

(1991) 09 AHC CK 0040

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12871 of 1984

Soman and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Bar Council of India Rules, 1975 — Rule 39
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3
Constitution of India, 1950 — Article 226

Citation : AIR 1992 All 50 : (1991) 2 AWC 227

Hon'ble Judges : P.P. Gupta, J

Bench : Single Bench

Advocate : Swaraj Prakash and K.P. Pandey, for the Appellant; Standing Counsel and M.D. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition was listed for orders on 17-9-1991, when the case taken up, Sri K. P. Pandey, learned counsel for the petitioners, made an oral request that the petition may be dismissed to which Sri M. D. Misra, learned counsel for the respondent had no objection. Earlier also the petitioners had moved an application on 23-8-1991 to dismiss the petition as not pressed. Accordingly, the following order was dictated in open Court :--

"The petitioners have moved an application on 23-8-1991 to dismiss this petition as not pressed. Sri. K. P. Pandey learned counsel for the petitioner makes an oral prayer also that this petition may be dismissed to which Sri M. D. Misra learned counsel for the respondent has no objection. Accordingly this petition is hereby dismissed as not pressed with no order as to costs."

Dt. 17-9-1991.

2. After the said order was transcribed, Mr. Swaraj Prakash, Advocate, who was engaged by the petitioners earlier, appeared and made a request that the order

may not be signed as Sri K, P. Pandey, Advocate, who was engaged subsequently had no power to make such a request for dismissing the writ petition without his concurrence. On his request the order was not signed on 17-9-1991.

3. Sri S. Prakash, and Sri K. P. Pandey learned counsel for the petitioners and Mr. M. D. Misra learned counsel for the respondents have been heard today.

4. Sri S. Prakash has relied on a decision of this Court in the case of R. N. Singh v. State of U. P. 1988 ACJ 48. In this case it has been held that where counsel subsequently engaged appears for the petitioner without obtaining prior consent from the previous counsel already appearing, an error is being committed by the subsequent counsel by violating Rule 39 of the Rules framed by the Bar Council of India. Holding that because Counsel's instructions were unilaterally terminated by clients without reasonable cause, the previous counsel was entitled to full fees settled with clients.

5. This case is no authority on the point that if an order has been dictated in open Court after hearing the counsel subsequently engaged it becomes illegal on the ground that prior consent of the previous counsel already appearing was not obtained.

6. In the case of Vinod Kumar Singh Vs. Banaras Hindu University and Others, the Supreme Court has held (paras 7 and 9) :

"When a judgment is pronounced in open Court, parties act on the basis that it is the judgment of the Court and that the signing is a formality to follow. Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the Court in regard to the conclusion. Once that stage is reached and the Court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced in Court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open Court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case."

7. In the instant case, the order was pronounced in open Court and the writ petition was dismissed as not pressed. The order was transcribed but not signed for the reasons already given above. While the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. In this case there are no such exceptional circumstances or features for not signing the order already pronounced in open Court. The ground that while making a request to dismiss the writ petition as not pressed, Sri K. P. Pandey, counsel engaged subsequently did not obtain prior consent of the previous counsel already appearing in the case is not such a circumstance which may justify reconsideration of the order and not to sign it. Sri S. Prakash, the previous counsel of the petitioners, has not

urged that the petition has been got dismissed without the consent of the petitioners. He may seek his remedy for the professional misconduct, if any, on the part of" Sri K. P. Pandey, Advocate, at a proper forum but there are no reasons for not signing the order dictated in open Court yesterday. Accordingly, the said order which was pronounced and transcribed on the order sheet yesterday is being signed today.

8. Order accordingly.