

**(2016) 10 JH CK 0045**  
**In the Jharkhand High Court**  
**Case No : Cont. Appeal No. 1 of 2016**

|                                 |    |            |
|---------------------------------|----|------------|
| OMEC Engineers                  | Vs | APPELLANT  |
| Jharkhand Urja Vikas Nigam Ltd. |    | RESPONDENT |

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**Date of Decision :** 18-10-2016

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 19

**Citation :** (2017) 1 JCR 462 : (2017) 1 JLJR 211

**Hon'ble Judges :** Mr. Pradip Kumar Mohanty, ACJ. and Ananda Sen, J.

**Bench :** Division Bench

**Advocate :** Mr. Ajit Kumar, Sr. Advocate, for the Respondent-JUVNL; Mr. M.S. Mittal, Sr. Advocate, for the Appellant

**Final Decision :** Dismissed

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## Judgement

I.A. No. 603 of 2016

This application has been filed for condonation of delay of one day in filing the present appeal.

2. There being no deliberate and intentional laches on the part of the appellant in preferring the instant appeal, the delay of one day is, hereby, condoned.

3. I.A.No.603 of 2016 stands disposed of.

Cont. Appeal No. 1 of 2016

4. This appeal has been filed by the appellant challenging the order dated 04.12.2015 passed in Contempt Case (Civil) No.147 of 2014, by which the Hon'ble Single Bench did not initiate contempt proceeding and closed the contempt case.

5. The appellant is the original petitioner of Contempt Case (Civil) No.147 of 2014. The appellant alleged that Respondents have deliberately and knowingly committed gross violation of the order dated 23.7.2013 passed by the Court in

W.P. (C) No.4482 of 2012. It is further alleged that the respondents will fully disobeyed the order passed by the Hon''ble Court passed in the aforesaid writ application. It has been submitted that the writ application bearing W.P.(C) No.4482 of 2012 was disposed by this Hon''ble High Court on 23.7.2013 giving liberty to the petitioner to approach the Chairman of the Jharkhand State Electricity Board with a fresh representation containing all necessary facts and documents in support of his claim for payment of outstanding dues against the execution of work, under the work orders issued under the A.P.D.R.P. Scheme within a period of three weeks. On receipt of such representation, the Chairman, Jharkhand State Electricity Board was directed to consider the same in accordance with law and, after due verification of records, a reasoned and speaking order had to be passed in respect of claim of the petitioner within a period of 12 weeks thereafter, which was to be communicated to the petitioner. It was further ordered that, if the claims of the petitioner is found to be genuine and legally admissible and there is no legal impediment, payments in lieu thereof shall also be made within a period of 8 weeks thereafter. The petitioner submits that after the said order was passed, a detailed representation was filed, which was decided by the Chairman, Jharkhand State Electricity Board by passing a reasoned order dated 29.10.2013. He submitted that despite the claim of the petitioner being found genuine and correct, no payment was made to the petitioner, even after lapse of 8 weeks of the order.

6. Alleging will full disobedience of the order of this Hon''ble Court, a Contempt application being Contempt Case (Civil) No.147 of 2014 was filed. The Hon''ble Single Judge heard the Contempt Case (Civil) No.147 of 2014 and after hearing the parties, on 04.12.2015 dropped the contempt proceeding with a liberty to the petitioner to assail the decision before an appropriate forum. Challenging the said order by which the contempt was dropped, this appeal has been filed.

7. Learned Sr. counsel for the appellant submitted that the Hon''ble Single Judge has committed gross illegality by dropping the contempt proceeding. He submits that since the respondents have will fully and deliberately flouted the order of the Hon''ble Court, appropriate proceeding under the Contempt of Courts Act should have been initiated and the respondents should have been dealt with in accordance with the said Act. He submitted that the Hon''ble Single Judge failed to take into consideration the fact that the reasoned order is also not in full compliance of the direction passed by the Court, as such, the Hon''ble Single Judge committed error in dropping the proceeding.

8. Learned Sr. counsel appearing for the respondent submitted that this appeal itself is not maintainable and the same is liable to be dismissed. He submitted that the learned Single Judge after taking into consideration each and every aspect and after considering the documents of the parties have concluded that no contempt is made out and thus, has dropped the proceeding. He further submitted that liberty has been given to the petitioner to challenge the reasoned order, if the appellant is aggrieved by the same, before an appropriate forum. He

lastly submitted that no contempt is made out in the instant case.

9. The question which needs to be considered in this case is whether this appeal is maintainable against the order dropping the proceeding for contempt.

10. An appeal is a creature of statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course.

11. Section 19 of the Contempt of Courts Act provides for filing an appeal.

12. For better appreciation, it is necessary to quote Section 19 of the Act which reads as follows:

"19 Appeals ? (1) An appeal shall lie as of right from any order or decision of 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 the Supreme Court.

(2) Pending any appeal, the appellate Court may order that -

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed -

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

13. On a plain reading of Section 19, it is clear 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. This means that if an order is passed to punish any person for committing contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act, against the said order of punishment.

14. The Hon''ble Supreme Court in the case of State of Maharashtra v. Mahboob

S. Allibhoy and another as reported in [(1996) 4 SCC 411] has held that, 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 circumstance o the particular case.

15. The Hon''ble Supreme Court in the said judgment, after discussing the law and several other decisions has further held that no appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt, which is apparent, not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate court may order that -

- (a) the execution of the punishment or the order appealed against be suspended;
- (b) if the appellant is in confinement, he be released on bail; and
- (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

16. Sub-section (2) of Section 19 indicates that the reliefs provided under clause (a) to (c) can be claimed at the instance of the person who has been proceeded against form contempt of court.

17. The Hon''ble Court lastly held that even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, he is not without any remedy. In appropriate cases he can invoke the jurisdiction of the Hon''ble Supreme Court under Article 136 of the Constitution.

18. Thus, from the provision of law as discussed, and also from the judgment, as referred to above, it is quite clear that no appeal lies against an order by which a contempt proceeding has been dropped, dismissed or refused to have been initiated.

19. Thus, we have no hesitation to hold that this contempt appeal challenging the order dated 04.12.2015 by which contempt proceeding has been dropped, is not maintainable.

20. In view of the findings arrived at above, this appeal is dismissed.