

(2001) 09 P&H CK 0055

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1841 of 1992

Pt. Iswar Swaroop and
Another

APPELLANT

Vs

Rulia Ram and Others

RESPONDENT

Date of Decision: Sept. 14, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: C.B. Goel, Amar Vivek and R.C. Chauhan, for the Appellant; Anil Khetarpal, for the Respondent

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This Civil Revision filed on behalf of Shri Ishwar Swaroop and Shri P.K. Garg. Advocates of Jagadhri seeks expunging of adverse remarks made by the then Sub Judge. Jagadhri. While deciding the suit which was registered as Civil Suit No. 490 of 1983 titled Rulia Ram v. Rattan Lal on 20.11.1991 some adverse remarks were made against the counsel representing the defendant with a prayer that these adverse remarks be expunged and deleted from the various paras of the judgment the present revision petition has been filed. The adverse remarks recorded on 20.11.1991 read as under:

"Learned counsel for the defendant has refused to address arguments on the ground that an application for transfer of this case from this court to another court is pending in the court of District and Sessions Judge, Ambala. I do not find any logic in the aforesaid refusal of the learned counsel for the defendant. Keeping in view his mischievous mala fide, and wilful conduct to delay the proceedings of this case which is one of the oldest pending cases in this Court being pertaining to the year

1983. The detailed discussions qua the transfer application plea of the learned counsel for the defendant has been made by this Court vide its separate order of even date wherein the two applications filed by the applicant/defendant for framing additional issue and for amendment of written statement had been dismissed with the cost of Rs. 100/- each for the sake of convenience, the relevant portion of the aforesaid separate order is reproduced herein below:

"So far as the contention of learned counsel for the defendant is concerned that the transfer application for the transfer of this case is still pending in the court of learned District and sessions Judge, Ambala, the same is not only absolutely meritless but mischievous and mala fide also because learned counsel for the defendant had informed this Court on 4.6.91 that he had already moved an application for transfer of this case when last opportunity to the defendant for leading defence evidence after giving him as many as two opportunities had already been ordered. Considering the request of learned counsel for the defendant, this Court granted as many as 5 adjournments in the interest of justice to enable the applicant/defendant to get this case transferred but since the defendant had filed the transfer application with mala fide intention to delay the proceedings of this case which being pertaining to the year 1983 was one of the oldest pending cases, so this Court could not afford to give further unnecessary adjournment after waiting for four months that too without any stay order from the appellate court. The case was again fixed for defendant's evidence on 28.10.91 vide order dated 14.10.91. It was also stipulated vide order dated 14.10.91 that if the defendant was able to place any stay order as alleged by him, from the court of learned Distt. Judge, Ambala, he was free to do so till 28.10.91 but the defendant-instead of obtaining and placing on record any stay order from the Court of learned District Judge, Ambala started examining his DWs. So he now cannot take the plea that the application filed by the defendant for transfer of this case was still under consideration in the court of learned Distt. Judge, Ambala. The non placing of any stay order as to the existence of which had been alleged by the learned counsel for the defendant Sh. P.K. Garg by making a statement at bar to this effect, compelled this court to draw an adverse inference that no such stay order was in existence. Even then vide order dated 14.10.91, the defendant was given yet an another opportunity to file the alleged said order on record on or before 28.10.91. These facts have been narrated vide detailed interim order of this court dated 14.10.91 which is on the judicial file as part and parcel of the order-sheet of the present case. Thus the aforesaid conduct of the defendant and his learned counsel clearly shows that the defendant not only tried to play hide and seek with this Court but also kept this court in dark about the existence of stay order from the appellate court which in fact was non-est and that too by the learned counsel for the defendant by making a statement to this effect in the court at bar. That the defendant wanted to prolong the proceedings of the case on frivolous ground, is clear from the fact that the defendant had also filed an application u/s 10 CPC for staying the proceedings of the present case which was

dismissed by this court on merits with cost of Rs. 100/- vide order dated 25.4.91 with the warning to the defendant to desist from filing such type of frivolous applications in future. The defendant did not choose to go in an appeal against the said order dated 25.4.91. The non filing of appeal against said order dated 25.4.91 vide which the application of the defendant had been dismissed with warning and cost of Rs. 100/- clearly shows that the defendant had filed the aforesaid application just to delay the proceedings of the case. Had it not been so the defendant must have had gone in appeal. Thus in view of my aforesaid discussion, it is crystal clear that the present two applications have again been filed by the applicant-defendant with mala fide intentions to delay the proceedings of this case. Thus in view of my aforesaid discussion, it is clear that the plaintiff is entitled for the relief of possession of the suit land. I, therefore, decide this issue in favour of the plaintiff against the defendant.

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Learned counsel for the defendant as has been discussed above has declined to address arguments on false and frivolous grounds with mala fide intentions to prolong the proceedings of this case. It is worthwhile to mention that the defendants have also failed to place any cogent evidence on record to prove the aforesaid two issues. I, therefore, decide these two issues against the defendant and in favour of the plaintiff."

2. At the outset a request has been made by Shri C.B. Goel, learned counsel for the petitioners for deletion of the name of respondent No. 3. I accept his request and order the striking of the name of respondent No. 3 from the array of parties. In view of the deletion of name of respondent No. 3. the Registry is directed to make necessary correction in the memo of parties.

