

(2010) 09 DEL CK 0380

Delhi High Court

Case No: CM (M) No. 1139 of 2010 and CM No. 15983 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Sh. Rajesh Jha and Sh. Vijay

RESPONDENT

Kumar Vinayak

Date of Decision: Sept. 9, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: Pradeep Gaur, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

This petition under Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of order dated 12.8.2010, passed by Additional District Judge, Delhi.

2. Brief facts as apparent from record are that, petitioner filed a suit for recovery against respondent in 2005. Issues were framed on 13.4.2007. Thereafter, large number of opportunities were granted to the petitioner to examine its witnesses but it did not examine any witness till date as apparent from the petition nor it is mentioned in the entire petition as to what was the first date of evidence.

3. Be that as it may be, on 5.7.2010 when matter was fixed for petitioner's evidence no witness of petitioner was present nor previous cost were paid by the petitioner. It would be pertinent to point out that, even regular counsel of petitioner was not present. Under these circumstances, trial court closed the evidence of petitioner.

4. Thereafter, petitioner filed an application for recall of order dated 5.7.2010, which was dismissed by the trial court, vide the impugned order.

5. It is contended by learned Counsel for petitioner that, the trial Judge completely ignored the genuine difficulty and bonafide ground for non-appearance of the counsel and witness on 5.7.2010 when traffic in entire city was in bad shape due to Delhi/Bharat Bandh. Under these circumstances, non-appearance of petitioner and its witness was justified and impugned order is liable to be set aside.

6. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

7. Article 227 of The Constitution of India reads as under;

227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.

8. In Waryam Singh and Another Vs. Amarnath and Another, the court observed;

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

9. In Mohammed Yusuf Vs. Faij Mohammad and Others, Supreme Court held;

The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety.

10. In State of West Bengal and Others Vs. Samar Kumar Sarkar, Supreme Court held;

10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In AIR 1975 1297 (SC) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court's function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

11. In Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, Apex Court observed;

The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

12. In light of principles laid down in the above decisions, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

13. In application for recall of order dated 5.7.2010, petitioner took the plea that its witness and counsel could not reach the Court due to heavy traffic jam and Sh. Amit Kumar Pandey, Advocate informed the facts about traffic jam over telephone to Sh. Anil Kumar, Advocate and requested him to put appearance before the Court and apprise these facts to the Court.

14. Order dated 5.7.2010 read as under:

Present: Sh. Anil Kumar, proxy counsel for the plaintiff
Sh. Ravinder Rawat, Adv. for defendant No. 1.

No PW is present. Even the previous cost has not been paid by the plaintiff to the defendant.

Perusal of the record shows that on last date of hearing last and final opportunity was granted to the plaintiff to lead the evidence subject to payment of cost of Rs. 1,000/- but even today, no PW is present on behalf of plaintiff and cost is also not paid. In these circumstances, PE is, hereby, closed.

15. This order nowhere states that proxy counsel who appeared on that date, apprised the trial court that the witness and regular counsel have been stuck up in the traffic jam. These averments made in the application are clearly an after-thought as there is no mention of any such request or information given to the trial court, on 5.7.2010.

16. Now coming to the impugned order, it read as under:

Present: Sh. Amit Kumar Pandey, Adv. for the plaintiff
Sh. Ravinder Rawat Adv. for defendant No. 1
Sh. Rakesh Kumar Adv. for defendant No. 2

The counsel for the plaintiff has filed an application u/s 151 CPC for recalling of the order dated 5.7.2010, on 14.7.2010. Copies of the same have already been supplied to the counsels for defendants. The counsels for the defendants have stated that they do not want to file any reply to the present application. Arguments on the present application are heard.

Perusal of the case file shows that the issues in the present suit were framed on 13.4.2007 and thereafter, a large number of opportunities were granted to the plaintiff to examine the witnesses but still the counsel for the plaintiff has failed to examine his witnesses. Even on several dates, the costs were imposed upon the plaintiff. On 20.1.2010, last and final opportunity was granted to the plaintiff for 5.4.2010 and again on 5.4.2010, the matter was adjourned for 5.7.2010 as last and final opportunity subject to imposition of cost of Rs. 1,000/-. Even, on 5.7.2010, no PW was present.

Perusal of the record further shows that the Ld. Counsel for the plaintiff has taken false defence in his application which is contrary to the record. In these circumstances, I do not find any merit in the application and therefore, the same is,

hereby, dismissed.

17. Above order clearly shows that issues in this case were framed on 13.4.2007 and thereafter, large number of opportunities were granted to the petitioner to examine its witnesses, but still counsel for petitioner failed to examine any witness. Even on several dates costs were imposed upon petitioner. On 20.1.2010 last and final opportunity was granted to the petitioner and matter was adjourned for 5.4.2010. Again on 5.4.2010, matter was adjourned for 5.7.2010 by giving last and final opportunity, subject to imposition of cost of Rs. 1,000/- . Even cost were not paid by the petitioner. Trial court rightly observed in its order that petitioner has taken false defence in its application which is contrary to the record.

18. Petitioner, being a Public Sector Undertaking is conducting its case before the trial court, in a very casual and negligent manner. Suit of petitioner is pending trial since 2005. During last 5 years, petitioner has not examined even a single witness which itself speaks for the conduct and gross negligence on the part of petitioner.

19. Time and again, courts have been expressing their displeasure at the Government's/Public Sector Undertaking Conduct in not pursuing litigation in a meaningful manner and thus indulges in mindless litigation and unnecessarily waste the time of Court and public exchequer. These Undertakings, though having large number of legal personnel under their employment, do not take their cases seriously after filing them in the Court and do not pursue them in right earnest.

20. Petitioner has been pursuing this suit for recovery in a very casual and negligent manner and has caused great loss to the exchequer. No leniency should be shown to such litigant who in order to cover up their own inefficiency and negligent act file frivolous application and cause obstruction in the administration of justice.

21. Since, there is no illegality, infirmity or irrationality in the impugned order passed by the trial court, present petition being meritless, is hereby dismissed with costs of Rs. 10,000/- (Ten thousand only).

22. Petitioner is directed to deposit the costs with Registrar General of this Court by way of cross cheque, within four weeks from today.

CM No. 15983/2010 (stay)

23. Dismissed.

24. List for compliance on 20th October, 2010.