

(2005) 05 AHC CK 0223

In the Allahabad High Court

Case No : First Appeal from Order No. 3429 of 2004

Sukhdev Steel Cutters and Welders

APPELLANT

Vs

Hon''ble Sri Lalta Prasad, Judicial Officer, (1st A.C.J. Sr. Div.),
Union of India (UOI), Secretary, Ministry of Supply and The
Chief Controller of Accounts

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Arbitration Act, 1940 — Section 30
Constitution of India, 1950 — Article 141, 142
Judicial Officers Protection Act, 1850 — Section 1

Citation : (2006) 2 AWC 1119 : (2005) 3 ESC 1642

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; A.K. Sinha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This First Appeal From Order has been filed against the judgment and order dated 09.04.2004 passed by the 1st Additional Civil Judge (Senior Division), Kanpur Nagar by which the learned Court refused to make the award of the Arbitrator dated 27.02.1999 the Rule of the Court.

2. Smt. Ira Sharma, the proprietress of the appellant-firm appealed in person and submitted that the aforesaid judgment and order should be set aside and the aforesaid Award should be made Rule of the Court. She was confronted as under what circumstances the respondent No. 1, Sri Lalta Prasad, the 1st Additional Civil Judge (Senior Division), Kanpur Nagar has been impleaded as a party by name in this appeal. Her reply came that he failed to ensure compliance of the order passed by the Hon''ble Supreme Court and has violated mandate of Articles 141 and 142 of the Constitution of India. In fact, we tried to find out as what directions had been issued by their Lordships which have not been complied with by the learned Civil Judge who has been impleaded as respondent herein by

name. It appears that when the Award was filed in the Court for making the Rule of the Court, the Union of India, the defendant therein did not file any objection u/s 30 of the Arbitration Act, 1940 (hereinafter called the "Act 1940"). However, it was filed at a belated stage. The Court refused to take the same on record and consider the same. At a much belated stage, the Union of India filed Writ Petition No. 20956 of 2000 before this Court for condoning the delay in filing the objections u/s 30 of the Act 1940. The said writ petition was allowed vide judgment and order dated 31.03.2001. Against the same, an SLP was filed before the Hon"ble Supreme Court and the Hon"ble Apex Court set aside the judgment and order of this Court dated 3.1.03.2001 meaning thereby the objections filed by the Union of India would not be taken into consideration by the Court.

3. Smt. Ira Sharma has submitted that as the direction had not been complied with by the said Judicial Officer, she also filed a contempt petition before Hon"ble Apex Court. However, the same was dismissed. We asked Smt. Sharma to point out: from the judgment and order under challenge, where the objections filed by the Union of India have been considered. She submitted that she has filed the Memo of Appeal and the written submission and she is not going to assist the Court any further. We asked her whether she would like to engage any counsel for her assistance, but she refused. We again asked her as to whether she would like us to make a request to some lawyer of this Court to plead her case without charging any fee but her parrot like reply came "no" and she submitted that she has done her duty by filing the Memo of Appeal and the written submissions and the Court has to decide the same. When we pointed out to her that it is not possible for the Court to understand what has been her grievance, she said then the Court may pass any order it likes.

4. In Thakur Sukhpal Singh Vs. Thakur Kalyan Singh, Hon"ble Supreme Court has held that in absence of proper assistance to the court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless the lawyer satisfies the Court that there is some balance in his client's favour to alter the situation, it is not for the Court itself to decide the controversy. The Court observed as under :-

"-----He (counsel) cannot just raise objections in his memorandum of appeal and leave it to the appellate to give its decision on those points after going through the record and determining the correctness thereof. It is not for the appellate court itself to find out what the points for determination can be and then proceed to give a decision on those points."

5. While deciding the said case, Hon"ble Apex Court placed reliance upon judgment of Privy Council in Mt. Fakrunisa and Ors. v. Moulvi Izarus Sadik and Ors. AIR 1921 PC 55 wherein it had been observed as under:-

"In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in

their favour when all the circumstances are considered to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged."

7. In *T.C. Mathai and Another Vs. The District and Sessions Judge, Thiruvananthapuram, Kerala*, , Hon"ble Supreme Court observed:

"The work in a court of law is a serious and responsible function. The primary duty of a-----court is to administer...justice. Any lax or wayward approach, if adopted; towards the issues involved in the case, can cause serious consequences for the parties concerned. -----In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides."

8. The Rajasthan High Court in *Bhola Singh and etc. Vs. The Prescribed Authority, The Tehsildar and Others*, held as under:-

"-----the quality of the judgment depends upon the assistance rendered at the Bar. The Judge can not take the entire responsibility of laying down a correct law unilaterally without any assistance of the learned members of the Bar. The Judge cannot afford to retire from chamber and sit in the library and find out the case law on the issues involved in every case and what is the occasion to do anything in a case where the pleadings are so vague as the petition itself cannot be entertained."

9. In *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, , the Hon"ble Apex Court has observed as under: -

"----- Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice.-----A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception.----- This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."

11. In *New Delhi Municipal Committee Vs. State of Punjab, etc. etc.*, the Apex Court observed that the Court should not deal with an issue not agitated by the party concerned at the time of arguments as the opposite party would not be in a position to reply and any observation so made against him would be violative of the principle of natural justice.

