

(2016) 09 RAJ CK 0094

RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Civil Writ Petition No. 8520 of 2009.

M/s Auto Corus "Auto
Compound", Adalat Road,
Aurangabad through Partner
Annirudha Dhoot S/o. Shri
Venugopal Dhoot, r/o. Station
Road, Aurangabad (Owner of
Trailer No. GJ 16-U-9093) -
Petitioner/Non-claimant @HASH
The Motor Accident Claims
Tribunal, Ajmer

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 14, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

Citation: (2016) 4 DNJ 1637

Hon'ble Judges: Veerendr Singh Siradhana, J.

Bench: Single Bench

Advocate: Mr. Kailash Sharma, Advocate, for the Petitioner; Mr. M.K. Goyal, Advocate, for the Respondents

Final Decision: Dismissed

Judgement

Mr. Veerendr Singh Siradhana, J. - Aggrieved of the order dated 16th May, 2009 and 10th December, 2008, so also the ex-parte award dated 3rd September, 2007; the petitioner has instituted the present writ application praying for the following relief(s):

"(i) quashing and setting aside the impugned orders dated 16.5.2009 (Annex.5) and 10.12.2008 (Annex.3);

(ii) allowing the application filed by the defendants-petitioners under Order 9, Rule 13 r.w. Section 151 CPC for quashing and setting aside the ex-parte award dated 3.9.2007 (Annex.1) passed by the learned Motor Accident Claims Tribunal, Ajmer in MAC Case No. 468/05; or in the alternative.

(iv) directing the learned Tribunal to pass fresh award after affording proper opportunity of leading evidence and hearing to the petitioner.

(v) Any other relief which this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case, may also be passed in favour of the petitioner."

2. Briefly, the essential skeletal material facts are that two claim petitions were instituted arising out of the same Motor Accident before the Motor Accident Claims Tribunal, Ajmer, adjudicated upon by a common award dated 3rd September, 2007.

3. The petitioner non-claimant, in claim petition No. 468/2005, instituted an application under Order 9, Rule 13 CPC on 30th April, 2008, with a prayer to set aside the ex-parte proceedings and award dated 3rd September, 2007. For none appeared on behalf of the petitioner; the application under Order 9, Rule 13 CPC, was again dismissed for want of prosecution on 10th December, 2008.

4. Another application preferred on behalf of the petitioner for restoration of the application under Order 9, Rule 13 CPC and recall of the order dated 10th December, 2008, was again dismissed for want of prosecution as well for non-appearance on behalf of the petitioner on 16th May, 2009.

5. Learned counsel for the petitioner, reiterating the pleaded facts and grounds of the writ application, vehemently argued that the ex-parte award made for compensation to the tune of Rs. 45,000/- with interest @ 7.5% per annum, has been made ex-parte. So also, the application preferred on behalf of the petitioner with a prayer to set aside the proceedings as well as ex-parte award dated 3rd September, 2007, were dismissed in default for want of prosecution, since the counsel for the petitioner did not put in appearance.

6. It is contended that the petitioner entrusted the matter to his counsel, but he could not attend the proceedings for "sufficient cause" and "bona-fide reasons" for the counsel engaged by the petitioner failed to enter the date i.e. 10th December, 2008, in his daily diary and went to Kekri to attend other case, resulting into his non-appearance and as a consequence dismissal of the application under Order 9, Rule 13 CPC, seeking setting aside of ex-parte proceedings and award dated 3rd September, 2007. Thus, the facts and circumstances detailed out in the application, were not considered by the Tribunal in correct perspective, while making the impugned order dated 16th May, 2009, declining the restoration application, and therefore, the order is illegal, arbitrary and unconstitutional.

7. In response to the notice of the writ application, Mr. M.K. Goyal, appearing for the respondent No. 3-Oriental Insurance Company Ltd., resisting the prayer of the writ application, vehemently argued that it is a case of gross negligence on the part of the petitioner as well as the counsel for the ex-parte proceedings in the claim petition were drawn on 6th February, 2006, and the ex-parte award was made on 3rd September, 2007, whereas an application under Order 9, Rule 13 CPC, with a prayer to set aside the ex-parte award dated 3rd September, 2007; was instituted on 30th April, 2008, after an inordinate and undue delay. Further, the application was dismissed in default for want of prosecution on 10th December, 2008. Learned counsel would further submit that even the application for restoration was again dismissed for want of prosecution and non-appearance on 16th May, 2009.

