
(2014) 02 AP CK 0038
In the Andhra Pradesh High Court
Case No : CRP No. 500 of 2014

Thulluri Subba Rao

APPELLANT

Vs

Yelchuri Srinivasa Rao

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Evidence Act, 1872 — Section 114(g)

Citation : (2014) 3 ALD 36 : (2014) 4 ALT 67

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Siva Sankara Rao Borra, Advocate for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.—This civil revision petition arises out of docket orders, dated 26.12.2013 and 30.12.2013, in I.A. No. 548 of 2013 in O.S. No. 114 of 2008, on the file of the Court of the learned Senior Civil Judge, Kandukur. A perusal of docket order, dated 26.12.2013, of the lower Court shows that there was no representation by the Counsel for the petitioner as well as the Advocate-Commissioner. The Court below has observed that despite lapse of six months, expert's evidence was not recorded and there was no representation by the petitioner's Counsel. Even the petitioner was also called absent. From the conduct of the petitioner and his Advocate, the Court below has drawn the presumption that neither the petitioner nor his Counsel nor the Advocate-Commissioner is interested in examining the expert. The lower Court has, accordingly, directed return of the warrant by 30.12.2013 with an observation that the Court can draw adverse inference u/s 114(g) of the Indian Evidence Act, 1872. A consequential order was passed on 30.12.2013 for return of the Commissioner's warrant.

2. At the hearing, Mr. Siva Sankara Rao Borra, learned Counsel for the petitioner, submitted that in view of the Advocates' strike for the cause of United Andhra Pradesh, the Advocate-Commissioner has not executed the warrant and the Counsel for the petitioner was not present.

3. In my opinion, the Conduct of the Counsel for the petitioner in the lower Court and the Advocate-Commissioner is legally impermissible. The Supreme Court repeatedly held that strike by lawyers is unconstitutional and the same constitutes professional misconduct. I had an occasion to deal with this aspect in the The New India Assurance Co Ltd. Vs. A. Chalapathi and K. Sreelatha Reddy, It was held:

In Ex. Capt. Harish Uppal v. Union of India, the Supreme Court held as under:

? Lawyers have no right to go on strike or give a call for boycott, not even on a token strike.

? The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc., outside the Court.

? All lawyers must boldly refuse to abide by any call for strike or boycott and no lawyer can be visited with any adverse consequences by the association or the Council; There shall be no threat or coercion of any nature including that of expulsion of the advocate.

? No Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored.

? In rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day.

? It is for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. In such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from Court, whose decision shall be final to be abided by the Bar.

? Courts are under no obligation to adjourn matters because lawyers are on strike and it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers.

? Courts must not be privy to strikes or calls for boycotts.

? If a lawyer, holding a vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay his client for loss suffered by him.

(emphasis added)

4. In Ramon Services Private Limited v. Subhash Kapoor, the Supreme Court held:

....When the advocate who was engaged by a party was on strike there is no

obligation on the part of the Court either to wait or to adjourn the case on that count....

5. In view of the above noted authoritative pronouncements, irrespective of the cause, the lawyers cannot go on strike. Therefore, the plea that because of the lawyers' strike, the Advocate-Commissioner could not execute warrant cannot be countenanced in law. By staying away from the work, the Court was left with no option other than directing return of the warrant by the Advocate-Commissioner. Therefore, I do not find anything wrong in the approach of the lower Court or any error in the orders passed by it, which are the subject-matter of this civil revision petition. If the petitioner has suffered any damage on account of the return of the warrant by the Advocate-Commissioner, he shall be free to claim such damages from his Advocate as well as the Advocate-Commissioner by initiating appropriate proceedings.

6. Subject to the liberty given to the petitioner as above, the civil revision petition is disposed of. As a sequel, CRP MP No. 663 of 2014, filed by the petitioner for interim relief, is disposed of as infructuous.