts to disparagement of

the petitioners" product or not, cannot be decided or even gone into in contempt proceedings. The petitioners have motivatedly based this

contempt application on disputed questions of facts and law as also matters of surmise which cannot be decided in any contempt proceedings.

g) The instant application is not really for Contempt of Court but has been made in the abuse of the process of law for obtaining an interim order in

respect of advertisement issued on and from 26th March, 2010 which is not at all the subject matter of any suit or any civil proceeding.

k) The instant petition has been filed before this Hon"ble Court with mala fide intent to harass the respondent No. 1 company.

19. It is submitted that this contempt application should be dismissed with exemplary costs.

11. From the aforesaid averments it is clear the alleged contemnors have questioned the very initiation of the contempt proceeding and have urged

that the said proceeding is mala fide and should be dismissed. The alleged contemnors have also urged that the application for contempt is not in

compliance of the Contempt of Courts Act and more particularly Rule 10 of the Rules framed by the High Court as also Order 29 of the CPC and

Appendix A thereto.

12. The learned Single Judge after considering the affidavits on record held that from a reading of the affidavits filed by the alleged contemnors

respondent company and the alleged contemnor respondent Nos. 2 and 3 it appears that ""undoubtedly"" a second advertisement has been aired

during the continuance of the Order dated 5th March, 2010. The said order was unsuccessfully challenged in an appeal by the said order, the

respondents were restrained from disparaging ""the petitioners" product ""Tide"" or the petitioners in any manner whatsoever"". The advertisement

televised by the alleged contemnor respondent company subsequent to the said order nowhere mentions product ""Tide"" but it certainly has chosen

the same models in the same sarees and the music is also the same which is a violation of the order dated 5th March, 2010. The learned Single

Judge in more than one place had used the expression ""undoubtedly"" in arriving at the final conclusion that the Rule is required to be issued against

the alleged contemnor Nos. 1 and 2, along with the officers who are associated with the advertisement and media department of the alleged

contemnor No. 1 company. The learned Single Judge arrived at such conclusion after holding that the explanation sought to be given in the affidavit

filed by the alleged contemnor respondent company cannot be accepted and in so far as the contemnor respondent No. 2 is concerned he could

not have shrug off responsibility for such alleged violation of the order dated 5th March, 2010, although, he may not be personally looking after the

Advertisement and Media Department. It is against the aforesaid backdrop, the question of appeal ability of the said order requires to be

determined.

13. The Contempt of Courts Act, 1971 is a departure from the earlier Contempt of Courts Act, 1952. There was no provision for appeal in the

Contempt of Courts Act, 1952. This was a great lacuna which has now been satisfactorily made by the introduction of section 19 of the 1971 Act.

For the first time, an appeal is provided as of right from "any order" or "decision" of the High Court in its contempt jurisdiction in terms of section

19 of the Contempt of Courts Act, 1971.

14. The introduction of the said statutory right of appeal is the outcome, is the Sanyal Committee recommendation which elaborately discussed the

pros and cons as to the need for a provision for appeal in contempt matters as of right. That Committee, in fact, had approved the recommendation of Lord Shawcross Committee (UK) as the clear need for an appeal as of right. The relevant portion of the Sanyal Committee

Report is reproduced hereinbelow:

But considering the uncertain state of the law and the fact that an appeal should be provided as a matter of course in all criminal cases, we are of

the opinion that a right of appeal should be available in all cases and we accordingly recommend that against an order of Single Judge, punishment

for contempt, the appeal should lie in the High Court, to a Bench of Judges...

15. In so far as appeals from orders made in matters arising out of civil contempt, the High Court appears to have considered the question of

appeal ability in the context of Clause 15 of the Letters Patent. In considering such questions relation to the appeal ability under Clause 15. The

Courts made a distinction between appeals from orders of civil contempt and criminal contempt. Our Courts have held that in exercise of criminal

contempt jurisdiction, no appeal would lie under Clause 15 (AIR 1918 Calcutta 988, Tarit Kanti Biswas (S.B.) and AIR 1948 Calcutta 214,

Shyam Sunder Jodhraj). The said view was relied upon by the Madras High Court in Swami Nathan reported in AIR 1955 Madras 121.

16. An appeal u/s 19 would lie from any order or decision of High Court in exercise of its jurisdiction to punish for contempt.

17. The provision for appeal has been provided in order to give relief to a party who has suffered gross injustice or prejudice or where he has not

been given a fair hearing on matters of contest. The order or decision appealed against u/s 19 must be such that it decides some bone of contention

raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by issuance of the notice on the

prima facie"" view that the case is a fit one for drawing up the proceeding does not decide any question and cannot be deemed to be a final order.

Since on this point, decisions have been cited by both the parties, we may refer to some of such decisions.

