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Court : Karnataka

Decided On : Feb-10-2009

Reported in : 2009(5)KarLJ314

Judge : B.V. Nagarathna, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24 and 151 - Order 11, Rule 1

Appeal No. : Civil Revision Petition No. 35 of 2009

Appellant : V. Rajkumar

Respondent : C.M. Abu Mohammed (Since Dead) by His L.Rs and ors.

Advocate for Def. : S. Srivatsa, Sr. Adv. for ;Legal Axis by ;M.D. Raghunath, Adv.

Advocate for Pet/Ap. : S.K. Venkata Reddy, Adv. for ;T. Rajaram, Adv. for ;BSBG Law Firm, Adv.

Judgement :

ORDER

B.V. Nagarathna, J.

1. This revision petition is filed by the petitioner challenging the order dated 2-2-2009 passed in Misc. No. 1029 of 2009 by the Principal City Civil and Sessions

Judge at Bangalore. By the said order the miscellaneous petition has been dismissed.

2. The relevant facts of the case are that O.S. No. 16707 of 2002 is pending on the file of CCH-20 Mayo Hall Unit at Bangalore. The said suit is for ejectment of the petitioner herein and the same has been filed by the respondents herein. The Original Suit No. 16483 of 2001 is pending in CCH-29 Mayo Hall Unit, Bangalore and the said suit is for partition and separate possession. The relief claimed by the petitioner herein in the miscellaneous petition filed before the Principal City Civil Judge.-Bangalore was for transfer of O.S. No. 16707 of 2002 pending on the file of CCH-20 to any other Court after clubbing the same with O.S. No. 16483 of 2001. However, during the course of submission before this Court, it has been submitted on behalf of the petitioner that the relief is restricted to only transfer of O.S. No. 16707 of 2002 pending on the file of CCH-20 to any other Court for disposal in accordance with law.

3. In the petition seeking for transfer, the petitioner has submitted that on account of certain observations made by the Presiding Officer in O.S. No. 16707 of 2002 of CCH-20 in which the same is pending and further, due to the grave and serious apprehension in the mind of the petitioner that justice would not be rendered to him in the said suit, the petition for transfer was filed. Being aggrieved by the dismissal of the said transfer petition, this revision petition has been preferred. In the case put forth by the petitioner before the Principal City Civil Judge, it has contended that there were about 2,332 cases pending in CCH-20 and among them 920 cases were listed for evidence, but the Court was giving lot of priority to the instant suit. That though the application for interrogatories in the suit has been filed, the same was not answered, but the Presiding Officer was insisting for cross-examination of P.W. 1 and further to proceed with the examination of D.Ws. 1 and 2 and that the observations made by the Presiding Officer and the fact that he was not accommodating the petitioner's Counsel in the matter of adjournments and in general the conduct of the Presiding Officer during the course of the proceedings in the said original suit had caused an apprehension in the mind of the petitioner and therefore, the transfer petition filed under Section 24 of the Civil Procedure Code, 1908 had to be allowed.

4. The respondents herein appeared and filed their objections to the transfer petition by contending that the said transfer petition was filed with a mala fide intention to protract the proceedings. That the suit for ejectment was filed in the year 2002 and several interlocutory applications were filed by the petitioner with a view to see that the proceedings in the suit do not come to an end and that on three occasions, writ petitions were filed before this Court and despite directions being given with regard to the regulation of the procedure, the petitioner was bent upon seeing that the suit would not be concluded in the near future and therefore, the filing of the transfer petition was another instance of causing delay and hence, sought for dismissal of the same.

5. After hearing both sides, the Trial Court was pleased to dismiss the petition seeking transfer of the said suit. Being aggrieved by the said order of dismissal, the petitioner has filed this revision petition.

6. I have heard Sri S.K. Venkatareddy, learned Counsel for Sri Rajaram for M/s. BSBG Law Firm appearing for the petitioner and Sri S. Srivatsa, learned Senior Counsel for M/s. Legal Axis for caveators.

