

(2014) 10 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : CMP (M) No. 774 of 2014

Asha

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Land Acquisition Act, 1894 — Section 11A

Citation : (2014) 10 SHI CK 0023

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : K.D. Sood, Senior Advocate and Sanjeev Sood, Advocate for the Appellant; Bhupender Gupta, Senior Advocate and Neeraj Gupta, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The applicants have sought condonation of 121 days delay in filing of revision petition on the ground that they had preferred a revision petition on 28.5.2014 against the judgment of the appellate court dated 22.10.2013. Earlier the case was being pursued by Sh. Naresh Kumar, who died on 30.11.2012 and after his death the matter was being pursued by Sh. Rajinder Kumar, who met with a road accident at Solan in January 2014 and was hospitalized in Zonal Hospital, Solan and later at his home. He inquired from his counsel Sh. Rajiv Garg about the hearing of the appeal and was informed that the same had been dismissed. He accordingly, applied for copy of the judgment through another counsel on 25.2.2014, which was taken by Sh. Sudhir Thakur, Advocate on 4.3.2014. However, the copy of the judgment was not received by the petitioners. It is then alleged that the house and business premises were earlier with Naresh Kumar and now petitioners No. 1 to 5 are occupying the same and petitioners No. 6 to 8 who are real brothers of Naresh Kumar could not pursue the matter as the petitioners Asha Devi and Ajay Kumar subsequently got copy of judgment from Sh. Sudhir Thakur, Advocate, but because of ill health of Asha Devi the revision against the order of Rent Controller, Solan dated

23.6.2012 affirmed in appeal on 22.10.2013 could not be preferred earlier.

2. It is also averred that petitioners No. 1 to 5 are residing in the premises in dispute and also carrying on business. It is also averred that Asha Devi has not been keeping well and for the said reason the copy of the judgment which had been given to her could not be brought to the notice of other petitioners, thereby preventing the filing of revision petition within the prescribed period of limitation. As soon as the factum of the case having been decided against the petitioners came to the notice of Ajay Kumar, he collected the copy of judgment under revision and after taking legal advice preferred the present revision petition.

3. The respondents filed reply to this application, wherein it was claimed that contents of the petition were an afterthought and lame excuses were being made to cover up the negligence with a sole view to create a false ground for condoning the delay in filing the revision petition. It was averred that the stand taken by the petitioners was falsified from the fact that all the four brothers, who were respondents in the eviction petition, not only reside at Solan, but also carrying on business. Therefore, it is not permissible for the tenants-petitioners to allege that it was only Naresh Kumar, who alone was pursuing the matter. The factum of death of Naresh Kumar is not disputed, but it is emphatically denied that Rajinder Kumar allegedly met with a road accident in January 2014, since no medical records had been annexed with the application in support of such contention. It is also claimed that ground taken by the petitioners that after the death of Naresh Kumar, the matter was being pursued by Rajinder Kumar, could not be accepted as the appeal before the learned appellate court was filed on behalf of all the four brothers and there was no explanation why the other two brothers could not pursue the matter when it was within their knowledge. It is then claimed that falsity of the claim of the tenants-petitioners is apparent from the fact when one of the petitioners alleged to have contacted his counsel for obtaining the copy then where was the necessity of engaging another counsel especially when the matter stood finally disposed of. It was also denied that Asha Devi was not keeping good health. Lastly, it was alleged that the allegations made by Ajay Kumar are false and nothing more than cooked up bull story.

4. In rejoinder to reply, the petitioners claimed that after the death of Naresh Kumar, Sh. Rajinder Kumar had been pursuing the matter, but he met with a road accident in Solan in January 2014. It was also submitted that Asha Devi and Ajay Kumar got copy of the judgment, but because of ill health of Asha Devi, the matter could not be pursued, while on the other hand, Sh. Ajay Kumar was busy with the treatment of his mother Asha Devi and therefore, he too could not file the appeal.

I have heard the learned counsel for the parties and gone through the records of the case.

