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Saurabh Prakash Vs. Samir Prakash

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Court : Delhi

Decided On : Nov-03-2003

Reported in : 109(2004)DLT817; 2004(73)DRJ63

Judge : Manmohan Sarin, J.

Acts : Code of Civil Procedure (CPC) - Sections 25 - Order 12, Rule 6 - Order 19, Rule 1 - Order 23, Rule 3 - Order 32A, Rules 3 and 5; Army Act - Sections 14 and 130

Appeal No. : S. No. 1628 of 1997

Appellant : Saurabh Prakash

Respondent : Samir Prakash

Advocate for Def. : Party in person

Advocate for Pet/Ap. : Party in perso

Judgement :

Manmohan Sarin, J.

1. Vide Order dated 29.10.2003, the prayer made by the defendant that the undersigned should consider recusing himself from the case, was declined for reasons to follow. Now I proceed to give reasons.

2. Defendant, appearing in person on 23.10.2003, submitted that the undersigned should consider recusing himself from the case. He stated that he has gathered an impression that the Court is of the view that the defendant was wasting the time of the Court and his submissions were being treated with contempt and disdain. He felt that the plaintiff and others present in Court were mocking at him. Defendant submitted that the Order sheets disclose a certain bias inasmuch as when the defendant wanted an adjournment for inspection of the file, the Order sheets give an impression that the defendant had been given enough time to inspect the file. The Court has also appointed an amices curiae on the question whether the allegations of the defendant in filing an application for another Hon'ble Judge of this Court to recused himself, constituted contempt or not? This was hanging as a sword of Democeles on him.

3. Before proceeding to consider the above submissions, it would be relevant to briefly notice the proceedings that have taken place so far in this suit.

4. The present suit for partition had been filed by the plaintiff, Mr. Saurabh Prakash against his brother Mr. Samir Prakash, the defendant herein. Plaintiff and the defendant both happen to be advocates and sons of late Dr. Anand Prakash. The suit had been instituted on 12.8.1997. Written statement was filed in May, 1998 and pleadings were completed thereafter. On 28.5.1998, plaintiff moved an application IA.No. 4913/98 under Order XII Rule 6, CPC seeking a preliminary decree for partition on admissions since the shares in the properties were not being disputed. Adjournments were sought to file reply to this application between 28.5.1998 to 3.4.2000. On 3.4.2000, the right to file reply was closed. In view of an amendment in the plaint, defendant was again permitted on 21.8.2000 to file reply. However reply was not filed. On 19.4.2001, it was again ordered that right to file reply already stood closed. Thereafter, defendant sought amendment of the written statement, which was allowed. On 16.10.2001, defendant sought adjournment on the ground that he had an infected throat. Thereafter, on 11.1.2002, he sought adjournment on the hearing of the application on the ground that he wanted to move an application for impleadment of his mother as a necessary party. The application for impleadment was not filed.

5. In the meanwhile, FAO (OS).47/02 was filed. The Division Bench thereupon vide Order dated 14.2.2002, took the suit on record before itself along with the Appeal. A number of Chamber hearings were held. The Division Bench thereafter vide Order dated 30.5.2002, released the suit and directed it to be heard by the Single Judge, with a direction that endeavor be made to expeditiously decide all pending applications. The appellant/plaintiff preferred an appeal FAO(OS).375/02, submitting that despite the Order of the Division Bench dated 30.5.2002 to decide pending applications, as expeditiously as possible, the matter was being adjourned by the then learned Single Judge. The Division Bench has kept the appeal pending and expressed the hope that pending applications, would now be heard and disposed of expeditiously, without any further delay.

