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

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*Date of Decision : 27.02.2025*+ **CONT.APP.(C) 3/2025 CM APPL. 3965/2025, 3967/2025****BIJENDER KUMAR KARHANA THROUGH SPA HOLDER**

.....Appellant

Through: Mr Jatan Singh, Sr Advocate with Mr Mahender Mishra, Mr Paruv Tyagi, Mr Dharmender Basoya and Ms Vanshika Adhana, Advocates.

versus

**HARSH VASHIST & ORS.**

.....Respondents

Through: Mr Kirtiman Singh, Sr Advocate with Mr Maulik Khurana, Mr Ranjeev Khatna, Mr Ashish Gupta, Mr Sachin Tanwar, Advocates for R1.  
Ms Ritu Reniwal SrPC and Mr Mahendra Kumawat, Advocate for R4 & R5.

**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The appellant has filed the present appeal, *inter alia*, impugning an order dated 06.11.2024 (hereafter *the impugned order*) passed by the learned Single Judge in Cont. Cas (C) No.1731/2024 captioned *Bijender Kumar Karhana v. Harsh Vashist and Ors.*

2. The appellant had filed the said petition alleging wilful disobedience



of the directions issued by the court in terms of the order dated 07.10.2024 passed in W.P.(C) No.14034/2024. The learned Single Judge had not accepted that respondent no.1 was required to be proceeded against and, accordingly, dismissed the aforesaid contempt petition.

3. The relevant extracts of the impugned order is set out below: -

“5. Learned counsel for the respondent No.2/MCD has pointed out that it has passed a demolition order in accordance with the undertaking given to this Court. However, the respondent No.1/owner/occupier has assailed the said order before the learned Appellate Tribunal, Municipal Corporation of Delhi [ATMCD] by way of Appeal No. 934/2024, and the learned ATMCD *vide* order dated 22.10.2024 has stayed the operation of the impugned demolition order. A copy of the order dated 22.10.2024 has been placed on record which be digitized by the Registry.

6 It manifestly appears that the learned ATMCD is seized of the matter and has passed appropriate direction to the respondent no.2 not to carry out any impermissible repairs and/or unauthorized construction in the subject property.

7 In view of the above, there is no cause of action to file the present petition.”

4. The principal question to be addressed is whether the present appeal is maintainable. A plain reading of the impugned order indicates that the learned Single Judge had declined the appellant’s prayer for initiating the proceedings under the Contempt of Courts Act, 1971 (hereafter *the CC Act*).

5. As noted above it is the appellant’s case that respondent no.1 had wilfully disobeyed the directions as contained in the order dated 07.10.2024



passed in W.P.(C) 14034/2024. According to the appellant, the direction to furnish an undertaking as directed in paragraph no.6 of the said order was violated as respondent no.1 had not furnished an undertaking, as directed. Secondly, it is stated that the said order was violated as despite being interdicted from carrying on unauthorised construction during the period of two weeks, respondent no. 1 had continued raising unauthorised construction unabatedly.

6. Insofar as the issue of undertaking is concerned, the learned counsel for the respondents affirms that the allegation is incorrect and, in fact, an undertaking, as directed in terms of the paragraph no.6 of the order dated 07.10.2024, was filed on 09.10.2024. Insofar as the allegation that respondent no.1 had continued to raise construction despite the order interdicting the same, is disputed.

7. In terms of the liberty granted by this court, the contesting respondent had filed an appeal [being Appeal No. 934/2024] before the Appellate Tribunal, Municipal Corporation of Delhi (hereafter *the ATMCD*). It is stated that the ATMCD had passed certain protective orders on 22.10.2024 whereby the MCD was restrained from demolishing the construction as raised.

8. In the aforesaid context, the learned Single Judge has observed that the appellant had no cause of action. It is apparent from the said observation, that the learned Single Judge did not find any merit in the contention that unauthorised construction was raised after the order dated 07.10.2024 and prior to the grant of the protective orders by the ATMCD on 22.10.2024.



9. An appeal against an order declining to initiate proceedings for contempt under the CC Act or exonerating the contemnor is not maintainable.

10. In *Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others: (2006) 5 SCC 399*, the Supreme Court had summarised the principles relating to entertaining an appeal in respect of orders passed by the court in proceedings under the CC Act. The relevant extract of the said decision is reproduced below:

“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 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 first point is answered accordingly.”

11. Mr. Jatan Singh, the learned senior counsel appearing for the appellant submits that the present appeal falls under sub-paragraph No.(V) of paragraph No.11 of the decision in *Midnapore Peoples’ Coop. Bank Ltd. and Others v. Chunilal Nanda and Others* (*supra*). He states that there is a definite finding that the appellant has no cause of action and, thus, the learned Single Judge has in fact decided the principal dispute whether the



respondents has raised an unauthorised construction contrary to law.

12. We are unable to accept the said contention. Contrary to the submissions made by the appellant, the learned Single Judge had noted that respondent no. 1 had assailed the demolition order passed by the MCD before the ATMCD by filing an appeal (Appeal No. 934/2024) and the ATMCD is in seisin of the said matter. Further the ATMCD also passed directions to respondent no.1 not to carry out any impermissible repairs and / or unauthorised constructions on the subject property. Thus, the question whether respondent no.1 has raised any unauthorised construction or is continuing to raise unauthorised construction on the property in question is clearly a subject matter of appeal before the ATMCD. The impugned order is confined to rejecting the appellant's prayer for initiating proceedings under the CC Act against respondent no.1.

13. The observation of the learned Single Judge that the appellant has no cause of action to file the petition is indicative of the decision of learned Single Judge not to initiate the contempt proceedings under the CC Act on the basis of the allegations, as made. The said observation is not determinative of the allegations against respondent no.1, which are regarding raising of unauthorised construction and are the subject matter of proceedings before the ATMCD. Thus, the question whether respondent no.1 has raised or has continued to raise unauthorised construction – which is the principal dispute between the parties – is required to be decided by the ATMCD uninfluenced by the order passed by the learned Single Judge.

14. The present appeal is thus not maintainable and is, accordingly,



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dismissed. Pending applications are also disposed of.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**FEBRUARY 27, 2025**

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*Click here to check corrigendum, if any*