

(2008) 01 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 17237 of 2007

Rajula Nagarpalika

APPELLANT

Vs

Arvindbhai Ravjibhai and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 7
Industrial Disputes (Gujarat) Rules, 1966 — Rule 26A

Citation : (2008) 116 FLR 952

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; Kalpesh N. Shastri, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. R.V. Desai for the, petitioner, Rajula Nagarpalika and Mr. K.N. Shastri, learned advocate for respondents-workmen.

Rule. Service of Rule is waived by learned Advocate Mr. K.N. Shastri on behalf of the respondents-workmen. In the peculiar facts and circumstances of the case and with the consent of both the learned advocates, the matter is taken up for final hearing today.

2. Through this petition, petitioner is challenging the ex parte award made by the Industrial Tribunal, Bhavnagar in Reference (IT) No. 38 of 2002 dated 22.3.2005 wherein the Tribunal has decided ex parte in absence of the petitioner on the ground that inspite of repeated opportunity given to the petitioner, petitioner has remained absent before the Tribunal and ultimately Tribunal decided the matter ex parte against the petitioner. Tribunal has granted benefit of permanency in favour of total seven workmen those who are working as Safai Kamdar with the petitioner with effect from 26.3.2002 with all consequential service benefits with costs of Rs. 1,000.00, Miscellaneous Application No. 12 of 2005 filed by the petitioner for setting aside the said ex parte award before the Industrial Tribunal also came to be rejected by the Tribunal by order dated 29.1.2007 and, therefore, that order is also under challenge in this petition before this Court.

3. The Tribunal, while rejecting the application for setting aside the ex parte award, came to the conclusion that the Advocate Mr. Rajyaguru, engaged by the petitioner Nagarpalika has not taken sufficient care to remain present before the Tribunal and ultimately matter has been decided ex parte in absence of the petitioner. In view of that, learned Advocate Mr. R.V. Desai for the petitioner has submitted that there was lapse on the part of the advocate engaged by the petitioner before the Tribunal and because of the lapse on the part of the advocate engaged by the petitioner before the Tribunal, petitioner, a public body should not be made to suffer but some reasonable course has to be adopted for enabling the petitioner to get reasonable opportunity to place his case before the industrial tribunal and to get the matter decided on merits. He also submits that due to lapse on the part of advocate engaged by the petitioner before the tribunal, petitioner is put in financial loss, financial constraints which is going on in Rajula Nagarpalika. As per his submission, all these seven workmen are working with the petitioner as a daily wagers and receiving Rs. 102.00 as daily wage and, therefore, if the ex parte award as well as the order below application for setting aside the ex parte award are set aside and the matter is remanded to the Industrial Tribunal for adjudication thereof on merits, then, it will not adversely affect the livelihood of the respondent-workmen in any manner whatsoever because they will continue to work and will get wages for the work done by them but if such opportunity is not given to the petitioner, then, petitioner will be deprived of his right to get his matter adjudicated on merits. In support of these submissions, reliance was placed by him on the decision of the Apex Court in Rafiq and Another Vs. Munshilal and Another, (Para 3), in particular and has prayed for granting relief.

4. On the other hand, learned Advocate Mr. K.N. Shastri appearing for the respondents-workmen has submitted that if the advocate is engaged by the petitioner and his advocate has not been remaining present, then, for that, workmen should not be made to suffer as reference is pending" before the tribunal for more than five years, since 2002. He also submitted that the decision in case of Rafiq and Another Vs. Munshilal and Another, has been distinguished by the Apex Court in case of Salil Dutta Vs. T.M. and M.C. Private Ltd., He also submits that it is also the duty upon the State Authority to look into the matter even if the advocate has been engaged by the State authority before the tribunal and the petitioner has failed to discharge the said duty. He has, however, submitted that if the petitioner is prepared to pay reasonable costs to each of the workmen, then, Court may decide it by reasonably quantifying the costs and to set aside the ex parte award with a direction to the industrial tribunal to decide the matter a fresh within reasonable time in accordance with law. He also submits that he is having instruction from the respondents-workmen to give consent for setting aside the ex parte award and also order passed below application for setting aside the award by awarding reasonable amount of costs in favour of the workmen.