18. To start with we may first refer to the decision in the Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High

Court,

19. In the said decision, the Hon"ble Supreme Court was deciding a preliminary objection taken by the State against the maintainability of the

appeal on the ground that where the High Court had not initiated proceedings and refused to take action no appeal as of right will lie u/s 19(1). It

appears that the appellant therein was member of the Judicial Service of Orissa and/or was under suspension. He was subject to a disciplinary

enquiry by the High Court. The said appellant was served with a charge-sheet and was called upon to show cause why disciplinary action should

not be taken against him. In the mean time, the appellant addressed to the Government a letter dated 10th April, 2010, complaining against the

order of suspension passed by the High Court and requesting the Governor to cancel the order of suspension on the ground that it was beyond the

authority of the High Court. The High Court withheld the appeal of the appellant and refused to forward it to the Governor since in its opinion no

appeal would lay to the Governor against the order of suspension passed by the High Court. The appellant thereupon forwarded directly to the

Governor a representation dated 14th May, 1972 with a copy to the Registrar of the High Court in which he made several statements which

scandalized the High Court and tendered to lower the prestige, dignity and authority and, thus, constituted criminal contempt of Court within the

meaning of Contempt of Courts Act, 1971. The High Court, therefore, ""suo motu"" issued a notice dated July 03, 1972 called upon the appellant to

show cause why he should not be punished for Contempt of Court. The appellant appeared in answer to the notice and raised several contentions

with a view to exonerate himself from the charge of contempt. The appellant therein questioned the very jurisdiction of the Bench, hearing the

matter since according to the appellant whatever he had said with regard to the Judges of the High Court in the representation made by him to the

Governor or in respect to their conduct in the discharge of administrative functions and not judicial functions and hence it did not amount to

Contempt of Court. The Full Bench rejected the said plea of the appellant. A special leave to appeal is preferred before the Hon"ble Supreme

Court in which the appellant once again made statements which, prima facie, appear to constitute criminal contempt of Court. The said petition was

rejected by the Hon"ble Supreme Court but the High Court took note of the objectionable statements contained in the petition and issued a

supplementary notice dated January 5, 1973 to the appellant to show cause why he should not be punished for having committed contempt of

Court by publishing such statements. The Full Bench thereafter heard the matter upon notice and held the appellant guilty of Contempt of Court

and sentenced to simple imprisonment for two months. In the said decision, the Hon"ble Supreme Court has taken note of the highly unsatisfactory

state of affairs that was existing prior to Contempt of Courts Act, 1971 and the report of the Sanyal Committee. The Hon"ble Supreme Court

made the following observations:-

5. Now, while considering this question, we must bear in mind the true nature of the contempt jurisdiction exercised by the High Court and the law

in regard to right of appeal which obtained immediately prior to the enactment of the Contempt of Courts Act, 1971. It has always been regarded

as well settled law that as far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a

statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of

contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the

Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of

its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been

committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a

proceeding for contempt even where a prima facie case appears to have been made out. The same position obtains even after a proceeding for

contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional

apology from the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the

contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way

of drawing the attention of the Court to the contempt which has been committed: he does not become a part of the proceeding for contempt which

may be initiated by the Court. It was for this reason that a Division Bench of the Bombay High Court held in *Narendrabhai Sarabhai Hatheesing*

vs. *Chinubhai Manibhai Seth* that an order made by the High Court refusing to commit a man for breach of an undertaking given to the Court is not

a judgment within the meaning of Clause 15 of the Letters Patent as it does not affect the merits any question between the parties to the suit.

Beaumont, C.J., pointed out:

The undertaking is given to the Court, if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If

it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt

such course as it thinks fit.

Rangnekar, J., also spoke in the same strain when he said:

Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any

statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can

do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its

discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the

parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be

in the wrong can be said to raise any question between the parties.

It is, therefore, clear that under the law as it stood prior to the enactment of the Contempt of Courts Act, 1971 no appeal lay at the instance of a

party moving the High Court for taking action for contempt, if the High Court in the exercise of its discretion refused to take action on the motion

of such party. Even if the High Court took action and initiated a proceeding for contempt and in such proceeding, the alleged contemner, being

found guilty, was punished for contempt, the order being one made by the High Court in the exercise of its criminal jurisdiction, was not appealable

under Clause 15 of the Letters Patent, and therefore, no appeal lay against it from a Single Judge to a Division Bench and equally, there was no

appeal as of right from a Division Bench to this Court. The result was that in cases of criminal contempt, even a person punished for contempt had

no right of appeal and he could impugn the order committing him for contempt only if the High Court granted the appropriate certificate under

Article 134 in fit cases or on the refusal of the High Court to do so, this Court intervened by granting special leave under Article 136.