6. Two Hon'ble Judges declined to hear this matter. The suit thereafter came up before a third Hon'ble Judge who also recused himself. The matter was then directed to be listed before another Single Judge being the fourth Judge. Defendant moved an application before the Judge-In-Charge, Original Side for withdrawal of the suit from the Court of Single Judge to whom the case was assigned. It was alleged that on account of illegalities, misrepresentations, false statements and production of fabricated record etc., by an advocate now an Additional District Judge, she enabled the mother of the defendant to siphon off properties which were of the HUF. Transfer of case was sought since the Single Judge happened to be a colleague of the Additional District Judge in Delhi Higher Judicial Service. thereforee, it was urged that he may recused himself from the case. Further it was urged that as a result of the proceedings before the Single Judge, the defendant had lost faith completely in the Judge's ability and willingness to give him impartial justice and proceedings before him would by an eye-wash. Without going into the merits and the contents of the application, the request for transfer was declined by me as Judge-In-Charge (Original Side), on the ground that there was no power to withdraw a case from another Hon'ble Judge and the matter was directed to be listed before the learned Single Judge.

7. Vide Order dated 26.2.2003, the learned Single Judge observed that the allegations were false and mischievous. The same appeared to be scandalous, tend to lower the authority of this Court and interfere with due course of judicial

proceedings and obstruct the administration of justice. While noting that the allegations were false and mischievous, he directed the matter to be listed before another Bench.

8. The defendant then filed application before the Judge In-Charge (Original Side) dated 4th March, 2003, stating inter alias that the defendant nurtured doubts whether he would receive justice in the Delhi High Court since he has objected to a number of Judges on the Original Side hearing the case. This according to defendant must have prejudiced the Judge In-Charge also against him. Thereupon, again on 4.3.2003, defendant filed written submissions before the Judge In-Charge (Original Side).

9. Para 23 of his prayer in the application is as under:-

'23. That the defendant seeks that the Hon'ble Judge in charge may kindly put on record whether he finds the averments relating to the proceedings which took place before him to be true or not and in case is of the view that he can do justice in the above matter and deal with the defendant's case freely and in unbiased manner even in the light of the facts pointed out he may keep the case with himself, but fix a date for hearing on the application after sufficient gap (as would also be normal) to enable the defendant to take further appropriate action, including seeking transfer and other relief from the Hon'ble Supreme Court U/S. 25 CPC and other provisions/powers. '

10. Vide Order dated 4.3.2003, it was observed, 'In my view, the apprehensions sought to be raised are wholly unfounded and do not merit any further consideration'.

11. Defendant also sought deferment on the ground that he had a talk with his mother about a compromise. In these circumstances, by the same Order and keeping in mind the observations of the learned Single Judge who had recused himself and transferred the matter, Ms.Hima Kohli, Advocate, was appointed as an amices curiae to assist the Court on whether the application addressed to the Judge-In-Charge, Original Side, for transfer of the case from the Court of the Single Judge as also written submissions handed over on 4.3.2003 tended to

undermine the dignity of the Court and was actionable as contempt?

12. IA.No. 4913/98 was again directed to be listed for arguments on 25.4.2003. The matter was adjourned from time to time. Again IA.No. 4913/98 was directed to be fixed for hearing on 15th and 22nd September, 2003, as per the convenience of the parties. Plaintiff was heard for sometime under Order XII Rule 6 CPC. Defendant on 22.9.2003, sought time for inspection of the file. On 26.9.2003, defendant informed the Court that he had talks with his mother in an attempt to settle the entire dispute with his family and an understanding has been reached. Plaintiff was skeptical about the settlement. Plaintiff submitted that his mother could be called for a chamber hearing. Defendant objects to the same and states that his mother be heard in Court itself.

13. Keeping in mind the nature of proceedings, as noted earlier, it was directed that the parties should be left to reach a settlement of their own, as even suggestion of help through a conciliator to be appointed or amices curaie were not acceptable to the defendant. It was ordered that in case parties could arrive at a settlement then an application under Order XXIII Rule 3, CPC be filed, failing which the matter would be taken up for arguments and disposal of the application under Order XII Rule 6, CPC, which had been partly argued. The defendant moved an application, filing an unsigned draft affidavit, to be signed by his mother with the application under Order XIX Rule 1 and under Order XXIII Rule 3, CPC. It is at this juncture that the plea for the undersigned to recusedd himself is made.