5. I have considered the submissions made by both the learned advocates. I

have also considered that the petitioner Rajula Municipality is a public State Authority and there is no personal grudge or vengeance alleged by the workmen against the petitioner. It is also equally true that for more than five years, reference is pending before the industrial tribunal for hearing and adjudication thereof was being delayed because of the fault on the part of the advocate engaged by the petitioner and due to that delay in adjudication of their reference, respondent-workmen were suffering.

6. I have also considered the decision of the Apex Court in Rafiq and Another Vs. Munshilal and Another, which has no doubt been distinguished by the Apex Court in the matter of Salil Dutta v. T.M. and M.C. Private Limited 1993 (2) SCC 18. However, looking to the facts of this case, advocate who was engaged by the petitioner, who has been appointed as Fast Track Court Judge has not intimated the petitioner about the same, and the matters wherein he was appearing as advocate remained unattended and as a consequence thereof during this period for which the petitioners were not aware about the stage of the matter, date of hearing of the matter pending before the tribunal and that has resulted into an ex parte award made by the Industrial Tribunal against the petitioner. Application for setting aside the ex parte award made by the petitioner under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966 came to be rejected by the Industrial Tribunal and thereafter, present petition has been filed by the petitioner before this Court. Decision of the Apex Court in Rafiq and Anr. v. Munshilal and Anr. (supra) was distinguished by the Apex Court in Salil Dutta's case (supra) after considering facts of the case. In case of Salil Dutta (supra), it was observed by the Apex Court that the respondent chose to non-co-operate with the Court and in view of such facts, the decision was given which are not the facts in the case before hand. In the case before hand, it cannot be said that the petitioner was adopting any dilatory tactics for delaying the hearing of the reference and that is also not the case of the workmen but petitioner was unaware about the appointment of his advocate as a Fast Track Court Judge and in view that, it is clear that there is no any intention on the part of the petitioner to delay the hearing of the reference. Ultimately, purpose is to see as to whether there was any deliberate attempt on the part of the petitioner or not to remain absent or there was any lapse on the part of the advocate engaged by the petitioner. Considering the facts of the present case, it is clear that there was no any deliberate attempt on the part of the petitioner for not to remain present before the tribunal but there was lapse on the part of the advocate engaged by the petitioner because after his having been appointed as a Judge in the Fast Track Court, no alternative arrangement was made by him and no intimation to that effect was given by him to the petitioner and that has resulted into an ex parte award against the petitioner. Therefore, in view of the aforesaid background, hard reality remains as it is that ultimately, petitioner, a public body is suffering.

7. In view of the facts of this case, decision of the Apex Court in Rafiq and Another Vs. Munshilal and Another, would apply in this case. In para 3 of the said

decision, it has been observed by the apex Court as under:

3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally, We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K. Sanghi.

8. Recently, in case of Lal Devi and Another Vs. Vaneeta Jain and Others, it has been observed by the Apex Court as under:

...But, the passing of an ex-parte decree in a case of this nature is too harsh a

consequence to be upheld. The defendant cannot be made to suffer an ex-parte decree particularly when he was not at fault, having duly instructed his Counsel to appear before the Court of the District Judge, The District Judge could not entertain an application under Order IX Rule 7 CPC, and even the application under Order IX Rule 13 was dismissed as not pressed. But nothing prevented the High Court from setting aside the ex-parte decree in the appeal preferred against it. (Para 14 to 16)

9. Further, the Apex Court has also observed in Paras 16 and 18 which are quoted as under:

16. We are not delving into the technicalities of the legal question argued before us because we are of the view that in the facts of this case the interest of justice demands that the ex-parte decree be set aside. We appreciate that the learned District Judge could not entertain an application under Order IX Rule 7 CPC, and even the application under Order IX Rule 13 was dismissed as not pressed, lint nothing prevented the High Court from setting aside the ex-parte decree in the appeal preferred against it.