6. This was a highly unsatisfactory state of affairs and it was largely responsible for the criticism against the large powers of the Court to punish for

contempt. This unsatisfactory feature of the law of contempt was adversely commented upon by Sanyal Committee in its report dated February

28, 1963 submitted to the Government of India. The Sanyal Committee pointed out in paragraph 2.1 in Chapter XI of its Report:

The present state of the law relating to appeal in cases of criminal contempt appears to be more the result of accidents of legal history than a matter

of policy. That this is so is clearly evident from the fact that in those cases of contempt for which specific provision is made in the Indian Penal

Code and the Code of Criminal Procedure a right of appeal is provided for u/s 486 of the Code of Criminal Procedure. In the case of contempt

falling within the purview of inherent powers of the High Courts, no specific provision has been made in the Letters Patent of the High Courts and

the only explanation for this seems to be that no such provision was made in England in regard to the English superior courts. Further, under the

provisions of the Letters Patent, no appeal is ordinarily permissible where the order of the Court is made in the exercise of the criminal jurisdiction.

It has also been held that section 411A of the Code of Criminal Procedure does not afford any remedy by way of appeal in contempt cases. The

result has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could be only in

special cases to the Judicial Committee. The Constitution did not alter this position very much for the effect of Articles 134 and 136 of the

Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at

present in cases of criminal contempt.

20. Then in Paragraph 3.1 in Chapter XI of its Report the Sanyal Committee proceeded to state:

We accordingly recommend that against an order of a Single Judge, punishing for contempt, the appeal should lie, in the High Court, to a Bench of

Judges and against a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court. Chapter XII of the

Report contained the recommendations of the Sanyal Committee and Clause 25 of the recommendations was in the following terms:

Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for

contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or

decision is of a Bench the appeal should lie to the Supreme Court.

It was in pursuance of this recommendation made by the Sanyal Committee that the Parliament, while enacting the Contempt of Courts Act, 1971,

introduced section 19, sub-section (1) in that Act conferring an appeal as of right ""from any order or decision of a High Court in the exercise of its

jurisdiction to punish for contempt.

21. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction

to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a

decision would not, therefore, fall within the opening words of section 19, sub-section (1) and no appeal would lie against it as of right under that

provision. This of course does not mean that there is remedy available where the High Court on an erroneous view of the law or unreasonably and

perversely refuses to take action for contempt on a motion or a reference.

22. The Hon^{ble} Supreme Court, however, pointed out that in the said case it would not necessary to consider whether an appeal u/s 19,

subsection (1) is confined only to a case where the High Court after initiating a proceeding for contempt finds the alleged contemner guilty and

punishes him for contempt as contended by the learned Additional Solicitor General or it extends also to a case where after initiating a proceeding

for contempt, the High Court finds that the alleged contemner is not guilty of contempt and exonerates him, or even if he is found guilty of

contempt, declines to punish him. A question may well arise whether in the latter case the Advocate General or any other person who has, with the

consent in writing of the Advocate General, moved the High Court can appeal as of right against the order or decision of the High Court. That

question does not arise in the present case and we need not, therefore, express any opinion upon it, though we may point out that in England a right

of appeal is given to a disappointed applicant u/s 13, sub-section (1) and (2) of the Administration of Justice Act, 1960.

23. The aforesaid decision was rendered in a case arising out of criminal contempt.

24. In Purshotam Dass Goel's Case, the Hon^{ble} Supreme Court after noticing Barada Kanta Mishra dealt with the preliminary objection as to the

maintainability of the appeal u/s 19(1) of the Contempt of Courts Act, 1971 made the following observations:

2. A preliminary objection was raised by the learned Solicitor General on behalf of the respondents that no appeal lies to this Court u/s 19 of the

Act from an order issuing notice as nothing yet has been decided by the High Court. Mr. Mohan Behari Lal, learned Counsel for the appellant

combated this argument and submitted that an appeal does lie to this Court as a matter of right u/s 19.

3. In our opinion, the preliminary objection raised on behalf of the respondents is well-founded and must be accepted as correct. Section 19(1)

says:

An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the

Supreme Court.

25. It would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a

Bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right

from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated u/s 17 by issuance of a notice.

Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature

to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must

be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a

proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not

decide any question. This Court, for the first time, cannot be asked in such an appeal to decide whether the person proceeded against has

committed contempt of the High Court or not. The matter has to be decided either finally or, may be, even at an earlier stage an order is made,

which does not decide a contention raised by the alleged contemner asking the High Court to drop the proceeding. It is neither possible, nor

advisable, to make an exhaustive list of the type of orders which may be appealable to this Court u/s 19. A final order, surely, will be appealable.

Our attention was drawn by Mr. Mohan Behari Lal, to section 20 of the Act which provides:

No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date

on which the contempt is alleged to have been committed.

