

MAHABIR PRASAD SINGH
v
M/S JACKS AVIATION PVT. LTD.

NOVEMBER 13, 1998

[S. SAGHIR AHMAD AND K.T. THOMAS, JJ.]

Civil Procedure Code, 1908 :

Section 115(1)—Revisional jurisdiction of High Court—Suit for recovery of possession pending before Trial Court—Advocate abstaining from the Court on account of boycott call by Bar—Application for suo motu transfer of case—Dismissed by Trial Court on the ground that there was no provision for transfer of case—Revision petition entertained by High Court—Stay of proceedings of trial Court—Validity of—Held, no legal infirmity in the order of trial Court—High Court not to interfere with the orders of subordinate Court unless the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party—Thus High Court committed jurisdictional error in entertaining the revision petition.

Section 24—Plea for transfer of case from one Court to another—Opposite party has no objection to change—Held, change of Court not allowable merely because opposite party has no objection for such change—If allowed parties combine together can avoid a Court and get Court of their own Choice.

Judicial process—Duty of Court—Boycott call by Bar Association—Advocate abstaining from attending the Court—Held, it is the solemn duty of every Court to proceed with the judicial process and not to yield to pressure tactics or boycott calls—No Advocate can avoid a Court on the ground that he does not want to appear in that Court.

Appellant filed a civil suit before the Additional District Judge for recovery of possession of a building. In view of certain admissions made in the written statement by respondent, appellant filed an application under Order XII Rule 6 of the Code of Civil Procedure for pronouncing a judgment. Respondent filed objections to the said application and prayed for its dismissal. When the application came up for arguments, respondent filed a petition for transfer of the case suo motu on the ground that counsel for the respondent would not be in a position to attend the Court as the Bar Association has

A decided to boycott that Court. The Additional District Judge passed an order holding that there was no provision under section 151CPC for transfer of the case. On revision, the High Court while entertaining the revision petition, stayed proceedings before the Trial Court. Appellant, with the intention to get speedy relief, made a statement before the High Court that he has no objection for transferring the case to another Court. The matter was adjourned from time to time and posted to a far off date. Being aggrieved by this, the appellant has preferred the present appeal.

Allowing the appeal, this Court

C HELD : 1.1. The order passed by the Additional District Judge has no legal infirmity. The High Court has committed a jurisdictional error in entertaining the revision petition and passing the impugned order. Thus, the revisional proceedings are quashed. [683-C-D]

D 1.2. The order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to Section 115(1) of the Code. Under the same sub-section, High Court is empowered to call for the records of any case which has been decided by any Court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally or with material irregularity. In such cases the High Court has power to make such order as it thinks fit. The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976. The proviso provides that the High Court shall not vary or reverse any order except where (a) the order it made would finally dispose of the suit or other proceedings or (b) the order if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

E Out of the two clauses in the proviso the former has no application to the order which has been challenged in the High Court because even if the application of the respondent filed on 21.5.1998 was granted, the suit would not have been finally disposed of. The latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus even if such an order passed by the subordinate Court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party. [680-E-F-G; 681-B-C]

H 2 If any counsel does not want to appear in a particular Court, that too

for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that Court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that Court, that too not on any particular day, on account of some personal inconvenience of the counsel, but as a permanent feature, is unprofessional as also unbecoming of the status of an Advocate. No Court is obliged to adjourn a case because of the strike call given by any Association of Advocates or a decision to boycott the Courts either in general or any particular Court. It is the solemn duty of every Court to proceed with the judicial process during Court hours. No Court should yield to pressure tactics or boycott calls or any kind of browbeating. At any rate no Advocate can ask the Court to avoid a case on the ground that he does not want to appear in that Court. In the instant case the respondent's counsel by his conduct prevented the judicial process to have its even course flow.

[682-D-E; 683-B; 682-C]

3. There is no valid ground for transferring the case to another Court. A change of Court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both parties combine together they can avoid a Court and get a Court of their own choice. The Additional District Judge, before whom the suit is pending is directed to proceed with the matter in accordance with law. [683-F-G]

Ram Lal v. Madan Gopal, [1995] Suppl. 4 SCC 655, distinguished.

Lt. Col. S.J. Chaudhary v. State (Delhi Administration), [1984] 1 SCC 722, referred to.

Warvelle's Legal Ethics, p. 182, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5710 of 1998.

