
(1998) 05 GAU CK 0033
In the Gauhati High Court
Case No : M.A.F. No. 40 of 1998

Matadin Mour

APPELLANT

Vs

Prahlad Kr. Mour

RESPONDENT

Date of Decision : 22-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 43 Rule 1, Order 9 Rule 13, 151

Citation : (1998) 2 GLT 193

Hon'ble Judges : V.D. Gyani, Acting C.J.; H.K.K. Singh, J

Bench : Division Bench

Advocate : S.S. Sarma and D.K. Bhatra, for the Appellant; S.P. Roy, S.N. Debnath and C. Borah, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, Actg. C.J.

1. This appeal filed on 9.2.98 under Order 43, Rule 1(d) CPC is directed against the judgment and order dated 24.2.97, passed by Additional District Judge, Kamrup, Guwahati in Misc. Case No. 71/91, arising out of Probate Misc. Case No. 339/88, therefore rejecting the petition under Order 9, Rule 13, read with Section 151 CPC for setting aside an ex-parte order dated 4.4.89 passed in the foresaid Probate case.

2. This appeal was admitted for hearing on 3.3.98, when notices were directed to be issued an interim order was also passed with direction to Appellants counsel to serve by registered post, copies of the appeal memo, application for injunction and also by hand to learned Counsel who appeared for the Respondent before the lower Court. Accordingly on 17.3.98 Mr. Roy, for the Respondent prayed for time till 23.3.98, when the counsel for the Appellant sought some time in view of the bulky reply filed by the Respondent and secondly it was submitted that some allegations have been made against the learned Counsel appearing for the Appellant and in support of the allegations the copying application No. 176/97

has been filed by the Respondent as Annexure-13. Appellant filed an affidavit which the Respondent wanted to controvert for which time was prayed and granted.

3. In view of the allegations of interplotations made in the copying application for copy, its date of receipt tampering with record, trial Court's record was requisitioned. The record of the copying section makes some shocking revelations. There is tampering with record, it is full of interpolations at places mentioning date and these interpolations, were made solely with a view to gain time, which had already run out for filing an appeal. Merits apart, we have confined the hearing to the question of limitation.

4. Admittedly, the impugned order was passed on 24.2.97, The application for obtaining certified copy of the impugned order was made on 6.3.97, on the same day requisits were notified and supplied by the Appellant on 29.3.97 while the copy was ready for delivery on 28.1.98 and delivered on 5.2.98, and the present appeal has been filed on 9.2.98 along with an application for injunction. It is significant to note that there is no mention about the delay, much less and explanation as to why it took almost 13 months for obtaining the certified copy of the impugned order dated 24.2.97. The Respondent in his application for vacating the stay order has alleged that the Appellant managed the Ministerial staff of the Copying Section of the Court of District Judge, Kamrup. In this connection Rule 497 of the Civil Rules and Orders may be referred. If the requisits and folios are not filed within 3 days of the notification in the prescribed manner, copying application is liable to be rejected. In the instant case the requisits were supplied on 29.3.97 while the application was made ready on 6.3.97. Rule 501, 511, 512 and 513 governed the preparation of certified copies, the comparison thereof and finally the delivery of certified copy applied for. The Respondent in his application for vacating the stay registered as Misc. Case No. 79 of 1998 has averred as follows:

That it is submitted respectfully that the OP/Respondent and/or his learned Counsels have tempered with the certified copy of the order dated 24.2.97 passed by the learned Additional District Judge, Kamrup, Guwahati and in fact Shri D.K. Bhatra had received the certified copy of the impugned order dated 24.2.97 on 26.3.97. But the certified copy as filed by the OP/Respondent in this Hon'ble Court shows that the certified copy was delivered to Shri D.K. Bhatra, Advocate for the OP/Respondent on 5.2.98. The certified copy of the impugned order dated 24.2.97 also shows that the copy was received by Shri D.K. Bhatra on 26.3.97, which clearly means beyond reasonable doubt that either the OP/Respondent or his learned Counsels have tempered with the judicial records and Changed the dates and inserted the dates as 28.1.98 showing that the copy was ready for delivery only on 28.1.98 and Shri D.K. Bhatra, Advocate of the OP/Respondent had received the copy on 5.2.98. But in fact Shri D.K. Bhatra had received the certified copy of the impugned order dated 24.2.97 on 26.3.97 and this is duly endorsed over the copy petition No. 176/97 wherein the Copy Section

had clearly mentioned that Shri D.K. Bhatra had received the certified copy on 26.3.97 and Shri D.K. Bhatra had put his signature on 26.3.97 stating that he had received the certified copy on that day.

The tempering and forgery is writ large on the face of the record and the conduct of the OP/Respondent and his counsels is unheard, unparallel and they have dared to temper with the judicial records just to save the limitation for filing the present appeal, which shows that the OP/Respondent did not approach this Hon'ble Court with clean hands and mal-practitioners should be taught a lesson so that other such persons should learn a lesson and desist themselves from indulging in such nefarious activities. And on this account only the appeal as well as the injunction petition are liable to be rejected.