26. He submitted that initiation of the proceeding by the High Court will be without jurisdiction if its is in violation of section 20. It may be so. If the

alleged contemner in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred u/s

20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court u/s 19 from such an

order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an

order, but we merely mention this type of order by way of an example to show that even orders made at some intermediate stage in the proceeding

may be appealable u/s 19. In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything

against the alleged contemner and cannot be appealed against as a matter of right u/s 19.

4. We find some support to the view expressed by us above from the decision of this Court in Barada. Kanta Mishra vs. Orissa High Court,

where it has been held that no appeal lies to this Court u/s 19 of the Act from an order rejecting the prayer of the alleged contemner for hearing the

case piecemeal.

27. In the said case the Hon"ble Supreme Court was deciding as to whether an appeal would lie from an order issuing notice. It was held that

mere initiation of the proceeding for contempt by the issuance of the notice on the ""prima facie"" view that the case is a fit one for drawing up the

proceeding does not decide in question.

28. The views of the Hon"ble Supreme Court in Barada Kanta-was taken note by a subsequent bench of equal strength of the Hon"ble Supreme

Court reported in State of Maharashtra Vs. Mahboob S. Allibhoy and another, In the said decision an appeal was preferred for setting aside of an

order passed by the High Court of Bombay dropping the contempt proceeding which had been initiated against the respondents. The Hon"ble

Supreme Court construed section 19 of the said Act and more particularly the expression "any order" and "decision" used in the said section in the

following manner:

on a plain reading section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction

to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for Contempt of Court,

then only an appeal shall be maintainable under sub-section (1) of section 19 of the Act. As subsection (1) of section 19 provides than an appeal

shall lie as of right from any order an impression is created than an appeal shall lie as of right from any order, an impression is created that an

appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt

proceedings. The words ""any order"" has to be read with the expression "decision" used in the said sub-section which the High Court passes in

exercise of its jurisdiction to punish for contempt. "Any order" is not independent of the expression "decision". They have been put in an alternative

form saying "order" or "decision". In either case, it must be in the nature of punishment for contempt. If the expression "any order" is read

independently of the "decision" then an appeal shall lie under sub-section (1) of section 19 even against any interlocutory order passed in a

proceeding for contempt by the High Court which shall read to a ridiculous result.

It is well known that 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 the 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.

29. In the said decision, the Hon^{ble} Supreme Court, however, did not notice the view expressed in Purshotam Das Goel's Case.

30. Subsequently, in a decision reported in R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, a two - Judge Bench of the Hon^{ble}

Supreme Court upon consideration of Purshotam Dass Goel construed section 19 in the following manner:

8 The learned counsel for the respondents submitted that after issuance of notice for contempt proceedings initiated by the respondents, the Court

has only issued rule and the matter is not finally decided, therefore, the appeal against such order is not maintainable. It is submitted by the learned

Counsel for the appellants that respondents want to take undue advantage of the pending contempt proceedings and coerce the officers of the

State in making payment on the basis of the award even though they are not entitled to recover the same as the property had already vested in the

State and that the appellants were required to pay in all approximately Rs. 50 lakhs to the claimants.

10. In our view the aforesaid contention of the learned Counsel for the respondents requires to be rejected on the ground that after receipt of the

notice, officers concerned tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the

rule issued for contempt action. When the Court either suo motu or on a motion or a reference, decides to take action and initiate proceedings for

contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a

proceeding for contempt and if the order is passed not discharging the rule issued in a contempt proceedings, it would be an order or decision in

exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable.

31. The power of the High Court to entertain an appeal arising out of a contempt proceeding and against an ad interim order passed in such

proceeding came up for consideration in a fairly recent decision reported in Tamilnad Mercantile Bank Share Holders Welfare Association Vs.

S.C. Sekar and Others,

32. The Hon"ble Supreme Court in the said decision was construing the interim order dated 20th June, 2008 for the purpose of ascertaining as to

whether the said order really prejudiced the right of the respondents in the said proceeding. The Hon"ble Supreme Court was considering the

nature of ad interim order of injunction passed in the said proceeding by which the bank was restrained from implementation of its resolution

relating to question of directors till dismissal of the contempt application and it was held that such an ad interim injunction is a judgment for which

an intra court appeal would lie. The Hon"ble Supreme Court construing the said interim order dated 20th June, 2008 that the said interim order

clearly affects the rights of the respondents and accordingly they are ""persons aggrieved and as persons aggrieved they could move higher Court"".

33. In the said decision, the Hon"ble Supreme Court has taken note of Purshtam Das, R.N. Dey and two decisions of the Calcutta High Court,

namely, Ashoke Kumar Roy and Asish Chakrabarty.

34. The Hon"ble Supreme Court has also taken note of the decision of Midnapore Peoples" Cooperative Bank Limited Case, the nature of the

order in which an intra court appeal would lie as would appear from the said report which is reproduced below:

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal u/s 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 contemner, is appealable u/s 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 u/s 19 of the 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 u/s 19 of the Act, can also encompass the

incidental or inextricably connected directions.

