X Vs. Y and ors.

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Court : Himachal Pradesh

Decided On : Aug-10-1978

Reported in : AIR1979HP29

Judge : T.U. Mehta, C.J.

Acts : Code of Civil Procedure (CPC) , 1908 - Section 24

Appeal No. : C.M.P. (M) 10 of 1977 in Civil Revn. No. 96 of 1977

Appellant : X

Respondent : Y and ors.

Disposition : Petition dismissed

Judgement :
ORDER

T.U. Mehta, C.J.

1. This is an application for transfer of Civil Suit No. 130/6/77 from the court of Solan to the Court at Simla principally on the ground that when the hearing of the case took place on 1-10-1977 in presence of the then Chief Justice of this Court who was on inspection tour, the Advocate of the other side repeatedly interrupted the arguments of the Advocate of the petitioner, and even though he used 'abusive and highly defamatory language' against the petitioner's Advocate, the presiding

officer of the Court could not restrain him. The contention is that the Presiding Officer of the court did not restrain the Advocate of the other side because he 'seems to be hand in glove' with the counsel of the other side.

2. Short facts of the case, which form the background, can be stated as under. The respondents Nos. 1 to 3 have filed the above referred suit for possession of an agricultural land against the present petitioner in the court of the Senior Sub Judge, Solan in the month of June, 1975. When the suit reached the stage of arguments, the petitioner moved an amendment application by which he wanted to amend his written statement In the original written statement which is filed in the suit he raised the plea that he is owner of the suit land having acquired it by gift made by the plaintiff's ancestor in the year 1948. He has further contended in the original written statement that apart from the gift, he has also become owner of the suit land by adverse possession. On these pleas, the parties proceeded with the case, but ultimately when the case reached stage of arguments, amendment application was moved with a prayer that the petitioner-defendant should be allowed to amend his written statement by raising a plea that he has also become a tenant in the land. This amendment application was rejected by the trial court on 13-8-1977, and against that . order the petitioner preferred revision application No. 96 of 1977. This revision application was admitted by this Court on a limited ground, but on the stay application this Court ordered that the trial Court should not be restrained from hearing the arguments but should be restrained from pronouncing the judgment disposing of the case.

3. Accordingly, on 1st October, 1977 the case was taken up for hearing the arguments of the parties. On that day, the ex-chief Justice of this Court happened to conduct the inspection of the trial court. He was, therefore. occupying the dais with a view to observe the court's proceedings. After the arguments started, the learned Advocates of both the parties seem to have entered into a verbal duel which generated heat. The present petitioner was the defendant, while the present respondents were the plaintiffs before the lower court.

4. Now, the case of the petitioner-defendant is that when his counsel commenced his arguments, the plaintiffs' counsel started interrupting him. At this interruption

the petitioner's counsel protested to the court and requested the learned Judge 'to note how the opposing counsel was behaving even in the presence of the most respectable and sacrosanct head of the Judiciary in the State and what he must be doing in his court on other occasions'. It is further alleged by the petitioner that soon thereafter, the Chief Justice left the court room, but after that the plaintiffs' counsel again started using 'offensive and insulting language' towards his opposite counsel who then sought the protection of the court. It. is further alleged that the counsel of the other side 'was so much encouraged that he used abusive and highly defamatory language against the defendant's counsel.' The petitioner admits that thereafter the learned Sub Judge adjourned the arguments to 29-10-1977, but the petitioner's counsel 'told him frankly that it was no use arguing in the case before him, and that he would not come again to argue this case before him and against that counsel, who had insulted, abused and threatened him more than once'. It is alleged that the learned Judge who was presiding over the Court took no action against the plaintiffs' counsel for his attitude and on the contrary encouraged him, and therefore, it appeared that he was 'hand in glove' with the plaintiffs' counsel.

5. The transfer application made by the petitioner on these allegations was admitted by this Court and the report of the learned trial Judge who was presiding over the court on the occasion was sent for. The learned trial judge has reported on the material allegations as under.

6. According to him, when the case was argued on 1-10-1977, the counsel for the parties were in hot temper and, therefore, on that date he made a note in the case proceedings regarding The expression of this hot temper and 'exchange of unparliamentary language'. Reference to the court's proceedings shows that the learned Judge has at that time made the following note :--

'Present : Counsel of the parties.

