
(2010) 08 DEL CK 0122

In the Delhi High Court

Case No : CM (M) No. 1055 of 2010 and CM No. 14779 of 2010

Delhi Jal Board

APPELLANT

Vs

Sh. Devender Singh Sole Proprietor Jagat Singh Contractor

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 227

Citation : (2010) 08 DEL CK 0122

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : D.P. Kaushik, 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 by petitioner for setting aside order dated 30th January, 2010 passed by Additional District Judge, Delhi.

2. Vide impugned order, learned trial court dismissed the application of petitioner u/s 114 read with Order 47 Rule 1 of CPC (for short as "Code"), for review of order dated 19.9.2009.

3. Respondent herein, had filed a suit for recovery of Rs. 5,81,655/against petitioner in year 2008, which is pending in the trial court.

4. On 19.9.2009 the matter was listed before the trial court for filing of replication, admission/denial of documents and for settlement of issues. No authorized representative of the petitioner was present in the Court on that day for admission/denial of the documents filed by the respondent along with the plaint and accordingly the matter was adjourned to 16.11.2009 for admission/denial of documents and framing of issues.

5. It is contended by learned Counsel for petitioner that on 19.9.2009, two

officers of the petitioner appeared in the Court despite the fact that their presence was not needed as the petitioner was to press for rejection of the plaint.

6. It is further contended that on the first call, counsel for petitioner was in the High Court and in his absence, officers of the petitioner sought a pass over. Respondent made up the deficiency in furnishing of a duplicate copy of the plaint and deficient papers.

7. On the next call, petitioner's counsel accompanied by the aforesaid two officers appeared before the Court. The trial court asked petitioner's counsel to carry out admission/denial of the documents. Petitioner's counsel submitted that there could be no admission/denial of the documents as in the written statement petitioner, has set up a case for rejection/dismissal of the plaint and prayed for rejection/dismissal of the plaint. Respondent counsel did not offer even slightest opposition to petitioner's case for rejection of the plaint.

8. After hearing, learned trial court passed order dated 19.9.2009 in breach/disregard of fundamental canons of adjudication and thereby grave injustice has been caused to the petitioner. Thereafter, petitioner filed an application for review, which was wrongly dismissed by the trial court. Hence this petition.

9. 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.

10. 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.

11. In light of principles laid down in the above decision, 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.

12. At the outset, it may be pointed out that facts mentioned in the present petition are against the record. In order dated 19.9.2009, it is nowhere stated that two officers of the petitioner were present in the Court on that day.

13. In the present petition, the petitioner has nowhere mentioned the name of those two officers, who were present in the trial court on 19.9.2009 nor their affidavit to this effect have been filed that though they were present in the Court on 19.9.2009 but their presence was not recorded. Moreover, petitioner has not filed any documents to show that those officers were duly authorized by the petitioner to represent the petitioner in the Court.

14. Petitioner in the present petition has made absolutely false, wrong and baseless allegations against the trial Judge and has tried to malign him.

15. In this regard order dated 19.9.2009 of the trial court is reproduced as under:
19.09.2009

Present: Sh. R.K. Bachchan Adv. for plaintiff Sh. D.P. Kaushik, Adv. for defendant The authorized representative of the defendant is not present in the court for admission/denial of documents filed by the plaintiff alongwith the plaint. It has been submitted by the counsel for defendant that the plaint does not mention the documents as "Annexures" and therefore, the defendant cannot admit or deny the documents. He has further stated that the documents have to be mentioned specifically in the plaint as "Annexures" and only then, the defendant can admit or deny the documents.

The counsel for the defendant has also prayed for framing of a preliminary issue regarding the non-maintainability of the plaint because the documents filed by the plaintiff alongwith the plaint are not mentioned as "Annexures" in the plaint.

