

SUPREME COURT OF INDIA

Municipal Corporation of Delhi

Vs.

Nirmal Sachdeva (Smt)

(S Majmudar and U C Banerjee JJ.)

10.12.1998

JUDGMENT

BANERJEE, J.

1. The general principles upon which the Court of Chancery exercised its jurisdiction have been embodied as maxims of equity. These maxims, however, are not to be treated as positive laws to be applied literally and to their widest possible amplitude, since equity does not demand that its suitors shall have to lay themselves blameless. It lends assistance to the cause of justice and avoids inequities. Ethics and good conduct, always subserve the need of justice and equitable maxims denote the same.

2. Having noticed the broad features of these maxims, be it noted that this civil appeal is directed against an order of summary dismissal of the writ petition by the Division Bench of the High Court of Delhi against an order of the VIIIth Labour Court, Tis Hazari, Delhi in Labour Court Case No. 994 of 1986, dated 27-10-1987 allowing the application under Section 33-C(2) of the Industrial Disputes Act on the ground that the petitioner has not come to the court with clean hands and has misrepresented material facts to mislead the court. It is this finding which has been strongly commented upon by the learned Senior Advocate, Mr Ashok Grover appearing in support of the appeal. Mr Grover contended that as a matter of fact there is no factual support for the same and the same cannot but be attributed to be wholly unwarranted. On the second count Mr Grover contended

that in any event, in the contextual facts, question of maintaining an application before the Labour Court under Section 33-C(2) of the Act does not and cannot arise.

3. In order to appreciate the contentions raised in the matter, it would be convenient at this juncture to advert to certain factual details:

The facts depict that Respondent 1 was appointed by the petitioner on 21-12-1965 as Auxiliary Nurse-Midwife in the pay scale of Rs 260-350 with usual allowances admissible under the Rules. The factual score reveals that apart from the special pay of Rs 15 per month, the Auxiliary Nurse-Midwives were allowed rent-free accommodation at the premises of their place of duty and within the area, where emergency duties had to be performed by the staff concerned. The records of the proceedings depict that by a notification dated 5-12-1962, issued by the Delhi Administration being the "appropriate government" within the meaning of the Minimum Wages Act, the staff of Child Welfare center of the Municipal Corporation of Delhi had been declared as essentially intermittent.

4. On the factual score it further appears that on 5-11-1979, the first respondent filed an application under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, inter alia, for a claim of Rs 2,97,425 of which a sum of Rs 2,85,000 was claimed on account of overtime allowance for the period between 21-12-1966 and 29-9-1976 and a sum of Rs 9250 on account of difference in salary together with a claim for travelling allowance at the rate of Rs 45 per month.

5. In the course of submissions, Mr Grover further contended that as a matter of fact at the time of final argument before the Labour Court, one Shri C.P. Aggarwal, authorised representative of the first respondent seems to have made a similar statement, as he has been making in various other matters, to the effect that the claim for overtime allowance stands withdrawn by the claimant. The record, however, depicts that no such statement was recorded by the Labour Court. Mr Grover contended that it is basically by reason therefore that a perusal of the order of the Labour Court itself would indicate that no submissions pertaining to overtime allowance were put forth by and on behalf of the petitioner Corporation.

6. Incidentally, be it noted that it is on the score as above, that the petitioner moved a review application of the order dated 27-10-1987 which is, however, pending adjudication before the Labour Court.

7. Be that as it may, the petitioner herein being aggrieved by the order, filed a petition under Article 226 of the Constitution before the High Court of Delhi being No. 492 of 1988 and it is this petition which stands rejected by the High Court with the following observations:

"In view of the matter, we are dismissing the writ petition because the petitioner has not come to this Court with clean hands and has misrepresented material facts to mislead this Court, consequently writ petition is dismissed with costs of Rs 1000."

The observation of the High Court obviously is based on para 11 of the writ petition wherein it has been stated that during the course of final arguments before the Labour Court the workmen's representative did not press the claim pertaining to field travel allowance and overtime allowance, and as a matter of fact withdrew the same. Similar is the situation in the grounds being grounds (II), (iii) and (iv) of para 17. For convenience sake, the same are set out hereinbelow:

"17. (i) * * *

(ii) That the learned PO has no jurisdiction to entertain the dispute relating to overtime allowance and field travelling allowance as the claims were not existing claims.

(III) That the learned PO of the Labour Court failed to appreciate that the representative of the workmen has withdrawn the claims relating to the overtime allowance and field travelling allowance and the learned PO has put X-mark on the said two claims.

(iv) That the learned PO of the Labour Court has grossly erred in not recording the statement of formal withdrawal of the said 2 claims made by the representative of the workmen on 20-8-1987 and on obtaining his signatures."

