

[2012] 1 S.C.R. 855

RATTAN BAI & ANR.

v.

RAM DASS & ORS.

(Civil Appeal No. 1614 of 2012)

FEBRUARY 06, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

SUIT: Withdrawal of - Suit for specific performance by respondent 1 to 3 - Application P-2 filed by Advocate on behalf of respondents that in view of compromise with defendants, suit be dismissed - Trial court did not pass any order - Application (P-4) made by Advocate on behalf of respondent 1 and 3 that they intended to withdraw the suit - Respondent 1 gave another affidavit (P-5) that the said suit was not filed by him - The counsel of the respondents made statement that he did not press the applications P-2 and P-4 - In view of the said statement, trial court disposed of the said two applications and posted the matter for evidence - Revision petition by appellant dismissed by High Court - On appeal, held: The issue was not whether the trial court has the power to permit the withdrawal of the applications filed earlier to the withdrawal of the suit but whether such power was exercised in accordance with law and for the purpose for which it is meant - The mere existence of a power did not justify the exercise of the power - The fact situation on hand did not justify permitting the respondents 1 and 3 to withdraw their earlier application (P-2) and the statement P-4 as a matter of course in the background of the content of the affidavit (P-5) - The professional conduct of the counsel apart from anything else amounted to the abuse of the process of the court - High Court erred in dismissing the revision petition of the appellants - Matter remitted to High Court for consideration afresh.

Respondents 1 to 3 instituted a suit for specific

A performance of an agreement of sale of immovable property and for the possession of the said property against the appellants and others. The appellants filed a written statement on 2.12.2006. On 18.12.2007, an application (Annexure P-2) was filed on behalf of
 B respondents 1 to 3 but signed only by respondents 1 and 3 alone. The application was accompanied by an affidavit of respondent 3, wherein he made a statement that he had compromised the suit with defendants and he did not wish to continue the suit, and, therefore the same be
 C dismissed. Annexure P-3, purportedly a vakalatnama in favour of one 'S', advocate in the said suit was executed on the same day, i.e. 18.12.2007 by the respondents 1 to 3. However, Annexure P-2, application was signed by an advocate by name 'AK' along with respondents 1 and 3.
 D The trial court did not pass any order either accepting or rejecting the application. On 4.8.2010, a joint statement (Annexure P-4) of respondent 1 and the advocate 'AK' allegedly representing respondents 1 and 3 was recorded by the trial court stating that they intended to
 E withdraw the suit.

On 7.8.2010, respondent 1 gave another affidavit (Annexure P-5) before the trial court to the effect that the said suit was neither filed by him nor the said suit bore his signatures. Thereafter, the appellants filed an
 F application praying that the suit be dismissed in so far as it pertained to respondents Nos. 1 and 3. Another application (Annexure P-8) was filed on 16.9.2010 purportedly on behalf of respondent 1 stating that application dated 18.12.2007 (annexure P-2) and the
 G statement dated 4.8.2010 (annexure P-4) was wrongly submitted by the Advocate 'AK' and, therefore, respondent 1 be allowed to withdraw the same and pursue the suit.

H On 1.2.2011, the trial court recorded the statement by

one 'MS', Advocate said to be appearing for the respondents that he did not press the application dated 18.12.2007 and 4.8.2010. Thereupon the trial court passed an order that in view of the statement of the advocate, the applications dated 18.12.2007 and 4.8.2010 were disposed of. Aggrieved by the said order, the appellants filed revision petition before the High Court. The said revision was dismissed. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal and remitting the matter to the High Court, the Court

HELD: 1. The issue was not whether the trial court has the power to permit the withdrawal of the applications filed earlier to the withdrawal of the suit but whether such power was exercised in accordance with law and for the purpose for which it is meant. The mere existence of a power did not justify the exercise of the power. In the context of the powers of the judicial bodies, all powers are required to be exercised with a view to secure ends of justice. The fact situation on hand did not justify permitting the respondents 1 and 3 to withdraw their earlier applications (p.2) dated 18.12.2007 and the statement of respondent 1 dated 04.08.2010 as a matter of course in the background of the content of the affidavit (p.5) dated 7.8.2010. If the content of P.5 is proved to be false, appropriate legal action against the 1st respondent must be taken. The professional conduct of the counsel 'AK' apart from anything else amounts to the abuse of the process of this Court. The High Court erred in dismissing the revision of the appellants. [Paras 23, 25, 26] [864-F-H; 866-B-F]

Jet Ply Wood (P) Ltd. and anr. v. Madhukar Nowlakha & Ors. (2006) 3 SCC 699; 2006 (2) SCR 761; Rajendra Prasad

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- A *Gupta v. Prakash Chandra Mishra & Ors.* (2011) 2 SCC 705: 2011 (1) SCR 321- Distinguished.

