

Koutons Retail India Ltd. Vs Raghunath and Another

Court: Delhi High Court

Date of Decision: Sept. 29, 2008

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Surya Kant Singhla, Sumesh Gulati and Shanto Mukherjee, for the Appellant; Nemo, for the Respondent

Judgement

Sudershan Kumar Misra, J.

The petitioner assailing the award passed by the Labour Court V, Karkadooma, Delhi in ID No. 141/2005

on 7.04.2006 whereby the respondent No. 1 was awarded reinstatement with continuity in service with full back wages at the rate of last drawn

wages of Rs. 4,500/- per month, or the minimum wages fixed for that post by the appropriate government from time to time. The petitioner has

also assailed the order dated 12.10.2006 of the Labour Court whereby the applications for setting aside the aforesaid order dated 07.04.2006

were dismissed.

2. The respondent workman was working with the petitioner management as a tailor since 25.05.1993. A dispute arose between the respondent

workman and the petitioner regarding his service conditions. On failure of the conciliation proceedings, the Secretary (Labour) Government of

NCT of Delhi vide order No. F.24(3361)/04-Lab./6001-05 dated 29.3.2005 made a reference to the Labour Court in the following terms:

Whether Sh. Mahesh Kumar S/o Sh. Potan has abandoned his services on his own or his services have been terminated illegally and/or

unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing

laws/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?

Since no written statement was filed by the management in the Labour Court despite repeated opportunities being granted for the same, its defence

was struck off on 14.02.2006. Thereafter, on 7.04.2006, on the un rebutted testimony and corroborative documents filed by the workman, the

Labour Court passed the impugned award in favour of the workman and against the petitioner management.

3. It is the petitioner's case that it had engaged counsel to defend the matter before the Labour Court. However, its counsel was negligent. He

failed to pursue the matter on behalf of the management. Its defence was struck off for non-filing of its written statement. Ultimately, due to the

negligence of its counsel, these matters came to be decided against the management. It appears that the petitioner has filed an appropriate

complaint before the Bar Council of India against that counsel for his negligence. Counsel for the petitioner management has drawn my attention to

the letters written by the petitioner to its advocate. In these letters, the petitioner has taken serious objections to the lackadaisical attitude of its

advocate.

4. According to counsel for the petitioner, the management had engaged one Mr. Pranav Kanti, Advocate , 457, Civil Wing, Tis Hazari Courts,

Delhi to represent it before the Labour Court in this matter. It is the petitioner's case that Mr. Kanti, Advocate failed to effectively pursue these

matters and was negligent. My attention has been drawn to the copies of the order sheets which, inter alia, state that on 19.10.2005 because the

written statement was not filed, a cost of Rs. 100/- was imposed. Thereafter, the matter was adjourned to 4.01.2006 and on 4.01.2006 also,

since nothing was done and the previous costs were not paid, another opportunity was given, subject to further cost of Rs. 250/-. It was also

noted that in case of failure to comply with this order, the defence of the management shall be struck off and the matter was adjourned to

14.02.2006. On 14.02.2006, neither was the cost paid nor was the written statement filed. Mr. Vivek Singh, whose presence is noted as proxy

counsel for Authorized Representative of the management, requested the court to take up the matter at 2.15 p.m. Thereafter, since there was no

appearance on behalf of the management, when the matter was taken up, its defence was struck off and the matter was posted for workman's

evidence on 2.03.2006. On 2.03.2006, it appears that there was no appearance on behalf the management at all, and as the workman was also

not present, the matter was posted for workman's evidence on 7.04.2006. The order sheet of 7.04.2006 reads,

Present Mr. Pranav Kanti with Mr. Vivek Singh AR for mgt. WW1 examined in chief. Cross taken as nil; opportunity given as Mr. Pranav Kanti

sought time for instruction. Moreover, the mgt. has no right to lead evidence as no W.S. is filed and defence of mgt. already stood struck off.

Ultimately, the award came to be passed on 7.04.2006 itself. According to the petitioner, it received the copy of this award on 26.06.2006 and

made enquiries from Mr. Pranav Kanti. It appears that consequent upon this award having been passed, Mr. Pranav Kanti, Advocate moved an

application bearing M.A. No. 63/2006 dated 11.07.2006, where he had categorically stated that the written statement drafted by the management

has already been given to Mr. Vivek Singh, Advocate, to be filed, and that the cost imposed earlier was also given to be paid to the opposite

party; but due to the negligence of Mr. Vivek Singh, this could not be done. Before this application was decided, another application seeking

amendment in the caption of the former application, was filed. However, the Labour Court dismissed the applications on 12.10.2006, on the

ground that Mr. Pranav Kanti was not the authorized representative of the management and that his authority letter was not on record.

5. The petitioner claims to have made repeated attempts to recover the records from Mr. Pranav Kanti. A letter dated 19.04.2007 was sent by

the petitioner to Mr. Kanti, wherein the petitioner has stated that its interest has been severely affected as a result of the cases entrusted to him,

being decided against the petitioner. It requested Mr. Pranav Kanti that all the remaining records and documents connected with the petitioner be

immediately sent to the petitioner so that it could engage another counsel and take appropriate remedial measures.

