

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

BEFORE:

**THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
AND
THE HON'BLE JUSTICE OM NARAYAN RAI**

**MAT 2003 OF 2024
WITH
CAN 1 OF 2024**

RAJESH KUMAR KAUSHAL

...APPELLANT

-VERSUS-

SRMB SRIJAN PRIVATE LIMITED & ANOTHER

...RESPONDENTS

For the Appellant : Mr. Ashok Kumar Chakraborty, Ld. ASGI
Mr. Kumar Jyoti Tewari, Sr. Adv.
Ms. Amrita Pandey, Adv.
Mr. Aniruddha Tewari, Adv.

For Respondents : Mr. Sakya Sen, Sr. Adv.
Mr. Saptarshi Datta, Adv.
Ms. Srijita Ghosh, Adv.
Mr. P.K. Pal, Adv.
Mr. Debdut Hore, Adv.

Reserved on : 12.06.2026

Judgment on : 08.09.2026

OM NARAYAN RAI, J.:-

1. The instant appeal has been filed by an alleged contemnor. It takes exception to an order dated October 04, 2024 passed in CPAN No. 1154 of 2023 (filed in connection with WPA No. 9990 of 2020), whereby the Hon'ble Single Judge has issued a rule calling upon the alleged contemnor (i.e., the appellant herein) to show cause as to why penal action as prayed for in the contempt application filed by the respondents herein, shall not be taken against the appellant.

FACTUAL MATRIX:

2. Shorn of meticulous details, the facts relevant for adjudication of the present appeal, as may be gathered from the material on record, are as follows:-
 - a. The respondents- writ petitioners had filed a writ petition being WPA No. 9990 of 2020 challenging Clause 27.2 of the Central Public Works Department

(CPWD)¹ Works Manual, 2014², which was retained in the CPWD Works Manual, 2019³ as amended by the Office Memoranda dated December 27, 2019 and January 08, 2020, as well as connected Office Memoranda.

- b.** The said writ petition was disposed of by the Hon'ble Single Judge by an order dated April 11, 2023 thereby quashing the modified Clause 27.2 of the 2014 Manual, as reincorporated in the 2019 Manual, and the consequential Memoranda issued by the CPWD. By the said order, the CPWD was directed to implement the Notification dated May 12, 2016 issued by the Ministry of Steel, Government of India, the order dated August 09, 2016 and the reminders dated December 14, 2016 and February 07, 2017 issued by the said Ministry. The said order was carried in appeal being MAT 310 of 2024 before the Hon'ble Division Bench.
- c.** The Hon'ble Division Bench disposed of the appeal by an order dated April 15, 2024 by observing that there was no ground to interfere with the order passed by the Hon'ble Single Judge except with regard to the direction issued in paragraph 53 of the order impugned in the said appeal whereby the modified Clause 27.2 of the 2014 Manual was quashed. The Hon'ble Division Bench instead of quashing the said Clause directed the CPWD to appropriately amend their Work Manual to be in consonance with the notification issued by the Ministry of Steel, Government of India as done by the notifications referred to in the appellate order.
- d.** Alleging contempt of the order dated April 11, 2023, the respondents filed an application being CPAN No. 1154 of 2023. During hearing of the said application, the appellant (who was the alleged contemnor in the application for contempt), filed an affidavit of compliance stating *inter alia* that the application for contempt had become infructuous as there was no wilful disobedience and violation of the order dated April 11, 2023 passed by the Hon'ble Single Judge and also since the said order dated April 11, 2023 had been modified by the Hon'ble Division Bench on April 15, 2024.
- e.** The Hon'ble Single Judge took note of the affidavit of compliance on October 04, 2024 and ultimately issued rule directing the alleged contemnor "*to show cause as to why he should not be committed to prison or otherwise penalized or*

¹ Hereafter "CPWD"

² Hereafter "the 2014 Manual"

³ Hereafter "the 2019 Manual"

dealt with” for having wilfully and deliberately violated the order dated April 11, 2023 passed by the Hon’ble Single Judge in WPA No. 9990 of 2020.

