

(1993) 04 AHC CK 0053

In the Allahabad High Court

Case No : Writ Petition No. 4537 (S/S) of 1992 -- In re: CM Application Nos. 18606 (w) and 21701 (w) of 1992 and 658 (w) of 1993

S.S.Barathokey

APPELLANT

Vs

Chairman, U.P.Seeds & Tarai Development Corporation Limited and another

RESPONDENT

Date of Decision : 19-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148A, 148A(3)
High Court Rules, 1952 — Chapter 22, 1(4), 10

Citation : (1993) 04 AHC CK 0053

Hon'ble Judges : K.C.Bhargava, J

Final Decision : Allowed

Judgement

K.C. Bhargava, J.—These are applications for vacation of ex parte interim order dated 23rd July, 1992. These applications have been moved by the learned counsel for the opposite parties to the writ petition. Along with the applications an affidavit has also been filed which discloses that Sri D.P. Singh, Advocate, who has moved the present applications, is a Standing Counsel for the U.P. Seeds and Tarai Development Corporation Ltd., Pant Nagar, district Nainital, which is opposite party in the present writ petition. According to the learned counsel for the Opposite parties a caveat was also filed by him on 7/1/1992 but the notice of the writ petition was not served upon him by the learned counsel for the petitioner before filing the writ petition.

2. A counter affidavit to these applications has also been filed by the petitioner. It is alleged in the counter affidavit that neither the petitioner nor his counsel knew that Sri D.P. Singh was the Standing Counsel of the opposite parties. It is further alleged that it was due to the mistake on the part of the Stamp Reporter who did not make any endorsement on the writ petition that a caveat had already been filed by the opposite parties or that Sri D.P. Singh was the Standing Counsel of the opposite parties and that a copy of the writ petition should be served upon Sri D.P. Singh. The notice of the caveat was served upon the petitioner on 27th

July, 1992 after the writ petition had been filed and an interim order was passed by this Court. It is not necessary to mention the other facts because they deal with the merits of the case and at present the Court is not concerned with the merits of the case but is only concerned with the limited question raised by the learned counsel for the opposite parties.

3. Learned counsel for the parties have been heard. Learned counsel for the opposite parties has argued that he is a Standing Counsel of the opposite parties and this fact has been mentioned in the cause list of this Court. He has further argued that he had also filed a caveat in the present case and notice of the caveat was also given to the petitioner. The Stamp Reporter did not make any endorsement on the writ petition that a caveat had been filed in this case when the writ petition was presented before him for reporting.

4. A perusal of the Photostat copy of the cause list dated 11111991 goes to show that on page 45 at serial no. 20 it was mentioned that Sri D.P. Singh is the Standing Counsel of Uttar Pradesh Seeds and Tarai Development Corporation Ltd., Pant Nagar, district Nainital. The fact that the opposite parties had filed a caveat through Sri D.P. Singh, Advocate, is also not disputed. Learned counsel for the petitioner has argued that the petitioner is not at fault and therefore he should not suffer on account of the fault of the office & if he had known that Sri D.P. Singh is the Standing Counsel of the opposite parties then a copy of the writ petition would have been served upon him. He has further argued that if the Stamp Reporter had reported that a caveat had been filed then a copy of the writ petition would have been served on Sri D.P. Singh, Advocate.

5. Learned counsel for the opposite parties, Sri D.P. Singh, has referred to the Rules of the Court. Subrule (4) of Rule 1 under Chapter XXII of the Allahabad High Court Rules reads as under:

?(4) Where the Government or an officer or department of the Government, or a Court or a Tribunal, Board, Commission or other body appointed by the Government is an opposite party named in the application, the applicant shall before presenting the application serve notice of motion upon the Government Advocate, criminal matters and upon Standing Counsel, if he is authorised to receive notice on behalf of such opposite party in other matter along with as many copies of the application, affidavit and other papers accompanying it as may be equal to the number of parties to be presented by the Government Advocate or the Standing Counsel, as the case may be, and one extra copy for the use of the Government Advocate or the Standing Counsel naming therein the day for the making of the motion. The application shall indicate that such notice of motion has been served. There be at least twenty four hours between service of notice of motion and the day named therein for the making of the motion except where the matter is one of urgency and permission of the court is obtained for making such motion earlier.