From the Judgment and Order dated 10.9.98 of the Delhi High Court in C.M. No. 3042 of 1998.

Naresh Kaushik and Mrs. Lalita Kaushik for the Appellant.

Arun Jaitley and Krishna Kumar, (Caveator) for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

A Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court.

B

C It all happened in the following manner :

A civil suit for recovery of possession of a building was filed by the appellant in the court of the Additional District Judge, Tis Hazari, Delhi (Shri S.N. Dhingra's court). Respondent filed written statement in the suit. Taking advantage of certain admissions made in the written statement, appellant preferred an application under Order XII Rule 6 of the Code of Civil Procedure (for short 'the Code') for pronouncing a judgment, having regard to such admissions and for passing a decree for recovery of possession of the suit premises. Respondent filed objections to the aforesaid application and prayed for its dismissal. When the application came up for argument on 21.5.1998, respondent filed a strange petition seeking transfer of the case by the judge suo motu. How strange was that petition can be shown by extracting the material portion of it hereunder :

D

E

F "That the counsel for the defendant is a member of Delhi Bar Association and recently vide Resolution dated 15.5.98 Delhi Bar Association has boycotted the appearance of its members in any case before this Hon'ble court. That the counsel for the defendant being a member of the Delhi Bar Association is bound by all the resolutions passed by the executive Committee of Delhi Bar Association and in such circumstances the counsel for the defendant is not in a position to appear in the said case before this Hon'ble Court. That due to the said boycott call, the defendant is taking necessary steps for moving an application under Section 24, C.P.C. before the Hon'ble District Judge, Delhi for the transfer of the aforesaid case, in case the Hon'ble Court is not inclined to suo-motu transfer the said case. That serious prejudice will be caused to the interest of the defendant if any adverse order is passed on account of non-appearance of the counsel for the defendant and/or the defendant. That the said boycott call by the

G

H

Delhi Bar Association could not be conveyed to the defendant and in such circumstances the defendant is also not in a position to cause personal appearance in the said matter. A

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to suo motu transfer the aforesaid matter or in the alternative this Hon'ble Court may be pleased to adjourn the matter to some future date without passing any adverse order so as to enable the defendant to move necessary application before the Hon'ble District Judge, Delhi." B

The counsel for the defendant, who filed the said petition, did not himself appear in the court for addressing arguments on 21.5.1998 nor did he depute any other advocate on his behalf. Learned Additional District Judge then passed the following order: C

"This application under Section 151 for transfer of the case has been made. There is no provision under Section 151 for transfer of case. Transfer application lies before learned District Judge under Section 24 CPC. The application is hereby dismissed. Written arguments have been filed on behalf of plaintiff on application under Order XII Rule 6. To come up for orders on 30.5.98." D

A revision petition was filed by the respondent before the Delhi High Court in challenge of the aforesaid order. A single Judge of the High Court entertained the same on 29.5.1998 and ordered stay of proceedings before the trial court. Appellant, who was innocent of the attitude of the counsel for the defendant towards the Additional District Judge, entered appearance in the High Court and submitted that he has no objection to have the case transferred to any other competent court and all that he needed was a decision on the application made by him under Order XII Rule 6 of the Code. E F

Appellant being an octogenarian has seemingly felt that further delay in the trial proceedings would only result in procrastination of his suit. But, despite the aforesaid offer made by the appellant, learned Single Judge of the High Court adjourned the revision from time to time, until it reached the date 10.9.1998, on which day the respondent filed a civil miscellaneous petition praying that "in the event the Hon'ble High Court is pleased to allow the revision and quash the impugned order, the suit presently pending before Shri S.N. Dhingra, learned Additional District Judge, Delhi may be transferred to some other court." G

The ground for making such a prayer was a newspaper report that when H

A the Secretary of Delhi Bar Association shouted in open court in the presence of all litigants asking Shri Dhingra to stop working, the Judge did not accede to it and then filthy language was hurled in the court to which “other litigants present in the court also raised their voice” against such invidious vituperations, and that appellant was also one of such litigants.

B Learned Single Judge of the High Court has noted in the proceedings what appellant had stated before the court that he has no objection in the case being transferred to another court as prayed for by the respondent. Still, learned Single Judge called for “the comments” of the Additional District Judge concerned regarding the transfer petition and posted the revision to a far off date (in the month of January 1999) and stayed all further proceedings in the trial court. Appellant has filed this special leave petition at the above stage challenging the order entertaining the revision and also the order by which the revision has been adjourned to such farther extent.