Case Law Reference:

- B 2006 (2) SCR 761 Distinguished Para 22, 24
2011 (1) SCR 321 Distinguished Para 22

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1614 of 2012.

- C From the Judgment & Order dated 8.3.2011 of the High Court of Punjab & Haryana at Chandigarh in C.R. No. 1075 of 2011.

- D Brijender Chahar, K.R. Anand, Jyoti Chahar, Jagbir S. Malik, Vinay Garg for the Appellants.

Uday U. Lalit, S. Padhi, Siddhesh Kotwal, Nirnimesh Dube, Sandeep Phogat, Jayant Kumar Mehta for the Respondents.

- E The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. Leave granted.

- F 2. This appeal arises out of the final order dated 8th March, 2011 of the Punjab and Haryana High Court in Civil Revision No. 1075 of 2011 under Article 227 of the Constitution of India. By the said order, the High Court dismissed the Revision filed by the appellants herein.

- G 3. Respondent Nos.1 to 3 herein instituted a Civil Suit No. RBT 124/22.05.2006 on the file of Civil Judge, Senior Division (S.D.) Jhajjar, against the two appellants herein and two others.

4. Respondents 4 to 7 herein are the legal representatives of one Kanta Bai, who died during the pendency of the suit and

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the said Kanta Bai was one of the other two defendants in the suit. A

5. Unfortunately, copy of the plaint is not available on record but it appears that the suit was filed for the specific performance of an agreement of sale of immovable property and for the possession of the said property. B

6. The defendants (appellants herein) contested the suit. They filed a written statement on 2.12.2006.

7. On 18.12.2007, an application (Annexure P-2) came to be filed purportedly on behalf of the three plaintiffs (respondents 1 to 3 herein), but signed only by respondents 1 and 3 alone. The relevant portion reads as follows:- C

"Aforementioned titled case is fixed for 4.8.2010 for defendants evidence and in the afore-stated case the applicant plaintiff has compromised with the defendant in the suit I have neither any claim against the defendant nor I intend to continue the suit. D

Therefore, it is prayed that file be summoned and the suit on behalf my self plaintiff no.3 be dismissed and file be consigned, I will be highly grateful." E

The application was accompanied by an affidavit of the third respondent herein, wherein he made a statement that he had compromised the suit with defendants and he did not wish to continue the suit, and, therefore the same be dismissed. F

8. Annexure P-3, purportedly a vakalatnama in favour of one Shri A.K. Saini, advocate in the above mentioned civil suit, came to be executed on the same day, i.e. 18.12.2007 by the respondents 1 to 3. However, it must be mentioned herein that Annexure P-2, application was signed by an advocate by name Shri Arun Kumar along with two plaintiffs mentioned above. G

9. The trial court did not pass any order either accepting or H

A rejecting the application. (Annexure P-2)

10. On 4.8.2010, a joint statement (Annexure P-4) of first respondent and the above-mentioned advocate Shri Arun Kumar allegedly representing respondents 1 and 3 herein was recorded by the Trial Court. The relevant portion reads as follows:-

“.....stated that we do not intend to continue with the suit and withdraw the suit on behalf of plaintiff no.1 and 3.”

C 11. On 7.8.2010, the first respondent herein gave another affidavit (Annexure P-5) before the Trial Court. The relevant portion reads as follows:-

“1. That above noted suit has neither filed by me nor above noted suit bears my signatures.

D 2. That pertaining to the agreement to sell we were not having sufficient funds within limitation and my compromise with Rattan Bai, Ram Phool took place in the year 1999.

E 3. That in the afore-stated case I have neither furnished any power of attorney as plaintiff nor any General Power of Attorney has been given by me.

F 4. That in the afore-stated suit I have falsely been impleaded as plaintiff and my signatures are also forged.

G 5. That in the aforesaid suit I have neither engaged any counsel nor purchased any stamp nor any witness has been produced by me on my behalf. The entire proceedings in this case carried out on my behalf are false and forged.”

