

Kalipada Das Alias Mahanto and Others

Vs

Bimal Krishna Sen Gupta (Dead) By L. Rs.

Civil Appeal No. 3432 of 1982

(D. A. Desai, V. B. Eradi JJ)

25.10.1982

ORDER

1. Special leave granted.
2. This appeal is directed against an order dated June 29, 1979, by which a Division Bench of the Calcutta High Court dismissed Appeal No. 14 of 1979 preferred by the present appellant on the ground that the appellants failed to comply with the order dated January 19, 1979, by which the appellants were directed to prepare the paper-books out of court and to supply six typewritten or printed copies thereof within two months of the service of the notice of arrival of records upon the learned Advocate for the appellants. The Division Bench noted that an earlier default by the appellant was condoned by recalling the order dated June 11, 1979, dismissing the appeal, but in view of the subsequent lapse on the part of the appellants even after restoration of the appeal and service notice of arrival of the record the appellants failed to comply with the court's order dated January 19, 1979, the appeal was dismissed.
3. This Court directed issue of notice by its Order dated April 10, 1980, simultaneously directing the stay of dispossession as directed by the earlier Order of this Court to continue to be operative provided the appellants filed paper-books as directed by the High Court within four weeks from the date of Order of this Court. The Court further directed that in the event the appellants in compliance with the Order of this Court submit the paper-books, the High Court will accept the same. This direction was subject to the final orders that may be passed in the special leave petition. In the meantime there was another Civil Appeal No. 3451 of 1979 arising out of an order granting leave to amend the plaint. This Court granted leave to appeal at the instance of the present appellants against the order granting leave to amend the plaint to the respondents. Subsequently, however, the Registrar of the Calcutta High Court by letter dated July 3, 1979, informed the Registrar of this Court that the order granting leave to amend the plaint has been recalled. Consequently Appeal No. 3451 of 1979 became infructuous and this Court by the Order dated February 8, 1982, disposed of the appeal observing that the appeal has become infructuous on account of the subsequent events. As the present appeal was sought to be tagged on to Civil Appeal No. 3451 of 1979 after the disposal of the said appeal, the present appeal was set down for hearing.
4. A detailed affidavit in opposition has been filed and Mrs. Veena Devi Khanna, learned counsel appeared at the hearing of this appeal and contended that even the present appeal has become infructuous because by a subsequent order for another reason the appeal is dismissed. This submission is not substantiated because we requested Mrs. Khanna to inform us whether at any point of time the order dismissing the appeal of the present appellants on account of the failure to supply the paper-books as directed by the High Court was withdrawn by the High Court. It is not

pointed out to us that the order dismissing the appeal on account of the failure of the appellants to supply the paper-books has ever been recalled by the High Court. The confusion arises from the fact that the order granting leave to amend the plaint to the respondents against which the Civil Appeal No. 3451 of 1979 was preferred to this Court by the appellants was withdrawn rendering the appeal against the order infructuous. There is, however, nothing to show that the order substantially dismissing the appeal of the appellants being Appeal No. 14 of 1979 by the order dated June 29, 1979, against which the present appeal is preferred has at any point of time been withdrawn. Therefore, this appeal has to be disposed of on merits.

5. The only question is whether the appellant-tenants who undoubtedly failed to comply with the Court's order to supply the paper-books within the prescribed time should be visited with such serious consequences of a penal nature as described by the High Court itself. Supplying paper-books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice, and not substantive justice itself. Undoubtedly, Court's orders have to be obeyed. The institution of judiciary may not be able to function if there is no sanction behind the Court's order. But penalty of (sic on) failure to comply with Court' order providing a procedural stage in aid of justice must be commensurate with the gravity of the lapse. If the penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage to instead of becoming a step in aid of justice would be a roadblock to justice and at this stage it would be advantageous to recall what this Court said in *Sangram Singh v. Election Tribunal, Kotah*. It reads as under :

Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done on both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.

But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

6. We feel that omission or lapse arising out of non-compliance with the court's order was not of such a serious gravity as to close the door of the court to the appellants by dismissing the appeal. A procedural step which facilitates hearing of the appeal cannot impede access to justice. And that is what has happened.

7. If the court felt that the appellants were trying to delay the hearing of the appeal and that on account of this dilatory tactics the respondents-landlords who had obtained a decree would suffer, it was open to the High Court to direct the respondents to get the paper-books prepared and impose the cost of the same on the appellants. That was the easiest way to deal with the situation and thwart the efforts of the appellants to delay the hearing of the appeal. We fail to see how the High Court by

taking the step which it took has expedited the hearing of the appeal because from June 1979 the proceeding has reached October 1982 and pursuant to the Order of this Court, would consume some more time before the appeal could be disposed of. If the other way the matter had been approached by now the appeal to this Court could have been finally disposed of.

8. It is not for a moment suggested that the court cannot make an order directing the appellants to prepare the paper-books. A sanction could have been created by providing that if the paper-books are not supplied in time the interim stay of dispossession would be vacated. That would have imposed a serious obligation on the appellants to comply with the court's order in time. If the respondents were very keen to get the appeal expeditiously disposed of, they could have been called upon to supply the paper-books and costs could have been imposed on the appellants. Instead of this permissible mode of achieving the end, the High Court has imposed a penalty which we find disproportionate to the gravity of the omission. Access to justice cannot be thwarted in this manner. Therefore, we are constrained to interfere in this matter.

9. We are assured that the paper-books have been supplied by the appellants. Therefore, the appeal can now be expeditiously disposed of.

10. We accordingly allow this appeal, set aside the order of dismissal of Appeal No. 14 of 1979 dated June 19, 1979 and remit the case to the High Court and restore the appeal to the file of the High Court. It would be open to the High Court to dispose of the appeal as expeditiously as it considers proper and as suits its convenience. In the circumstances of the case there would be no order as to costs.

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