

# **Ecl Finance Ltd vs Harikishan Shankarji Gudipati on 16 November, 2017**

**Equivalent citations: AIR 2018 SUPREME COURT 90, 2018 (13) SCC 142, AIR 2018 SC (CRIMINAL) 474, 2018 (2) ABR 123, (2018) 1 WLC(SC)CVL 343, (2017) 13 SCALE 691, (2018) 1 CAL HN 130, (2018) 2 ALLMR 469 (SC), (2018) 1 JCR 308 (SC), (2018) 181 ALLINDCAS 187 (SC), (2018) 2 CURCC 240, 2018 (131) ALR SOC 45 (SC), 2018 (2) KCCR SN 115 (SC), (2018) 1 BOM CR 299**

**Author: Kurian Joseph**

**Bench: R. Banumathi, Kurian Joseph**

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 18834 OF 2017  
(Arising out of SLP (Civil) No. 12596 OF 2017)

ECL FINANCE LTD

.. APPELLANT (S)

VERSUS

HARIKISHAN SHANKARJI  
GUDIPATI & ORS.

.. RESPONDENT (S)

JUDGMENT

KURIAN, J.,

1. Leave granted.

2. The appellant is before this Court aggrieved by an order dated 14th February, 2017 passed by the Division Bench of the High Court of Bombay in Appeal (LDG.) No.2 of 2017. The said appeal was filed against the order dated 22nd December, 2016 in Contempt Petition No. 17 of 2016 in Suit No. 802 of 2014.

3. The appellant filed a Contempt Petition alleging that the respondents herein had not honoured the consent Date: 2017.11.24 15:37:44 IST Reason:

decree drawn on 14th August, 2015, and hence they are liable to be punished for contempt. It appears that the appellant had also initiated execution proceedings, since in the decree, it is stated that in case the terms of the consent are violated, the suit would stand decreed in terms of the prayer made in the plaint. Be that as it may, we find from the order dated 22nd December, 2016 of the learned Single Judge that the learned Single Judge has admitted the contempt petition and has issued notice to the respondents. It is, at that stage that the respondents filed an intra-Court appeal under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”). The Court admitted the appeal, despite the objections regarding the maintainability, leaving the question of the maintainability of the appeal to be considered at the time of final hearing.

4. It appears from the impugned order passed by the Division Bench that, during the pendency of the appeal before the Division Bench, a direction was issued to deposit an amount of Re. 1,00,00,000/- which has subsequently been withdrawn by the appellant as per Order dated 21st July, 2017 passed by this Court.

5. Learned counsel for the respondents has referred to two decisions of this Court in R.N. Dey and Others v. Bhagyabati Pramanik and Others<sup>1</sup> and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others<sup>2</sup> and made a persuasive submission regarding the maintainability of the appeal. We are afraid that the decisions relied upon by the respondents do not further their case, in the given facts and circumstances. R.N. Dey (supra) was a case where the High Court declined to accept the unconditional apology tendered by the contemnor. It was in that context that this Court held that the contemnor could file an appeal since he was otherwise entitled to be discharged in case the unconditional apology had been accepted. In other words, this Court was of the view that the decision to reject the unconditional apology and proceed further was an order or decision to proceed to punish the contemnor. Hence, it was held that such a decision or order was appealable. That is not the situation in the present case. And in any case, at paragraph 13, the Court made (2000)4 SCC 400 (2009)2 SCC 784 it clear that “In the present proceedings the question whether appeal under Section 19 is maintainable or not is not required to be decided finally as, in our view, facts of this case are grossly inadequate and the contempt proceedings were not required to be initiated at all.” In Tamilnad Mercantile Bank (supra), this Court referred to Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others<sup>3</sup> and took the view that though an appeal under Section 19 of the Act, may not be maintainable against certain orders, still the aggrieved person can file an intra-court appeal if in the impugned order an issue has been decided or a direction has been issued, relating to the merits of the disputes between the parties, in exercise of its contempt jurisdiction. No doubt, in paragraph-39, this Court has held that an appeal would be maintainable even against a notice to show cause. But it has to be seen that such a notice is in a case where the court, preceding the notice, had decided some disputes raised before it. Hence this Court guardedly put a caveat as follows: “Thus, in a given situation, an appeal would be maintainable even against a notice to (2006) 5 SCC 399 show cause”. In other words, notice referred

in paragraph-39 is a notice apparently after taking decision on contempt and proceeding further. For the sake of completion of the discussion, we have extracted paragraph-39 also:-

“39. We may repeat that it may be a different matter if the court while passing an order decided some disputes raised before it by the contemnor asking it to drop the proceedings on one ground or the other. Thus, in a given situation, an appeal would be maintainable even against a notice to show cause. Here even such a notice has not been issued and thus the question of satisfying the court by showing cause that the respondent contemnors had not committed any contempt did not arise. Allegations had not been made against the Chairman of the meeting. The contempt proceedings had been initiated only against the Managing Director of the Bank.”

6. In *Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others*<sup>4</sup> after an extensive discussion on various case laws, this Court has summarised the legal position as follows:

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

I. An appeal under Section 19 is maintainable only against an

(2006) 5 SCC 399

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 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 under Section 19 of the Act, can also encom-

pass 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 be-

tween 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 ap-

peal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.”

7. Learned counsel for the respondents submits that before issuing notice, the learned Single Judge had considered the merits of the case and had already made his mind to punish the respondents and, therefore, an appeal would lie, in view of the decisions referred to above. We are afraid the contention made by learned counsel for the respondents cannot be appreciated. The observations made by the learned Single Judge in the Order dated 22 nd December, 2016, while issuing notice in the contempt petition, is only for the prima facie satisfaction as to whether the contempt petition needs to be considered on merits. Only after such a preliminary stage, notice can be issued. Now, it is open to the respondents to file their reply and after considering the defence, the learned Single Judge will have to take a call as to whether it is a case to be proceeded against for punishing the respondents. In case such a decision is taken by the High Court, it is, at that stage, that the respondents get a right to file an appeal before the Division Bench in terms of Section 19(1)(a) of the Act. Such a stage having not arisen, the impugned order passed by the Division Bench is only to be set aside. Ordered accordingly.

8. Having said so, since it is brought to our notice that the appellant has also initiated the proceedings for execution of the decree and since the said matter is also before us, we request the learned Single Judge who has exercised the contempt jurisdiction, to consolidate the execution petition and the contempt proceedings and take a decision as to what exactly would be the amount payable by the respondents in terms of the decree. We also make it clear that nothing said by us or by the learned Single Judge or the Division Bench shall stand in the way of the parties settling their disputes.

9. With these observations, the appeal is disposed of.

.....J. (KURIAN JOSEPH) .....J. (R. BANUMATHI) NEW DELHI  
NOVEMBER 16, 2017