Tahil Ram Issardas Sadarangani

Vs

Ramchand Issardas Sadarangani

Civil Appeal No. 963 of 1975

(Kuldip Singh, P. B. Sawant JJ)

16.10.1992

JUDGMENT

1. This appeal has arisen from the order of the High Court dated March 15, 1974 dismissing in default the petition filed by the appellant-petitioner to set aside an award given in the arbitration proceedings. The application for restoration of the petition was also dismissed by the High Court on April 24, 1974. Further appeal filed by the appellants was dismissed in limine by a Division Bench of the High Court by its order dated August 5, 1974.

2. Appellants' petition for setting aside the award came for hearing before Vimadalal, J. of the Bombay High Court on March 15, 1974. Mr. N. V. Adhia, Advocate appeared before the Learned Judge on behalf of the petitioner. It is no doubt correct that on the original side of the High Court, an advocate, at the relevant time had to appear through an attorney or a firm of attorneys. It seems that Mr. Adhia had directly sought instructions from the petitioners and made appearance before the Court. When the case reached for hearing on March 15, 1974 Mr. Adhia appeared for the petitioners and stated that he had no instructions in the matter although he had informed the petitioners regarding the date of hearing of the petition. He requested for adjournment which was refused. Thereafter, Mr. Adhia was allowed to withdraw his appearance and since neither any counsel nor the petitioners in person were present the petition was dismissed in default. The application for restoration was also dismissed by the learned Judge vide order dated April 24, 1974. While dismissing the said application, Learned Judge observed as under :-

> "This Motion disclosed a sorry state of affairs in regard to which, unfortunately, I have had my suspicions in several matters while sitting in Chambers on the Original Side. It appears that there are certain firms of attorneys who enter into arrangements with advocates under which they file appearances for persons who are the direct clients of these advocates. In such cases, the entire carriage of the proceedings is left to the advocate, and he is briefed at the hearing by the attorney merely as a matter of form, even the fees being recovered directly by the advocate from his client. From the point of view of professional ethics, it is, in my opinion, not proper for an attorney to lend his name in that manner and such practices amount to an abuse of the Dual System prevailing on the Original Side of this Court. Once an attorney files his appearance on the Original Side of this court on behalf of a party, it is his duty and his obligation to attend to the matter, both on the clients as well as the Court. It is not difficult for everybody concerned with the Original Side to realise which particular firms of attorneys indulge in these practices frequently, and some of them even

regularly."

We entirely agree with the sentiments expressed by the Learned Judge. Though the observations were made by the Learned Judge almost two decades ago, the same are apposite even today. Legal profession must give an introspection to itself. The general impression which the profession gives today is that the element of service is disappearing and the profession is being commercialised. It is for the members of the Bar to act and take positive steps to remove this impression before it is too late.

3. We are, therefore, of the view that the Learned Judge was justified in expressing his anguish at the impunity with which the legal ethics are side-lined by some members of the profession.

4. It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present in Court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr. Adia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.

5. We, therefore, allow the appeal, set aside the order of the learned single Judge dated March 15, 1974. We also set aside the order of the Division Bench dated August 5, 1974. The High Court shall now hear and decide Arbitration Petition No. 57 of 1972 pending before it on merits. No costs. Appeal allowed.

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