

Krishan Kumar Vs. State and Others

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Court : Delhi

Decided On : Oct-22-2013

Judge : Jayant Nath

Appellant : Krishan Kumar

Respondent : State and Others

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on Pronounced on
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02. 08.2013 :

22. 10.2013 O.A. No.28/2012 (u/ Ch. 2 R4of Delhi High Court Rules) in I.P.A. 14/2008 KRISHAN KUMAR Through Petitioner Ms.Padmini Gupta, Advocate. Versus STATE & OTHERS Through Respondents Mr.Sushil Dutt Salwan, ASC for R-1 to 3 (GNCTD). CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

O.A. No.28/2012 1. The present appeal is filed by the respondents against the order dated 20th December 2011 passed by the Joint Registrar in the application of the petitioner under Order 33 of the Code of Civil Procedure holding that the petitioner does not have the means to pay the court fee ad valorem on the claim amount of Rs. 1 crore.

2. It is the contention of the petitioner that he applied to respondent No.3 for running a coal depot on 29.12.1997 for which he was required to deposit a sum of Rs. 500/- as security deposit for issue of retail license. The petitioner deposited the security deposit in the Post Office in favour of Commissioner Food & Supply, Delhi. The petitioner was allotted coal shop at premises No.840/6, Chirag Delhi, New Delhi on rent. The petitioner ran the coal business in the name and style of K.K. Coal Depot as its sole proprietor.

3. It is the contention of the petitioner that after 07.04.1991 the coal supply was abruptly stopped by respondent No.3 without any just and sufficient cause. However, the license issued by respondent No.3 to the petitioner was renewed continuously year to year on payment of renewal fees till 1996 with assurances given to the petitioner that the supply of soft coal would be resumed soon. It is the contention of the petitioner that in the year 1995 a press communique was issued by the respondent No.3 which was published on 13.01.1995 in almost all the leading newspapers which stated that the supply of soft coal would be resumed if the petitioner/ license holder deposit a sum of Rs. 13,000/- per truck as an advance upto 15.02.1995 for supply of three months from Jan, 1995 to March, 1995. It is further the contention of the petitioner that on contacting the respondent No.3 after publication of the abovementioned circular, the respondent No.3 informed the petitioner that he is not in a position to requisition soft coal. The petitioner contends that even after this, his license was renewed on 12.11.1996.

4. It is the contention of the petitioner that for about six years the work/ business of the petitioner came to a grinding halt due to non- supply of coal by respondent No.3. The petitioner further contends that he filed Civil Writ Petition No.564/1998 in this Court seeking a direction to respondent No.2 and 3 to provide some avenue of income such as allotment of ration depot, STD kiosk or telephone booth on compassionate ground due to petitioner being a handicapped person. The petitioner by order of this Honble Court was allotted a site for PCO booth on 14.06.2005 near Alaknanda Market, New Delhi in pursuance of Handicapped Certificate issued by All India Institute of Medical Sciences (AIIMS) certifying the petitioner as a physically handicapped person with sixty percent permanent physical impairment in relation to his right lower limb.

5. It is contended by the petitioner, that the petitioner is running a PCO booth and earns a meagre income of Rs. 1800/- per month. A copy of his income certificate issued by Deputy Commissioner (South District) Delhi in support of the same has been placed on record. The petitioner further states that the petitioner has to pay the rent of the earlier allotted coal shop even after the stoppage of its business. The petitioner further submits that after the unlawful closure of the coal business of the petitioner due to the lapses on the part of respondent No.3, the petitioner suffered extreme and exceptional hardship and mental agony since 1996.

6. The petitioner further submits that he is an indigent person and only earns Rs. 1800/- per month from running the PCO Booth which is the only source of petitioners income. The petitioner has also filed a schedule of moveable and immovable properties showing that he has an immovable property dwelling house bearing No.J-3/227, DDA Flats, Kalkaji, New Delhi.

7. I have heard learned counsel for the parties.

8. Learned counsel appearing for the appellants/respondents has strenuously contended that the petitioner is the owner of an immovable property bearing No.J-3/227, DDA Flats, Kalkaji, New Delhi as is clear from Annexure A. Hence, it is contended that the petitioner has the means to pay the court fee. Further, it is submitted that the petitioner has deliberately over valued the suit claiming a sum of Rs. 1 crore as damages. It is stated that the sum of Rs. 1 crore has no correlation to the alleged damages suffered by the petitioner. Reliance is placed on the judgment of the Full Bench of the Madhya Pradesh High Court in the case of Tejkumar vs. Subhashchandra, AIR 1989 MP78 to contend that the court while examining a petition under Order 33 CPC is not precluded from examining the question of its pecuniary jurisdiction and to return the plaint for presentation to the proper court. Hence, it is contended that if the suit is valued properly, the petitioner would have the means to pay the proper court fees. Hence, the present appeal.