The counsel for the parties are in hot temper and have exchanged unparliamentary language. To calm the atmosphere the case THE adjourned for 29-10-1977.'

The learned trial judge proceeds to say that since both the counsel were protesting against each other in arguments, the court wanted to cool them but without any effect. According Jo the learned Judge, it is correct that the present petitioner's counsel protested against the attitude of the counsel for the plaintiffs, and even the plaintiffs' counsel protested against the behaviour of the counsel of the defendant. As for the general allegations, which the petitioner has made about the use of defamatory and abusive language by the counsel of the other side, the learned trial Judge has stated that beyond the note made in the proceedings above referred, he did not remember the ether details.

7. Even the respondents-plaintiffs and their counsel have filed their affidavits in this transfer application. Therein the respondents have denied that their counsel ever used offensive or insulting language against the defendant's counsel or ever threatened him. They have further made a positive allegation that in fact it was the defendant's counsel who wanted to overawe and browbeat the court and also made derogatory remarks against their own counsel with the result that the trial Judge had to adjourn the case. The plaintiff's counsel, of his affidavit, has also made the denial of the allegations made in the petition and has further alleged that the defendant's counsel 'has been making wild allegations against me and the court and wants to overawe me and the court'.

8. The above is the main summary of the contentions raised by both the sides in this transfer application. It should be noted at this stage that in support of the transfer application the affidavit is filed only by the petitioner himself and not by his counsel.

9. It is clear from the record of this petition that neither the affidavits filed in the case, nor the report of the learned trial Judge, nor the court's proceedings dated 1-10-1977 furnish any details as to how and under what circumstances the unfortunate incident took place, and who out of the two opposing counsel first became aggressive, what words were used by whom and how and in what manner the other side reacted. The allegations contained in the application are obviously vague and general without any particulars showing the development of the incident. Therefore, in absence of the necessary details it is not possible to know

who out of the two counsel was originally at fault, and it is equally impossible to know at what stage of the incident as positive interference of the Presiding Officer of the court was called for to contain the learned counsel within the limits of discipline.

10. It is important to bear in mind that this is an application for transfer wherein the sole point to be considered is whether during the course of the incident the Presiding Officer of the court evidenced any attitude which was likely to create any reasonable apprehension in the mind of any of the parties that he was partial, and that therefore, he would not be able to deliver any impartial justice. The allegations of the petitioner in this connection are already narrated above. These allegations do not carry any material from which it can be judged that at a particular stage the Presiding Officer of the court should have Taken some action to discipline the attitude of the counsel of the other side. It is clear from the report of the learned trial Judge that he does not remember the sequence and details of the event, nor does he remember in what manner, and by using what particular language the counsel of both the sides had expressed their hot temper. On the question of the use of abusive and defamatory language by the plaintiffs' counsel, there is as stated above, nothing in the record except the vague and general allegation* of the petitioner himself. It is significant to note that the petitioner's counsel hag not filed any affidavit In support of these genera! allegations made by his client in his affidavit. As against this, the plaintiffs and their counsel have filed their affidavits to controvert these allegations of the petitioner-defendant. If the contention of the petitions is that the learned trial Judge should have intervened to curb the counsel of the other side irrespective of the provocation given to him, then the said contention cannot be accepted as valid. At any rate, it is not possible to accept the ipse dixit of the petitioner who is a party highly interested in the result of this dispute.

11. It is in this background that we have to judge whether the learned trial Judge had evidenced any conduct during the incident Which could have created any reasonable apprehension in the mind of the petitioner that he would not get justice at his hands.