V. If the High Court, for whatsoever reasons, 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).

35. In the Tamilnad Mercantile Case, the Hon^{ble} Supreme Court has taken note of the reference pending before a Three Judge Bench in

Dharman Singh's Case. It had relied upon Purushottam Dass's Case, for the purpose of determining as to whether an order which has been

passed adverse to the interest of the alleged contemner an appeal would be maintainable.

36. Our attention was drawn to a recent unreported decision of our High Court rendered by Division Bench decided on 9th December, 2009,

Guriqbal Singh & Anr. vs. Indusind Bank Ltd., in which the Division Bench had taken note Purshotam Dass and Tamilnad Mercantile. After

considering the said two decisions, the Division Bench made the following observations:

After hearing the learned Advocates for the parties and after taking into consideration the decision of the Supreme Court in the case of Purshotam

Dass Goel Vs. Hon^{ble} Mr. B.S. Dhillon and Others, , dealing exactly with the point involved before us, we are of the opinion that this appeal is

not maintainable. We appreciate that subsequently two-Judges-Bench of Supreme Court in more than one case have taken a contrary view

Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others, and we are also alive to the position of fact that a

reference to a larger Bench has been made for the purpose of resolving the said dispute.

Notwithstanding the aforesaid position, we are of the opinion that so long the earlier view taken by a two-Judges-Bench in the case of P. Dass

Goel (supra) is not set aside by a larger Bench of the Supreme Court, the same is binding upon us as a precedent and not the ones which took

contrary view.

It is now settled law that merely because the legality of a decision of an earlier Bench has been doubted by a subsequent Bench of equal standing

and referred the matter for decision to a larger Bench, such fact does not destroy the value of the earlier decision as a precedent.

We, therefore, uphold the preliminary objection taken by Mr. Chowdhury that this appeal is not maintainable under the provisions of Section 19 of

the Contempt of Courts Act.

We also find substance in the contention of Mr. Chowdhury that while issuing such Rule no further interim order having been granted by the

learned Single Judge and at the same time, by the order impugned no right of the appellant having been adjudicated, the mere issue of such Rule

cannot bring the matter within the purview of Clause 15 of the Letters Patent. On that ground also, the appeal is not maintainable.

37. It appears to us that the driving force behind the conclusion was that no interim order was passed affecting the right of the parties and no right

of the appellant had been adjudicated and merely issuance of a rule would not be appealable under Clause 15 of the Letters Patent.

38. We respectfully state that we are unable to find any apparent conflict between the said two decisions of the Hon^{ble} Supreme Court, namely,

Purushottam Das Goel and Tamilnad. As noted supra Purshotam Dass Goel had contemplated various orders against which an intra court appeal

under Clause 15 of the Letters Patent could be maintainable which is being followed in Tamilnad. All that is required to be satisfied in an appeal

under Letters Patent is some decision prejudicially affecting the right of a contemner.

39. Our attention has been drawn to the order of reference dated 19th September, 2005 passed in Dharam Singh vs. Gulzari Lal & Ors.

18852/2005. The said order of reference is set out hereinbelow:

The question as regards the interpretation of section 19 of the Contempt of Courts Act, 1971 arises for consideration in this appeal. Our attention

has been drawn to the decision of this Court in State of Maharashtra Vs. Mahboob S. Allibhoy and another, , where in a two-Judge Bench has

taken the view that no appeal shall lie u/s 19 of the Contempt of Courts Act against the interlocutory order passed by the High Court stating that

the words: ""any order"" must be read with the expression "decision" used in the sub-section so as to exclude any interlocutory order of the High

Court from the scope of the appeal. However, in R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, another two-Judge Bench of this

Court has held that where after initiation of a proceeding for contempt, an order is passed without discharging the rule issued under the provisions

of Section 19, it would be an order or decision in exercise of its jurisdiction to punish for contempt and against such order an appeal shall be

maintainable. It appears that various High Courts have taken different views on interpretation of the Judgment in Mahbood S. Allibhoy (supra) as

some of the High Courts are of the opinion that even if a direction is issued to the contemner by way of interlocutory order the same would attract

the provisions contained in section 19; as such an order or decision of the High Court would be in exercise of its discretion to punish for contempt.

We are, therefore, of the opinion that the matter being of some importance requires consideration by a larger Bench. Accordingly, we direct that

the matter may be placed before Hon^{ble} the Chief Justice for necessary orders.

In the mean time, there shall be a stay of the operation of the order passed by the learned Single Judge.