- f. Feeling aggrieved thereby the appellant has approached this Court by filing the present appeal.
- g. At the time when the appeal was initially moved, this Court took note of the question as regards maintainability of the appeal keeping in view the fact that the order impugned was one whereby only rule of contempt had been issued and penalty/punishment had not been imposed. At the same time, this Court also took note of another seminal question as to whether the application for contempt was itself maintainable before the Hon’ble Single Judge when the original order (contempt whereof has been alleged) stood modified by the Hon’ble Division Bench. The Hon’ble Division Bench accordingly entertained the appeal by observing as follows:-

“Two issues arise for consideration in this appeal. Firstly, whether this appeal is maintainable at the instance of the contemnors under Clause 15 of the Letters’ Patent when the order impugned passed by the learned Single Bench is an order issuing rule of contempt. The second issue is whether the contempt application was maintainable before the learned Single Bench in the light of the fact that the order passed by the learned Single Bench was modified by the Division Bench by judgment dated 15th April, 2024 in MAT 300 of 2024. By the said judgment the order and direction issued by the learned Single Bench was modified and instead of quashing Clause 27.2 of the CPWD Works 2 Manual as was done by the learned Single Bench the Division Bench modified the same and directed CPWD to appropriately amend their Work Manual to be in consonance with the notification issued by the Ministry of Steel, Government of India. Admittedly, the contempt application was filed much before filing of the intra-Court appeal. According to the appellant, the first memorandum dated 14.08.2024 is in terms of the direction issued by the Division Bench in its judgment dated 15th April, 2024. Mr. Sen, learned Advocate appearing for the respondent would vehemently contend that it is not in compliance of the said order and the learned Single Bench was fully justified in issuing rule of contempt. The other question we require to consider and decide is whether in a contempt jurisdiction to what extent the Court can test the correctness of the first memorandum dated 14.08.2024. Since all these issues, legal and factual aspect, are involved in this appeal, we incline to entertain the appeal. In this regard we also require to take into consideration the recent decision of the larger Bench of this Court passed in CPAN 26 of 2022 and CAN 1 of 2023 reported in 2023 SCC OnLine Cal 1152.”

- h. Post entertainment of the appeal as aforesaid, the Presiding Member of the Hon’ble Division Bench which entertained the appeal demitted His Office and the matter was thereafter assigned to this Bench by the Hon’ble the Chief Justice.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

- 3. A brief summary of the submissions made by Mr. Chakraborty, learned Additional Solicitor General of India, appearing for the appellant, is as follows:-

- a. The order impugned is squarely appealable, inasmuch as the same satisfies all attributes of a judgment within the meaning of Clause 15 of the Letters Patent. The impugned order has in fact decided everything and the issuance of rule is a mere formality leaving only the question of the quantum of the punishment to be decided.
- b. In answer to the point of maintainability of the appeal, **Shah Babulal Khimji vs. Jayaben D. Kania & Another**⁴ was cited and it was asserted that the impugned order qualifies for a judgment within the meaning of Clause 15 of the Letters Patent.
- c. The order impugned has been passed on the faulty premise that contempt of the original order passed in WPA No. 9990 of 2020 had been committed while the original order lost its existence upon being modified by the Hon'ble Division Bench. **Sailesh Kumar vs. Smitha R., IAS & Another**⁵ was pressed into service to demonstrate that in case of reversal, modification and setting aside the order of the Hon'ble Single Bench in an appeal under Clause 15 of the Letters Patent by the Hon'ble Division Bench, the contempt application would lie before the Hon'ble Judges constituting the Division Bench which passed the order.
- d. The order impugned is a nullity since the Hon'ble Single Judge lacked jurisdiction to entertain an application for contempt of an order that no longer remained an order of the Hon'ble Single Bench upon being modified by the Hon'ble Division Bench in appeal.
- e. **Ram Kishan vs. Tarun Bajaj & Others**⁶ was relied on to support the contention that if two interpretations are possible and if the action is not contumacious, a contempt proceeding would not be maintainable and that element of willingness is an indispensable requirement to bring home the charge of contempt.
- f. **Prithawi Nath Ram vs. State of Jharkhand & Others**⁷ was cited to assert that while dealing with an application for contempt, the Court is only concerned with the question whether the earlier decision that has attained finality has been complied with or not and it would not be permissible for the Court to examine the correctness of the earlier decision which had not been