7. It is submitted on behalf of the petitioner that the relief in this petition is restricted to only seeking a transfer of O.S. No. 16707 of 2002 pending on the file of CCH-20 at Mayo Hall Unit to any other Court. Learned Counsel drew my attention to three instances, which according to him were glaring enough so as to cause grave apprehension in the mind of the petitioner resulting in losing his confidence in getting justice from the concerned Court. According to him, the concerned Presiding Officer had expressed 'in this case there is nothing. Since it is an old matter, the orders are to be pronounced and therefore should go on with the matter'. On more than ten occasions it has made the petitioner to lose confidence in the Judge. It is also the case of the petitioner that when the petitioner was cross-examining the witness for the respondents, the Senior Counsel appearing for them expressed as 'you need not have to worry about the case, the Presiding Officer will take care of your case and will take care of you. Therefore, you need not bother about the Advocate's questions'. He has further drawn my attention to the fact that on 2-12-2002, in the morning and in the lunch

hour a relative of the respondent had entered the chamber of the Judge. Therefore, the petitioner does not have any confidence and hence the suit ought to be transferred to another Court. He submits that in this connection, the affidavits of the petitioner, Sri Yatishkumar and Sri T.A. Ramachandraiah, learned Counsel appearing for him were filed. Taking note of the cumulative effect of the three instances, learned Principal City Civil Judge ought to have allowed the transfer petition and transferred the case from the said Court. He, therefore, submits that the civil revision petition ought to be allowed and the relief sought by the petitioner be granted. Learned Counsel also relied upon certain citations which will be adverted to later.

8. Per contra, it is submitted on behalf of the respondents that the suit was filed in the year 2002 and that there were as many as thirty two interlocutory applications which were filed and out of the same twenty-eight applications were filed by the petitioner herein with a view to protract the proceedings and that the filing of the transfer petition is one more instance of a mala fide intention to ensure that the proceeding in the suit does not come to an end. He further submits that although thirty-two interlocutory applications were disposed of by the said Presiding Officer, it was only on three occasions that writ petitions were filed challenging three of the said orders passed on the interlocutory applications and further, a direction was given by this Court in the said writ petitions to ensure that the suit be concluded on a regulated procedure and therefore, there is no substance in the case made out by the petitioner. He, therefore, submits that the revision petition being devoid of merits ought to be dismissed. Learned Senior Counsel has relied upon certain decisions which shall be adverted to later.

9. Having regard to the above submission, the only point that arises for my consideration is, as to whether the impugned order requires any interference in this revision petition.

10. It is not in dispute that the Original Suit No. 16707 of 2002 has been pending on the file of CCH-20 at Mayo Hall Unit since the year 2002. It is also not in dispute that as many as thirty-two interlocutory applications were filed by the parties and they have all been disposed of by the very same Presiding Officer. It is

only on three occasions that writ petitions were filed challenging the orders passed by the said Presiding Officer.

11. Learned Senior Counsel Sri S. Srivatsa appearing for the respondents during the course of his arguments submitted a list of interlocutory applications filed between 26-6-2007 and 4-11-2008 i.e., for a period of one year and four months wherein twenty applications have been filed. He has also submitted during the course of his arguments a list of dates of cross-examination of P.W. 1 which commenced from 29-1-2007 to 2-12-2008 which is almost for a period of two years. When the case was at the stage of cross-examination of P.W. 1, on 2-12-2008, when time was sought for cross-examination of P.W. 1 and the same was rejected by the Presiding Officer on 5-12-2008 the miscellaneous petition was filed seeking transfer of the case to another Court and the learned Principal City Civil Judge granted stay of the proceedings of the suit which was in force until miscellaneous petition was disposed of.

12. At this stage, it would be of relevance to note that the orders made by this Court in the three writ petitions, which were filed against the interlocutory orders made by the Presiding Officer concerned. W.P. No. 13345 of 2008 was filed calling in question the order dated 18-10-2008. By an order dated 24-10-2008, this Court by noticing that the prayer made in the writ petition was in the nature of grievance with regard to the procedure followed by the Trial Court in not disposing the application filed under Order 11, Rule 1 read with Section 151 of the CPC and instead posting the case for cross-examination of P.W. 1, directed the concerned Judge to dispose of the said application before continuing with the cross-examination of P.W. 1. Therefore, to the limited extent the writ petition was allowed with a direction to the Trial Court to dispose of the application in I.A. No. XXVII and thereafter to proceed with the matter. Considering the fact that the matter was pending for quite sometime and taking note of the fact that the petitioner herein had been making similar applications to protract the proceedings, without indicating any time frame to the Trial Court, a direction was issued to regulate the proceedings to see that the matter is not been protracted unduly and with the said observations and the direction, the said writ petition was disposed of.