I am not inclined to accept the submissions of the counsel for defendant to frame the preliminary issue regarding the maintainability of the present suit only on the ground that the documents, filed by the plaintiff, have not been mentioned as "Annexures" in the plaint. It is admitted by the counsel for the defendant that the copies of all the documents filed by the plaintiff alongwith the plaint have already been supplied to him and therefore, I find no reason or any substance in the objections of the Ld. Counsel for defendant that the plaintiff has to mention all the documents as "Annexures" and only then the defendant can admit or deny those documents and therefore, the suit of the plaintiff is not maintainable unless the documents are mentioned as "Annexures" in the plaint.

Adjourned for admission/denial of documents and framing of issues on 16.11.2009.

The plaintiff and AR of the defendant shall appear in person before the court on the next date of hearing for the purpose of admission/denial of documents.

16. Bare reading of above order shows that no authorized representative of the petitioner was present in the Court on 19.9.2009.

17. Thereafter, application filed by petitioner for review of order dated 19.9.2009, was rightly dismissed by the trial court, making following observations:

Perusal of the record shows that vide order dated 19.9.09 the request of the counsel for the defendant for framing of a preliminary issue regarding the maintainability of the present suit was rejected, and on 19.9.2009 the authorized representative of the defendant was not present in the Court to admit or deny the documents filed by the plaintiff. A false plea has been taken by the counsel for the defendant in the present application that the authorized representative of the defendant was present in person for admission and denial of the documents. The specific noting in this regard has been done by this Court in the order dated

19.9.2009. It appears that the Id. counsel for the defendant has levelled false allegations about the presence of the authorized representative of the defendant before this Court on 19.9.2009, only at the instance of the authorized representative of the defendant. There was no occasion for the court for not recording the presence of the authorized representative of the defendants if he was present before the court on 19.9.2009. On the contrary this Court has specifically noted down their absence in the order dated 19.9.2009.

10. Perusal of the record further shows that the Id. Counsel for the defendant has failed to disclose any material discrepancy or any error apparent on the face of the record and has also failed to disclose any illegality in the order dated 19.9.2009, which necessitates the review or modification or recalling of the said order. It appears that the present application has been moved only to delay the present proceedings. Id. Counsel for the defendant has also failed to disclose any sufficient reason for which the order dated 19.9.2009 may be reviewed.

18. Since, none of the authorized representatives (whose name have not been disclosed even in the present petition) was present in the trial court on 19.9.2009, the trial court rightly dismissed the application for review filed by petitioner. As such there is no illegality, infirmity in the impugned order.

19. Present petition which is most bogus, false and frivolous one is liable to be dismissed with heavy costs, since petitioner has made absolutely false and baseless allegations against the trial Judge, in order to cover up its own fault.

20. It is well settled that frivolous and bogus petitions levelling false allegations against trial court Judges should be dealt with heavy hands. No leniency should be shown to such type of litigants, who in order to cover up their own fault and negligence, try to level false allegations against the courts.

21. It is a well known fact that the courts across the country are saddled with large number of cases and Government Undertakings indulgences further burden them. The courts have been expressing their displeasure at the Government compulsive litigation habit. Rise in litigation is also due to the fact that Government Undertakings such as the petitioner, having large number of legal personnel under their employment do not examine the cases properly and approaches the Courts by filing mindless and frivolous litigation.

22. Since petitioner, which is Government Undertaking had already filed review petition before the trial court and which was rightly dismissed, has chosen to come to this Court without any legal basis and has just made baseless allegations against the trial court Judge.

23. Under these circumstances, present petition which is meritless, bogus, most frivolous one is not maintainable under Article 227 of Constitution of India and same is hereby dismissed with costs of Rs. 50,000/- (Fifty thousand only).

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

25. Meanwhile, petitioner shall recover the cost amount from the salaries of delinquent officials who has been pursuing this meritless and frivolous litigation with the sole aim of wasting the public exchequer. Affidavit giving details of the officials from whose salary the costs have been recovered, be also filed within four weeks.

CM No. 14779/2010 (stay)

26. Dismissed.

27. List for compliance on 28th September, 2010.