

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

WRIT APPEAL No. 1518 of 2019

BETWEEN:-

**ANURAG NAGAR GRIHA NIRMAN SAHAKARI SANSTHA MARYADIT
THROUGH ITS PRESIDENT SHRI SHARAD CHANDRA MEHTA FLAT
NO. 304, VISHAL EMINENCE 60, AHILYA MATA COLONY, INDORE
-452003 (MADHYA PRADESH)**

.....APPELLANT

(SHRI VIJAY KUMAR ASUDANI, ADVOCATE)

AND

**INDORE DEVELOPMENT AUTHORITY THROUGH ITS CHIEF
1. EXECUTIVE OFFICER 7, RACE COURSE ROAD, INDORE (MADHYA
PRADESH)**

**SHRI VIVEK SHOTRIYA, CHEIF EXECUTIVE OFFICER INDORE
2. DEVELOPMENT AUTHORITY 7, RACE COURSE ROAD, INDORE
(MADHYA PRADESH)**

**3. SHRI S.C. JAIN, ASSISTANT ENGINEER INDORE DEVELOPMENT
AUTHORITY 7, RACE COURSE ROAD, INDORE (MADHYA PRADESH)**

**4. SHRI ASHOK SAMEER ,SUB ENGINEER INDORE DEVELOPMENT
AUTHORITY 7, RACE COURSE ROAD, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(MS. MINI RAVINDRAN, ADVOCATE FOR RESPONDENT NO.3)

Reserved on : 16/02/2023

Posted on : 14/06/2023

*This appeal coming on for admission this day, **JUSTICE SUSHRUT ARVIND DHARMADHIKARI** passed the following:*

ORDER

Heard finally with the consent of both the parties.

2. This writ appeal under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has been filed being aggrieved by the order dated 20/07/2019 passed by learned Single Judge in Contempt Case No.883/2019 whereby contempt proceedings have been dropped/dismissed.

3. At the out-set learned counsel for the respondent No.3 - Ms. Mini Ravindran raised a preliminary objection with regard to maintainability of the present writ appeal, since the order impugned is passed by the learned Single Judge in exercising its contempt jurisdiction.

4. Learned counsel for the appellant submitted that on perusal of the order impugned, it is seen that the same has tenets of an order under Article 226 of Constitution of India and as such observations/findings issued by the learned Single Judge cannot be issued in its contempt jurisdiction, the same have to be presumed to be the directions under Article 226 of Constitution of India and, therefore, the appeal is maintainable.

5. Heard learned counsel for the parties on the question of **maintainability**.

"2. Appeal to the Division Bench of the High Court from a judgment or or of one Judge of the High Court made in exercise of original jurisdiction. --

{1} An appeal shall lie from a Judgment or order

passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench Comprising of two Judges of the same High Court: Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

{2} An appeal under Sub-section {1} shall be filed within 45 days from the date of order passed by a Single Judge :

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.

Explanation – The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section.

{3} An appeal under Sub-section {1} shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court.”

8. A fair reading and understanding of Section 2 would clarify that according to the intention of the legislature, an appeal shall lie from a judgment or an order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India. The proviso appended to Sub-section {1} of Section 2 clearly provides that no such appeal shall lie

against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Such an appeal is required to be filed within 45 days and if the appeal is not filed within 45 days then the High Court under particular circumstances shall have powers to condone the delay in filing the appeal. Section 4 of the Madhya Pradesh Uchcha Nyayalaya {Khand Nyaypeeth Ko Appeal} Adhiniyam, 2005 repealed the Madhya Pradesh Uchcha Nyayalaya {Letters Patent Appeals Samapti} Adhiniyam, 1981.

9. Section 2 and its sweep had been a subject of controversy in number of cases. A Full Bench of this Court has held that if an interlocutory order has the tenets of being final in nature and it affects the rights of the parties permanently or the parties are left at an irretrievable position then an order can be challenged in an appeal. However, none of the judgments of this High Court say that when a learned Single Judge has exercised his jurisdiction under the provisions of Contempt of Courts Act, an appeal shall be maintainable under Section 2 of the Madhya Pradesh Uchcha Nyayalaya {Khand Nyaypeeth Ko Appeal} Adhiniyam, 2005.

10. Section 2 of the Madhya Pradesh Uchcha Nyayalaya {Khand Nyaypeeth Ko Appeal} Adhiniyam, 2005 clearly provides that an appeal shall lie from a judgment or an order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India. Section 2 of the Adhiniyam, 2005 does nowhere provide that if an order passed under

some proceedings other than writ proceedings can be treated to be an order under Article 226 of the Constitution of India then also an appeal would be maintainable.

11. The key words in Section 2 are “in exercise of original jurisdiction under Article 226 of the Constitution of India”. If a learned Single Judge issues some direction in a civil matter or in a criminal matter, which even otherwise he could have issued under Article 226 of the Constitution of India then such a direction cannot be challenged before a Division Bench. The basic question is whether the Judge is exercising the jurisdiction under Article 226 of the Constitution of India or any other jurisdiction.

12. Undisputedly, the learned Single Judge was not exercising his jurisdiction under Article 226 of the Constitution of India but was exercising his contempt jurisdiction. Assuming for a minute that the order passed by the learned Single Judge is beyond his jurisdiction and the same can be set aside by an Appellate Court then the appeal must be filed before a proper forum because an intra-court appeal, which is a statutory appeal, would not be maintainable against such directions or illegal exercise of the jurisdiction.

21. In the present matter, undisputedly, the order was passed by the learned Single Judge but it was not passed in exercise of the jurisdiction under Article 226 of the Constitution of India. A perusal of the order would make it clear that the learned Single Judge was clear in his mind

that the earlier observations made by the learned Judge while disposing of the writ petition were to be understood in a particular form. While disposing of the writ petition, if the learned Single Judge made certain observations, issued certain directions and such directions were not wholeheartedly followed or complied with and ultimately a contempt proceedings came before the Court then even in such jurisdiction, the learned Single Judge could explain that what was really meant by the order. It would altogether be a different thing that the alleged contemnors may come before the competent Court and say that the interpretation made by the learned Single Judge is wrong or bad but the forum to challenge such observations or directions would be different not a Division Bench in an intra-court appeal under the Adhinyam.”

6. In view of the facts and circumstances of the case, without entering into the merits of the case, we hold that this appeal is not maintainable. Accordingly, writ appeal stands **dismissed**.

No order as to costs.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

Aiyer*