8. Referring to the order dated 16th May, 2009, it is further emphasised that even pending the application under Order 9, Rule 13 CPC, the counsel for the petitioner was allowed time to argue the matter imposing a cost of Rs. 100/-; despite a specific direction by the Tribunal and knowledge to the counsel for the petitioner none appeared before the Tribunal on 10th December, 2008. Furthermore, the application for restoration itself was filed, after a delay of more than three months and that too was not signed by any of the official/officer of the petitioner-establishment. Hence, the writ petition merits rejection at the threshold.

9. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

10. Indisputably, the ex-parte proceedings were drawn on 6th February, 2006 and an ex-parte award was made on 3rd September, 2007. An application under Order 9, Rule 13 CPC, with a prayer to set aside the ex-parte award, was instituted on 30th April, 2008, which resulted into dismissal for want of prosecution on 10th December, 2008. Despite of the fact that the date i.e. 10th December, 2008, was fixed by the Tribunal imposing a cost of Rs. 100/-, to argue the matter on the application. Thus, it is evident that the counsel for the petitioner is well aware of the date.

11. Be that as it may, even the application seeking restoration of the application under Order 9, Rule 13 CPC, instituted thereafter, with a delay of three months, also resulted into dismissal for want of prosecution on 16th May, 2009, by a detailed and reasoned order.

12. By a catena of judgments, it is well settled that lawyers play a vital and important role in the administration of justice. An Advocate, as an officer of the Court is obliged to discharge his duties as a lawyer to the Court maintaining standards of his profession for he owes a duty to the public. Lawyer is required to assist the Court in dispensing justice and the members of the Bar cannot absolve themselves of the duties and behave with doubtful scruples or strive to thrive on litigation. The lawyers must remember that there are equal partners with Judges in the administration of

justice, and therefore, they are required to perform their function with utmost, sincerity, devotion and duty for a contrary conduct would be destructive of democracy and the rule of law, as has been held by the Supreme Court in the case of **Manak Lal v. Prem Chand Singhvi : AIR 1957 SC 425, Jamilabai Abdul Kadar v. Shankarlal Gulabchand: (1975) 2 SCC 609, Bar Council of Maharashtra v. M.V. Dabholkar : (1976) 2 SCC 291, S.P. Gupta v. Union of India: AIR 1982 SC 149 and Sheela Barse v. State of Maharashtra: (1995) 3 SCC 619.**

13. In the case of Ministry of Information and Broadcasting, in re, the Supreme Court dealing with the issue, held thus :-

"19...Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings-many times even illegible and without personal check and verification, the nonpayment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

20.....The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society.....The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving."

(emphasis supplied)

14. In the case of **Harish Uppal v. Union of India : 2003 (2) SCC 45**, the Supreme Court in no uncertain terms held that if a lawyer refuses to attend the Court, it is not only professional misconduct but is also unbecoming of a lawyer disentitling him to continue to appear in the Court. It will be relevant to consider the text of Para No. 34, which reads thus:

34...The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts."

15. Having accepted the brief, a lawyer would be committing a breach of his professional duty, if he fails to attend the Court as has been observed by the Supreme Court in the case of **Lt. Col. S.J. Chaudhary v. State (Delhi Admn.): (1984)1 SC 722**. The Supreme Court relying upon the case of Warvelle's Legal Ethics,

further observed that a lawyer is under obligation to do nothing that shall be detrimental to 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 courtroom.

16. For the reasons and discussions aforesaid, the order dated 16th May, 2009, is perfectly legal, valid and calls for no interference in exercise of writ jurisdiction under Article 226 and/or 227 of the Constitution of India.

17. Consequently, the writ application fails and is hereby dismissed.