14. For considering the request made for recusal, let me notice the principles enunciated and the criteria laid down by various judicial pronouncements. Reference is invited to the decision in Ranjit Thakur v. Union of India and others : 1988 CriLJ158 . This was a case where the appellant-Ranjit Thakur had challenged the Court-Martial proceedings for non-compliance of statutory provisions on the ground that the proceedings were vitiated by participation of one of the members in the Court-Martial to which an objection had been raised. The appellant had been representing against his Commanding Officer for ill-treatment. The appellant had been sentenced already and was again sentenced for another offence of disobeying a lawful command given by the orderly officer to eat his

food, which he did not do. The Army Act itself in Section 130 provided a procedure for ascertaining from the accused his objection, if any, to any of the members of the Court-Martial. The Court laid down tests for determining the reasonableness of apprehension of bias in the following words:-

'As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, 'am I biased?;' but to look at the mind of the party before him.'

15. The Supreme Court quoted with approval the following:-

(i) Metropolitan Properties Co.(F.G.C.) Ltd. v. Lannon reported at (1969) 1 QB 577 : Lord Denning M.R. Observed:-

'..... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favor one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit.....'(ii) Frankfurther, J., in Public Utilities Commission of the District of Columbia v. Pollak reported at (1951) 343 US 451 observed:'The judicial process demands that a Judge move within the framework of relevant legal Rules and the court covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy with which they are interested. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges recused themselves. They do not sit in

judgment.....'.

16. Reference is also invited to P.K. Ghosh v. J.G.Rajput, : AIR 1996 SC513 . This was a case where an objection was raised to the case being entertained by one of the Judges, who as an advocate had represented the respondent even though some of these proceedings in the High Court had taken before him as a Judge. The Court observed :

'A basic postulate of the Rule of Law is 'justice should not only be done but it must also be seen to be done'. If there be a basis which cannot be treated to be unreasonable for a litigant to expect that his matter should not be heard by a particular Judge, then there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recused himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice for the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously influenced by some of the extraneous factors in making the decision, particularly if it happens to be in favor of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done'.

17. The two principles which may be deduced from the judgments of the Supreme Court in the case of Ranjit Thakur (supra) and P.K.Ghosh (supra) are : firstly, the reasonableness of the apprehension of bias has to be judged from the perspective of the party and not of the Judge himself; secondly, following that justice should not only be done but it must also be seen to be done, if there was a basis which cannot be treated as unreasonable for a litigant to expect that the matter should not be heard by the Judge, then the Judge should recused himself. 18. The sine qua non for recusal would thereforee be that there should be a basis for a litigant, which cannot be treated as unreasonable, for expecting that the case should not be heard by a particular Judge. A litigant or a party seeking recusal is required to

prima facie show that its basis for apprehension of bias on the part of the Judge is not unreasonable. In case this is not insisted upon, any litigant at any stage of proceedings, where he may apprehend that either a Judge is curtailing the delay in prosecution of the suit or the ultimate decision may not be in his favor would seek recusal of the Judge on one ground or the other. It would amount to Bench-hunting and subversion of the legal process. Reference in this connection may be made to the judgment of the Supreme Court in Arundhati Roy, in Re : 2002 CriLJ1792 . It was observed by the Supreme Court as under :-

'The plea for transferring the case to some other Bench was made after the commencement of the proceedings, which was not bonafide. The apprehension expressed by the respondent much less being reasonable, in fact had no basis. The notice was issued to the respondent not for having attributed motives to a particular Judge but for imputing motives to the Court in general for allegedly harassing her, as if the judiciary were carrying out personal vendetta against her. The contemptuous part of her affidavit, does not attribute any motive or make any allegation against any Judge. Moreover, the present proceedings are distinguishable from the proceedings contemplated under Section 14 of the Act. Initially on the petition of one J.R.Parashar, notice had been issued by a Bench constituting of G.B. Pattanaik and U.C. Banerjee, JJ. When the contemners appeared in that case, and filed show-cause, no prayer had been made seeking recusal of any Judge. Finally that application was heard by a Bench consisting of G.B. Pattanaik and Ruma Pal, JJ., and disposed of by the judgment in J.R.Parashar v. Prasant Bhushan, : 2001 CriLJ4207 discharging other contemners and initiating suo motu proceedings against the respondent because of disparaging comments in the show-cause filed by her. In pursuance to such notice, the proceeding was registered as Suo Motu Contempt Petition (Criminal). In the proceeding the contemner appeared on 29th October, 2001 and filed her show-cause. No prayer for recusal had been made on that day. When the case was taken up for hearing on 15-1-2002, prayer for recusal had been made, which was not allowed. The narration of facts indicates only a frustration on the part of the contemner and such belated prayer for Bench-hunting is to be curbed as it would be against the administration of justice.'