13. Shortly thereafter, W.P. No. 13628 of 2008 was again filed by the petitioner herein seeking a writ of prohibition directing the Trial Court not to proceed with the case in O.S. No. 16707 of 2002 till the direction issued by this Court on 24-10-2008 passed in W.P. No. 13345 of 2008 is complied. This Court while disposing of the said writ petition by its order dated 31-10-2008 held that the disposal of I.A. No. XXVII was in full compliance of the earlier order dated 24-10-2008 and that the suit would now have to proceed farther. Therefore, this Court did not see any reason to interfere with any order or to issue any prohibitory order as prayed for and found that the writ petition was without merit and disposed of the same.

14. Subsequently, by order dated 11-11-2008 W.P. No. 14042 of 2008 filed by the respondent herein was disposed of as they had filed the writ petition seeking a direction to the Trial Court to take up the case on day-to-day basis within the time to be fixed by this Court. While disposing of the said writ petition, this Court noted that 'it is no doubt seen that the defendants have sought for adjournment and the Trial Court has granted the same. Since this Court had already made an order that the Trial Court has to regulate this Court to dispose of the suit as expeditiously as possible. One more direction or mandamus need not be issued. Since this Court expressed confidence with the concerned Judicial Officer as well as every Judicial Officer would do his/her best to dispose of the matters before him/her, there will be no legal impediment to do so'. Therefore, while disposing of the petition all that was observed by this Court was that the Trial Court ought to regulate its proceedings and the matter is proceeded in accordance with law without creating hardship to the parties and finally concluded that it was premature to issue any direction to the Trial Court. But, however, it was made clear that if there was deliberate non-co-operation by the defendants in making it difficult for the Trial Court to regulate its proceedings, it would always be open to the petitioner to approach this Court.

15. In the above background, the filing of the transfer petition in Misc. No. 1029 of 2008 may have to be viewed. At para 20 of the impugned order, the Principal City Civil Judge has culled out the allegations made by the petitioners and the same is extracted as follows.:

The petitioner has sought for transfer of the suit mainly on the grounds that:

(1) though there are huge number of cases pending of various years, the Court giving much priority to dispose of O.S. No. 16707 of 2002;

(2) though he had filed an application for interrogatories in the suit, the same has not been answered by the respondents which has handicapped them for cross-examination of P.W. 1 and further to proceed with the examination of D.Ws. 1 and 2 whose affidavits have been filed;

(3) Presiding Officer expressing as 'in this case there is nothing, since it is an old matter, orders are to be pronounced and therefore, should go on with the matter';

(4) Presiding Officer taking up the case in the presence of Counsel for the plaintiff only and not accommodating the petitioner's Counsel during the course of the day;

(5) one of the relatives of the respondents who is helping them and giving instructions to the first respondent inside the Court Hall, many a times has gone inside the chambers of the Presiding Officer, on account of which the petitioner has lost confidence;

(6) the Senior Counsel appearing for the plaintiffs/ respondents expressing in the open Court to the witness P.W. 1 stating that 'you need not have to worry about the case, the Presiding Officer will take care of your case and will take care of you. Therefore, you need not to bother about the Advocate's questions'; and

(7) there is one more suit i.e., O.S. No. 16483 of 2001 filed by the defendants inter se amongst them seeking the relief of partition in respect of the suit schedule property involved in the ejectment suit and since the subject-matter in both the suits are same, they are to be transferred to the Court where the partition suit is pending. These are the main grounds on which the petitioner is seeking to transfer the suit pending in CCH-20 to CCH-29 where the partition suit is pending or to transfer both the suits to any other Court for disposal in accordance with law.

16. It is also forthcoming from the judgment impugned that at the time of hearing, the remarks of the Presiding Officer was also called for and the same has been

received on 19-1-2009 and after perusal of the same and hearing both sides, the miscellaneous petition was dismissed.

17. During the course of his submission, learned Counsel for the petitioner has already drawn my attention to three specific instances, wherein, according to the petitioner the bias of the Presiding Officer has been apparent which has led the petitioner to lose confidence in the said Judge. The nature of the allegations to which my attention was drawn can be viewed into two categories: (1) The observations made by the Presiding Officer during the course of conducting the suit and the observations made by the Counsel for the respondents herein; (2) The fact that one of the relatives of the respondent went to the chamber of the Presiding Officer who was seen by the petitioner and none else.

