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Court : Karnataka

Decided On : Jun-27-2000

Reported in : ILR2000KAR2598; 2000(5)KarLJ215

Judge : P. Vishwanatha Shetty, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 22029 of 2000

Appellant : Panchayya

Respondent : Mallayya and Another

Advocate for Pet/Ap. : Sri Anil V. Kulkarni, Adv.

Judgement :

ORDER

1. The petitioner in this petition is the plaintiff before the Court of the Civil Judge (Junior Division) at Jamkhandi. In this petition, he has prayed for quashing the order dated 12th June, 2000 made on I.A. Nos. Ito III in O.S. No. 23 of 2000.

2. Sri Kulkarni, while is unable to dispute that the petitioner has a right of miscellaneous first appeal provided against the impugned order under the provisions of the Code of Civil Procedure, submits that since the Advocates at Jamkhandi are on strike and have abstained from attending the Courts, the

petitioner is not in a position to avail of the remedy provided to him under the Code of Civil Procedure. In this connection, he drew my attention to the statement made by the petitioner in paragraph 5 of the writ petition, which reads as hereunder:

'5. It is respectfully submitted that though against the order of first respondent, the petitioner has to file Miscellaneous Appeal before the Civil Judge (Senior Division), but on account of ongoing strike by the Advocates at Uttar Kannada all the Courts have been closed and the Presiding Officers of the respective Courts are not functioning, the petitioner respectfully submits that in casethis Hon'ble Court will not come to the aid of this petitioner he will be evicted from the respondents 2 and 3 on the basis of the order dated 12-6-2000 from the suit house, under the circumstances the petitioner even cannot maintain a civil revision petition against the impugned order, since same is not maintainable against the order of Civil Judge (Junior Division)'.
'

3. Having given my anxious consideration to the submission made by the learned Counsel for the petitioner, I am of the view that this is not a fit case for this Court to exercise its extraordinary jurisdiction under Articles 226 and 227 of the [Constitution of India](#) to examine the correctness of the order impugned. Admittedly, the right of appeal is provided under the Code of Civil Procedure. The question is whether the right of appeal provided is not an efficacious remedy; and in the circumstances pleaded by the learned Counsel for the petitioner, whether this Court should exercise its writ jurisdiction under Articles 226 and 227 of the [Constitution of India](#)?

4. Admittedly, the petitioner has not filed the appeal against the impugned order. However, the explanation given is that the Presiding Officers of the Courts are not allowed to function by the lawyers who are on strike. In my view, if I am to accept the submission of the learned Counsel for the petitioner and proceed to examine the correctness of the impugned order in exercise of my writ jurisdiction, I will be doing greatest injustice to the Institutions established to administer justice and the justice delivery system. Preventing the Presiding Officers of the Courts from discharging their judicial work, there cannot be any doubt, would amount to obstructing or interfering with the course of justice and the persons who commit

such acts are committing contempt of the Court. Therefore, if, on the ground pleaded by the learned Counsel for the petitioner, I am to exercise my extraordinary jurisdiction under Articles 226 and 227 of the [Constitution of India](#) to examine the correctness of the order impugned, in my view, I will be tacitly putting the seal of approval of this Court for the illegal actions complained of by the petitioner in paragraph 5 of the writ petition, referred to above. In my view, it is the prime duty of this Court to maintain the majesty and dignity of the Courts and to put down all actions which have the effect of interfering with the course of justice and justice delivery system. Rule of law is required to be maintained at any cost. The Courts and more particularly this Court, in my view, should not do and permit anything to be done which would have the effect of diluting the administration of justice. On the other hand, it is the duty of this Court to take such steps that may be necessary to prevent interference in the course of justice by anyone. Therefore, I am of the view that merely because the lawyers are on strike and are preventing the Presiding Officers from attending the Courts, is not a ground to proceed to examine the correctness of the order impugned. In this connection, it is useful to refer to the judgment of the Supreme Court in the case of Mahabir Prasad Singh v M/s. Jacks Aviation Private Limited . The Hon'ble Supreme Court at paragraphs 15, 16, 17 and 18, has observed as follows:

'15. This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's Counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court forever as the Delhi Bar Association took such a decision. Here the Counsel did not want a case to be decided by that Court. By such conduct, the Counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.

16. If any Counsel does not want to appear in a particular Court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that Court so that the party can engage another Counsel. But retaining the brief of his client and at the same time abstaining from appearing in

that Court, that too not on any particular day on account of some personal inconvenience of the Counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an Advocate. No Court is obliged to adjourn a cause because of the strike call given by any association of Advocates or a decision to boycott the Courts either in general or any particular Court. It is the solemn duty of every Court to proceed with the judicial business during Court hours. No doubt should yield to pressure tactics or boycott calls or any kind of browbeating.

17. A three-Judge Bench of this Court has reminded members of the legal profession in the case of *Lt. Col. S.J. Chaudhary v State (Delhi Administration)* , that it is the duty of every Advocate who accepts a brief to attend the trial and such duty cannot be over-stressed. It was further reminded that 'having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend'.

'A lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the Courtroom'.

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the Court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public, Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in Courts of law. But that does not mean that any Advocate or a group of them can boycott the Courts or any particular Court and ask the Court to desist from discharging judicial functions. At any rate, no Advocate can ask the Court to avoid a case on the ground that he does not want to appear in that Court'.

The Division Bench of the Patna High Court in the case of *Ranchi Bar Association, Ranchi v State of Bihar*, while considering the effect of the unlawful 'Bandh', at paragraphs 15 and 21 of the judgment, has observed as follows:

'15. The Government, being duty-bound to protect the people, has to prevent unlawful activities like Bandh, Rally etc., which invade or threaten to invade their life, liberty and property. It is neither open to any person, organization or political party to take the people to ransom, nor is it permissible for the Government to allow such unlawful activities. Such activities have to be prevented at the threshold otherwise it may not be possible to protect the people's rights. Prevention of unlawful activities ensures the protecting of the rights of the people and their property. If the people who organize and support such unlawful bandh, rally etc., are armed, they have to be disarmed and prevented from proceeding further by the State Administration and any failure on the part of the administration to do so is negligence liable to be punished.

21. Under our legal system, the Courts are entitled to work and decide cases in accordance with law without any fear, threat or coercion. If any person or organization obstructs or interferes with the working of the Courts and/or prevents unlawfully the lawyers from attending the Courts to plead for their clients, they commit contempt of Court liable to be punished. In the instant case, the supporters of the Bandh forced the closure of the Court, interfered with its working and prevented unlawfully the lawyers from attending their cases. They have thus committed contempt of Courts. But we are not taking any action in this case, against them hoping that such activities will not be repeated in future. If our hope is belied in future, this Court will not hesitate to take action against the person who interferes with the Courts' working'.

(emphasis supplied)

The legal position, in a matter like this, having been settled by the Hon'ble Supreme Court and the High Courts, which have been referred to above, I am unable to accede to the submission of the learned Counsel for the petitioner that since lawyers are on strike, this Court should proceed to examine the correctness of the impugned order. If a section of the members of the public or lawyers prevent functioning of the Courts, remedy open to the petitioner and others, who believe in Rule of law, administration of justice, majesty of the Courts and orderly society is to prevent such illegal acts being continued, by taking appropriate legal action

against such of those persons who indulge in such illegal actions and interfere with the course of justice.

5. In the light of the discussion made above, this petition is liable to be rejected at the stage of preliminary hearing itself and it is accordingly rejected.

6. However, all the contentions urged on merits challenging the correctness of the order impugned, are left open to be urged before the Appellate Court.

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