(1998) 10 MAD CK 0119

In the Madras High Court

The Oriental Insurance Co. Ltd. APPELLANT

Vs

R. Mani and Another RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Citation : (1999) 1 MLJ 117

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—The second opposite party in Workmen''s Compensation Case No. 227 of 1997 on the file of Commissioner of Workmen''s Compensation, Coimbatore is the revision petitioner. This revision petition is filed under Article 227 of the Constitution of India.

2. First respondent in this revision filed the claim petition making the second respondent and the petitioner liable for getting compensation. First respondent herein is the driver of a vehicle belonging to the second respondent and he met with an accident. Making petitioner also liable, he produced an Insurance Policy. Steps have been taken by the second respondent against the petitioner. Relying on the Insurance Policy, award was passed making the petitioner also liable and directed it to pay a sum of Rs. 1,21,099. The Insurance Policy was marked in the case as Ex.A-5.

3. After the award was passed it was found that the Policy produced before the court was fabricated and therefore the petitioner filed an unnumbered interlocutory application to reopen the award giving various reasons by the award shall not stand as against the petitioner. Authority simply returned the same on the ground that the said application is not maintainable and it is only to protract the recovery proceedings. The same is challenged in this revision under Article 227 of Constitution of India.

4. The finding that the petitioner wants to delay the proceedings cannot stand since it has already deposited entire award amount before the authority and only

thereafter filed the application to reopen the case.

5. The second contention that there is no jurisdiction to reopen the case also cannot stand in view of the decision reported in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., . In that case, their Lordships held that fraud invalidates every act of the court and if any order is obtained on the basis of fraud, it is the duty on the part of the tribunal to have the same set aside. Their Lordships also said that every court/tribunal has got inherent jurisdiction to set aside orders obtained on fraud. In page 2597 in paragraphs 20 to 23, their Lordships held thus:

20. . . .This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a Us) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus et jus nanquam cohabitant). It has been repeatedly said that fraud and deceit defend of excuse no man (Fraus et dolus nemini patrocinari debent).

21. In Smith v. East Elloe Rural District Council, 1956 A.C. 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estate Ltd. v. Beasley (1956)1 Q.B. 702, Denning, L.J. said:

No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

22. The judiciary in India also possesses inherent power, specially u/s 151, C.P.C. to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent power are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the construction of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court''s business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee Vs. Mohanlal Goenka and Others, ; Gajanand Sha and Others Vs. Dayanand Thakur, ; AIR 1947 236 (Nagpur) ; Devendranath Sarkar v. Ram Rachpal Singh, ILR (1926)1 Luc 341 : AIR 1926 Oudh 315; Saiyed Muhammed Raza v. Ram Saroop, ILR (1929) Luc 562 : AIR 1929 Oudh 385; Bankey Behari Lai v. Abdul Rahman, ILR

(1932) 7 Luc 350: AIR. 1932 Oudh 63; Lekshmi Amma Chacki Amma v. Mammen Mammen, 1955 K.L.T. 459. The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar AIR 1954 Pat. 450 or to set aside the order recording compromise obtained by fraud; (Bindeshwari Pd. Chaudhary Vs. Debendra Pd. Singh and Others, ; Smt. Tara Bai v. V.S. Krishnaswamy Rao AIR 1985 Karn. 270.

6. Petitioner apart from relying on the above decision also given the circumstances under which he filed the application before the authority. The accident happened on 30.3.1997 and on that date, there is no Insurance Policy at all. A policy was taken only on 31.3.1997. If that be so, the company cannot be made liable. Various other circumstances also pointed out in para 5 of the application before the authority. There is an allegation of fraud and prima facie if it is found to be sustainable, the authorities should not have returned the same for the reasons stated therein.

7. In the result, I set aside the impugned order and I direct the Commissioner of Workmen''s Compensation, Coimbatore to reopen W.C. No. 227 of 1997 in so far as the petitioner is concerned and decide the case in accordance with Law. There is no necessity to pass any fresh order on the interim application filed by the petitioner and I reopen the main compensation case itself in so far as the petitioner is concerned. I direct the authority to issue notice to all parties and decide the same in accordance with Law. Till fresh orders are passed, the amount deposited by the petitioner will not be allowed to be disbursed. If ultimately it is found that Insurance Company is also liable, the amount already deposited will be allowed to be withdrawn by the claimant. If it is found otherwise, The Insurance Company is entitled to get back the amount.

I make it clear, I have reopened the case only as against the Insurance Company. The award as against the owner of the vehicle is confirmed and the claimant is entitled to realise the amount from the owner of the vehicle on the basis of the award.

8. The Civil Revision Petition is allowed as above. No costs, consequently, C.M.P. No. 10572 of 1998 is closed.

