

(2014) 11 SHI CK 0125

In the High Court Of Himachal Pradesh

Case No : C.M.P. No. 14339 of 2014 in C.W.P. No. 1859 of 2008

Uttam Chand Sharma

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2014) 11 SHI CK 0125

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Sunita Sharma, Advocate for the Appellant; V.K. Verma, Addl. A.G., Party-in-Person and B.S. Attri, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The applicant/petitioner has preferred this application for recalling the following statement given at the Bar on 19.8.2009:

"Mrs. Ranjana Parmar, learned counsel for the petitioner has stated that she does not press relief 7(a) made in the petition and she has also stated that in view of the fact that the petitioners have not pressed relief 7(a) now, there is no need to amend the petition and she will argue the petition on the basis of the pleadings already on the record. The H.P. State Administrative Tribunal has been abolished and, therefore, the name of respondent No. 1 is deleted. Amended memo of parties be filed within two weeks. Put up after two weeks."

It is contended that the applicant was not aware of this statement and it has now come to his notice when the case came up for hearing.

2. Respondent No. 2 has filed reply to this application. In the preliminary objection, it is claimed that the application is barred under Order 2 Rule 2 CPC. It is further contended that the statement in question cannot be said to have been given inadvertently as the learned counsel for the petitioner knowingly and purposely withdrew relief 7(a). It is also claimed that the petitioner is also estopped from filing the application due to his act and conduct, particularly when

more than five years have elapsed and no steps whatsoever had been taken for recalling of the statement.

3. No reply has been filed by respondents No. 1 and 3.

4. I have heard learned counsel for the petitioner, learned Additional Advocate General for respondent No. 1, learned counsel for respondent No. 3 and respondent No. 2, who appeared in person.

5. At the outset, it may be observed that the petitioner has changed his counsel and thereafter moved this application and even the counsel of respondents are not the same whose presence has been marked in the order dated 19.8.2009.

6. Learned counsel for the petitioner has strenuously argued that there was no occasion for the petitioner to have relinquished with relief 7(a) as this infact was the only relief which had been prayed for. It is further contended that if the petitioner would have known about this order, he would have mentioned these facts in the applications subsequently preferred by him being CMP No. 6475 of 2009 and CMP No. 4708 of 2012 wherein in para-2 of both the applications, the following averments have been made:

"2. That during the pendency of the O.A., H.P. State Administrative Tribunal has been abolished by the State Government and the petitioner opted for deputation in the State Judicial Academy, Shimla and stood absorbed as Superintendent Grade-II. The petitioner now has got himself absorbed in Judicial Department; therefore, he is now only interested in pay fixation from the date when respondent No. 2 was absorbed as Judgment Writer."

7. While on the other hand, learned counsel for respondents No. 1 and 3 and respondent No. 2 would contend that the applications, as such, at belated stage was not maintainable not only because of the bar created under Order 2 Rule 2 CPC but because of the act and conduct of the petitioner.

8. I have considered the rival submissions of the parties and of the opinion that the application deserves to be allowed for more than one reason. There is no dispute that the petitioner was being represented by a counsel of a good standing but that does not make the counsel infallible because after all "to err is human". A perusal of the petition would show that the petitioner had claimed the following reliefs:

"a. In view of the facts and circumstances of the case it is most respectfully prayed that the absorption order of respondent No. 2 may be quashed and set-aside and applicant may be considered for appointment as Judgment Writer from the due date with all consequential benefits.

b. That the applicant may be given the arrears of difference of salary, along with interest and arrears thereafter."

9. Indisputably, in case the relief 7(a) is given up, then the petitioner has nothing to agitate and correspondingly this Court has nothing to adjudicate. Then could

this have been the intention while making the statement on 19.8.2009? The petitioner obviously has not gained anything by making the aforesaid statement, rather he has been a loser.

10. The provision of Order 2 Rule 2 CPC or principles thereof are not attracted to the facts of the present case as none of the ingredients contemplated by this provision are attracted to the facts of the case.

11. This Court can certainly permit a party to resile from a statement or a concession if it is satisfied that it was made on a misappreciation or a wrong understanding of law resulting in injustice. A similar question arises before the Division Bench of this Court in *Purewal and Associates and another Vs. Punjab National Bank and others*, in which the respondent had filed a review for withdrawing the statement and this Court held as follows:

"16. From the drift of the judgments it is clear that it is the original Court which must be first approached while the matter is still fresh in the minds of the Judges who recorded the facts on the concession. It would appear to us that they can certainly permit a party to resile from the concession if they are satisfied that it was made on a misappreciation or a wrong understanding of the law resulting in injustice...."

12. This court is not oblivious to the fact that admissions, concessions and withdrawals by counsel are generally binding upon the parties unless the same are induced or misled by some circumstance to make a statement under a mistake or it is based on a complete misappreciation of the law. It appears that the counsel for the petitioner had mistakenly given up relief 7(a) as recorded in the order dated 19.8.2009 and the mere fact that counsel was having many other standing does not mean that she could not have committed mistake. Similar facts were involved in *Purewal's* case (*supra*) and it was held:

"37. There is no doubt that Mr. Chhabil Dass is a seasoned lawyer of good standing but that does not make him infallible. "To err is human". He is also an extremely fair and straightforward lawyer and, therefore, we are more inclined to accept his statement that the clarification was made on a misapprehension and a wrong understanding of the clear legal position and was beyond the express instructions of his client. There is no rule that says that a lawyer of many years standing cannot have any misapprehension or misconception of law though it is normally presumed that he would know the law better than a junior lawyer. However, the presumption is rebuttable. But no advocate can know every aspect of the law and understand all its nuances and never make a mistake.

38. It would appear to us that the mistake is apparent from the statement itself as the clarification takes away the general right of lien which the Bank had and which had been recorded in the earlier part of the statement.

39. Consequently, in view of what has been outlined by us above regarding the scope of the writ petition, the express instructions given to counsel and the

clarification being contradictory to the earlier part of the statement thus taking away the general right of lien which had been specially reserved as recorded therein, it is clear that even a seasoned and senior counsel like Chhabil Dass has made a mistake and/or a statement on a misconception of the law by "misapprehension".

13. Insofar as the plea of estoppel is concerned, the respondents have not shown as to how on the basis of such representation they have acted upon it or have misled or changed the position being a simple mistake. Therefore, this is neither any estoppel nor a waiver nor acquiescence.

14. At the end of the day, it must be remembered that the Courts are respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so and further taking into consideration the fact that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done. It is interest of justice and advancement of course of justice, which is required to be insured by this Court.

15. Consequently, the application is allowed and the statement given by the counsel on 19.8.2009 shall not be binding on the petitioner and the petitioner is permitted to agitate relief 7(a).