

B.S. KRISHNA MURTHY AND ANR. A

v.

B.S. NAGARAJ AND ORS.

(Special Leave Petition (C) No. 2896 of 2010)

JANUARY 14, 2011 B

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Alternative disputes redressal: Mediation – Disputes involving family and business relationships – Resolution of, by mediation – Responsibility of lawyers – Held: It is the responsibility of lawyers to advise their clients to try for mediation for resolving the disputes, especially where relationships like family and business relationships are involved, otherwise the litigation would drag on for years and decades – Lawyers as well as litigants ought to follow Mahatma Gandhi's advice in the matter and try for arbitration/mediation – This is also the purpose of s.89 – In the instant case, dispute was between the brothers – Matter referred to the Bangalore Mediation Centre – Code of Civil Procedure, 1908 – s.89. C D E

'My Experiments with Truth' by Mahatama Gandhi – referred to.

CIVIL APPELLATE JURISDICTION : SLP (CIVIL) No. 2896 of 2010. F

From the Judgment & Order dated 17.09.2009 of the High Court of Karnataka at Bangalore in RFA No. 1387 of 2004.

G.V. Chandrashekar, N.K. Verma (for Anjana Chandrashekhar) for the Petitioners. G

P. Vishwanatha Shetty, Vijay Kumar Pardesi, Mahesh Kumar. G.N. Reddy for the Respondents.

A The following order of the Court was delivered

ORDER

Heard learned counsel for the appearing parties.

B This is a dispute between brothers. In our opinion, an effort should be made to resolve the dispute between the parties by mediation.

C In this connection, we would like to quote the following passages from Mahatma, Gandhi's book 'My Experiments with Truth':-

D "I saw that the facts of Dada Abdulla's case made it a very strong indeed, and that the law was bound to be on his side. But I also saw that the litigation, if it were persisted in, would ruin the plaintiff and the defendant, who were relatives and both belonged to the same city. No one knew how long the case might go on. Should it be allowed to continue to be fought out in Court, it might go on indefinitely and to no advantage of either party. Both, therefore, desired an immediate termination of the case, if possible.

E I approached Tyeb Sheth and requested and advised him to go to arbitration. I recommended him to see his counsel. I suggested to him that if an arbitrator commanding the confidence of both parties could be appointed, the case would be quickly finished. The lawyer' fees were so rapidly mounting up that they were enough to devour all the resources of the clients, big merchants as they were. The case occupied so much of their attention that they had no time left for any other work. In the meantime mutual ill-will was steadily increasing. I became disgusted with the profession. As lawyers the counsel on both sides were bound to rake up points of law in support of their own clients. I also saw for the first time that the winning party never recovers all the costs incurred. Under the Court Fees Regulation there was a fixed scale of costs to be allowed

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as between party and party, the actual costs as between attorney and client being very much higher. This was more than I could bear. I felt that my duty was to befriend both parties and bring them together. I strained every nerve to bring about a compromise. At last Tyeb Sheth agreed. An arbitrator was appointed, the case was argued before him, and Dada Abdulla won.

But that did not satisfy me. If my client were to seek immediate execution of the award, it would be impossible for Tyeb Sheth to meet the whole of the awarded amount, and there was an unwritten law among the Porbandar Memons living in South Africa that death should be preferred to bankruptcy. It was impossible for Tyeb Sheth to pay down the whole sum of about 37,000 and costs. He meant to pay not pie less than the amount, and he did not want to be declared bankrupt. There was only one way. Dada Abdulla should allow him to pay in moderate installments. he was equal to the occasion, and granted Tyeb Sheth installments spread over a very long period. It was more difficult for me to secure the concession of payment by instalments than to get the parties to agree to arbitration. But both were happy over the result, and both rose in the public estimation. My joy was boundless. I had learnt the practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby-not even money, certainly not my soul."

In our opinion, the lawyers should advise their clients to try for mediation for resolving the disputes, especially, where relationships, like family relationships, business relationships, are involved, otherwise, the litigation drags on for years and dacades aften ruining both the parties.

A Hence, the lawyers as well as litigants should follow Mahatma Gandhi's advice in the matter and try for arbitration/mediation. This is also the purpose of Section 89 of the Code of Civil Procedure.

B Let the matter be referred to the Bangalore Mediation Centre. The parties are directed to appear before the Bangalore Mediation Centre on 21.02.2011.

List after receiving report from the Mediation Centre.

C D.G. Matter Pending.