12. It is settled legal proposition that even if an issue has been taken in the pleadings but not pressed at the time of submissions, such a plea cannot be permitted to be raised before the appeal Court nor can it be suggested to be considered any further and as such the same cannot be a ground to remand the

matter back. (Vide Union of India (UOI) and Others Vs. N.V. Phaneendran, and The Transmission Corporation of A.P. Ltd. and Others Vs. P. Surya Bhavagan,

13. Undoubtedly, in an era when the Courts are overburdened, it is desirable that the Court must insist on being briefed by oral submissions backed by written submissions but that does not mean that a party can refuse to make oral submissions at all and shift the entire burden upon the Court to go through the brief and understand what is his case. A litigant cannot be permitted to stipulate any condition whatsoever on the Court for its participation in judicial proceedings. (Vide Life Insurance Corporation of India Vs. Escorts Ltd. and Others, and Sheela Barse Vs. Union of India (UOI) and Others,

14. Therefore, in view of the above, the party is required to make proper pleadings, take all possible grounds in facts and law and then agitate before the Court properly. It cannot throw the burden on the Court to decide the case without making arguments. The appellant mentioned the case to be taken up out of turn as she had lost her patience in waiting for her case to be taken up and it was on her insistence that the case was taken up. The Court after assessing the demeanour of the appellant suggested her to seek adjournment so as to prepare her case and thereafter address on the issues that were involved in the case, but she flatly refused to adhere to this suggestion and left the Court to ponder over the issues for itself.

15. Though the appellant, in person, is not in a position to explain as how respondent No. 1 has violated the order passed by the Hon'ble Apex Court, we are not able to understand as how the Presiding Officer of the Court has been impleaded as a respondent by name. The appellant had initially impleaded the Court also but the same stood deleted from the array of respondents on the order of the Court, perhaps in view of the judgment of the Hon'ble Supreme Court in Savitri Devi v. District Judge, Gorakhpur and Ors. AIR 1999 SC 577.

Section 1 of the Judicial Officers' Protection Act, 1850 reads as under:-

"No Judge, Magistrate, Justice of the Piece, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty...."

16. Protection under this Act is absolute so long the action has been taken while performing the judicial duty. (Vide Teyen v. Ram Lal ILR (1890) All 115 ; Anowar Hussain Vs. Ajoy Kumar Mukherjee and Others, H.W.F. D'Souza Vs. Chandrika Singh, and Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh,

17. On the same principle and to provide similar protection, Judges (Protection) Act, 1985 was enacted. It was found necessary to enact the said Act to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in Court are made subject to legal proceedings, either civil or criminal. In State of Rajasthan Vs. Prakash Chand and Others, the Hon'ble Apex Court observed as under:-

"Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice."

19. Such a wide immunity has been conferred on judicial orders, so that they may act fearlessly, impartially and with full sense of security. In case of abuse of judicial powers, remedy is provided on the executive side preventing them to exercise such powers any more. The protection so granted does not protect them from disciplinary control by the superior authorities.

20. A person in judicial service is liable for the consequences if he acts outside the scope of his judicial service. (Vide *Govinda Menon Vs. Union of India (UOI)*, *Union of India (UOI) and Others Vs. J. Ahmed*, *Daya Shankar Vs. High Court of Allahabad and Others through Registrar and Others*, ; *Union of India and others Vs. A.N. Saxena*, ; *Union of India and Others Vs. K.K. Dhawan*, and *Union of India (UOI) and Others Vs. Upendra Singh*, .

21. The word "judicial office" means a subsisting office with a substantive position which has an existence independent from its holder. (Vide *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, ; *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, ; *Shri Kumar Padma Prasad Vs. Union of India and others*, and *S.P. Goel Vs. Collector of Stamps, Delhi*,

22. The term "judicial" extends to the acts and order of a competent authority which has a power to impose the liability or to give a decision determining the rights and liabilities of the parties upon consideration of facts and circumstances. However, it must be an act of a person or persons who have legal authority to determine questions affecting the rights of parties in a judicial manner. (Vide *Province of Bombay Vs. Kusaldas S. Advani and Others*,

23. The protection may extend even to an officer having an obligation to perform Quasi-judicial functions.

24. Whether an act is a judicial or a quasi judicial one or a purely executive one, depends on the terms of the particular rules and the nature, scope and effect of powers, in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each particular case. Where an authority is required to act judicially, either by an express provision of the Statute under which it acts or by necessary implication of the said statute, the decision of such an authority generally amounts to quasi-judicial decisions. (Vide *State of Bombay Vs. Narothamdas Jethabai and Another*, ; *Maqbool Hussain Vs. The State of Bombay*, ; *Jaswant Singh Mills Ltd., Meerut v. Lakshmi Chand and Ors.* AIR 1953

SC 677 ; The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, ; Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, ; Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, ; Dev Singh and Others Vs. Registrar, Punjab and Haryana High Court and Others, ; State of Tamil Nadu Vs. G.N. Venkataswamy and others etc. etc., ; State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, ; Indian National Congress (I) Vs. Institute of Social Welfare and Others, ; Union of India (UOI) and Another Vs. G.T.C. Industries Limited., Bombay, Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Another, ; and State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia,

25. In view of the above, it is difficult to presume that a Judicial Officer, whose judgment and order is under challenge, can be impleaded by name and that too without giving any reason for doing so.

26. Thus, in view of the above, as the appellant is not in a position to assist the Court by any means and also does not want to engage a lawyer even on our request, we are not in a position to decide the case in the absence of legal assistance. The Appeal is accordingly dismissed.