H 12. In the background mentioned above, an application, Annexure P-7, came to be filed on behalf of the appellants herein. It does not contain any date. But in the opening paragraph of the said application it is stated as follows:-

"That the above noted civil bearing no.124 of 2006 is pending in this Hon'ble Court and the same is fixed for hearing on 28.1.2010." A

13. The normal inference of the above extracted statement should be that the application was filed sometime prior to 28th January, 2007. However, the remaining paragraphs referred to events which took place on 4.8.2010 i.e. the date of joint statement (exhibit P-4). It is not clear from the record whether the Annexure P-7 is a true copy of certified copy of the application filed by the appellant herein. The appellant herein owes an explanation with regard to the discrepancy of the dates referred to above. Para 4 of the said application reads as follows:- B C

"That the defendants applicants are not alleging any malafide intention on the part of the learned presiding officer inspite of the fact that some undesirable persons are claiming that they have approached the learned presiding officer and the order for withdrawal and dismissal of the suit qua the claim and relief claimed by plaintiffs nos.1 and 3 will not be passed nor the suit will be dismissed. But it appears that inadvertently and due to oversight the orders for dismissal of the suit filed by plaintiffs nos.1 and 3 has not been passed inspite of the statement dated 4.8.2010 made by their counsel along with Ram Dass plaintiff read with the application moved earlier by Jawahar plaintiff No.3. F

It is, therefore, prayed necessary orders for dismissal of civil suit on behalf of plaintiffs 1 and 3 may kindly be passed keeping in view the above said circumstances as they have already withdrawn the same and have sought the dismissal of their suit." G

In substance, praying that the suit be dismissed in so far as it pertains to respondents Nos. 1 and 3 herein.

14. As the matter stood, thus, another application (Annexure H

A P-8) came to be filed on 16.9.2010 purportedly on behalf of the first respondent herein. The substance of the application is that annexure P-2 application dated 18.12.2007 and the statement dated 4.8.2010 (annexure P-4) had been wrongly submitted by the above-mentioned Advocate Shri Arun Kumar and, therefore, B the first respondent herein be allowed to withdraw the same and pursue the suit. The prayer portion is as follows:-

C “It is therefore prayed that the application dated 4.8.10/18.12.07 has been wrongly submitted before the Hon’ble Court by Sh. Arun Kumar Advocate. Hence applicant may please be allowed to withdraw the said application dated 4.8.10/18.12.07 and further be retained as a plaintiff in the said suit in the interest of justice.”

D 15. It is also stated in para 3 of the affidavit as follows:-

“That the applicant never engaged Sh. Arun Kumar as his advocate and further never intended to submit such applicant. The applicant/plaintiff has not reached to a compromise with defendants.”

E 16. The said application was supported by an affidavit of the first respondent herein wherein the first respondent reiterated the various allegations made in the application portions of which are extracted earlier. An identical application and affidavit (Annexure P-9) also came to be made by the third respondent F herein on the same date i.e. on 16.9.2010.

17. Such applications were contested by the appellants herein by filing a counter.

G 18. On 1.2.2011 the trial court recorded the statement by one Shri M.S. Gulia, Advocate said to be appearing for the plaintiffs. The statements as follows:-

H “...Stated that I do not press the application dated 18.12.2007 and 4.8.2010.”

19. Thereupon the trial court passed an order on the same date which reads as follows:- A

“ Sh. M.S. Gulia Ld. Counsel for plaintiff has made a statement that he does not press the application order dated 18.12.2007 & 4.8.2010, accordingly. Both the applications is disposed off accordingly. Now come upon 8.2.2011 for rebuttal evidence, if any and arguments.” B

20. Aggrieved by the said order, the appellants herein carried the matter by way of Revision under Article 227 of the Constitution of India to the Punjab and Haryana High Court by the order under appeal. The said revision was dismissed. The High Court held - C

“The learned trial Court was well within its jurisdiction to allow the withdrawal of application dated 18.12.2007 and statement dated 4.8.2010 under its inherent powers and this view can be supported by way of the latest judgment of Hon'ble Supreme Court in *Rajinder Prasad Gupta v. Prakash Chandra Mishra* (2011) 2 Supreme Court Cases 705” D

The High Court after examining four paragraphs of the above-mentioned judgment finally held – E

“In my considered opinion, the impugned order is innocuous and no prejudice will be caused to the defendants-petitioners as they will have full opportunity to present their case before the learned trial Court at the relevant stage. F

Keeping in view the facts and circumstances discussed hereinabove, this Court finds no illegality or perversity in the impugned order dated 1.2.2011 (P.16) passed by the learned Civil Judge (Sr. Division), Jhajjar warranting interference under Article 227 of the Constitution.” G

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A 21. Learned senior counsel for the appellant Mr. Brijender
Chahar argued that the High Court erred in dismissing the
Revision. He further submitted that the question is not whether
the trial Court had the inherent power to permit the respondent-
B and 18.12.2007 but in the circumstances of the case particularly
in the background of the reasons given in the affidavit dated
7.8.2010 (p.5) wherein the 1st respondent herein made a
categoric allegation that he had been "falsely impleaded as a
C plaintiff" and his signatures are "forged" etc. whether the inherent
power of the Court was exercised in accordance with the well
established principles of law.

