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Madras High Court

Case No: Writ Appeal No. 1210 of 2008

The Managing Director, Tamil Nadu Agro Industries Development Corporation Limited, Agro House, Tiruvika Industrial Estate, Guindy, Chennai-32		APPELLANT
	Vs	
V.T. Lakshmipathy and The Government of Tamil Nadu		RESPONDENT

Date of Decision: Oct. 30, 2008

Hon'ble Judges: A.K. Ganguly, C.J; P. Jyothimani, J

Bench: Division Bench

Advocate: A. Shanmugam, for the Appellant; J. Raja Kalifulla, Govt. Pleader for Respondent-1, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Ganguly, C.J.

Heard the learned counsel for the parties. This appeal has been filed by the Managing Director of Tamil Nadu Agro Industries Development Corporation Limited impugning an order dated 14.3.2008 passed by a learned Judge of the writ court. In the said order, the learned Judge of the writ court has directed the present appellant to pay an amount of Rs. 10,06,665/- to the first respondent/writ petitioner by way of ex gratia payment, retrenchment compensation, earned leave reimbursement and gratuity payment. The said payment has been directed to be made on the basis of a memo of calculation which was filed by the writ petitioner. Learned counsel for the appellant before us submits that no opportunity was given to the appellant to controvert the said calculation and a copy of the said memo was also not served on

him.

2. We find that in the body of the order itself, the learned Judge has recorded the following statement of fact :-

"Inspite of filing of above memo of calculation before this Court, the quantum is not disputed by the respondents."

Learned counsel for the appellant submits that the said statement of fact was incorrectly recorded by the learned Judge.

3. We are unable to entertain such an argument in this appeal court. Learned counsel for the appellant who is appearing before us submits that he was not before the learned Judge of the writ court. Therefore, by changing the counsel, the appellant is taking a stand which is contrary to what is recorded by the learned Judge of the writ court in the order appealed against.

4. It is well settled when the facts recorded in a judgment of a court are disputed as incorrectly recorded, the proper procedure is not to file an appeal against the judgment, but to immediately file an affidavit before the Court which has made the alleged incorrect recording and bring the same to the notice of the same learned Judge till it is fresh in judicial mind. Please see the judgment of Supreme Court in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, The relevant passage at paragraph-4, page 1251, is extracted: -

"Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation" AIR 1926 136 (Privy Council) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated, and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC 30 =(1917) 6 L.W.437). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

5. The aforesaid principles have been repeatedly affirmed by the Supreme Court in several judgments. Reference may be made to paragraph 12 of Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another, . The relevant findings in

paragraph-12 (page 3030) run as follows: -

"Statements of fact as to what transpired at the hearing recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the part, while the matter is still fresh in the minds of Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary."

6. Sitting in appeal court, it is difficult for us to appreciate the aforesaid stand taken by the appellant, that too by changing their lawyer. It is obviously open to the appellant to engage a lawyer of their choice, but the stand which has been taken before this Court cannot be appreciated. We, therefore, dismiss the writ appeal for the aforesaid reason, giving liberty to the appellant to take the steps which should be taken in such matters and which have been indicated hereinabove. If such a step is taken it is entirely open to the learned Judge to decide on the same and the matter is left to the discretion of His Lordship. We do not say anything on that. There shall be no order as to costs. Consequently, M.P. No. 1 of 2008 is closed.