12. On occasions such as this, when the tempers run high, it would be well to remember that the learned members of the Bar and the Presiding Officer of the court are expected to try their best to understand their responsibility by showing more tolerance and restraint. In the adversary system of litigation, such as the one prevailing in our country, the counsel appearing on behalf of the opposite sides stand on equal footing, and hence they should better absolve themselves of their false inhibitions of seniority and juniority, and should try to develop their capacity to show respect for each other, because that is the very essence of the learning and respect which the legal profession generally claims. This idea of equality, however, does not mean that age should not be respected. A junior member of the Bar can, therefore, not be oblivious of the civilized and refined norms of behaviour which are expected of a member claiming to belong to the fraternity of a learned profession. If he, therefore, intentionally adopts an attitude to belittle a senior member of the Bar appearing on the opposite side, he thereby only exposes his real breed and culture. On the other hand, if the senior member of the Bar constantly remains overburdened with a false sense of vanity born out of his seniority, and In the result, tries to overawe his opposite junior member, or the court, his attitude does not invite anything better than a contemptuous ridicule. The fact remains that, human nature being what it is, respect and regard are not the commodities which can be ordered out or purchased in open market. They are to be inspired, and the required inspiration cannot be obtained by an overbearing attitude. These are very common and well-known platitudes, but they are required to he emphasised because, common and well-known though they are, they are often forgotten as they seem to have been forgotten during the course of the incident under consideration.

13. The more important question, however, is what should be the attitude of the Presiding Officer of the court in whose pre-sence such unpleasant incidents occur. If he at once jumps into the fray, even with the best of motives, he would be easily misunderstood. Restraint, tolerance and cool temper are the unavoidable perspectives, which an impartial Judge should seek. Therefore, even if he finds that a particular Advocate was on the wrong side, his attitude should be one of firmness tempered with mildness, and hence, he should try to correct the attitude of the defaulting counsel in a polite and mild, but firm manner. But very often,

when tempers run very high, and the atmosphere is surcharged with emotional outbursts, such attempts on the part of the Judge bear no fruits. In such circumstances, the Judge has to act with firmness and should try to enforce discipline, if necessary, by calling spade, a spade. But that is not the only course open to him, because, after assessing the situation calmly, if in his wisdom, the Presiding Officer finds that better alternative is to withdraw from the ugly scene with a view to enable the warriors to cool their tempers, he can also retire to his chamber for a while. This obviously results in waste of public time, but the blame thereof should be shared by those who are itching for an undignified duel in a place which is meant for calm approach and cool logic.

14. The grievance of the petitioner in this case against the Presiding Officer is that he did not control the Advocate of the other side. The question is, should the Judge try to rebuff one side even if he is of the opinion that both the sides have, in their own way contributed to the Ugly atmosphere. In this case, the proceedings made by the learned Judge on that day show that both the counsels exchanged 'unparliamentary language'. If the Judge wanted to intervene he should have intervened to curb both the learned advocates. This, in the particular situation, might have created further bickerings and misunderstandings. Therefore, instead of reprimanding both the counsel on the spot, the learned Judge preferred to adjourn the case. On the face of it, the action of the learned Judge appears to be quite proper. The apprehension of the petitioner, therefore, that the learned Judge was 'hand in glove' with the other side appears to be completely misplaced and unwarranted. This tendency to start abusing the Judge the moment it is found that he is not acting in accordance with the desire of the party concerned, is highly deplorable. It is high time that the litigants should know the virtues of looking with respect at those, on whom the duty of administering justice is cast, even if the result of the 1itigation. goes against them. Fight is inevitable in litigation, but the fight must be with dignity and decorum. Such a dignity and decorum seem to have been totally lost by the acrimonious and undignified scene created in court in presence of the Chief Justice, who was a visiting guest. Prestige and respect for the Judiciary can be raised to a higher level principally by the members of the Bar. Their behaviour, inside and outside the court, must always be dignified, otherwise they have no claims of belonging to the fraternity of a learned profession. One can

imagine what the other observers sitting in court might have thought about the court's dignity which was being violated in presence of the Chief Justice and what respect they would have carried about the court atmosphere when they left the court.

15. I am of the opinion that if there exists any Bar Association at Solan, it was the duty of this Association to give a cool thought to this incident, and to induce the defaulting members to make proper amends to the Judge. I should have expected both the learned Advocates, after their tempers were cooled, to go to the Presiding Officer of the court in his chamber and to offer their apology for this ugly incident, irrespective of the question as to who was actually to be blamed for this incident. An attitude of this type only can develop sound and good traditions which the Judiciary of this State still requires to develop.

16. With these observations, I find that there is no substance in this transfer application which is dismissed with costs.