
(2006) 12 DEL CK 0115
In the Delhi High Court
Case No : WP (C) No. 1478 of 1997

Kamal Sahdev

APPELLANT

Vs

Ashok Kumar and Others

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Evidence Act, 1872 — Section 114
Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 12 DEL CK 0115

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Raj Birbal and Atul Batra, for the Appellant; K.K. Aggarwal, V.K. Tandon and Parul Sharma, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 23.8.1985 in ID No. 92/84 whereby the Labour Court directed the petitioner to reinstate the respondent with full back wages.

2. It is submitted by the petitioner that the respondent obtained an ex parte award against the petitioner by concealment of facts and by filing a false and frivolous statement of claim. The respondent obtained the award against Bharat Dealers, 60 Okhla Industrial Estate, New Delhi whereas the respondent had in fact worked with the petitioner's firm National Refrigeration Industries for the period 1981-82 and after voluntarily leaving the petitioner's firm, he sought employment with Punj Sons. He was employed by Punj Sons and he went abroad on an assignment given to him by Punj Sons. He concealed all these facts and obtained award that he be reinstated with full back wages.

3. In the counter filed by the respondent the respondent took the stand that the writ petition was time barred as the award has become enforceable. The petitioner had not challenged the finding of the order dated 14.11.95 whereby

the application of the petitioner for setting aside the ex parte award was dismissed on merits. The petitioner was the owner of Bharat Dealers and the respondent had worked with the petitioner i.e. Bharat Dealers on monthly salary of Rs. 700/- per month. Mr. Kamal Sehdev was the proprietor of M/s Bharat Dealers, M/s National Refrigeration Industries and Trikuta Cooling(P) Ltd. All the three firms were having their registered office at 3, Netaji Subash Marg and Factory at 60, Okhla Industrial Estate. He denied that he had left the services on his own accord. He submitted that the petitioner had intentionally avoided the appearance before the Labour Court despite receipts of the summons and the Labour Court rightly proceeded ex parte against the petitioner and passed the award. He did not respond to Para-13 of the writ petition and did not deny about the specific averments made in para-13 of the writ petition that he had worked with the petitioner only in the year 1981-82 and thereafter he took employment with Punj Sons. His counter is silent about his taking employment with Punj & Sons or going abroad.

4. During the pendency of the writ petition, when the arguments on the application u/s 17-B of the Industrial Disputes Act were being heard, the petitioner produced the documentary proof about the respondent having gone to Kuwait soon after leaving the services of the petitioner under a contract of service entered into between the respondent and Punj Sons. The petitioner placed on record the contract of service and other documents entered into between the respondent and Punj Sons and also moved an application u/s 340 Cr.P.C. for purgery.

5. After these documents coming on record, the respondent was asked to produce his passport by this Court and other documents. The respondent then admitted that he had worked in Kuwait from October, 1983 to June, 1984 and filed an affidavit to this effect with photocopy of the passport.

6. A perusal of the statement of claim filed by the respondent before the Labour Court and perusal of the award would show that the respondent had taken the stand before the Labour Court that he was terminated from services on 28.8.1983 and despite his best efforts to get job anywhere, he could not get job and remained totally unemployed. On the basis of these averments in the statement of claim and the affidavit to the same effect, filed by the respondent the Labour Court passed an ex parte award against the petitioner. Now it has been admitted by the respondent during pendency of these proceedings that he had gone to Kuwait on contract with Punj Sons. He left India on 8th October, 1983.

7. The petitioner has placed on record the documents showing that the respondent had applied in Punj & Sons in July, 1983 and he entered into a service contract with Punj & Sons on 4th October, 1983 for going to Kuwait and in the application made to Punj & Sons, he had categorically stated that he had worked with National Refrigerators during 1981 and 1982 @ Rs. 700 per month. He left India for Kuwait on 8th October, 1983 under a contract for 11 months at a

salary of Rs. 400+70 Kuwaiti Dinars with M/s In Eng. Company Kuwait. In his affidavit, the respondent admitted that he remained in Kuwait up from 8.10.1983 to 6.6.1984 and worked there for this period under a contract.

8. It is thus clear that the respondent did not approach the Labour Court with clean hands. He concealed from the Labour Court the material facts having bearing on the case. He concealed that he had entered into a contract of service with Punj & sons for being employed with M/s IN Engineering Company, Kuwait and had left for Kuwait on 8th October, 1983 for a period of 11 months on a better and handsome salary from what he had been getting earlier. In order to go for Kuwait, he must have obtained passport, visa and also appeared for the interview before the Recruitment Agent. In 1980's, the recruitment agents used to initiate the process of recruitment by inviting such workers and taking interviews. After they found a person fit for trade or work, the person was asked to obtain passport, apply for visa etc. He used to be given tentative service contract to help obtain passport and visa. He could fly to Middle East Countries only after completion of formalities. The respondent had applied with Punj & Sons in July, 1983 when he was in service with the petitioner. He left the services because he had already decided and planned to fly to Kuwait. But he took a false plea of termination of his services. He made M/s Bharat Dealers as the respondent/management whereas in his application with Punj & Sons he specifically mentioned that he had worked with M/s National Refrigerators during the year 1981-82. In his claim before the Labour Court he claimed that he worked with Bharat Dealers. In his statement of claim and affidavit, he stated that he had been unemployed throughout whereas he had left the employment of the petitioner and gone to Kuwait on a lucrative salary and job. He thus played fraud with the court and obtained an award by concealment of facts and not disclosing the material facts and played fraud. In Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, the Supreme Court held:

...Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of the plot No. 134 . We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. it is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold, from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi 44 Ind App 98 : AIR 1971 PC 6 Lord Shaw observed as follows:

A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its

decision. With regard to third parties, this may be right enough—they have no responsibility for the conduct of the suit, but with regard to the parties to the suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to reply upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.

This passage was cited with approval by this Court in a recent decision, - *Biltu Ram v. Jainandan Prasad* Civil Appeal No. 941 of 1965, D/- 15-41968(SC). In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in *Mt. Bilas Kunwar v. Desraj Ranjit Singh* 42 Ind App. 202 : AIR 1915 PC 96:

But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents.

6. But Shah, J., Speaking for the Court, stated:

The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with illustration (g) of Section 114 of the Evidence Act, and also an impressive body of authority.

9. The plea of the respondent that he was not supposed to disclose about his going to Kuwait must fail. The other plea that he remained unemployed after coming from Kuwait has no relevance because he left the services of the petitioner for better service and he could not claim any reinstatement or wages from the petitioner if he remained unemployed on leaving job with another employer. He concealed all these material facts from the Court which had bearing on the case. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, Supreme Court observed:

The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances, of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence." The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clear hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders,

bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered released deed(Exhibit B-15) in favor of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the court as well as on the opposite party.

10. I consider that the award was obtained by the respondent by playing fraud and concealment of facts upon the Court. The respondent was supposed to come to Court with clean hands and disclose to the court all relevant facts in statement of claim and affidavit of evidence. An award obtained by practicing fraud is a non est award. Fraud vitiates the orders and avoids all judicial acts. An award obtained by concealment of material facts is a nullity and does not bind the parties.

11. The writ petition is allowed. The award is hereby set aside. However, I consider that looking into the facts and circumstance, the respondent need not be proceeded for purgery, although it is a clear case of purgery. The application of the respondent u/s 17-B of the Industrial Disputes Act is also dismissed since the award was null and void ab initio. No orders as to costs.