40. Our attention was subsequently drawn to the order of disposal of the Full Bench reference.

41. A certified copy of the Full Bench order in Dharam Singh's case has been produced before us by the appellant It appears that the Full Bench

has disposed of the reference in the manner following:

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5869 OF 2005

DHARAM SING Appellant (s)

:VERSUS:

GULZARILAL AND ORS. Respondent (s)

ORDER

Learned Counsel for the appellant wishes to withdraw this appeal. This appeal is dismissed as withdrawn.

However, the costs of Rs. 2,000/- as directed by this Court on 5.10.2009, would be recovered from the appellant as arrears of land revenue.

...J

(DALVEER BHANDARI)

New Delhi;

December 14, 2009

42. It would be evident from the said order of reference that such reference was confined to two issues, namely, as to whether any order

mentioned in section 19 must be read the expression "decision" used in the said sub-section so as to exclude an interlocutory order and secondly,

whether any order passed without discharging rule issued u/s 19 would be an order of decision in exercise of its jurisdiction to punish for contempt

and against such order if appeal would lie.

43. In the present case, none of the questions arise at all. In any event, in the decision reported in Tamilnad Mercantile Bank Share Holders

Welfare Association Vs. S.C. Sekar and Others, , the decision in Purushotam Dass Goel (supra) and R.N. Dey (supra) were considered.

44. Although the parties have cited the following decisions on the question of maintainability in view of the aforesaid discussions, we do not feel it

necessary to deal such cases specifically:

1. 1996 (2) CLJ 89, Arun Kumar Gupta & Ors. vs. Jyoti Prasanna Das Thakur & Ors.;

2. 1998 (4) SLR 417, Dipti Ganguly vs. State of W.B. & Ors.);

3 N. Ramanuja and Others Vs. P. Satyanarayana and Others,

45. As in our respectful reading of the judgment it appears to us that if the order prejudices any party or decides any matter affecting the

representation of any party, the same would be appealable under Letters Patent if not directly u/s 19 of the Contempt of Courts Act, 1971.

46. The Hon"ble Supreme Court in the decision reported in Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, ,

have considered what could have been an appealable order under Clause 15 of the Letters Patent and have categorised three types of order,

namely, (i) a final judgment (ii) preliminary judgment and (iii) intermediary and inter locutory judgment. An order was refusing to drop the

proceeding under the Contempt of Courts Act would certainly come under the category of preliminary judgment and covered by the second

category carved out by the Hon"ble Supreme Court.

47. In fact, while dealing with the Contempt of Courts Act, the Hon"ble Supreme Court had categorised four types of order as noticed in the in the

case of Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, which is being followed in a recent decision of the

Hon"ble Supreme Court in Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others, of the four categories of

the order set out in the said judgment even interim orders and interlocutory orders are amenable to judicial scrutiny by the Appellate Court if such

order which may cause some inconvenience or some prejudice to a party but which do not finally determine the rights and obligations of the

parties. In our considered opinion the order under challenge has the trappings of finality as it rejects the contentions of the respondents and arrived

at a clear finding that the explanation could not be accepted. It was because of the nature of such order, we are inclined to hold that the said order

is appealable under Clause 15 of the Letters Patent following Midnapore People"s Cooperative Bank Ltd. Case (supra).

48. A Division Bench decision of our High Court reported in 2006 (2) CHN 628 has been cited by both the sides on the question of appeal ability

under Clause 15 of the Letters Patent. It has been argued that an order of finding the contemner guilty is an appealable order and since the learned

Single Judge by the said judgment, in fact, have held the contemner guilty and directed issuance of the rule which is only for the purpose of

sentence, the appeal should be entertained under Clause 15 of the Letters Patent. In the said decision, the Division Bench was construing the

following order passed by the learned Single Judge:

In this case, on an alleged breach or violation of an order passed by the learned Single Judge, the learned Single Judge was pleased to come to a

finding that the Court was of the opinion that it is a fit case for taking action for contempt. I hold the contemnors guilty of contempt. However, in

order to give contemnors an opportunity to purge the contempt before I pass the sentence, I adjourn the matter for three weeks to enable the

contemner Nos. 2, 3 and 4, namely, the Managing Director of the contemner No. 1, the Vice-President (Marketing) of the contemner No. 1 and

the Company Secretary of the contemner No. 1 to delete the said brown cup/mug from the disputed advertisement and to report compliance

before August 17, 2005, failing which this Court will proceed to pass appropriate orders in respect"" of the contempt.

49. It was contended on behalf of the appellant in that case that since no order of punishment have been passed, no appeal would lie u/s 19(1) of

the Contempt of Courts Act. In that context, the Division Bench passed two independent and separate judgments, upholding that although such

order may not be appealable u/s 19(1) of the Contempt of Courts Act, but it would be appealable under Clause 15 of the Letters Patent. In this

regard, the following observations may be taken note of:

D.K. Seth, J.

(i) The expression "to punish" has to be read that an exercise imposing or inflicting punishment for contempt. If no punishment is inflicted or

imposed, the jurisdiction exercised may be a jurisdiction in exercise of power to contempt.