18. The observations made by the Presiding Officer and the Counsel for the respondents have been extracted by me supra. At the cost of repetition it is stated that the allegation is that the Presiding Officer had expressed on more than ten occasions that the suit was an old matter and that there was nothing in the case and only orders had to be pronounced. In this context it is relevant to refer to the decision of this Court in the case of Smt. Sangeetha S. Chugh v. Ram Narayan v. and Ors. : 1994 (4) Kar. L.J. 696, wherein it has been held that during the course of the trial of any case, when the matter is being heard, the Presiding Officer might express some opinions, but it does not mean that he would have made up his mind with respect to the decision taken in the case. When discussions are held and arguments are heard, a Presiding Officer is entitled to disclose his mind. It would be too much to state that if any statement is made by the Presiding Officer, it means that the Presiding Officer has made up his mind with respect to the decision in the case. It is further stated that if this be the position, no case can be heard by any Court. It cannot be expected that the Judges should be silent without expressing any opinion. A sphinx like attitude is not expected from the Presiding Officer especially when he is trying a matrimonial case or litigation between very near relations.

19. Although the above observations have been made in the context of a matrimonial dispute, they are equally applicable to cases of other kind and that

any observation or comments made by the Presiding Officer cannot be misunderstood as an expression of a decision. Taking into consideration the adversarial nature of our judicial system and dispensing of justice, the Presiding Officer cannot be a mute spectator when he is duty bound to decide one way or the other after, complying with all procedural aspects and after hearing both sides and in accordance with law. What flows in the mind of the Presiding Officer during the pendency of a suit cannot be understood as the ultimate decision or otherwise there would be no effective participation of the Presiding Judge in any matter. Therefore, the expressions or even the . repeated observations made by the Presiding Officer in the instant case cannot in my view cause an apprehension much less a grave apprehension in the mind of the petitioner that justice would not be rendered to him in accordance with law.

20. As far as the observation of Senior Counsel are concerned the same can have no bearing on the decision of the case. Even though the said observations, if really, uttered ought not to have been uttered particularly by dragging the Presiding Officer into it, I am of the considered view that observations in the nature of what has been stated in the instant case cannot have any bearing on the decision of the case. On the basis of the observations made by a Counsel suspicion cannot be raised against the Presiding Officer of the Court.

21. As far as the other aspect of the case is concerned i.e., the petitioner coming to know of respondent's relative visiting the chamber of the Presiding Officer it is submitted that the petitioner in the initial stage could not recognise the relative of the respondent who visited the Judge's chamber. However, he filed an affidavit stating that one of the relatives of the respondents herein had visited the Judge's chamber and the said affidavit is supported by the affidavit of the two Counsel for the petitioner. Although they have not seen the said incident with their own eyes, have nevertheless filed affidavits on the basis of the statements made by their client. The learned Principal City Civil Judge during the . course of his reasoning has observed that though the affidavits of the petitioner and the two Advocates have been filed, in the affidavits of the Advocates, there is no mention about the relative of the respondent sitting in the Court and entering the chambers of the Presiding Officer. It is only in the affidavit of the petitioner which finds a place.

Since the affidavit of the petitioner does not disclose the name of the said person and as the Presiding Officer, whose remarks has been called for in the case, has denied all the allegations made in the case and further as the respective Advocates of the petitioner have not mentioned anything about the same and though only on 21-1-2009 during the pendency of the miscellaneous petition for transfer, affidavits have been filed by the petitioner disclosing the name of the person and not at the first instance and the same being afterthought, cannot be believed. In the circumstances of the case, the reasoning in the impugned judgment cannot be found fault with. It is strange that in their over enthusiasm to support their client the Advocates for the petitioner, have in a way acted as litigants by filing their affidavits only on the basis of the statements made by their client without they being witnesses to any person related to the respondent who had entered into the chamber of the Presiding Officer concerned. The fact that they were not witnesses and at the first instance and the petitioner did not disclose the name of the person who is said to have visited the Presiding Officer in his affidavit and thereafter, if they did so only during the pendency of the transfer petition before the Principal City Civil Judge the same cannot in my view make out a case that there is a grave apprehension in the mind of the petitioner or that he has lost confidence in the said Presiding Officer.

22. At this stage, it is necessary to advert to the judgments cited by the learned Counsel for the petitioner in the case of Pushpa Devi Saraf and Anr. v. Jai Narain Parasrampurua and Ors. : AIR 1992 SC 1133 : (1992) 2 SCC 676 and in the case of Jagatguru Sri Shankaracharya Jyotish Peethadhiswar Sri Swami Swarbopanand Saraswati v. Ramji Tripathi and Ors. : AIR 1979 MP 50.

