

206 COCP-87-2022 (O&M)

NAURTY RAM VS DEVENDER SINGH IAS AND ANR

Present: Mr. Ravinder Malik (Ravi), Advocate,
for the petitioner.

Mr. Arvind Seth, Advocate,
for the respondents.

1. Learned counsel for the respondents has filed fresh compliance report by way of additional affidavit of Meenakxee Raj, Secretary, HSVP. The same is taken on record. Registry is directed to scan the same and place it at appropriate place in the file.

2. Alongwith the aforesaid compliance report, there is an order dated 03.05.2024 passed by Hon'ble the Supreme Court in SLP (C) No.9638 of 2024, whereby the contempt proceedings before the High Court have been stayed. Had the Supreme Court stayed the operation of the order impugned before it, then this Court would have dismissed the contempt petition *ipso facto*, as is the normal practice in this Court. However, that has not been done. Rather, the order passed by the Hon'ble Supreme Court has given rise to a problem of Constitutional Conformity vis-a-vis the Court Compliance, besides increasing the pendency before this Court by one more case. One never knows how many more cases in execution and contempt petition may have been kept pending throughout the Country because of such orders.

3. The Hon'ble Supreme Court itself has clarified multiple times that the High Court is not subordinate to the Supreme Court. Therefore, the relation between High Court and the Supreme Court is not the same as is the

relation between a Civil Judge (Junior Division) within its jurisdiction and the High Court. In terms of Articles 132 to 134 of the Constitution of India, the Supreme Court is not even an ordinary Court of unconditional appeal, unless there is a specific statute providing for appeal from the orders of the High Court to the Supreme Court in specified matters. Therefore, there is no scope for sundry direction being issued by the Supreme Court to a High Court, regarding certain proceeding pending before a High Court.

4. Though under Article 136 of the Constitution of India, the Supreme Court can permit an appeal and entertain the same against an order of any Court, including an appeal directly from the order of a Court of Civil Judge (Junior Division), however, that is a provision for appeals through special leave from the Supreme Court. Even this Article use non-obstante clause qua only provision contained in Chapter IV of Part V of the Constitution of India and not qua the provisions contained in Chapter V of Part VI of the Constitution of India containing Article 215 of the Constitution of India. The power of the High Court under Article 215, is framed in exactly the same language as in Article 129 of the Constitution of India under which the Supreme Court has the power to punish for contempt qua its own orders. Therefore, Article 215 of the Constitution of India, *per se*, is not even subject to the Article 136 of the Constitution of India. Although, the Supreme Court has used this provision even for passing interim orders in SLP entertained against interim order passed by High Courts in a revision petition against an interim order passed by the District Court in an appeal against an interim order passed by the Civil Court, however, it is for the Supreme Court to decide as to how 'ordinarily' this

provision is to be used for entertaining 'special' appeals. But in the present case even this provision has not been invoked.

5. As an answer to the query from the Court, learned counsel for the respondents has clarified that the respondents have not filed any appeal against any order passed by this Court in exercise of its contempt jurisdiction. The appeal filed by the respondents before the Supreme Court is only against the order passed by the Writ Court and the Division Bench. However, the operation of the order passed by the Division Bench of this Court, which is under challenged before the Supreme Court has not been stayed by the Supreme Court. Therefore, legally and effectually the said order is having full legal force.

6. Since, the operation of the order passed by the Division Bench of this Court has not been stayed by the Supreme Court and the respondents have not complied with the same, therefore, the contempt qua the order of the Division Bench of this Court is still continuing.

7. Power to initiate and to continue the proceedings for alleged contempt qua an order passed by the High Court lies exclusively with the High Court as per the Article 215 of the Constitution of India and Section 12 of the Contempt of Courts Act. The Supreme Court has no role in this aspect except in an appeal against the order of a Division Bench of High Court convicting a contemner. As per the provisions of the Act even an appeal does not lie before the Supreme Court against an order passed by Single Bench, rather it lies before the Division Bench of High Court, and even there, the powers of the appellate Court are well defined, in terms of stage of appeal and in terms of the nature of order which the appellate Court

could pass. The Supreme Court may have power to permit special appeal by a 'party' to contempt proceedings before the High Court, against certain types of orders of Contempt Court under certain circumstances, however, in the present case neither there are any such circumstances, nor has any such special appeal been filed by the respondents against any such order of the Contempt Court. Hence, in the given circumstances, the order of the Supreme Court turns out to be simply in the nature of putting an estoppel on the powers of the High Court exercisable under Article 215 of the Constitution of India and under the Contempt of Courts Act. However, it is highly doubtful if the Supreme Court has any such power to stay operation of Article 215 of the Constitution of India and the Contempt of Courts Act, *per se*. Probably more caution on the part of the Supreme Court would have been more appropriate.