19. Let us apply the principles enunciated in the foregoing judgments to the present case. This is a suit for partition filed in the year 1997. IA.4193/1998 was moved by the plaintiff for a preliminary decree of partition on admissions in view of the share in the property not being disputed has been pending since then. It is a family matter. Repeated attempts at settlement were made but had failed. The Division Bench of this Court itself attempted settlement over extended periods of time by calling for the hearing of the suit along with the Appeal but in vain. The Division Bench vide Order dated 30th May, 2002 in FAO(OS).47/2002 released the suit and directed that the suit be heard thereafter by the Single Judge and all pending applications to be disposed of expeditiously. Yet in another Appeal filed by the plaintiff bearing No. FAO(OS).375/ 2002, the Division Bench while disposing of CM.No. 931/2002, noted the grievance of the plaintiff that the case was being adjourned from time to time by the then learned Single Judge and had been posted to 27th January,2003.The Division Bench while recording that it hoped and expected that the pending applications would now be heard and disposed of expeditiously without any further delay in the matter or adjournments being granted has kept the Appeal pending. As noted earlier, it was then that one learned Single Judge recusedd himself on 27th January, 2003 and the matter was directed to be listed before another Single Judge before whom initially, an adjournment was sought. Thereafter, the defendant sought recusal on the grounds set out in the Order in para 6, namely, allegations being made against an Additional District Judge then an advocate of misrepresentation, false statements and production of false records, etc. Recusal was sought on the ground that the learned Single Judge happened to be a service colleague of the Additional District Judge at the same time. The learned Single Judge noted these allegations to be false and mischievous. He observed these to be scandalous and tending to scandalise the Court and interfering with the due administration of justice.

20. As noted earlier, even before the undersigned, request was made to put on record, whether the averments made in the application dated 4th March, 2003 were true or not and whether the undersigned could do justice in the above matter and deal with the defendant's case freely in an unbiased manner. The undersigned as noted earlier had vide Order dated 4th March, 2003, rejected the same as wholly unfounded and not meriting further consideration.

21. The position which emerges is that the Division Bench's attempt over extended period of time to bring about a settlement had failed. More than three Judges of the Court have either recusedd themselves on the basis of submissions and objections raised by the defendant. One of the Judges who recusedd himself found the allegations to be false, mischievous and tending to scandalise the Court. There are two directions from the Division Bench for an expeditious hearing of the pending applications. It is at this juncture, that the defendant has brought in again the proposal for settlement based on talks with his mother, who is not imp leaded as a party in the suit and whom he does not want to appear for a Chamber hearing. The draft unsigned affidavit proposed to be executed by the mother has been filed along with the applications under Order XIX, Rule 1, Order XXIII, Rule 3, Order XXXII-A, Rules 3 and 5, CPC. It is at this juncture, that the submission for the undersigned to recused himself has been made.

22. I do not find any basis, reasonable or otherwise, being disclosed by the defendant for the undersigned to recused himself. No adjudication on merits in the suit or in the proceedings has occurred on the basis of which defendant could entertain any impression or basis of any bias on the part of the Judge. This is the conclusion on a dispassionate and objective consideration of the matter. An easy path would have been to recused myself also and transfer the matter to another Judge. But then I would be failing in my duty.

23. A litigant cannot be permitted to hold the judicial process at bay and subvert the same. A litigant cannot be permitted, firstly, to raise objections on untenable grounds against the hearing to be done by different Judges of this Court and when the said Judges recused themselves, to urge that the Judge-in charge now hearing the matter would feel prejudiced against the defendant because of the repeated transfers and become incapable of impartially delivering justice. This would enable an erring litigant to subvert or hold at bay the judicial process. The prayer made for recusal completely lacks bonafides and appears to have been made with the ulterior object of delaying the decision, on merits, on the applications pending in the Suit.

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