

(2019) 06 CAL CK 0002

In the Calcutta High Court

Case No : Review (RVM) No. 39 Of 2019 With Civil Application (CAN) No. 2060 Of 2019 In Writ Petitions (WP) No. 26199 (W) Of 2018

Sri Krishna Barik & Anr Vs State Of West Bengal & Ors ?

Date of Decision : 10-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107

Citation : (2019) 06 CAL CK 0002

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Bibek Jyoti Basu, Uttam Kumar De, Rajesh Sen, Ashis Guha, Naren Ghosh Dastidar

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

Report as called for by the order dated April 5, 2019 filed in Court be taken on record.

The review application along with the connected application are taken up for final hearing.

Learned advocate appearing for the review applicant submits that, the writ petitioners obtained the order under review by making false statements on oath and by suppression of material facts. He submits that, the review applicants are the respondent nos. 8 and 9 in the writ petition. The review applicants were not served with the copy of the writ petition. No attempt was made to serve the review applicants with a copy of the writ petition. Such procedure was adopted mala fide to deprive the valuable rights of the review applicants. The writ petitioners are guilty by making false statements in the writ petition. He draws the attention of the Court to the fact that, the writ petitioners claimed that they were the sole and absolute owners of three several plots of land in the writ petition whereas, the record of rights annexed by the writ petitioners themselves, in the affidavit in opposition to the review application, demonstrates

otherwise. Moreover, the writ petitioners are guilty of suppressing the order of the High Court dated August 23, 2018 passed in W. P. No.30746 (W) of 2017 (Chandan Kumar Barik & Anr. Vs. The State of West Bengal & Ors.). The writ petitioners had filed such writ petition for police inaction on the basis of self same documents as annexed to the present writ petition. He submits that, when the present writ petition was filed, a suit for partition and administration was pending between the private parties. There subsists an order of status quo passed in such suit. The writ petitioners are guilty of suppressing such material facts from the Court. In any event, the order under review, prejudices the review applicants so far as the pending suit for partition is concerned.

Learned advocate appearing for the writ petitioners submits that, although the suit for partition and administration was filed prior to the filing of the writ petition, the writ petitioners were not aware of the same. He submits that, the review applicants are not the sole and absolute owners of the property concerned.

The State is represented.

Learned advocate appearing for the review applicants relies upon the decisions reported at (2017) Volume 7 Supreme 454 (Kusum Agarwal & Anr. v. M/s. Harsha Associates Pvt. Ltd.), AIR 2016 Supreme Court 345 (M/s. Sciemed Overseas Inc. v. Boc India Ltd.), (2009) Volume 8 Supreme Court Cases 106 (R.K. Anand & Anr. v. Registrar, Delhi High Court) and (2010) Volume 4 Supreme Court Cases 728 (Oswal Fats and Oils Ltd. v. Additional Commissioner (Administration) Bareilly Division, Bareilly & Ors.). The review application arises out of an order dated February 5, 2019 passed in W. P. No.26199 (W) of 2018. The writ petition was for police assistance. On the basis of the pleadings made in the writ petition, the order dated February 5, 2019 was passed. At the time when, the writ petition was moved, learned advocate appearing for the writ petitioners did not bring to the notice of the Court that, the respondent nos. 8 and 9 in the writ petition, were not served. The affidavit of service filed in Court does not demonstrate that, the writ petitioners even attempted to serve the respondent Nos. 8 and 9. In the writ petition, the writ petitioners claim themselves to be the owners in respect of lands comprised in plots No.1306, 1307 and 1308. Such is the averment in paragraph 2 of the writ petition. Although, the writ petitioners allude to a suit for partition and administration being, Title Suit No.17 of 2018 at paragraph 23 of the writ petition, pending between the private parties. The writ petitioners did not mention the subsistence of the order of status quo passed by the Court in seisin of such proceedings. Such order was passed on July 25, 2018. The writ petition was affirmed on December 20, 2018. The order of status quo was within the knowledge of the writ petitioners. There is a proceeding under Section 107 of the Criminal Procedure Code between the private parties in respect of the plots concerned. The writ petitioners did not bring the factum of such proceeding to the notice of the Court. As the record of right in respect of the plots of land stands, the writ petitioners cannot be said to be the sole and absolute owner of the plots

concerned.

Kusum Agarwal & Anr. (supra) is of the view that, where, a party comes with un-clean hands to a forum, he is not entitled to any relief. M/s. Sciemed Overseas Inc. (supra) is of the view that, where, false affidavits are filed, the Courts are entitled to impose exemplary costs. Oswal Fats & Oils Limited (supra) is of the view that, a person who approaches the Court for grant of relief, equitable or otherwise is under a solemn obligation to candidly disclose of material/important facts which has a bearing on the adjudication of the issues raised in the case. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

R. K. Anand & Anr. (supra) is of the view that, where, an advocate is found to be guilty of misconduct, then, the Court has the right to take appropriate steps against such advocate.

In the facts of the present case, the writ petitioners obtained an order for police assistance dated February 5, 2019 in the writ petition. Such order was obtained by suppressing the order of status quo passed in the pending suit for partition and administration as also the order dated August 23, 2018 passed in W.P. No. 30746 (W) of 2017. The writ petitioners are guilty of suppression of the order of status quo, orders of the High Court, making false claims as to their title, coming with un-cleaned hands to the Court and making false statements on oath. The claim of the writ petitioners that they are sole and absolute owner of the three plots of land are false. They are guilty of suppressing not only the order of status quo passed in the suit for partition and administration but also the proceedings under Section 107 of the Criminal Procedure Code. The writ petitioners did not attempt to serve the private respondents whose rights the writ petitioners sought to affect through the writ petition. It was expected that, the learned advocate appearing in support of the writ petition apprises the Court as to the deficiency of service when the writ petition was moved on behalf of the writ petitioners. The conduct of the learned advocate for the writ petitioners is deprecated. Learned advocate for the writ petitioners failed to discharge his duties that he owes to the Court.

The conducts of the petitioners are deplorable. They came with un-cleaned hands, obtained orders from the Court by suppressing material facts in order to benefit themselves. They should be put on terms. Each of the petitioners will pay costs assessed at Rs.10,00,000/- (Rupees Ten Lac Only) to the West Bengal State Legal Services Authority, Kolkata within a period of fortnight from date. In the event of default of payment of such costs, the defense of the writ petitioners in the pending suit for partition and administration will stand struck off and the suit shall proceed as if, the writ petitioners as defendants in such suit, did not file any written statement. It is clarified that unless the aggregate costs of Rs. 20,00,000/- are paid, none of the writ petitioners will be entitled to have any rights as defendants filing a written statement.

At this stage, learned advocate appearing for the review applicants seeks costs of the litigation.

The prayer made being reasonable is accepted. In addition to the costs awarded, each the writ petitioners will pay costs assessed at Rs.1,00,000/- (Rupees One Lac only) each to the review applicants within a period of fortnight from date. In other words, each of the review applicants will be entitled to Rs. 2,00,000/- each as costs from the writ petitioners. In the event of default of payment of the costs to the review applicants, the review applicants are at liberty to execute this order as a decree.

R.V.W. No.39 of 2019 and C.A.N. No.2060 of 2019 are disposed of.

The order dated February 5, 2019 passed in W. P. No.26199 (W) of 2018 is recalled.

W. P. No.26199 (W) of 2018 is dismissed.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.