(Note The word Government, in the above subrule also refers to those

departments of the Union of India for which a Standing Counsel has been duly appointed.?

When a Standing Counsel has been appointed by a Corporation then before filing a writ petition against that corporation notice of motion should be served upon the Standing Counsel and the matter would be taken up after 24 hours of such notice of motion to the Standing Counsel except where the matter is one of urgency.

6. With respect to the caveat rule (5) of the same Rules makes a provision. The relevant portion may be extracted below:

?5. Lodging of Counsel Caveat (1) Where an application is expected to be made or has been made, any person claiming the right to oppose such an application, may, either, personally or through his counsel, lodge a caveat in the Court in respect thereof.

(2) The Caveat shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application is expected to be made and submit proof of service in Court.

(3) After the caveat has been lodged and the notice thereof has been served on the applicant's counsel, the applicant shall forthwith furnish to the Caveator or his counsel, at the Caveator's expense, with a copy of the application as well as any miscellaneous application made therein for interim relief.

(4) Where a caveat has been lodged and notice thereof has been served the applicant shall when presenting the application in Court, furnish proof of having given prior notice in writing to the Caveator's counsel of the date on which the application is proposed to be presented.?

7. A perusal of the above Rule 5 will go to show that where an application is expected to be filed, the person claiming the right to oppose such an application, may file a caveat in the Court. Subrule (2) provides that the service of the notice of the caveat shall be made upon the other side by registered post acknowledgement due. Subrule (3) provides that after the caveat has been filed and the notice thereof has been served on the applicant's counsel, the applicant shall forthwith furnish to the Cavertor or his counsel copy of the application as well as any miscellaneous application for interim relief. The date of motion is also necessary to be indicated to the caveator's counsel.

8. In the present case from the allegations of the counter affidavit in para 6 it is apparent that the notice of the caveat was served on the petitioner on 27th July, 1991 while the writ petition was filed on 23rd July, 1992 and on the same day the interim order was passed. This shows that the notice of the caveat was served upon the petitioner after the writ petition had already been filed and interim order passed. But it cannot be said that the petitioner's counsel did not know that Sri D.P. Singh was the Standing Counsel of the opposite parties, therefore, he should have served Sri D.P. Singh With the copies of the writ

petition and its accompanying application for interim relief and should have also indicated the date of motion.

9. The second question of this case is as to whether the Stamp Reporter was to make a report about the caveat which was filed by Sri D.P. Singh, counsel for the opposite parties. A reference has also been made to Rule 10 of Chapter XII of the Rules of the Court regarding service of notice and summoning of record. This Rule provides that the provisions of Order V of the Code shall apply to the service in all proceedings in this Court, provided that where a party is represented by an Advocate notice of any proceedings in the case shall unless order otherwise be served on such Advocate. Under this Rule the petitioner should have served a copy of the writ petition on Sri D.P. Singh, Standing Counsel of opposite parties. Therefore it was incumbent upon the petitioners to have served a copy of the writ petition on the learned counsel for the opposite parties before filing the writ petition in this Court. The fact that Sri D.P. Singh was the Standing Counsel of the opposite parties was already known to the learned counsel for the petitioner as was demonstrated in the cause list, a Photostat copy of which has been filed in this case. In the cause list the names of Standing Counsel are printed from time to time so that the persons filing writ petitions against those departments or corporations may serve the respective Standing Counsel with the notice of the writ petition before filing the same in the Court. Serving a copy of the writ petition on the counsel for the opposite parties will save the time of the Court and will also prevent from passing an order which may otherwise appear to be unjust, because the facts disclosed by the opposite parties may also be considered by the Court while passing an interim order in the case.

