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Court : Kerala

Decided On : Sep-27-1995

Reported in : 1996CriLJ1021

Judge : K.T. Thomas, Ag. C.J. and; P. Shanmugam, J.

Acts : Limitation Act, 1908 - Schedule - Article 182; Constitution of India - Article 226 and 226(3); Kerala State and Subordinate Services Rules - Rule 60; Kerala High Court Rules, 1971 - Rules 150 and 153; Code of Civil Procedure (CPC) - Order 8, Rule 6

Appeal No. : C.C.C. No. 247 of 1995

Appellant : C. Babu

Respondent : Jayakumar and ors.

Advocate for Def. : Hemalatha, Govt. Pleader

Advocate for Pet/Ap. : K. Balakrishnan, Adv.

Judgement :

K.T. Thomas, Ag. C.J.

1. A question which has incidentally sprouted from this contempt proceeding is whether the application contemplated in Article 226(3) of the Constitution should necessarily be a numbered Civil Miscellaneous Petition. We have realised that

further proceedings in this contempt matter would depend upon the answer to the above question.

2. We shall presently state how the said question has surfaced to the fore in this case. A chauffeur in the Kerala Tourism Development Corporation (the petitioner now) has been counting the days ahead for the superannuation of his immediate senior (one Shri V.P. Kunhirama Kurup -who will be referred to hereinafter as Shri Kurup) so that the petitioner would gel promotion to the next grade (Head Chauffeur). The said exercise was founded on the hope that Shri Kurup would bow out of office on 30-4-95 on attainment of 55 years of age. But his hopes went awry as the Government passed an order extending the period of service of Shri. Kurup to the age of sixty in relaxation of Rule 60(a) of Part-I of the Kerala State and Subordinate Services Rules.

3. On 2-5-1995 the petitioner has filed an original petition in this Court under Article 226 of the Constitution for quashing the said Government Order. Petitioner also moved for an interim order of stay of operation of the extension granted to Shri Kurup. On 5-5-1995 learned single Judge, before whom the original petition came up, passed an order: 'Notice and interim stay'. Shri Kurup, on receipt of notice of the original petition, had filed a counter affidavit on 8-5-1995. In the final portion of the counter affidavit Shri Kurup made the following prayer: 'Under the circumstances it is most humbly prayed that the C.M.P. may be dismissed and the interim order of stay may kindly be vacated.' Copy of the said counter affidavit was served on petitioner's counsel on 8-5-1995 itself. However, no further orders have been passed on the Civil Miscellaneous Petition till now. This is the first stage of the facts in this case.

4. The second stage commenced when petitioner moved for taking contempt proceedings against the Secretary as well as the Director of Tourism Department of the Government of Kerala (they are the respondents) on the contention that services of Shri Kurup were not terminated and instead he was allowed to continue even after receipt of the stay older.

5. First respondent now contends that he was informed of the interim order only on 19-5-95 and since the extended period has already started even before the said

date, the stay order became infructuous.

6. We have to determine whether the interim stay order continued beyond two weeks counted from 8-5-95. If it did not continue thereafter, we are not inclined to take any further step against the . respondents in contempt proceedings since Shri Kurup must be continuing in service on the strength of a live Government Order.

7. Article 226(3) of the Constitution stipulates that when a party against whom an order of stay was made ex parte on a petition filed under this Article 'makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party' and if the application is not disposed of within two weeks 'the interim order shall, on the expiry of that period...stand vacated.'

8. The scope and ambit of the above sub-article was considered by a Division Bench of this Court in Raghunandanan v. Regional Transport Authority, (1995 (2) KLT 21). It was held that the sub-article is a self-operating one on fulfilment of the conditions contained therein, without anything more to be done. The Division Bench further observed thus:

'It must be remembered that the operation of the sub-article does not result in disposal of the application for interim order or even the application for vacating the interim order since it is open to the High Court to pass fresh orders on the application after hearing both sides.'

9. Learned counsel for the petitioner made a bid to have the interim order resuscitated on the premise that no 'application' as such has been made for vacating the said order. In other words, his contention is that the application contemplated in sub-article (3) is an application filed in accordance with the rules or the practice followed in each High Court. He invited our attention to Rules 150 and 153 of the Kerala High Court Rules, 1971. He sought support from the decision of the Supreme Court in Prem Raj v. Ram Charan, : [1974]3SCR494 and the observations in Diwan v. Central Bank, : AIR 1976 SC1503 .

10. Rule 150 is the affirmation of the power of the High Court to 'pass interim order on motion made for the same as to meet the ends of justice'. Such a motion can be made through an application 'unless the Judge otherwise directs'. This rule, therefore, does not contain any idea regarding the application envisaged in Article 226(3) of the Constitution. Rule 153 deals with counter-affidavits to be filed against main applications. The said rule is therefore, of no help in; finding an answer to the question. In Diwan Bros' case, : AIR 1976 SC1503 (cited supra), learned Judges have observed that where the legislature uses an expression bearing a well known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. A passage from Craies on 'Statute Law' has been quoted by the learned Judges. The said observation lends support to the view that the word 'application' used in the sub-article must gain the sense in which it has been so understood commonly. In Prem Raj's case, AIR 1974 SC 468 (cited supra), learned Judges were not inclined to treat a written statement filed in answer to the plaint averments as an application for the purpose of counting the period of limitation prescribed under Article 182 of the Limitation Act, 1908. Their Lordships, however, were inclined to treat a plaint as an application since it contained the prayers for the reliefs specified therein. It has been observed by the learned Judges in the decision like this : 'But unlike the plaint, the written statement ordinarily does not include any request to the Court. It is simply a defence to the plaintiffs claim. Order VIII C.P.C. deal with matters which ought to be included in a written statement. Rule 6 thereof enables the defendant to make a claim for set-off. To the extent a written statement includes the claim for set-off it may be treated as a plaint....The general practice in the mufassil of including in the written statement a prayer that the suit should be dismissed with costs is supererogatory and would not convert a written statement simpliciter into an application within the meaning of clause (5) of Article 182.'

11. But the situation here is ostensibly different. The question whether a prayer made in the counter-affidavit for vacating the interim order can be treated as an application for the said purpose has to be decided differently from how the contents of a written statement falling under Order VIII of the C. P.C. were considered.

12. The word 'application' in Article 226(3) can be regarded as a submission made in writing requesting that the interim order may be vacated. Black's Law Dictionary contains the meaning for application as preferring a request or petition to or before a person; or the act of making a request for something. The word 'apply' is understood as 'to make a formal request or petition is usually in writing to a Court... for the granting of some favour which is within the power of the Court'. It is not the nomenclature of the document which becomes decisive to hold that it is or is not an 'application.' Not even the form of the document would decide it. The contents of the document as well as the intention of the party who submitted the document would override other factors in deciding it.

13. The intention of the amendment made through the sub-article (3) is to ensure that the person who secured an ex parte interim order should not have any additional advantage on account of the inability of the Court to take up the matter either due to lack of time or other reasons, when the affected party has requested the Court to vacate the interim order. When the intention is so understood, we are of the view that the prayer made in the counter-affidavit can as well be treated as an application for the purpose of sub-article (3). The corollary is that the interim order did not remain in force after the expiry of two weeks counted from 8-5-1995.

14. In view of the above legal position, there is no need to proceed with this contempt. Accordingly. we close this proceeding.

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