9. In contrast, the learned counsel appearing for the petitioner has contended that as far as the issue of ownership of the flat in question is concerned, the same is in the name of his mother. The question of the inheritance of the petitioner to the same is an issue which is presently not settled. It is contended that even

otherwise, merely because the petitioner is in possession of a flat does not mean that he is possessed of sufficient means to enable him to pay the court fee prescribed by law. He has relied upon a judgment of the Delhi High Court in the case of Shri Suneal Mangal vs. M/s Prime Maxi Mall Management and Anr., 2013 (196) DLT234 to point out that this Court has held that petitioner is not expected to sell everything he has with him to pay the prescribed court fee.

10. Having considered the rival submissions of the learned counsel for the parties, in my view, the present appeal is devoid of merits.

11. The Collector of Stamps, Kalkaji has submitted his report in this case. The Collector has noted that the petitioner is found residing at J-3/327, DDA Flat, Kalkaji which he is sharing with his wife and two sons. The flat is, as per the conveyance deed, in the name of the mother of the petitioner who has expired. It is also noted that the petitioner is aged 58 years old and has a monthly income of Rs.2,000-3,000/- per month and is running a PCO Booth. It is also noted that the petitioner is also financially supported by his married sisters, namely, Smt. Usha Rani, Smt. Sunita Rani and Smt. Ravinder Sood.

12. The petitioner in his affidavit deposed that he earns a meagre income of Rs. 1,800/- per month which is his only source of income. A certificate from the Executive Magistrate Kalkaji to the said effect has been filed along with his affidavit as Ex. AW1/2. The petitioner has also filed a certificate from the All India Institute of Medical Sciences, Ex. AW1/1 showing that he is physically handicapped and has 60% permanent physical impairment in his lower limb. There are no reasons to disbelieve these statements.

13. The contention of the learned counsel for the respondents/appellants regarding the petitioner owing a residential flat is of no consequence. The impugned order rightly relies upon the judgment of Orissa High Court in the case of Smt. Diptilata vs. Land Acquisition Collector, Air 1995 Orissa 291 and of the Rajasthan High Court in the case of Smt. Manjulata vs. Sidhkarrant AIR2005 Rajasthan 32 where it was held that the expression possessed of sufficient means refers to capacity to raise money and not the actual possession of property.

14. This High Court in the case of Shri Suneal Mangal vs. M/s Prime Maxi Mall Management and Anr. (supra) in para 8 held as follows:

8. The petitioner/appellant is not expected to sell everything he has with him, to pay the prescribed Court fee. He need not be a pauper to obtain permission to sue as an indigent person. What needs to be seen in such cases is as to whether, after excluding the assets, which are exempt from attachment and the belongings which are necessary to lead a dignified life, considering his family and social background, the petitioner/appellant is in a position to pay the prescribed Court fee or not. In the case before this Court, prima facie, it appears to me that even if all the assets of the petitioner are taken into consideration, though the law excludes from consideration those assets which are exempt from attachment, the figure will not even close to Rs. 61 lakh which is prescribed court fee payable on the claimed amount.

15. Hence, merely because the petitioner allegedly owns a flat which is still in the name of his mother could not be a ground to hold that he is not an indigent person.

16. The other contention of the appellants/respondents is also without merit. It is not possible to conclude at this stage as to whether the petitioner has over valued his claim. The Full Bench of the Madhya Pradesh High Court in the case of Tejkumar vs. Subhashchandra (supra), the judgment relied upon by the learned counsel for the respondents did hold that it was upon the non-applicant to lead evidence to disprove the claim of the applicant and to also show that the suit is overvalued and if the valuation would have been proper then the applicant is in a position to pay the court fees. In the present case, admittedly, the non-applicant, namely, the State has not led any evidence whatsoever. There is nothing to show and demonstrate that the suit has been over valued by the petitioner.

17. The present appeal is accordingly dismissed. I.P.A. 14/2008 List the matter on 18.12.2013 before the Joint Registrar for further proceedings. JAYANT NATH, J
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