22. On the other hand, learned senior counsel for the
respondent Mr. Uday U. Lalit argued that even in cases where
an application for withdrawal of the suit is allowed, it is held by
D this Court that nothing prevents the plaintiffs to go back upon the
withdrawal. Therefore, nothing in law prevents the respondents/
plaintiffs to withdraw their applications for the withdrawal of the
suit. The learned counsel relied upon *Jet Ply Wood (P) Ltd. and
E arr. Vs. Madhukar Nowlakha & Ors.*, (2006) 3 SCC 699 and
Rajendra Prasad Gupta Vs. Prakash Chandra Mishra & Ors.,
(2011) 2 SCC 705 in support of his submissions.

23. As rightly contended by the learned counsel for the
appellant, the issue is not whether the trial court has the power
F to permit the withdrawal of the applications filed earlier to the
withdrawal of the suit but whether such powers was exercised
in accordance with law and for the purpose for which it is meant.
The mere existence of a power does not justify the exercise of
the power. In the context of the powers of the judicial bodies, all
G powers are required to be exercised with a view to secure ends
of justice. In neither of the above-mentioned two cases this Court
had an occasion to examine whether the inherent power of the
Civil Court under Section 151 CPC was properly exercised. In
the 1st case, the suit had been withdrawn by the plaintiffs and
H the plaintiffs subsequently sought to go back upon the withdrawal

and reopen the suits on the ground that they were induced to withdraw the suit on a misrepresentation made by the defendants. In the 2nd case, the plaintiff "changed his mind" after filing the applications for withdrawal of the suit and sought to withdraw the said application even before a formal order permitting the withdrawal was passed the Court. The argument in both the cases was the trial Court lacked the jurisdiction to permit the course of action undertaken by the plaintiffs. This Court only laid down the principle that Section 151 of CPC recognises* the existence of ample power on the Civil Court to permit the plaintiffs to pursue the course of action undertaken by them.

24. In *Jet Ply Wood* (supra), the trial Court rejected the application of the plaintiffs "recalling the order by which the suit had been permitted to be withdrawn". The High Court recalled the order and restored the suit. Dealing with the case, this Court held at para 24 -

"..... which indicates that the court did not find any scope to exercise its inherent powers under Section 151 of the Code of Civil Procedure for recalling the order passed by it earlier. In the circumstances set out in the order of 24..2004, the learned trial court felt that no case had been made out to recall the order which had been made at the instance of the plaintiff himself. It was, therefore, not a question of lack of jurisdiction but the conscious decision of the court not to exercise such jurisdiction in favour of the plaintiff."

This Court did not examine the question whether "the conscious decision of the Court not to exercise such jurisdiction" was justified. This Court only held that the High Court's decision to reverse the trial Court's order - not to permit the recall of the earlier order permitting the withdrawal of the suit - does not call for interference.

"27. We are of the view that the law having been

A correctly stated in the aforesaid case, the learned Singl
Judge of the Calcutta High Court in making an order on the
same lines did not commit any error of jurisdiction which
calls for any interference in these appeals.”

B 25. But the fact situation on hand does not, in our opinion,
justify permitting the respondents 1 and 3 to withdraw their earlier
applications (p.2) dated 18.12.2007 and the statement of the 1st
respondent dated 04.08.2010 as a matter of course in the
background of the content of the affidavit (p.5) dated 7.8.2010.
C If the content of p.5 is proved to be false, there is no validly
constituted suit at least on behalf of the 1st respondent. Secondly,
the professional conduct of the counsel Mr. Arun Kumar may
require an examination in the interest of the purity of a justice
delivery system. If the content of P.5 is proved to be false,
D appropriate legal action against the 1st respondent must be
taken. His conduct apart from anything else amounts to the abuse
of the process of this Court.

26. In the circumstances, we are of the view that the High
Court erred in dismissing the revision of the appellants herein.

E 27. We allow the appeal and remit the matter to the High
Court for an examination of the factors indicated above and any
other relevant factor which the High Court may deem
appropriate, if necessary even by taking evidence, and pass
appropriate orders in accordance with law. The trial of the suit
F shall stand stayed until the High Court takes a final decision as
indicated above.

D.G.

Appeal allowed.