

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS PETITION NO.9718 OF 2008

IN AND

CRIMINAL APPEAL NO.884 OF 2009

(Arising out of S.L.P. (Crl.) No.3246 of 2009)

Lucknow Golf Club, Lucknow

...Appellant(s)

Versus

Prashant Chandra and Ors.

...Respondent(s)

O R D E R

Though the case was placed under the heading 'Incomplete After Notice Matters', but both the parties stated that the matter be taken up and finally disposed of.

Permission to file special leave petition is granted.

Leave granted.

By the impugned order passed on 19th May, 2008, the High Court issued rule against Shri Amarjeet Verma, Civil Judge (Senior Division), Lucknow, to show cause as to why contempt proceeding be not initiated against him for violation of order dated 21st February, 2008 passed in First Appeal No.77 of 2007.

A perusal of the record shows that the first appeal preferred by the respondent against judgment and decree dated 17th July, 2007 passed by Civil Judge (Senior Division), Lucknow was allowed by the High Court and the case was remanded to the trial Court with the direction to expedite the hearing of the case and to conclude the same preferably within 3 months from the date of filing of certified copy.

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It is not in dispute that certified copy of the judgment of the High Court was produced before the trial Court on 23rd February, 2008 and on 14th March, 2008, notice was ordered to be issued to the defendant for 18th March, 2008. On the next date, the case was adjourned to 29th March, 2008 because of the lawyers' boycott of the courts. The case was then adjourned for 2nd April, 2008 on which date no one appeared for the parties. In the meanwhile, respondent filed an application under Section 24 of the CPC for transfer of case from the court of Civil Judge (Senior Division), Lucknow. That petition was dismissed by District Judge, Lucknow on 10th April, 2008. Due to pendency of the transfer application, no effective proceedings could be conducted in the suit. After dismissal of the transfer application, the case was taken up on 17th April, 2008, on which date it had to be adjourned to 19th April, 2008 because counsel for the respondent No.1 herein stated that he would conduct the case after coming from the High Court. On 19th April, 2008, the trial Court passed a detailed order and adjourned the case to 29th April, 2008 by recording that in view of the High Court's order, issues will have to be framed. On 29th April, 2008, neither party appeared till 1.10 p.m. and after lunch, counsel for the defendant did not appear necessitating further adjournment. On 30th April, 2008, the case was adjourned in the wake of resolution passed by the Bar Association. On the same day, the respondent filed a petition under Section 12 of the Contempt of Courts Act, which was dismissed by the High Court on 2nd May, 2008 as not pressed. On 5th May, 2008, the respondent filed transfer

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petition before the High Court. He also filed First Appeal No.502 of 2008 against order dated 19th April, 2008. On 17th May, 2008, the respondent filed second contempt petition under Section 15 of the Contempt of Courts Act with the prayer that the respondent be punished for his failure to comply with order dated 21st February, 2008.

Having heard learned counsel for the parties and perused the record, we are convinced that no case for contempt was at all made out and the direction contained in the impugned order was not at all called for. The manner, in which parties conducted the case before the Court, left respondent No.2 with no choice but to adjourn the case on more than one occasion. This being the position, the High Court was not justified in issuing notice to the respondent to show cause against the proposed initiation of the proceedings on the ground of alleged violation of order dated 21st February, 2008 passed in First Appeal No.77 of 2007.

Accordingly, the appeal is allowed, impugned order is set aside and the contempt petition filed by the respondent No.1 is dismissed.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,
May 01, 2009.

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