
(1994) 08 DEL CK 0033

In the Delhi High Court

Case No : C.Ms. 6294/91 and 1648/92 in C.W.P. 444/89

Lalit Mohan Puri

APPELLANT

Vs

Pure Drinks (New Delhi) Ltd., New Delhi

RESPONDENT

Date of Decision : 19-08-1994

Acts Referred:

Citation : AIR 1995 Delhi 172 : (1994) RLR 483

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. N.B. Shetty and Ravikesh Sinha, for the Appellant; Dr. Anand Prakash and Samir Prakash, for the Respondent

Judgement

D. K. Jain, J.—By these two applications made under O.9, R. 13 read with S. 151 of the Civil P. C. first being main and the other styled as supplementary application, the respondent-management seeks setting aside of ex parte judgment delivered on Oct. 30, 1991 whereby petitioner-workman's writ petition under Art. 226 of the Constitution, assailing the award dt. Oct. 29, 1988 given by the Labour Court against him and seeking its reversal was allowed, the award was set aside and it was held that the petitioner was entitled to re-instatement with all back wages and other consequential benefits.

2. The grounds taken up in the two applications, seeking recalling of the impugned judgment dt. Oct. 30, 1991, succinctly stated, are:-- (i) that the matter used to be Shown on the list of DB-VII but suddenly appears to have been transferred from DB-VII to DB-V from Oct. 28, 1991 onwards, which fact was not noticed by Gopal Singh, the Court clerk of Dr. Anand Prakash, Sr. Adv. whose duty was to scrutinise cause list and inform about the listing of the cases to Dr. Anand Prakash as well as to Mr. Samir Prakash, the advocate on record of the respondent; (ii) that at any rate there has been no lapse on the part of the applicant-management who had been defending the case diligently before the Labour Court and in the High Court and had entrusted the matter to the counsel for being pursued and prosecuted on their behalf; it should not be penalised for

the lapse of the counsel; and (iii) the petitioner had been guilty of making various false statements, concealing material facts and correspondence.

3. In support of their stand, the applicant management has filed affidavits of Gopal Singh, counsel's clerk, Mr. M. S. Chaudhary, the Deputy Personnel Manager of the respondent company, Mr. Samir Prakash, Advocate and Dr. Anand Prakash who generally support the averments in the two applications. The applications are resisted by the petitioner, mainly on the technical ground that an application under Order 9, Rule 13 read with Sec. 151, CPC is not maintainable as the respondent-management had entered appearance; had filed counter-affidavit; at the stage of admission it was represented and, Therefore, proceedings against it were not ex parte. Other pleas in the applications are generally denied.

4. We have heard learned counsel for the parties. It appears to us that the case was for final hearing on the board of DB-VII till Oct. 27, 1991 and then appeared on the board of DB-V from Oct. 28, 1991 onwards. The title of the case and the names of the counsel were correctly shown in the cause list and the case continued to be listed on the board of DB-V on Oct. 29, 1991 and Oct. 30, 1991. On the last mentioned date when the case was heard there was no appearance on behalf of the respondent. After hearing counsel for the petitioner the impugned judgment was delivered. Due to their own negligence and carelessness, the office of Dr. Anand Prakash failed to notice the case on the cause list. The plea that normally Benches change twice in a year and a sudden transfer of this case from one Bench to another led to this mishap has no force. There is no rule that transfer of a case from one Bench to another can take place only at the time of change in roster. It is the duty of the party or his counsel to keep a track of the case by scrutinising the cause list diligently. Admittedly, the office of the counsel failed to do so. As such there seems to be no sufficient cause for non-appearance of the counsel for the respondent on Oct. 30, 1991. However, it was contended by Dr. Anand Prakash, learned counsel for the respondent that though there was negligence on the part of his office in not keeping track of the case but the non-appearance of the counsel was not deliberate or with ulterior motive and in any case, his clients should not be made to suffer on account of negligence on the part of his office. In support reliance is placed on a judgment of this Court in *Bank of India v. M/s. Mehta Brothers* AIR 1991 Delhi 194, in which it was observed that if it is shown that the party has done everything possible for the conduct of the case by engaging a lawyer and giving instructions it cannot be denied justice on account of the negligence of its lawyer.

5. The laid judgment was based on two judgments of the Supreme Court in *Rafiq and Another Vs. Munshilal and Another*, and *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, . In *Rafiq's* case while considering the question of restoration of appeal which was dismissed in default on account of non-appearance of the lawyer of the party, the Supreme Court held that it is not proper that the party should suffer for the inaction, deliberate omission or

misdemeanour of his agent i.e. his lawyer.

6. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (supra) the Supreme Court observed that it had been making justifiably liberal approach with reference to the expression "sufficient cause" and held that the expression is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice, that being the life purpose for the existence of the institutions of the courts.

7. In a recent pronouncement of the Supreme Court in *Salil Dutta Vs. T.M. and M.C. Private Ltd.*, , the Supreme Court has held that though in certain situations, the Court may, in the interests of justice, set aside a dismissal order or an ex parte decree not with - standing the negligence and or misdemeanour of the advocate where it finds that client was innocent litigant but there is no such absolute rule that a party can disown its advocate any, time and seek relief. The Supreme Court has observed that the observations made in *Rafiq's case* (supra) must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

8. In the affidavit filed by Mr. Samir Prakash, counsel for the respondent with the supplementary application, it is stated that the officials of the respondent had been diligently prosecuting the case; the mistake had occurred due to fault of the office of the counsel and not for any fault of the party. It is a categorical statement by the counsel for the respondent on affidavit which is similarly supported by counsel's office clerk Gopal Singh and no material to the contrary having been brought on the record by the petitioner, there is no reason to disbelieve it. It is a case of lapse on the part of the counsel and his office.

9. *Salil Dutta's case* (supra) related to proceedings in a suit, where the presence of the party may be essential/ needed for recording the statement before issues, admission and denial of documents and evidence at the trial, which tasks can best be performed by the party itself. In an appeal or writ proceedings the personal appearance of the party is not necessary and after engaging and briefing a counsel, a party can justifiably trust that the advocate would safeguard his interest in the best possible way. In the circumstances we feel that the applicant respondent should not suffer for no fault of theirs, which is attributable to the office of their counsel.

10. We are satisfied that there was no default on the part of the applicant-respondent for their non-appearance in Court when the case was called for hearing and they should not be made to suffer for the negligence of the office of the counsel. The ex parte judgment has, Therefore, to be recalled. The objection taken by the petitioner to the maintainability of the present applications under O. 9, R. 13 read with S. 151, CPC is hypertechnical and cannot be accepted in writ proceedings. We also notice that recalling the impugned judgment would mean setting back the clock by almost three years for which the writ petitioner should be adequately compensated.

11. Consequently the applications are allowed: the judgment dated October 30, 1991 is set aside and the writ petition is restored to its original number for disposal, subject, however, to payment of costs, which we quantify at Rs. (sic)

12. Applications allowed.