8. Seen at a psychological plane this type of order is actuated, primarily, by two factors, firstly a tendency to avoid owning responsibility of the consequence which such an order, in all likelihood, is bound to produce, under a pretense that an order of stay of contempt proceedings does not adversely affect anybody, and secondly, a tendency to presume the Supreme Court to be more 'Supreme' than it actually is and to presume a High Court to be lesser 'High' than it constitutionally is. Given the current perspective, where the directions from the Supreme Court have come which are in the nature of controlling roster of High Courts in hearing of criminal cases and even for adopting the rules suggested by the Supreme Court for designation of Advocates as Senior Advocates wherein the procedure of voting in Full Court, as prescribed in the rules; is akin to the one generally

prescribed by the State Political Executive for Elections of the Chairman and the Presidents of Municipal Bodies and which is intended to breed servility amongst them by ensuring identification of dissidents so as to put them under threat of impending reprisal, and all such directions have been followed by the High Courts without any murmur, the High Courts may still follow any type of directions coming from the Supreme Court, sometimes out of perceived coercion, sometimes out of due regard for such order, and at some other times for the sake of institutional majesty. However, how much drastic and damaging consequences such an order of stay of contempt proceedings can produce, may not have occurred to the Supreme Court in its most wide imaginations. Some of such cases, as is mentioned in the coming paragraph would show as to what and how much detrimental consequences such an order of 'stay of contempt proceedings' can produce.

9. It appears that the Hon'ble Supreme Court has not been apprised in any case so far, as to how such an order can be casually interpreted by the recipient of the order or by a party to the litigation and how drastic but unintended consequences such an order could produce. But this Court has come across several such cases, but is specifically mentioning one such case; where the order qua stay of contempt proceedings passed in SLP No.14945 of 2019 has resulted in depriving about 35% strength of Punjab and Haryana Superior Judiciary of their Selection Grade and the Super Time Scale for the past several years. No doubt, the Supreme Court would never have intended such drastic consequences, however, this has actually happened because the Punjab and Haryana High Court, on administrative side, has interpreted this order as a *de facto* order staying the

final order passed by the Division Bench of this Court on judicial side, and has decided not to grant the above said Scales to the judicial officers till the SLP is finally decided by the Supreme Court. A question can very legitimately asked, as to who is responsible for this plight of judicial officer manning the Superior Judiciary of State of Punjab and State of Haryana. Is it the High Court or is it the Supreme Court. A soul searching on this aspect by the High Court and the Supreme Court may surprise both of them equally. However, this, in humble opinion of this Court should sound a note of caution even for the Hon'ble Supreme Court to be more specific in causing legal consequences through its order. Otherwise, if this is the interpretation given by a High Court to such an order then one can very well imagine the damage which could ensue between private parties, on account of such an order, where the parties are intensely fighting with each other. Another stark example would be where in appeal, arising from challenge to the land acquisition proceedings, the Court stays the contempt proceedings and not the impugned order or the acquisition proceedings, and the question arises regarding entitlement of the land owner to the interest in terms of Sections 28 and 34 of the Land Acquisition Act. There, the argument could be, and in one case before this Court such an argument has, in fact, come from the State; that it is not liable to pay interest because the proceedings remained pending due to stay by the Court and not due to any fault of the State, on the other hand, the argument of the land owner would be that since in the interregnum, there was no stay of impugned order or of acquisition proceedings, as such, therefore, he was fully entitled to the interest in terms of the statutory provisions. In such an innocuous situation, the Court may

have to give effect to the statutory provision, and that may reflect upon the order of 'stay of contempt proceedings' as an ineffective or superfluous order.

10. However, keeping in view the sanctity of the judicial process, this Court feels to be absolutely bound by the order and hence, the case is adjourned *sine die* till the aforesaid SLP is decided by Hon'ble the Supreme Court. But this may not be always possible for a High Court to follow such a course in view of particular facts and circumstances embedded in a particular case or because of involvement of some statutory provisions. That would be an unfortunate situation, which would better be avoided.

(RAJBIR SEHRAWAT)
JUDGE

July 17, 2024
'sandeep'

Whether Speaking/Reasoned : Yes

Whether Reportable : Yes