A photocopy of the certified copy of the application has been filed as Annexure-13 being copy petition No. 176 of 1997.

5. Replying to the allegations made by the Respondent in his application for vacating the stay, the Advocate in his affidavit dated 25.3.98 stated as follows:

That as regards the allegations made in para 42, I deny that the Appellant and/or his counsels did not temper with the certified copy of the order dated 24.2.97. I state that my senior had no occasion to temper with the certified copy nor it was tempered by me. We had no need or occasion to temper with the copy and we do not indulge into such nefarious activities. It is most unfortunate that the Petitioner has made such baseless allegations against us and I not only deny the same in toto but also say that they are not even worthy of being responded. But since such nefarious and baseless allegations have been made against me and my senior, I am swearing this affidavit and am denying on oath that there is no truth or substance in these allegations. I categorically deny that I received the certified copy on 26.3.97. In fact on 26.3.97, I was informed that requisites were notified on 6.3.97 for supply and since it was not correct and I could learn about the supply of requisites only on 26.3.97, I put the remarks "seen" and put my signature with date 26.3.97 on the body of the copy petition and thereby made it clear that the date of notifying requisite was 26.3.97 and I supplied the requisite on 29.3.97. The allegation that Appellant and/or his counsels tempered with judicial records is an absolutely false and baseless claim and I deny the same categorically, I categorically state that no dates were changed or inserted and the copy petition No. 176/97 does not contain any endorsement of myself receiving the certified copy on 26.3.97 or for that matter on any date. In fact, the copy was received by Mr. K. Bhatta on my behalf on 5.2.98 and I did not put any signature on 26.3.97 stating that I had received certified copy on that day. I pray that the office of District Judge is very near and the copy petition No. 176/97 may kindly be called from his office by Special Messenger so that the true state of affairs can be seen by this Hon'ble Court to find out the truth. I state that the certified copy was made ready on 28.1.98 and I never received the copy on 26.3.97, when it was simply not ready and neither I put my signatures dated 26.3.97 stating that I received the copy on that day nor there was any

question of myself tempering with judicial records or of changing and inserting dates. I state that there was no tampering or forgery and the allegation of the Appellant and his counsels making any unheard, unparalleled or daring to tamper with judicial records are made in very bad taste unjustly and I am sure that these allegations have been made at the behest of the learned Advocate of the Petitioner and it is a common knowledge amongst the fellow advocates at Guwahati bar that the said learned advocate has such type of reputation and the Hon"ble Court can verify this by asking some advocates practising in District Courts confidentially and I have no doubt in my mind that such enquiyy will confirm the claim made by me in this regard. I would not have raised my finger in this direction but when such despicable and false allegations have been made against me. I have no other option but to refute the allegations and narrate the actual facts.

6. The verification appended to this affidavit reads as follows:

That the averments made in the foregoing paras are true to my knowledge.

To say the least, this is no verification and hardly helps the Deponent. It does not meet the bare minimal requirements of Order 19 Rule 3 Code of Civil Procedure. Emphasising the importance of verification of affidavit, the Supreme Court in A.K.K. Nambiar Vs. Union of India (UOI) and Another, has held as follows:

The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test tlie genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.

7. Affidavit without proper verification is held to be inadmissible and they are not to be acted upon. Realising the inherent infirmities in the affidavit, learned Counsel for the Appellant offered to file a fresh affidavit by way of amendment as if the oath can also be improved upon. There are glaring infirmities in the record, Annexure-13. As per affidavit filed by the Advocate he notified on 26.3.97, whereas record shows that he was notified on 6.3.97 itself. There is clear interpolation in the endorsement "seen" made by the Advocate and the change of date, it is apparent even to the naked eye. There is over writing of the date on crucial places. We also sent for the record, the movement Register of the application of Copying Petition No. 176/97, the manipulation made in the date stands exposed. It is amply made out that the certified copy was received on 21.3.97 and in this view of the matter, the appeal clearly barred by time. We are conscious of the justice oriented approach to be adopted by the Court in the

matter of condonation of delay as propounded by the Apex Court in Collector, Land Acquisition, Anantnag v. Must Katiji AIR 1987 SC 1352. But this liberal justice oriented approach does not permit tampering of the Court record. Had the Appellant come with the clean hand with a prayer for condonation of delay howsoever long, his prayer could well have been considered and may possibly be granted. But tampering with Court record making interpolations in the dates in collusion with the staff is something which is wholly impermissible and condoning delay in such matters would tantamount to putting a premium on such malpractices which not only pollute the sanctity of oath, but also defile the Court record. It must not be forgotten that the administration of justice in a very large measure depends on oath which is the fountain head of purity of judicial proceeding. We are not touching the merits of the respective claims of the parties. The appeal is apparently barred by time, the attempt made to bring it within time in the manner as discussed above deserves to be deprecated in no uncertain terms, the appeal is dismissed with costs, counsel fee Rs. 1,500/-