10. A reference has also been made to Section 148A of the Code of Civil Procedure. In the case of Chandrajit v. Ganeshiya (AIR 1987 All 360) a Division Bench of this Court has held that the provisions of Section 148A can be applied to appeals, first, second, execution or any other appeal filed under the Code of Civil Procedure or any other enactment. The caveats would be entitled to be entertained at the time an appeal is submitted for reporting. The Stamp Reporter will make a note, if the caveat has already been filed before him, about the same. In para 8 of this case the intention as to why a caveat is filed has been made clear as under:

78. A caveat is only an intimation to a Judge or officer notifying that the opposite party be given an opportunity to be heard before any action is taken on the application or proceeding initiated by the other side. It is a request which, if attended to, will help the court in doing justice in between the parties.?

11. In the case of G.C. Siddalingappa v. G.C. Veeranna (AIR 1981 Karnataka 242) after considering the provisions of Section 148A of the Code of Civil Procedure the Court came to the conclusion that the provision regarding service of notice as contained in subsection (3) is mandatory and noncompliance with it defeats the very object of introducing Section 148A. Consequently it follows that the breach of subsection (3) vitiates the order passed thereof. Once a caveat is

filed, it is a condition precedent for passing an interim order to serve a notice of the application on the caveator who is going to be affected by the interim order. Once a caveat is filed it becomes the duty of the Stamp Reporter to report that such and such counsel for the opposite parties or one of the opposite parties has filed a caveat and it becomes the duty of the Court to hear that counsel before an interim order is passed in the case.

12. This question was also raised for consideration in the case of Pashupati Nath Arora v. The Registrar, Cooperative Societies Jaipur and others (AIR 1983 Rajasthan 191). In that case the provisions of S. 148A of the Code of Civil Procedure and the Rajasthan High Court Rules, (Rule 159), were interpreted. In that case the High Court held that in order to make the caveat effective, the analogy of provisions 148A, CPC can be applied to the caveats which are filed before the Court.

13. A single Judge of this Court in the case of Nainital Bank Limited v. Munsif, Nainital and others (1992(1) LDR 70) has held that an interim order which has been passed in absence of a party who has put in appearance, is to be recalled. In that case also the power had been filed in the Court by the counsel for the opposite parties. The filing of caveat in the court is equivalent to filing of power on behalf of opposite parties and once it is known that a caveat has been filed the office should report this fact.

14. The Hon''ble Supreme Court in Jang Singh v. Brij Lal (AIR 1966 SC 1631), has observed in para 6 as under:

?It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: ?Actus curiae neminem gravabit.?

15. Thus from the perusal of these cases and the Rules of the Court and Section 148A of the Code of Civil Procedure it becomes quite apparent that in the present case when a caveat had already been filed it was the duty of the Stamp Reporter to make an endorsement to this effect on the writ petition. In the present case it was not the fault of the opposite parties. At the same time it was also the duty of the learned counsel for the petitioner to have served the notice of the writ

petition before filing it in the Court because Sri D.P. Singh, Advocate was the Standing Counsel of the U.P. Seeds and Tarai Development Corporation, the opposite party in the present case. As the petitioner did not serve copy of the writ petition on the counsel for the opposite parties the exparte interim order passed in the present case is liable to be recalled and the matter to be heard again. In this case the exparte interim order has been passed by the Court on the fault of the learned counsel for the petitioner for not serving Sri D.P. Singh, learned counsel for the opposite parties who was also their Standing Counsel. The office of the Stamp Reporter is also to be blamed equally for not reporting about the filing of the caveat in the above case. It is a serious matter which requires consideration. The Stamp Reporter should be vigilant while making reports and see whether a caveat has been filed by the other party while reporting on the writ petitions. Dereliction of duty on the part pf the Stamp Reporter and his office has resulted in harassment of the parties and wastage of precious time of the Court.

16. In the present case as the exparte interim order has been passed without hearing the learned counsel for the opposite parties the same deserves to be recalled and the opposite parties are entitled to be given a right of hearing on the application for interim relief.

17. The applications are allowed .and the exparte interim order dated 23rd July, 1992 passed by this Court in the above writ petition is recalled. Let the matter be placed before appropriate Bench for necessary orders tomorrow peremptorily.

(Applications allowed.)