

HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Intra Court Appeal No.01 of 2019

[Zarai Taraqiati Bank Limited versus Saleem Ahmed Memon]

BEFORE:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Appellant : Through Ms. Rehana Nazeer Gujjar
advocate
Mr. Kamaluddin advocate as Amicus Curaie

Date of hearing : 30.11.2021

Date of Decision : 30.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J. - Through captioned Intra Court Appeal, filed under Section 3 of Law of Reforms Ordinance, 1972, the appellant, who is Senior Vice President of the Zarai Taraqiati Bank [ZTBL], has impugned orders dated 16.09.2019, 30.09.2019 and 07.10.2019 passed by a learned Single Bench of this Court on a contempt application bearing No.1613/2018 in Labour Appeal No.S-148 of 2007.

2. Since the captioned Intra Court Appeal has been filed under Section 3 of Law Reforms Ordinance, 1972, therefore, we asked learned counsel for the appellant to satisfy about the maintainability of an Intra Court Appeal against orders passed on a contempt application, as Section 3 ibid provides that an appeal shall lie to a Bench of two or more Judges of High Court from a 'decree' or 'final order' passed by a Single Judge of that Court in exercise of its 'original civil jurisdiction'. Learned counsel for the appellant submitted that the title of the appeal under the Law Reforms Ordinance, 1972 is a mistake and the appeal may be taken as one under Section 19(1) of the Contempt of Court Ordinance, 2003. For ease of reference, Section 19(1) of the Ordinance ibid is reproduced below:

“19. Appeal:- (1) Notwithstanding anything contained in any other law or the rules for the time being in force, orders passed by a superior Court in cases of contempt shall be appealable in the following manner:--

(i) in the case of an order passed by a Single Judge of a High Court an intra-Court appeal shall lie to a bench of two or more Judges

(ii) in a case in which the original order has been passed by a Division or larger Bench of a High Court an appeal shall lie to the Supreme Court; and

(iii) in the case of an original order passed by a Single Judge or a bench of two Judges of the Supreme Court an infra-Court appeal shall lie to a Bench of three Judges and in case the original order was passed by a Bench of three or more Judges an intra-Court appeal shall lie to a Bench of five or more Judges.”

In view of the above provision, and subject to all just legal exceptions, we treat this appeal as one under Section 19(1)(i) of the Contempt of Court Ordinance, 2003.

3. Sub-section (3) of section 19 of the Contempt of Court Ordinance, 2003 prescribes a limitation of 30 days for filing an intra-court appeal. Out of the three order impugned, the appeal is within limitation only against the order dated 07-10-2019 and it is beyond limitation as against the orders dated 16.09.2019 and 30.09.2019. The appellant has moved an application under section 14 of the Limitation Act, 1908 for excluding the time consumed in filing a Criminal Petition before the Supreme Court of Pakistan, which was returned by the office of the Supreme Court with the objection dated 11-10-2019 that the remedy of the appellant was under section 19(1) of the Contempt of Court Ordinance, 2003. However, that office objection shows that the Criminal Petition preferred before the Supreme Court was only against the order dated 16-09-2019, and not against the order dated 30-09-2019. Nonetheless, section 14 of the Limitation Act, 1908 does not apply to appeals, nor does the Contempt of Court Ordinance, 2003 make applicable section 5 of the Limitation Act to appeals under the said Ordinance. The appellant has also not filed a copy of the impugned order dated 16-09-2019. Therefore, this inta-court appeal, to the extent of the impugned orders dated 16-09-2019 and 30-09-2019, is dismissed as time-barred, and we consider this appeal only against the order dated 07-10-2019 whereby the learned Single Judge had given seven (07) days to the appellant for compliance of order dated 10.01.2009.

4. Facts of the matter are that respondent being an employee of the ZTBL filed Grievance Petition bearing No.251 of 2006 before learned Labour Court No.VI at Hyderabad, which was dismissed

along with connected petitions vide order dated 28.11.2007, against which respondent preferred Labour Appeal No.S-148 of 2007, which was allowed by short order dated 05.12.2008, followed by reasons dated 10.01.2009, which were subsequently maintained by the Hon'ble Supreme Court of Pakistan vide order dated 15.05.2009. Thereafter, on failure of ZTBL to comply with the above said judgment of this Court, respondent filed various contempt applications, which were disposed of by giving time to ZTBL for compliance; and, on failure of ZTBL to make compliance, the respondent preferred contempt application bearing M.A No.1613/2018, upon which the learned Single Judge of this Court seized of the labour appeal issued a show-cause notice to the appellant officer. Subsequently, by the impugned order dated 07.10.2019 the learned Single Judge denied the appellant's request for three months further time for compliance and gave him them seven (07) days, against which appellant Bank has preferred captioned Intra Court Appeal.

5. Learned counsel submits that the order of the learned Single Judge requiring compliance of payment to the respondent was beyond the powers of the appellant and was within the powers of the BoD of ZTBL pursuant to section 11 of the Banks Nationalization Act, 1974; and that such BoD which was not constituted for quite some time; and hence he had prayed for more time for making compliance.

6. The impugned order was passed as far back as 07-10-2019 and the instant intra-court appeal had been preferred only on the limited ground that the learned Single Judge had granted 7 days for compliance instead of the 3 months prayed by the appellant. Since those 3 months have gone by without any further order having been passed against the appellant, this appeal has served its purpose, and it is now for the learned Single Judge seized of the contempt proceedings to grant or not to grant more time for compliance or to pass any other order on the contempt application. The question whether section 11 of the Banks Nationalization Act, 1974 has any impact on the contempt proceedings against the appellant can also be examined by the learned Single Judge in passing further orders. Therefore, we do not travel into the question whether an intra-court appeal under section 19(1)(i) of the Contempt of Court Ordinance, 2003 can be maintained against

preliminary orders on a contempt application that are passed when a charge has yet to be framed against the alleged contemnor under section 17(3) of the Contempt of Court Ordinance, 2003. The appeal is disposed of accordingly.

JUDGE

JUDGE

Sajjad Ali Jessar