3. Shri C.B. Goel, learned counsel for the petitioners submits that no notice before recording the adverse remarks was served on the petitioners. The remarks against the petitioners are patently against the principles of audi altrem partem. He further submits that the remarks are even without jurisdiction because any disciplinary action could be competent only before the Bar Council under the provisions of the advocates Act, 1961. His further contention is that on facts also these remarks are unwarranted. Another submission made by Shri C.B. Goel is that on appeal against the judgment of the Sub Judge Ist Class dated 20.11.1991, the learned Additional District Judge while reversing the view of the learned Sub Judge has recorded his disapproval to the adverse remarks in the following words:

"Then a perusal of the judgment also shows that the Id. Sub Judge, has passed undesirable and unwarranted remarks against the counsel if he was seeking adjournments on the ground that transfer application was moved."

Shri Anil Khetarpal, advocate, learned counsel appearing for respondent No. 2 does not have serious argument to counter the argument of Shri C.B. Goel. His only

submission is that the learned Additional District Judge has commented on the remarks but has not expunged the same.

4. Having heard the learned counsel for the parties and after perusing the documents placed on record, I am of the considered view that these remarks are liable to be expunged on the short ground of violation of principles of natural justice namely giving of notice, seeking explanation about their conduct and consideration of the same by passing a reasoned order. The case of [K.I. Pavunny Vs. The Asstt Collector, Cochin](#), presented a similar situation before the Supreme Court. There, the Supreme Court had made some adverse remarks against a senior counsel who was not well prepared with the brief entrusted to him by the Union of India. The adverse remarks made in the case of [K.I. Pavunny Vs. Assistant Collector \(HQ\), Central Excise Collectorate, Cochin](#), read as under:

"When we asked the learned counsel appearing for the Union of India whether Customs Officer is a person in authority, the learned counsel started arguing that u/s 108 of the Act the officers are empowered to record the statement of the accused and then he pointed out that under the Act, though they were authorised to have the statement of the accused recorded u/s 108, in view of the ratio of Vallabhdas Liladhar case they are persons in authority. He started conceding to the question whether confession is inadmissible in evidence and prosecution could rely thereon. We are constrained to observe at this stage that though the two judge Bench referred the question of law to a three-Judge Bench, the learned counsel did not make any attempt to investigate into the questions of law and was on the brink of making concessions and proceeded to argue on that premise. Since wrong concession, in particular on a question of law, does not bind this Court and there are plethora of precedents covering the field, we pointed out to the counsel that he rendered no assistance to the Court constraining it to independently investigate into the matter by itself. Accordingly, we closed the arguments. Without meaning any disrespect to the learned counsel, we are at pains to point out that the persons involved in contravention of the provisions of the act are white-collared offenders and organised gangsters get the best of talent in the profession to assist them. The Union of India should take care to entrust these sensitive cases of far-reaching effect, in particular on question of law, to counsel who have experience and ability in that branch of law to defend their cases. Lest it is public justice that suffers and economy of the country is put in jeopardy. Unfortunately, the counsel did not make any effort to analyse the provisions of the act nor did he make investigation into question of law from the decisions rendered by this Court. At this juncture, it is further relevant to point out that when the Union of India has its panel of counsel, they should see to it that the work is assigned to the counsel who can competently argue the cases in that behalf lest, for lack of assistance, investigation and marshalling the questions of fact and law, public justice tends to suffer, we would greatly appreciate the counsel appearing for the appellant who placed for consideration all aspects of the case on law and facts. It is, therefore, for the

secretaries of the Departments of Law and Justice and Finance to look into the matter and set their house in order; equally, the Attorney General of India should also see that the affairs in the central Agency in the Supreme Court are organised accordingly. We have pointed out all this only to express our deep anxiety as the burden on the Court is multiplied to undertake unto itself the task of investigating into all aspects to consider the case so as to reach satisfactory conclusion."

5. The learned counsel against whom the adverse remarks were made requested for deletion of these remarks on the ground that opportunity to explain his conduct was not given to him before recording those remarks. The Supreme Court accepted the request for expunging of those remarks. In [K.I. Pavunny Vs. The Asstt Collector, Cochin](#), their Lordships observed as under:

"While deciding criminal Appeal No. 543 of 1988 some remarks came to be made against his competence as counsel. These applications have been given by him that those remarks may be deleted as he was not given an opportunity to explain his conduct before those remarks were made, it is pointed out by him in his application as under:

"That as already stated that since the brief of the applicant consisted only of a copy of the High Court judgment and no other papers were there and judgment was reserved and the remarks against the applicant were ultimately made in the judgment dated 3.2.1997, the applicant did not get any opportunity to place the handicapped (sic) while arguing the case."

Having heard the learned counsel who is appearing in persons and having perused the judgment, we allow the applications. Remarks made against the applicant personally in the judgment delivered by this Court on 3.2.1997 shall be treated to have been deleted."

6. The principles of natural justice enunciated in the judgment of the Supreme Court in [K.I. Pavunny Vs. The Asstt Collector, Cochin](#), are fully applicable to the case of the petitioners. Therefore, this revision is allowed and it is ordered that the adverse remarks appearing in para extracted above in this judgment would stand deleted. However, I do not make any order as to costs.