

C.V. Xavier Vs. J. and J. De Chane

C.V. Xavier Vs. J. and J. De Chane

SooperKanoon Citation : sooperkanoon.com/720809

Court : Kerala

Decided On : Dec-07-1971

Reported in : AIR1972Ker263

Judge : T.C. Raghavan, C.J. and; P. Unnikrishna Kurup, J.

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

Appeal No. : C.M.P. No. 13360 of 1971 in A.S. No. 449 of 1966

Appellant : C.V. Xavier

Respondent : J. and J. De Chane

Advocate for Def. : V. Rama Shenoi and; R. Raya Shenoi, Advs.

Advocate for Pet/Ap. : M.T. Paikaday,; Leelamma Paikaday and; Stanley P. George

Disposition : Petition dismissed

Judgement :

Raghavan, C.J.

1. This is an application under Order 41, Rule 19 and Section 151 of the Code of Civil Procedure for re-admitting an appeal dismissed for default. We may state a few facts to reveal the circumstances under which the appeal came to be

dismissed.

2. The appeal was in the hearing list in August 1971, over five years after the appeal was filed. The appeal was called, when the counsel of the appellant, Sri Manuel T. Paikeday, was not present. The name of the appellant was then called; and the appellant appeared and asked for time saying that his lawyer was away. We adjourned the case to 13th September, after the Onam holidays, since the appellant submitted that it would take some time for another lawyer to get ready with the case. After the Onam holidays, the case was again taken up for hearing on 20th September. Sri Manuel T. Paikedav himself appeared on 20th September; and the case was heard for about a day. 21st September was a holiday; and on the 22nd and the 23rd the counsel did not appear. (The affidavit filed by the petitioner in support of the petition appears to suggest that Sri Paikeday appeared on the 23rd, which is not correct and which has been rightly denied by the respondent in his counter affidavit).

On the 24th, the counsel came and asked for time; and we refused his request saying that the case was an old one and was already part-heard. The counsel then stated that he was not willing to go on with the case and left the Court. Then the name of the appellant was called; and he appeared and asked for time to engage another counsel. Realising the situation in which the appellant was placed, we adjourned the case to 4th October, (All this will appear from our order of 24th September). The case came up again on 4th October; and on that day Sri Paikeday stated that, in view of what had happened already, the case should be sent before another Bench, We refused to do so; and then called the name of the appellant, who was also found to be absent. Since there was no other course open to us, we dismissed the appeal for default. (All this will be evident from our judgment of 4th October).

3. The same afternoon, the original of Ex. P1, a letter addressed by the appellant to the Registrar of this Court, was placed before the Chief Justice; and the Chief Justice directed the letter to be put up in a file. (2nd and 3rd October were holidays). That was done the next morning; and we passed orders that, though the letter might probably be even contempt of court -- a letter written by a party on a

case pending, since the appeal was already disposed of and since we did not want to be vindictive in a matter like that, we left the matter alone. It was thereafter that the present petition was filed.

4. The counsel of the petitioner has cited a few decisions which lay down that a Judge who has any interest in a cause should not bear the cause. Nobody can have any dispute regarding this proposition: this is a well-known and well recognised principle, which it is too late to question. But the question in this case is whether any interest can be imputed to the Judges. The complaint is that the Judges (more so, the Chief Justice) made remarks against the merits of the appellant's case. To say that the Judges are biased if they express some opinion on the merits of the case after hearing the case for a day is certainly *mala fide*, if not even presumptuous.

5. The counsel of the respondent has drawn our attention to the decision of the Supreme Court in *M. Y. Shareef v. Judges of Nagpur High Court*, AIR 1955 SC 19, wherein Their Lordships had occasion to consider a case almost similar to the case before us; and their Lordships observed:

'We have no doubt that whatever the learned Judges of the High Court did in this case, they did in the firm belief that the dignity of the Court had to be maintained and the members of the Bar, however big or learned, cannot be allowed to scandalize the judges or to divert the course of justice by attempting to take a case out from one Bench to another Bench of the court when they find that the Bench is expressing opinions seemingly adverse to their clients'.

This observation of the Supreme Court applies on all fours to the case before us: the appellant's (and we regret to state, also his counsel's) attempt to take the case to another Bench when he felt that we were expressing opinion seemingly adverse to him was nothing less than diverting the course of justice, which should not be countenanced should even be put down. We are sorry to state that the petitioner was misguided and illadvised to have written a letter like Ex. P1, which would have easily landed him in a committal for contempt of court but for our lenient attitude; but for our restraint, another case like Shareef's case mentioned above would have been the result. Let us conclude this aspect of the matter by repeating the

hope expressed by the Supreme Court:

'We have firm hope that this kind of conduct will not be repeated by counsel in any High Court in this country

6. Now, the question to be considered is whether on 4th October the appellant was prevented by sufficient cause from appearing in court. It is evident that the circumstances narrated above do not warrant such a conclusion. On the previous occasion, the appellant himself took time to engage another counsel; and on 4th October, the appellant knew that his counsel was appearing not to argue the case. Could it be said that he was prevented by sufficient cause to appear in Court? Obviously not. The counter affidavit of the respondent has pointed out that there was another counsel on record. Sri Stanley P. George, who was also not present on any of the days mentioned above. Thus, no valid ground is made out for re-admitting the appeal. We may also add that the attempt is not merely to get a restoration of the appeal, but to take the appeal to another Bench after the appeal had been heard for about a day, on the ground that the Judges expressed opinions seemingly adverse to the appellant.

7. The petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com