

Bihar State Electricity Board and Others

Vs

Bhowra Kankanee Collieries Ltd. and Another

Civil Appeal No. 2433 of 1981

(D.A. Desai, Baharul Islam JJ)

10.09.1981

JUDGMENT

1. We have heard learned Attorney-General for the appellants and learned counsel Mr K. J. John for the respondents.
2. In our opinion, this is not a matter which should have been dealt with in a highly technical manner as has been done by the High Court. To identify the hypertechicality resorted to by the High Court, a few facts may be stated.
3. Respondents filed a suit against the appellants and the suit ended in a declaration that the present appellants have no right to charge the amount claimed and a refund was decreed to the extent of Rs 70,987. Against this decree in favour of the respondents, the appellants preferred an appeal, being FA 1248 of 1972, in the High Court of Patna (Ranchi Bench). During the pendency of the appeal from 1972 to 1978, it transpired that the letter of authority (Vakalatnama) of the learned advocate appearing for the present appellants, was not placed on record. It appears that there was an order to remove this defect and the order appeared to be of a peremptory character. Probably, there was some laxity on the part of the appellants and the defect was not removed and the appeal was dismissed on January 2, 1978 on the short ground of failure to remove the defect and non-compliance with the peremptory order No. 10 made by the Court on September 30, 1975.
4. An application for restoration of the First Appeal being MJC 17 of 1978 was moved on behalf of the appellants. Again, there was some peremptory order on December 10, 1979 and it transpired that there was some failure to comply with the same and the miscellaneous application stood dismissed. A fresh application No. MJC 12 of 1980 (R) was moved for restoration of First Appeal No. 1248 of 1972. This application was strenuously opposed on behalf of the respondents.
5. It appears that in the mean time the appeal migrated from Patna to Ranchi and the contention was raised that there as no notice of transfer of the appeal from Patna to Ranchi and therefore the appeal should be restored to file. The High Court was not impressed and it dismissed the application observing that in view of the fact that MJC 17 of 1978 was filed for restoration of First Appeal 1248 of 1972 and which was dismissed for non-compliance of a peremptory order, another application for restoration of the First Appeal is not maintainable. With this observation the application was dismissed, resulting in confirmation of the order dismissing the First Appeal. Hence this appeal by special leave.
6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence

involved in it because a vigilant litigant would not miss complying with procedural direction more so such a simple one as filing Vakalatnama. The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna ?

7. It is not for a moment suggested that a party can ignore peremptory orders of the Court for making the appeal ready for hearing the appeal within a specified time. But having said this, it must also be borne in mind that the procedure was devised for doing justice and not for thwarting the same. In such a situation, civil courts have learned in favour of repairing the harassment, inconvenience or damage to the other side by some order of costs. But to take the view that failure to comply with an order for filing Vakalatnama would result in dismissal of the appeal involving a fairly good sum is to put such procedural requirement on a pedestal tall enough to hinder the course of justice. We find it difficult to be a party to this proposition. Hence we are inclined to interfere.

8. We accordingly allow this appeal, set aside the order dismissing the appeal and restore First Appeal No. 1248 of 1972 to file. If there are any defects still in getting this old appeal ready, they must be rectified within four weeks from the date of this order. As this is an old appeal, it must be set down for hearing as early as possible.

9. In view of the fact that we are overlooking some negligence on the side of the appellants, we would resort to the usual traditional well-known procedure in this Court of repairing the inconvenience to the other side by awarding costs. The appellants to pay costs to the respondents quantified at Rs 1000. In the High Court whatever be the decision in the appeal on merits, appellants will pay the costs of the respondents.

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