5. The petitioners in support of their contention that Rajinder Kumar who had been pursuing the case met with a road accident in January 2014 have annexed

certificate Annexure A-1. Now in case this certificate is seen minutely it shows that the same bears the date 5.2.2013, while another certificate has also been annexed which is dated 16.3.2013, on which dates admittedly the proceedings were pending adjudication before the learned District Judge, who decided the same on 22.10.2013. The averments made by the applicants in this application coupled with the documents particularly Annexure A-1 shows that entirely a false claim has been set up by the applicants. Once the claim of the petitioners is found to be false, the same is sufficient to deny relief to them.

6. In CMP(M) No. 834 of 2014 titled Parju Ram vs. Bhag Singh, decided on 9.10.2014 while dealing with the similar case regarding condonation of delay in filing of the appeal wherein like in the present case the applicant had resorted to falsehood in the application, this court held as follows:-

"5. At the out set it may be observed that applicant is guilty of suppressio veri suggestio falsi because the applicant has not stated the truth and when confronted with the truth in rejoinder to the reply has invented stories which he expects this court to believe. It is settled law that a party who seeks to avail the jurisdiction of the court must come to the court with clean hands. His conduct plays an important role in the matter of exercise of discretionary jurisdiction by a court of law. A person whose case is based on falsehood has no right to approach the court and he can be thrown out at any stage of the litigation. The applicant cannot be permitted to abuse the process of the court. Save and except age by his side, the applicant on account of the falsity of his claim has nothing to fall back upon. But even age in this case can be of no help or assistance to the applicant as this would not only be a bad precedent but would also amount to granting premium to dishonesty. It cannot be denied that grant of relief apart from law on the subject is also governed by principles of "justice, equity and good conscience" and it is the duty of the court of equity to prevent legal fraud and the Court is expected to do justice by promoting honesty and good faith as far as it lies within its power. Therefore, it is all the more incumbent for the party seeking relief and equity that he must come to the court with clean hands."

7. This court is not oblivious to the fact that in matters of delay an extremely liberal and justice oriented approach has to be adopted but then can any indulgence be shown in favour of a party who has not approached the court with clean hands. It cannot be disputed that applicants have sought to abuse the process of law by resorting to falsehood and misrepresentation, which are required to be viewed very seriously by this court. The position of law has been succinctly dealt with by the Hon''ble Supreme Court in Dalip Singh Vs. State of U.P. and Others, in the following terms:-

"1. For many centuries, Indian society cherished two basic values of life i.e., "Satya" (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the

Courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the Court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order, to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In Hari Narain Vs. Badri Das, , this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, , the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

"2... Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material

facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

6. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Court held that where a preliminary decree was obtained by withholding an important document from the Court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. Vs. State Bank of India*, , it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a Court of law, but is also a Court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, LJ. in *R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become impossible."

8. In *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

9. In *Sunil Poddar and Others Vs. Union Bank of India*, , the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court, will non-suit him on the ground of contumacious conduct.

10. In K.D. Sharma Vs. Steel Authority of India Ltd. and Others, , the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree and Others Vs. Bhagwandas S. Patel and Others, ."

8. That apart it would be seen that there are as many as eight petitioners in this case and that too all of them are residents of Solan bazar where the trial and appellate court are situate and yet none of them cared to collect the certified copy of judgment, which was available at a stone-throw. This only establishes lethargy, negligence, intentional inaction on the part of the applicants in pursuing the petition, which inaction on the part of the applicants by no stretch of imagination can be termed to be a good ground for condoning the delay in filing the petition beyond the prescribed period of limitation. The petitioners were required to establish that they were not negligent or guilty of "inaction" and had exercised "due diligence" but despite this, the delay had occurred and having failed to do so, no indulgence can be shown in their favour.

9. For all the reasons aforesaid, there is no cause much-less sufficient cause disclosed by the applicants, which prevented them from filing the revision petition within the prescribed period of limitation. Further, since the applicants have resorted to falsehood and abuse the process of court by deceiving it, this application is dismissed and consequently even the revision petition is dismissed.