D We heard Shri Naresh Kaushik, Advocate for the appellant and Shri Arun Jaitley, Senior Advocate for the respondent. Neither of them even attempted to justify the conduct of the court for the respondent in the trial court in not attending the court on 21.5.1998. However, Shri Arun Jaitley made a plea that the suit may be sent to another court in view of all the aforesaid developments.

E In our view the High Court has committed a jurisdictional error in entertaining the revision petition filed by the respondent challenging the order dated 21.5.1998. That order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to Section 115(1) of the Code. Under the same sub-section, the High Court is empowered to call for the records of any case, which has been decided by any court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally or with material irregularity. In such cases the High Court has power to make such order as it thinks fit. The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976. That proviso reads thus:

G “Provided that the High Court shall not, under the Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where—

H (a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other

proceeding, or

A

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.”

Out of the two clauses in the proviso, the former has no application to the order, which has been challenged in the High Court, because even if the application of the respondent filed on 21.5.1998 was granted, the suit would not have been finally disposed of. The latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus, even if such an order passed by the subordinate court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party.

B

C

While entertaining the revision petition, learned Single Judge has observed thus:

D

“The learned counsel for the petitioner, on instructions states that the petitioner in the present proceedings assails and the part of the impugned order which relates to respondent’s application filled under XII Rule 6 CPC. The learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in case *Ram Lal v. Madan Gopal & Ors.*, reported as [1995] Supp. 4 SCC 655. Issue notice to the respondent on the above limited question asking the respondent to show cause as to why the petition be not admitted returnable on 12.8.1998.”

E

Further, learned single Judge ordered notice to be issued returnable on 12.8.98 and stayed the proceedings in the trial court in the meanwhile.

F

The decision cited before the learned single Judge *Ram Lal v. Madan Gopal*, [1995] Suppl. 4 SCC 655 is ostensibly inapplicable because in that case the aggrieved party was denied the opportunity to address oral arguments through counsel and the decision was taken on the basis of written arguments. Their Lordships observed “having regard to the special facts and circumstances of the case, we think it proper that the view of the Additional District Judge should be reobtained before his decision of fact becomes binding in second appeal before the High Court.” The case was thereafter remitted back to the lower court for rehearing the appeal to give opportunity to the parties’

G

H

A counsel to address their arguments, but subject to payment of Rs. 5000 - as costs. The said decision cannot be regarded as a precedent particularly in view of what the learned Judge had cautioned that the particular course was adopted by the court "having regard to the special facts and circumstances" of that case.

B This is not a case where respondent was prevented by Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that court. By such conduct the counsel prevented the judicial process to have its even course flowed. Respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.

D If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any Association of Advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

F A three-Judge Bench of this Court has reminded members of the legal profession in *Lt. Col. S.J. Chaudhary v. State*, (Delhi Administration) [1984] 1 SCC 722 that it is the duty of every advocate who accepts brief to attend the trial and such duty cannot be over stressed. It was further reminded that "having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."

H "A lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the court room".

(Warvelle's Legal Ethics at P. 182)

Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and, therefore, the aforesaid mutual respect is *sine qua non* for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appeal in that court.

Hence the order passed by the Additional District Judge on 21.5.1998 has no legal infirmity, much less any scope for occasioning failure of justice. Question of that order causing any irreparable injury does not arise particularly because the said order was by product of the unwholesome strategy adopted by the respondent's counsel in abstaining from the court and reporting that he would not attend that court in future. The party who brought about such a situation cannot be heard to complain that an order was passed consequently.

We unhesitatingly conclude that the High Court has committed grave error in entertaining the revision petition and passing the impugned order. Accordingly, we quash the aforesaid revisional proceedings.

Sri Arun Jaitley, learned senior counsel, made a plea before us that in view of all what happened and also in the light of the fact that appellant too has no objection to change the court, the case may be allowed to be transferred to another court. We have considered the aforesaid plea in all seriousness. We do not come across any valid ground whatsoever for a change of court. A change of court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both parties combine together they can avoid a court and get a court of their own choice. We are not disposed to give such an option to the parties. We, therefore, refrain from acceding to the said plea made by Sri Jaitley.

We direct the Additional District Judge, Tis Hazari before whom the suit is pending, to proceed with it according to law. Appeal is allowed in the above terms.