(ii) Section 19 made a distinction in exercise of power vested in the High Court under Article 215 relating to contempt and in exercise of that

jurisdiction for contempt to inflict punishment.

(iii) Where no order of punishment has been passed and the order is not in the nature of punishment, we hold that the order appealed against is not

an order appealable u/s 19(1) of the Contempt of Courts Act. Being a judgment within the meaning of clause 15 of the Letters Patent the said

order is appealable as such.

(iv) Jurisdiction for contempt or not is not necessary to be gone into in the present case. However, we are of the view the jurisdiction for contempt

is conferred on the Court under Article 215, which can never be circumscribed by any other enactment and as such even if the Rule framed by the

High Court under the Contempt of Courts Act is not followed or a contempt rule is not issued, still then the Court can assume jurisdiction for

contempt and exercise the same and that an exercise to that end to punish would be appealable u/s 19(1).

Maharaj Sinha, J.

(v) An appeal u/s 19(1) of the said Act is maintainable and maintainable only as of right by the party who has been punished for Contempt of

Court and the alleged contemner can thus only be aggrieved when he has, in fact, been punished for Contempt of Court as the alleged contemner

becomes a "contemner" in law when he is, in fact, punished for Contempt of Court and not before.

(vi) "Punishment" by the High Court in exercise of its contempt jurisdiction is the precondition for invoking the jurisdiction u/s 19(1) of the said Act

for preferring or maintaining an appeal by the contemner.

(vii) But nonetheless the same may amount to judgment and, therefore, appealable under Clause 15 of the Letters Patent and at the moment the

order under appeal is, in any event, to be construed as a "judgment" within the meaning of Clause 15 of the Letters Patent and, therefore, the

present appeal is maintainable in its present form.

(viii) There is no provision in section 19 or elsewhere in the Contempt of Courts Act, 1971 by which the applicability of Clause 15 of the Letters

Patent or the Letters Patent as a whole has been excluded.

29. Although the Supreme Court in Taneja's case was primarily concerned with an appeal against an order where the High Court concerned was

pleased to dismiss the contempt application holding that no contempt was, in fact, committed and though the Supreme Court was concerned with a

case of criminal contempt even then the decision in Taneja's case (supra), in my opinion, is an authority also for the proposition that an appeal u/s

19(1) of the said Act is maintainable and maintainable only as of right by the party who has been punished for Contempt of Court and the alleged

contemner can, thus, only be aggrieved when he has, in fact, been punished for Contempt of Court as the alleged contemner becomes a

"contemner" in law when he is, in fact, punished for Contempt of Court and not before. Therefore, once the alleged contemner is not only held

guilty of Contempt of Court but is, in fact, punished therefore, he becomes the contemner and, therefore, being aggrieved by such order of

punishment he, as of right can prefer or maintain an appeal under the provisions of sub-section (1) of section 19 of the said Act, namely, Contempt

of Courts Act and not before.

30. In other words, it may, thus, be said with sufficient certainty on the basis of Taneja's case that ""punishment"" by the High Court in exercise of its

contempt jurisdiction is the precondition for invoking the jurisdiction u/s 19(1) of the said Act for preferring or maintaining an appeal by the

contemner.

36. But since the contemnors were held guilty either rightly or wrongly of contempt, as the learned Single Judge used the following expressions- ""I

am, therefore, of the opinion that it is a fit case for taking action for contempt I hold the contemnors guilty of contempt"", the order under appeal

should, in any event, be treated to be a judgment within the meaning of Clause 15 of the Letters Patent and, therefore, appealable under the said

clause of the Letters Patent and though the said order was passed in exercise of the contempt jurisdiction, namely, in exercise of jurisdiction to

punish for contempt but since no punishment, in fact, was imposed and everything is so uncertain at this stage whether such punishment would at all

be imposed or the alleged contemnors would be exonerated even if the learned Judge maintains that the alleged contemnors were or are guilty of

contempt or even if the learned Judge finds the alleged contemnors were in Contempt of Court but considering the situation that though the alleged

contemnors were guilty of contempt but subsequently the breach of the order has been closed by them and on that consideration if no punishment

or punishments are imposed or made on or against the alleged contemnors, the order cannot be said to be made appealable in future u/s 19(1) of

the said Act, but nonetheless the same may amount to judgment and, therefore, appealable under Clause 15 of the Letters Patent and at the

moment the order under appeal is, in any event, to be construed as a ""judgment"" within the meaning of Clause 15 of the Letters Patent and,

therefore, the present appeal is maintainable in its present form.

38. There is no provision in section 19 or elsewhere in the Contempt of Courts Act, 1971 by which the applicability of Clause 15 of the Letters

Patent or the Letters Patent as a whole has been excluded.

