

Smt. Vimla Devi Gaur Vs. Anil Kumar Jain and Others

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Court : Allahabad

Decided On : Nov-07-2000

Reported in : 2001(1)AWC132

Judge : R.H. Zaidi, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24

Appeal No. : Civil Misc. Transfer Application No. 230 of 2000

Appellant : Smt. Vimla Devi Gaur

Respondent : Anil Kumar Jain and Others

Advocate for Def. : S.K. Mishra, Adv.

Advocate for Pet/Ap. : Vijai Kumar Rai, Adv.

Judgement :

R. H. Zaidi, J.

1. Heard learned counsel for the parties.

2. By means of this application under Section 24, C.P.C., applicant prays for transfer of Smt. Vimla Devi Gaur v. Anil Kumar Jain and others. Misc. Case No. 113 of 1998, pending before the Civil Judge (Junior Division). Haridwar, as well as Smt. Vimla Devi Gaur v. Anil Kumar and others, Civil Revision No. Nil of 2000,

arising out of an order dated 23rd November, 1999 passed by the Civil Judge (Junior Division), Haridwar pending before the 1st Additional District Judge, Haridwar from district Haridwar to any civil court either in district Bulandshahr, Meerut, Bijnor, Saharanpur or Dehradun.

3. Learned counsel appearing for the contesting respondents, Shri S. K. Mishra objected to the maintainability of the present application. It was urged that the applicant, Smt. Vimla Devi Gaur earlier filed transfer applications which were registered as Transfer Application No. 174 of 2000 and Transfer Application No. 175 of 2000, for transfer of the abovenoted cases from Haridwar. It was urged that the said applications were dismissed by this Court by Judgment and order dated 17.7.2000. The said order has become final. The applicant again filed the present application and deliberately and wilfully suppressed the fact of rejection of earlier applications and succeeded in obtaining the interim order dated 25.8.2000 from this Court by which further proceedings of Misc. Case No. 113 of 1998 and Civil Revision No. Nil of 2000 were stayed. It was submitted that deliberate suppression of material facts, amounts to criminal contempt. It was also urged that as the applicant did not approach this Court with clean hands, therefore, not only the aforesaid interim order dated 25.8.2000 is liable to be vacated but the present transfer application itself is liable to be dismissed. Learned counsel for the applicant conceded that Transfer Application Nos. 174 of 2000 and 175 of 2000 were dismissed by this Court. It was, however, urged that the said applications were filed on the grounds different from the grounds, on which the present application has been filed, therefore, this application is legally maintainable. He, however, had to concede that facts relating to dismissal of earlier transfer applications, were not mentioned/ stated in the present application. In *Asiatic Engineering Co. v. Achhru Ram*, AIR 1951 All 746 (FB), it was ruled by the Full Bench of this Court as under :

'A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking

these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the present case, we feel that, in this case, the petitioner Company has disintitiled itself to ask for a writ of prohibition by material suppressions, misrepresentation and misleading statements which have been found by us above.'

4. The principle laid down in the abovenoted case, will also apply to the transfer applications and other petitions filed in this Court inasmuch as nobody should be permitted to obtain orders from this Court by suppression or misstatement of material facts, thus, not only the interim order dated 25.8.2000 is liable to be vacated but this application itself deserves to be dismissed. The applicant did not approach this Court with clean hands, legally in view of the law laid down by the Apex Court, deliberate suppression or misstatement of material facts amounts to criminal contempt. A reference in this regard may be made to the decisions in Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 ; Dhananjay Sharma v. State of Haryana and others, (1995) 3 SCC 57 ; In re : Sanjay Datta, Deputy Secretary and others, (1995) 3 SCC 619 and in Dev Nath Yadav v. District Inspector, Schools and others, 1996 (2) ESC 359.

5. Further, it is evident from the copies of the earlier bail applications placed before this Court by the learned counsel appearing for the contesting respondent that the grounds taken for transfer of Misc. Case No. 113 of 1998, were substantially the same as have been taken in the present applications. In any view of the matter, the fact of dismissal of earlier transfer applications was a relevant fact for the purposes of the present application, therefore, the same ought to have been stated in the present application ; but with a view to obtain favourable orders from this Court, said fact was not stated. However, under the facts and circumstances of the present case and in view of the fact that the learned counsel for the applicant felt sorry and offered unconditional apology, I do not propose to take any action against the applicant or her counsel.

6. In view of the aforesaid facts and discussion, not only the interim order dated 25.8.2000 is liable to be vacated but the application itself deserves to be

dismissed.

7. This application fails and is hereby dismissed. The interim order dated 25.8.2000 is also discharged.

8. This order shall also govern the Transfer Application No. 231 of 2000.

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