23. In Pushpa Devi Saraf's case, it has been held that when a petition for transfer of suit is filed making allegations against the Presiding Officer, the report if and when called for from him, should normally be confined to the allegations made against the impartiality or fairness of the Judge and not with respect to the correctness or otherwise of the orders passed by him. The Supreme Court held that the Presiding Officer of the Court should not be put to such an explanation, barring exceptional circumstances. In the instant case, the Principal City Civil Judge has noted that remarks of the concerned Presiding Officer was called for.

Nothing further he has been stated in the judgment impugned and therefore, this is not a case where the Presiding Officer has justified the orders passed by him one way or the other. Hence this decision is of no assistance to the petitioner.

24. In Jagatguru Sri Shankaracharya Jyotish Peethadhiswar Sri Swami Swaroopanand Saraswati's case, it has been held that the onus of establishing sufficient grounds for the transfer lies heavily on the applicant and interest of justice is a consideration to be taken note of and a case has to be transferred if there is reasonable apprehension of a party to a suit that he might not get justice in the Court where the suit is pending. This may be because the Trial Judge is prejudicial or because in the surcharged atmosphere no fair trial is possible at that place. The question whether apprehension entertained by a litigant that he might not get justice in the Court at the hands of a particular Judge is a reasonable apprehension or not has to be determined on such materials as is on record and on the explanation of the Judge concerned, the onus of establishing sufficient grounds for the transfer lies heavily on the applicant, no account of imaginary suspicion or capricious belief could be permitted to be raised as a ground for transfer,

25. Considering the background and the checkered history that this case has had and taking note of the observation made by this Court on three occasions and also keeping in mind all the fact that as many as thirty-two interlocutory applications filed by both sides were disposed of by the very same Presiding Officer and it was only on two occasions that the order of the concerned Presiding Officer was challenged before this Court and this Court did not in either of the writ petitions set aside the orders impugned, but only made observations for the disposal of the suit in accordance with law by regulating the procedure considering the fact that this Court observed in Writ Petition No. 13628 of 2008 that the procedure had been complied with in terms of the order dated 24-10-2008 passed in the earlier writ petition and taking note of the observations made by this Court in W.P. No. 14042 of 2008 that since the Trial Court has already been directed to regulate the proceedings and dispose of the suit in accordance with law, in my view the attempt made by the petitioner to file the transfer petition seeking a transfer of the suit from Court Hall 20 to any other Court is a deliberate one to ensure that there is

protraction of litigation and the same has been filed with a mala fide intention.

26. It would not be out of context to mention the role of a Judge in an Adversarial System of Administration of Justice. It is said that the Judge is nothing but the law speaking and a good Judge conceives quickly, Judges slowly. It is the duty of the Judge to enquire not only into the matter, but into the circumstances of the matter. A Judge must bear in mind that when he tries a case he is himself on trial and when he put on his robes, he put off his relation to any. When the Judges are put in an ivory tower, then Justice is also in an ivory tower. It would also be relevant to quote Rose E. Bird, American Jurist, Chief Justice, California State Supreme Court who said in the year 1978: To some extent the questioning of the Courts is simply part of the increased attention that has been paid to all our institutions over the past several years. What concerns me is that the focus of this questioning of the Courts seems to be not on matters of substance but rather on points of prejudice and personal pique. A Judge's integrity, fairness, temperament, and knowledge of the law are all pertinent areas for public inquiry. However, what is happening instead is that Judges are being perceived as easy targets and are being portrayed in a manner calculated to create prejudice in the public mind.

27. The object and purpose of Section 24 of the CPC are well-known. However, when the allegations are made against the Judge or a Presiding Officer, they have not only to be made with a sense of responsibility, but also which would really cause an apprehension in the mind of litigant that justice would not be rendered in the matter. In the instant case, it is of significance that out of thirty-two interlocutory applications, as many as twenty-eight applications were filed by the petitioner herein and that of the applications were heard and disposed by the very same Presiding Officer and it is only on two occasions the petitioner herein had approached this Court and in respect of other applications the petitioner has accepted the orders made by the Presiding Officer. Taking note of the fact that there were innumerable applications and the fact that the proceedings were dragging on, the Presiding Officer might have expressed or made certain observations and those observations cannot be any stretch of imagination cause any great apprehension in the mind of the petitioner. Under the circumstances, I have no hesitation to dismiss this civil revision petition. However, having regard to

the peculiar facts and circumstances of this case, I refrain from awarding costs. The Trial Court in which O.S. No. 16707 of 2002 is pending is directed to dispose of the said suit in accordance with law and by following the observations of this Court in the writ petition disposed of earlier.

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