50. It appears to us that in the instant proceeding a procedure was adopted by the learned Single Judge which is not in conformity with the rules

made by the Calcutta High Court in exercise of power conferred by section 23 of the Contempt of Courts Act, 1971 and by Article 215 of the

Constitution. For the purpose of appreciation of the procedure that is required to be adopted in such matter we set out the following rules:

Rule 19.--The Court may issue Rule Nisi or summarily reject the petition or make such order thereupon as thought fit. The Rule Nisi shall be

drawn up, as far as may be, in the model Form No. 1, Appendix I.

Rule 23.--Every attempt shall be made to serve the Rule Nisi personally upon the alleged contemner or contemnors, but in suitable cases, the

Court, on being satisfied that personal service cannot be effected, may make an order for an alternative form of service provided for by the Code

of Civil or Criminal Procedure.

Rule 29.--The respondent or the contemner may file an affidavit showing cause and the petitioner may file a reply thereto with such time as may be

directed by the court. The court may, however, in a contempt proceeding take such evidence as may be considered necessary.

We may also refer to Model Form No. 1, Appendix I which is set out below:

APPENDIX I

Form of Rule Nisi

FORM I

Upon reading a petition of.... and his/their affidavit of verification thereof, dated.... and the exhibits or annexure to the said petition and upon

hearing.... advocate for the said petition(s).

It is ordered that Rule do issue calling upon the respondent/respondents to show cause why he/they should not be committed to prison or

otherwise penalised or dealt with for having... (Set out the nature of contumacious conduct).

And it is further ordered that pending the disposal of this rule the respondent/respondents are restrained from... (state particulars).

The Rule is made returnable.

On the returnable date, it is ordered, the respondent/respondents shall appear personally before this Court.... a.m./p.m. and shall not leave the

Court without permission.

51. In this case, admittedly no rule has been issued in terms of Appendix I, Form I instead, a notice to show cause was issued on 8th April, 2009

as to why a rule ought not to be issued. The alleged contemnors in such affidavits have specifically prayed for dismissal of the said petition on

various grounds.

52. The learned Single Judge had decided against the alleged contemnors and directed issuance of the rule after coming to a definite conclusion that

the explanation given by the said alleged contemnors are not accepted.

53. In view of the nature of the order that was passed one has to decide whether such order comes within the purview of section 19(1) of the

Contempt of Courts Act or a judgment within the meaning of Clause 15 of the Letters Patent.

54. We have read the impugned order time and again and could not persuade ourselves to accept the contentions of Mr. S.K. Kapoor, learned

Senior Counsel appearing on behalf of the respondents that the order should be construed as a ""prima facie"" view taken by the learned Single

Judge and it would be open for the appellants in answer to the rule to place their cards before the learned Single Judge either for exoneration or for

discharge of the same rule.

55. We, however, with respect unable to accept such contention, In fact, if the affidavits are read it would be clear that the said respondents have

urged all the defenses that were available to them in answer to the said show cause and have specifically asked for dropping of the said proceeding

being malicious and vexatious. The learned Single Judge did not accept such defence and direct issuance of the rule. In fact, such conclusion could

not have been arrived at unless the learned Single Judge finally decides the issues raised in the said affidavits by the alleged contemnors. There is

nothing more to be decided when the contemnors would give answer to the said rule. It is being argued on behalf of the respondents that the Court

may on the basis of the explanation come under the said rule, discharge contemnors or even exonerate them and accordingly interference with the

said order at this stage would not be desirable. We, however, are unable to accept such contention.

56. Rule 19 of the Rules made by the Calcutta High Court, gives power to the Court either to issue rule or summarily reject the petition or make

such payment as for fit. In this case, admittedly no rule nisi was issued nor the petition summarily rejected at the admission stage. The learned

Judge instead issues show cause as to why a rule should not be issued. Even if such direction comes within the other limb of Rule 19, namely,

makes such order thereupon as thought fit"", even then finality is impregnated in the decision of the learned Single Judge as to the Acts of Contempt

committed by each of the contemnors. We are of the opinion that ""make such order thereupon as thought fit"" may be an incidental or interim order

which in a given situation the Court may feel necessary to pass under peculiar facts or to do justice in a given situation. In fact, from the nature of

the order it does not appear to us that only a prima facie view has been taken. The use of the expression undoubtedly culminated in the conclusion

that the explanation cannot be accepted unmistakably reveals the mind of the learned Single Judge with regard to the Acts of the Contempt

committed by the contemnors. It cannot be said that the contemnors are not ""persons aggrieved"" since their very plea to drop the proceedings have

been rejected and the rule has been issued.

57. In view of the aforesaid the preliminary objection is not entertained and overruled. The appeal is admitted. Photostat certified copy of this

judgment, if applied for, be supplied to the parties.

Soumen Sen, J.

I agree.