⁴ (1981) 4 SCC 8

⁵ 2023 SCC OnLine Cal 1152

⁶ (2014) 16 SCC 204

⁷ (2004) 7 SCC 261

assailed and to take a different view than what was taken in the earlier decision.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. A brief summary of the submissions made by Mr. Sen, learned Senior Advocate, appearing for the respondents, is as follows:-
- a. The appeal is clearly not maintainable since no punishment has been imposed upon the appellant by the impugned order. ***Midnapore Peoples' Cooperative Bank Limited & Others vs. Chunilal Nanda & Others***⁸ was cited to demonstrate that neither an order declining to initiate proceedings for contempt, nor an order dropping proceedings for contempt nor an order acquitting or exonerating the contemnor is appealable under Section 19 of the Contempt of Courts Act, 1971⁹.
 - b. The order impugned is one whereby only rule has been issued and nothing has been decided as yet. The impugned order does not satisfy the requirements for it to be termed as a judgment within the meaning of Clause 15 of the Letters Patent. ***Shah Babulal Khimji*** (supra) was invoked to show that an order to be treated as a judgment within the meaning of Clause 15 of the Letters Patent, the impugned order must decide matters of moment or affect vital and valuable rights of the parties. In the instant case, only rule has been issued and the appellant would have all the opportunity to answer the same in accordance with law.
 - c. The views expressed by the Hon'ble Single Judge are only *prima facie* and the same only mark the initiation of a proceeding for contempt. ***Purshotam Dass Goel vs. Hon'ble Mr. Justice B.S. Dhillon & Others***¹⁰ was relied on in support of the proposition that mere initiation of proceeding for contempt by issuance of notice on the *prima facie* view that the case is a fit one for drawing up the proceeding, does not decide any question.
 - d. ***Dipti Ganguly & Others vs. State of West Bengal & Others***¹¹ was deployed to demonstrate that initiation of a contempt proceeding in exercise of contempt jurisdiction is not an order which is appealable either under Section 19 of the 1971 Act or Clause 15 of the Letters Patent of this Court.
 - e. Doctrine of merger is not a constitutional doctrine but is a common law concept. Application of such doctrine does not lead to inherent lack of

⁸ (2006) 5 SCC 399

⁹ Hereafter "the 1971 Act"

¹⁰ (1978) 2 SCC 370

¹¹ 1998 SCC OnLine Cal 442

jurisdiction of a Court. At best it can lead to irregular exercise of jurisdiction and at the highest may be termed as a waivable error. **Sailesh Kumar** (supra) was relied on in support of such contention and also to assert that doctrine of merger is not to be applied rigidly or universally.

- f. The appellant has participated in the contempt proceedings before the Hon'ble Single Judge and has accepted the jurisdiction of the Hon'ble Single Judge thereby waiving the irregularity of the proceeding, if any.
 - g. The order impugned is not a nullity since it does not suffer from the incurable defect of inherent lack of jurisdiction of the Court that passed it. **Balvant N. Viswamitra & Others vs. Yadav Sadashiv Mule (Dead) Through LRs. & Others**¹² was employed to buttress the point that a mere wrong exercise of jurisdiction does not result in a nullity and the lack of jurisdiction in the Court passing the order must be patent on its face. The Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. Relying on the said judgment, it was highlighted that there is a distinction between a decree passed by Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. In the latter case, the decree cannot be said to be inexecutable.
 - h. **Hasham Abbas Sayyad vs. Usman Abbas Sayyad & Others**¹³ was employed to demonstrate that jurisdiction of Court can be classified into three categories- i) pecuniary, ii) territorial and iii) subject matter and that jurisdiction as to subject matter stands on a different footing. Lack of jurisdiction as to subject matter would render the order nullity, which is not the case here.
5. Both the parties distinguished and countered the authorities cited against them with the appellant reaffirming its position in the rejoinder arguments.

