

(2025) 07 AHC CK 0782

In the Allahabad High Court

Case No : Contempt Appeal Defective No. 2 Of 2025

Rakesh Kumar Sharma And 2 Others

APPELLANT

Vs

Shri Ramjan Baksh, Consolidation Officer, Shikarpur And 3 Others

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Constitution of India, 1950 — Article 215

Contempt of Courts Act, 1971 — Section 19, 19(1)

Citation : (2025) 07 AHC CK 0782

Hon'ble Judges : Vivek Kumar Birla, J;Jitendra Kumar Sinha, J

Bench : Division Bench

Advocate : Gavendra Kumar Mishra

Final Decision : Dismissed

Judgement

1. Heard Sri Gavendra Kumar Mishra, learned counsel for the appellants and perused the record.

2. Present appeal has been filed under Section 19(1) of Contempt of Courts Act, 1971 challenging the order dated 3.3.2025 passed by the Contempt Court in Contempt Application (Civil) No. 901 of 2025 (Rakesh Kumar Sharma and others vs. Shri Ramjan Baksh), whereby the contempt application has been dismissed.

3. For the sake of clarity the impugned order dated 3.3.2025 is quoted as under:-

"The present contempt application has been filed pleading willful disobedience of the order dated 22.12.2010 passed by this Court in Writ-C No. 74537 of 2010.

The averments made in the affidavit filed in support of the contempt application do not indicate any willful disobedience of the order passed by this Court inasmuch as there is no delivery of possession during the consolidation proceedings.

The records annexed with the affidavit only disclose that title proceedings are

going on between the parties.

The contempt application is dismissed."

4. On being confronted with maintainability of the present appeal, on the last date learned counsel for the appellants sought time to prepare the matter.

5. Today, addressing the Court on the maintainability of the present appeal under Section 19 of the Contempt of Courts Act, 1971 as the impugned order decision has not been passed in exercise of its jurisdiction to punish for contempt by the High Court, learned counsel for the appellants has placed reliance on a judgment of Hon'ble Apex Court in the case of State of Maharashtra vs. Mahboob S. Allibhoy @ another 1996(4) SCC 411 to contend that the appeal would be maintainable.

6. We find that the reliance placed on the aforesaid judgment is patently misconceived inasmuch as in the said order itself in paragraphs 3 and 4 of the judgment the Hon'ble Apex Court has held as under:-

"3. The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the proceeding for contempt. It is well settled that an appeal is a creature of a 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. Section 19 of the Act says:

"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 to 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.

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 sub-section (1) of Section 19 provides that 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 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 lead to a ridiculous result.

4. 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 the 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. This Court in the case of *Baradakanta Mishra v. Mr. Justice Gatikrushna Misra C.J. of the Orissa H.C.*, AIR 1974 SC 2255 - 1975(1) SCR 524 said:

...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, subsection (1) and no appeal would lie against it as of right under that provision.

Again in the case of *D.N. Taneja V. Bhaian Lal*, (1988) 3 SCC 26 it was said:

"The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to

the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the high Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, as appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It s submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt 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.

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

(emphasis supplied)

7. As noticed in the above quoted paragraphs, clearly the law in respect of maintainability of appeal under Section 19 of the Act has been settled as back as in the year 1975 by Hon'ble Apex Court in the case of Baradakanta Mishra vs. Justice Gatikrushna Misra, Chief Justice of Orissa High Court 1975 (3) 535, wherein it was categorically held by the Constitutional Bench of 3 Hon'ble Judges' that no appeal lies under Section 19 of the Act, if the court refuses to take action or initiate proceedings.

8. By the order impugned herein the learned Single Judge has dismissed the contempt application, therefore, clearly the learned Single Judge has refused to take action or initiate contempt proceedings.

9. Under such circumstances, present appeal would not lie and the same stands dismissed as not maintainable.

Re: Criminal Misc. Delay Condonation Application

1. Since the appeal itself is not maintainable, therefore, there is no occasion to consider this application to condone the delay in filing the appeal.
2. The delay condonation application stands disposed of accordingly.