18. We have no doubt that the Courts are not helpless. When parties adopt unfair or delaying tactics the courts have abundant powers to deal with such situations. We direct the Court of District Judge who shall try the suit to proceed with utmost expedition so as to conclude the suit within a period of six months from the date on which the parties appear before him. He shall riot grant adjournment unless it becomes absolutely necessary. To the extent possible he shall proceed with day-to-day hearing of the suit.

10. It is also required to be considered by this Court that the Larger Bench decision of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, is having some weight on the submission made by learned advocate Mr. R.V. Desai. Similarly, in Full Bench decision of this Court in case of Amreli Municipality 2004 (103) FLR 239 (Guj.-F.B.), also, Full Bench of this Court has held that the Industrial Tribunal and/or labour Court has no jurisdiction to grant relief of permanency in favour of any daily wager. So, these are the legal questions required to be examined during the course of adjudication of the matter on merits but because no opportunity was available to the petitioner, petitioner was helpless and, therefore, opportunity is required to be given to the petitioner. Therefore, in light of the submissions made by the learned advocate Mr. Shastri and Desai regarding costs, some reasonable cost is required to be imposed against the petitioner.

11. Therefore, considering the peculiar facts involved in this matter and considering the fact that there was no any intention on the part of the petitioner to delay the adjudication of the matter before the tribunal but because of the lapse on the part of the advocate, petitioner could not participate in adjudication proceedings and, therefore, according to my opinion, in light of these facts, considering the fact that the petitioner Rajula Municipality is a public body,

therefore, it would be just and proper if the opportunity is given to the petitioner by quantifying the cost at Rs. 10,000.00 to each workman concerned because earlier there was two round of litigation and now third round of litigation will start wherein they would be required to bear the same expenses for engaging lawyer and, therefore, according to my opinion, it would be just and proper to award cost by quantifying it at Rs. 10,000.00 per workman i.e. Total Rs. 70,000.00 for seven workmen in this matter, considering the hardship suffered by them because of the facts of this case.

12. Therefore, considering the facts and circumstances of the case and the consent given by the learned Advocate Mr. Shastri for the workman for giving chance to the petitioner for participating in the adjudication proceedings subject to payment of reasonable cost in favour of the workmen, ex parte award made by the industrial tribunal, Bhavnagar in Reference (IT) No. 38 of 2002 dated 22.3.2005 and order in Miscellaneous Application No. 12 of 2005 dated 29.1.2007 both are hereby quashed and set aside and the said Miscellaneous Application is allowed by restoring the said reference on the files of the Industrial Tribunal by remanding the matter back to the Industrial Tribunal to decide reference (IT) No. 38 of 2002 afresh within the period of six months from the date of receipt of copy of this order and it is open for both the parties to lead oral as well as documentary evidence on record and petitioner is entitled to cross-examine each workman whose evidence is relied upon by the Tribunal and petitioner is also entitled to lead oral and documentary evidence and equally, respondents-workmen are also entitled to lead oral and documentary evidence before the tribunal and thus both the parties are entitled to produce documentary evidence and lead oral evidence and the tribunal shall have to give reasonable opportunity to both the parties and both the parties shall have to co-operate hearing before the tribunal and the tribunal shall have to decide afresh reference within the period of six months from the date of receipt of copy of this order. Petitioner is directed to pay Rs. 10,000.00 (Rupees ten thousand only) to each workman within the period of six months from the date of receipt of copy of this order and in case of difficulty in making such payment at a time, it will be open for the petitioner to pay the same to each workman by way of reasonable instalment. Rule is made absolute in terms indicated hereinabove with order of costs as aforesaid.