ANALYSIS & DECISION:

- 6. Since a question as regards maintainability of the appeal itself has been raised, that needs to be answered first.
- 7. The ground on which the maintainability of the present appeal has been challenged is that the order impugned is not one imposing punishment on the alleged contemnor and going by the law laid down by the Hon'ble Supreme Court in the case of **Midnapore Peoples' Cooperative Bank Limited** (supra) only an order that penalises the contemnor is challengeable in a Section 19 - appeal.

¹² (2004) 8 SCC 706

¹³ (2007) 2 SCC 355

8. Indeed, the order impugned does not impose punishment and would not be appealable under Section 19 of the 1971 Act, but in the facts of the present case can it be said that the said order was passed in exercise of contempt jurisdiction? The answer to this question would depend on the answer to the primary question i.e., which Court would be entitled to exercise the jurisdiction for contempt of an order?

9. Rule 15 of the Calcutta High Court Contempt of Courts Rules, 1975 framed by this Court *in exercise of the powers conferred by Section 23 of the Contempt of Courts Act, 1971 and by Article 215 of the Constitution of India and all other powers in that behalf* provides the answer to the latter and the primary question. The same reads thus:-

“All petitions in connection with a civil contempt grounded on wilful disobedience to a judgment decree, direction, order or other process of a Court or wilful breach of an undertaking given to a Court shall be heard by the Judge or Judges who passed the judgment or the decree or gave the direction or the order or issued the writ or other process or before whom the undertaking was given.”

[Emphasis supplied]

10. Thus, for the Hon'ble Single Judge to exercise jurisdiction of contempt, the order whereof contempt was alleged must be one that was passed by the Hon'ble Single Judge. In the case at hand, the Hon'ble Single Judge disposed of the writ petition of the respondents on April 11, 2023 by passing the following directions:-

“53. Hence, WPA 24267 of 2019 and WPA 9990 of 2020 are allowed on contest, thereby quashing the modified Clause 27.2 of the CPWD Works Manual of 2014, as reincorporated in the CPWD Works Manual of 2019, and consequential Memorandums issued by the CPWD. The Central Public Works Department (CPWD) is directed to implement the Notification of the Ministry of Steel, Government of India dated May 12, 2016, the Order dated August 9, 2016 and the reminders of the said Ministry dated December 14, 2016 and February 7, 2017.”

11. The appeal preferred against the said order dated April 11, 2023, was disposed of by the Hon'ble Division Bench ordering as follows:-

“6. Accordingly, we find no grounds to interfere with the order passed by the learned Single Bench except with regard to the direction issued in paragraph 53 of the impugned order whereby the modified Clause 27.2 of the CPWD Works Manual has been quashed and instead of quashing the said modified Clause 27.2 we direct the CPWD to appropriately amend their Work Manual to be in consonance with the notification issued by the Ministry of Steel, Government of India as done by the notifications referred to above. This direction shall be implemented by the CPWD within period of 12 weeks from receipt of the server copy of this judgement.”

12. It is thus clear that the Hon'ble Division Bench did not interfere with the order impugned in appeal except with regard to the direction issued in paragraph 53 of the impugned order whereby the modified Clause 27.2 of the CPWD Works Manual has

been quashed. That is as good as saying that the original decision of the Hon'ble Single Bench of quashing of the modified Clause 27.2 was modified by the Hon'ble Division Bench with a direction to amend the said Clause as indicated in the appellate order.