6. In the same context, the petitioner wrote another letter to Mr. Kanti on 15.05.2007 giving details of the cases which were being handled by Mr.

Kanti on its behalf. In that letter, the petitioner has also remonstrated with Mr. Kanti that its matters had been grossly mismanaged and that some

of the applications moved for setting aside the award passed by the Labour Court against the petitioner had themselves been dismissed in default.

The petitioner has expressed its anguish thus; "the aforesaid is a case of total negligence on your part in spite of the management paying you the

retainership charges regularly. Your negligence in the aforesaid matters goes to show your incompetence in handling the Industrial Relation matters.

It is submitted that it was your ethical duty either not to take the brief or refuse to accept the brief at the outset". This letter contains the detailed

facts pertaining to the negligence of Mr. Pranav Kanti. The letter, inter alia, expresses shock at the fact that Mr. Kanti had failed to file the written

statement. This letter has also been endorsed to the Bar Council of India for necessary action as per law. It is in these peculiar circumstances, that

the petitioner has approached this Court in September, 2007, for setting aside the impugned award and ultimately after removal of objections, the

same has been placed before the court in November, 2007.

7. According to the service report, respondent No. 1 /workman was duly served on 6.01.2008. There is, however, no appearance on behalf of

the said respondent/ workman.

8. Counsel for the petitioner urges that the petitioner management duly engaged counsel to represent its interest before the Labour Court, paid him

the fee, and issued all necessary instructions in that behalf. Unfortunately despite all this, counsel engaged by it acted in the most careless and

negligent manner. He says that once the petitioner became aware of the negligence of the counsel appointed by it, it immediately tried to take

remedial steps. It has also gone to the extent of sending intimation about the conduct of counsel to the Bar Council of India for taking necessary

steps as per law. Counsel for the petitioner states that under the circumstances, as the interest of the petitioner management has suffered for no

fault and for reasons beyond its control solely attributable to the negligence of its Advocate, the petitioner should be given liberty to defend the

case on merits before the Labour Court.

9. The counsel for the petitioner has relied on Rafiq and Another Vs. Munshilal and Another, in support of his contention that a litigant should not

be made to suffer for the inaction, deliberate omission and misdemeanor of his advocate. In that case the Supreme Court stated as follows;

3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates,

the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of

the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a

lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal

appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate

in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to

his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is not part of his job.... Even if we

do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice

delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the

default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who

did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the

inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned Advocate absented

himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the

matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted....

10. Similar observations were made by the Supreme Court in Smt. Lachi Tewari and Others Vs. Director of Land Records and Others, This

Court in Info Edge (India) Ltd. and Others Vs. Mr. Sanjeev Goyal, relying on Rafiq v. Munshilal (supra) held that,

19. This cannot be disputed that in certain circumstances, a party cannot be allowed to suffer for misdemeanor or inaction of his counsel....

11. In Sh. Sanjay Kumar v. Smt. Sita Rani Khanna IA Nos. 2143 and 13308/2006 in CS(OS) No. 1056/1998 decided on 18.09.2007 this

Court again held that,

15. ...a party who has selected his advocate, briefed him and paid his fee can remain confident that his lawyer will look after his interest and such

an innocent party who has done everything in his power and expected of him to look after his case, should not be made to suffer for inaction,

deliberate omission or misdemeanor of his counsel....

12. The Bombay High Court in Nanded Nagarpalika Dukan Vyapari Sanghatana Vs. Nanded Waghala City Municipal Corporation, whilst

observing that it is a well settled position that an innocent party, who has done everything in his power should not suffer for the inaction of or

misdemeanor of his counsel, restored the matter to its original position before the Lower Appellate Court. Similarly a Division Bench of the Andhra

Pradesh High Court in M. Sanjeeva Reddy Vs. A.P. Administrative Tribunal, Hyderabad and others, remitted the matter to the Tribunal for fresh

consideration for the reasons that the litigant should not suffer for the lapse on the part of the counsel, and should be given an opportunity of being

heard.

13. To my mind, this is also a case where the petitioner appears to have been a victim of the inaction, negligence and misdemeanor of its counsel,

who has conducted himself in a very unprofessional manner in this case. The conduct of the counsel is also clear from the observations made by the

Learned Labour Court in its orders. Furthermore, the fact remains that even though the award against the petitioner was passed in the presence of

its counsel, he did not inform his client, i.e. the petitioner, about this. Counsel for the petitioner also failed to inform his client about the fate of its

applications for setting aside the ex parte award. It is noteworthy that as soon as it came to the petitioner's knowledge that the said applications

have been dismissed, steps were taken by it to get all the relevant records of the cases from its counsel. In addition, the petitioner even filed a

complaint against its counsel with the Bar Council of India.

14. Under the circumstances, I am of the opinion that the petitioner should not be made to suffer for the inaction and negligence of the petitioner"s

counsel. It deserves to be given a fair opportunity to present and defend its case.

15. Consequently, impugned award dated 7.4.2006 and the order dated 12.10.2006 in ID No. 141/2005 is set aside, the matter is remanded to

the Labour Court for decision afresh after issuing the requisite notice to all parties and proceeding with the matter de novo from there. The Labour

Court is directed to deal with and decide the matter within six months from today.

16. The writ petition is disposed of.