13. In the wake of the above, can it be said that the original order passed by the Hon'ble Single Bench still subsisted? The answer is an emphatic - NO. It is well settled that once an order is reversed or modified by the appellate forum, it is the appellate order that subsists since the original order merges in the appellate order. The Hon'ble Full Bench of this Court has taken note of a long line of authorities on this trite legal proposition spanning from the case of **Commissioner of Income Tax vs. Amritlal Bhogilal & Co.**¹⁴ to **Khoday Distilleries Limited & Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited Kollegal**¹⁵.
14. The judgment of the Hon'ble Supreme Court in the case of **Kunhayammed & Others vs. State of Kerala & Another**¹⁶ (which has been relied on by the Hon'ble Special Bench in **Sailesh Kumar** (supra)) has discussed the issue elaborately and summed up the legal position in paragraph 44 in the following words:-

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All

¹⁴ 1958 SCC OnLine SC 59

¹⁵ (2019) 4 SCC 376

¹⁶ (2000) 6 SCC 359

that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

[Emphasis supplied]

15. This concept has been applied by the Hon’ble Special Bench while answering the reference made to it in the case of **Sailesh Kumar** (supra). It would be significant to note that the reference to the Hon’ble Special Bench was necessitated in the wake of conflicting views on maintainability of an application for contempt before the Hon’ble Single Bench when the relevant order passed by the Hon’ble Single Bench stood affirmed in appeal by the Hon’ble Division Bench. The Hon’ble Special Bench answered the reference made to it with the following observations in paragraph 22 of the judgment:-

“22. The Calcutta High Court Contempt of Courts Rules, 1975 was promulgated in exercise of power conferred under Section 23 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India to regulate the procedures of contempt of courts matter may be seen in this regard. The said Rules having a statutory backing have to be understood and applied and no departure can be presumed therefrom. Rule 15 of the Contempt Rules postulates that all petitions with regard to the civil contempt grounded on the wilful disobedience to the judgment, decree, the directions, order or other process of Court or wilful breach of an undertaking given to the Court shall be heard by the Judge or Judges who passed the judgment or a decree or gave the directions or the orders or issued the writ or other process or before whom the undertaking was given. The statutory provision has to be understood on the basis of the intention purposes and object it sought to achieve and segregation and/or compartmentalization has to be eschewed. The provisions contained in Rule 15 cannot be dissected nor segregated in the event of an undertaking, the contempt would lie to the Judge before whom the undertaking is given from rest of the express eventualities provided therein. It is explicit from Rule 15 of the Contempt Rules that the contempt would lie before a Judge or Judges who passed the judgment or decree and not before the Appellate Court which confirms the decree. The position would have been different when the judgment, decree, directions or orders passed

by the Single Bench is modified and/or reversed by the Division Bench exercising the appellate jurisdiction and in such event, the contempt may lie before the same Judges constituting the Division Bench as there is no express provision in the said contempt rules that of Section 37 of the Code of Civil Procedure. Any other interpretation to the provision contained under Rule 15 of the Contempt Rules would not only burden the Division Bench of the High Court with slew of the contempt applications but also have the ramification on docket explosion. Although the doctrine of merger is not a rigid rule but certainly depends upon the statutory provisions applicable in relation to the maintainability of the contempt application before a forum. The contempt jurisdiction is not only exercised to punish the person having found guilty of wilful and deliberate violation of the order/direction of the Court but can further be exercised in due implementation and/or execution of the said order. It stands to reason that the statutory provision contained in the Rules is strictly applicable and therefore, the answer to the references is as follows:

(i) In case of an affirmation of an order of Single Bench passed in exercise of the original jurisdiction either in Original Side or the Appellate Side, the contempt would lie before the Single Bench alleging the violation of the directions of orders passed by him.

(ii) In case of reversal, modification and setting aside the order of the Single Bench in an appeal under Clause 15 of the Letters Patent by the Division Bench, the contempt application would lie before the Judges constituting a Division Bench who passed the order.

(iii) In the event, an undertaking is given by the party to the proceeding before the Single Judge to do or not to do a certain thing and challenge to an order could not yield in reversal and/or modification of the original order is recorded the contempt would lie to a Judge before whom such undertaking was given.”

[Emphasis supplied]

- 16.** The underlined portion of the judgment leaves no scope for any doubt or ambiguity in the case at hand. As already noticed hereinabove, the order dated April 11, 2023 was modified by the Hon'ble Division Bench in appeal. What matters is not the extent of modification but its presence. Once there is a modification, howsoever little it be, the original order should be treated as having merged with the appellate order since there cannot be two orders in operation at the same time. In cases of affirmation, there is no addition or subtraction or variation of the original order so there is only one order that subsists - and that is the original order, but it is not so in cases of reversal or modification or variation of the original order.
- 17.** At this stage the respondents' arguments as regards the inapplicability of the doctrine of merger to the facts of this case as the same is not rooted in the Constitution of India but has arisen from the common law concept needs to be dealt with. The proposition is trite in the abstract but its applicability to the facts of the case cannot be doubted merely because it owes its genesis to the common law concept. In fact, the debate is no longer open for us after the judgment of the Hon'ble Special Bench. The Hon'ble Special Bench has clearly noted the source of the doctrine in paragraphs 4, 5, 8 and 13 of the judgment and has thereafter

answered the reference in paragraph 22 which has already been quoted hereinabove.

18. In any case the caution sounded by the Hon'ble Special Bench against the rigid and universal application of the doctrine of merger must be seen in the context of the case that was being dealt with. As already noted above, the Hon'ble Special Bench was answering a reference where there was a cleavage of opinion on maintainability of an application for contempt before the Hon'ble Single Bench when the relevant order passed by the Hon'ble Single Bench stood affirmed in appeal by the Hon'ble Division Bench. It was in such context that the Hon'ble Special Bench held that the doctrine cannot be universally applied such that the original order merges with an appellate order of affirmation as well.
19. Indeed, for merger to take place the nature of jurisdiction exercised by the higher Court must necessarily be seen. In such context **Kunhayammed** (supra) becomes the guiding light. Paragraph 12 and paragraph 44(iii) explain the legal position with absolute clarity. While paragraph 44 has already been quoted hereinabove, paragraph 12 deserves notice:-

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

20. In the instant case, the Division Bench was exercising appellate jurisdiction over the Hon'ble Single Bench and as such the doctrine of merger squarely applies without being rigid, even in the least, in its application.
21. This takes us to the issue of jurisdiction. What is the subject matter over which the Court exercises jurisdiction in case an application for contempt is filed before it? It is nothing else but the order, contempt whereof is alleged. The following observations of the Hon'ble Supreme Court in the case of **Jhaleswar Prasad Paul & Another vs. Tarak Nath Ganguly & Others**¹⁷ are apposite to the present context:-

¹⁷ (2002) 5 SCC 352

“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”

[Emphasis supplied]

- 22.** The underlined observations of the Hon’ble Supreme Court clearly mandate that while exercising contempt jurisdiction, “the Court should be confined to the question whether there has been any deliberate disobedience of the order of the Court”. So the order alleged to have been violated is the subject matter of the contempt proceeding and it defines the limits of the enquiry to be undertaken by the Court dealing with the proceeding.
- 23.** Viewed in the light of legal position governing the field, it becomes evident that the Hon’ble Single Judge did not have jurisdiction to entertain the application for contempt of the order that stood modified by the Hon’ble Division Bench. It is

indeed a case of inherent lack of jurisdiction and not one of irregular exercise of jurisdiction.

24. It is well settled that any order passed by a Court lacking jurisdiction would be a nullity. Law in such regard was settled by the Hon'ble Supreme Court as far back as in the year 1954 in the case of **Kiran Singh & Others vs. Chaman Paswan & Others**¹⁸ in the following words:-

"6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position."

[Emphasis supplied]

25. Once it is found that the order passed by the Hon'ble Single Bench is without jurisdiction, an appeal under Clause 15 of the Letters Patent would be clearly maintainable. The Hon'ble Supreme Court has held so in the case of **V.M. Manohar Prasad vs. N. Ratnam Raju & Another**¹⁹ in the following words:-

"8. The learned counsel for the employees in some of the appeals, submit that the Division Bench has held that no appeal would lie against the order of the Contempt Judge since no one was punished for contempt. We find the argument to be fallacious. If a direction is given by a court without jurisdiction, against such orders an appeal would lie to a court normally exercising the appellate jurisdiction. Secondly, this ground loses importance in view of the fact that in some of the matters the authorities and the State have filed appeals directly against the order passed by the learned Judge disposing of contempt matter, directing the authorities and the State Government to sanction the posts. No such direction could be given in contempt proceedings."

[Emphasis supplied]

26. The reason behind the normal appeal being maintainable is quite clear. If the Court does not have jurisdiction to deal with the contempt proceeding, the proceeding cannot be said to be governed by the 1971 Act. To wit, Section 19 of the 1971 Act presupposes a valid exercise of contempt jurisdiction; where the Court lacked jurisdiction to entertain the contempt proceeding, its order cannot be regarded as one passed in the exercise of jurisdiction to punish for contempt and hence the

¹⁸ (1954) 1 SCC 710

¹⁹ (2004) 13 SCC 610

rigours of Section 19 of the 1971 Act will not apply. It will be an appeal under Clause 15 of the Letters Patent.

27. Since the order impugned is clearly without jurisdiction, the same deserves to be interfered with.
28. Coming to the other decisions cited by the parties, **Shah Babulal Khimji** (supra) has held that while routine orders would not qualify to be called judgments within the meaning of Clause 15 of Letters Patent, orders which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned would qualify to be called judgments and would therefore be appealable under Clause 15 of the Letters Patent. The Hon'ble Supreme Court held that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense.
29. In the present case the Hon'ble Single Judge has assumed jurisdiction that it did not have and has found in the order impugned specifically that the appellant is guilty of contempt. Paragraph 44 of the impugned order deserves notice in such regard:-

"44. In view of the above observations, the alleged contemnor has specifically flouted the clear message given in the order of the Division Bench, thus rendering himself guilty of willful and deliberate violation of the order of this court."

[Emphasis supplied]

30. Thus, while exercising a non-existent jurisdiction, the Hon'ble Single Judge has passed an order that almost finally decides the issue and renders a specific finding. It therefore positively answers the test for being treated as a judgment as prescribed by the Hon'ble Supreme Court in the case of **Shah Babulal Khimji** (supra). Accordingly, the order is appealable under Clause 15 of the Letters Patent.
31. **Ram Kishan** (supra) instructs that if two interpretations are possible and if the action is not contumacious, a contempt proceeding would not be maintainable. It holds that element of willingness is an indispensable requirement to bring home the charge of contempt. Having regard to the view that we have taken and our finding as regards lack of jurisdiction of the Hon'ble Single Bench, the said judgment does not help the appellant any further.
32. **Prithawi Nath Ram** (supra) reaffirms that the Court dealing with a contempt proceeding is only concerned with the question whether the earlier decision that has attained finality has been complied with or not. The said judgment clearly supports the appellant. It mandates that compliance of the judgment that has attained finality is to be ascertained. In the present case the final judgment is the

one passed by the Hon'ble Division Bench and not the Hon'ble Single Bench and as such the Hon'ble Single Judge lacked jurisdiction to entertain the contempt proceeding.

- 33. *Purshotam Dass Goel* (supra), *Midnapore Peoples' Cooperative Bank Limited* (supra) and *Dipti Ganguly* (supra) cited by the respondents are all authorities for the proposition that neither an order declining to initiate proceedings for contempt, nor an order dropping proceedings for contempt nor an order acquitting or exonerating the contemnor is appealable under Section 19 of the 1971 Act. We have already held that the instant appeal is not under Section 19 of the 1971 Act but under Clause 15 of Letters Patent since the Hon'ble Single Judge lacked jurisdiction to entertain the application for contempt.**
- 34. *Balvant N. Viswamitra* (supra) and *Hasham Abbas Sayyad* (supra) reiterate that a decree which is a nullity cannot be executed. The difference between a decree which is a nullity and a decree which is illegal as enunciated in the case of *Balvant N. Viswamitra* (supra) does not help the respondents inasmuch as in the instant case it has been found that the order impugned is indeed a nullity.**
- 35. For all the reasons aforesaid, the order impugned herein and all consequential steps taken on the basis thereof stand set aside. MAT 2003 of 2024 stands allowed. CAN 1 of 2024 stands disposed of accordingly. No costs.**
- 36. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.**

I agree.

(Hiranmay Bhattacharyya, J.)

(Om Narayan Rai, J.)