8. Ground (iv) noted above categorically records that the Labour Court has erred in not recording the statement of a formal withdrawal of the said two claims made by the representative of the workmen. There is admittedly nothing in writing. It is an oral statement which was made according to the averments in the petition before the Labour Court and the contextual situation, therefore, depicts at best a statement of oath against oath. There might or might not have been such a statement but the issue arises as to whether the reference to such a situation would tantamount to dismissal of the writ petition on the ground of coming to court with unclean hands. When the issue at best is oath against oath, would it be in consonance with the concept of justice to rely thereon and non-suit the petitioner -- the answer cannot possibly be in the affirmative having due regard to the ends of justice. The Tribunal has failed to record the oral statement, does it go to the root of the matter, the answer cannot but be in the negative. As noticed above, the equitable maxim that he who comes to equity must come with clean hands ought not to be read with a very wide meaning attributed to it, but be introduced with care and caution in proper perspective. It is not a material

fact which goes to the root of the matter that there has been a tendency to suppress or mislead but it is a fact that a statement is said to have been made in court which does not find place in the order or in the proceeding-sheet and merely because averments to the factum of non-recording thereof have been taken recourse to -- can the petition be dismissed in limine on the ground of unclean hands? The answer again cannot but be in the negative. It is not an abuse of the process of the court neither can it be said to be so misleading so as to warrant the court to dismiss the application.

9. The applicability of the equitable maxim is to be had only in the event of there being a reasonable amount of certainty about the unclean hands --can there be such a certainty in the facts of the matter under consideration? The answer again cannot, however, be in the affirmative. The facts of the matter ought to be considered with utmost care and caution before a summary rejection can be ordered. These observations find support from the decision of this Court in the case of Siraj Ahmad Siddiqui v. Prem Nath Kapoor, wherein Bharucha, J., speaking for the Bench, observed in paras 4 and 5 of the Report as below:

"4. Learned counsel for the respondent raised a preliminary objection before us. He submitted that the appellant had not approached the court with clean hands and that, therefore, we should not exercise in his favour the discretion under Article 136. The submission that the appellant had not approached the court with clean hands was based upon the findings of the trial court, affirmed by the High Court, that when the defendant had appeared before the trial court and made an application for time for filing a written statement and permission to deposit the arrears of rent under Section 20(4) of the said Act, it had not been stated that a copy of the plaint had not been received by the defendant. Upon the typewritten application interpolations in this behalf had been made by hand. To the trial court the interpolations did not appear to be genuine additions made in the course of preparation of the application or its presentation before the court but were in the nature of interpolations made for securing the benefit of Section 20(4) of the said Act somehow or the other.

5. A photocopy of the application has been placed before us at our instance. We are not inclined to dismiss the appeal only upon the ground that the appellant had not approached the court with clean hands for, basically, two reasons. In the typewritten application it is mentioned that the summons had not been served on the appellant and that he had not refused to accept it. What was added by hand was that a copy of the plaint relative to the summons had not been supplied. It was averred in the application, as typed, that the defendant had not come to know of the suit filed against him prior to 24-2-1984, which was the date of the application,

and in handwriting what was added was that the appellant had only just come to know about the suit and was depositing the entire amount of arrears. There was, therefore, only an amplification in handwriting of the averments already made in the typewritten application. Secondly, we find that each handwritten addition on the application is flanked on either side by initials and these initials are stated at the Bar to be of the advocate of the appellant before the trial court."

10. In the matter under consideration, we are therefore, of the view that the question of dismissal of

the writ petition on the ground of unclean hands cannot subserve the ends of justice and the matter ought to have been dealt with on its merits with proper appreciation of the facts.

11. In that view of the matter we set aside the order of the Division Bench of the Delhi High Court and remit the matter to the Delhi High Court for being dealt with on merits upon affording an opportunity of hearing to the parties. We, however, are not expressing any opinion as regards the issue of maintainability of the application under Section 33-C(2) of the Act as raised by Mr Grover and the same is left open.

12. Mr Ashok Agarwal, learned counsel appearing for the respondents submitted that there is an allied issue pending before the High Court and the matter ought to be heard together. We are, however, not expressing any opinion in regard thereto and it is left to the discretion of the High Court to deal with the matter as it deems fit and proper. It is, however, desirable that since the matter is pending for a fairly long period of time the matter ought to be dealt with by the High Court and to be taken up at its earliest convenience. The amount already directed by this Court dated 13-7-1988 shall continue to remain in deposit with the nationalised bank until further orders in the matter by the High Court. The writ petition is restored to the file of the High Court to be dealt with as above. The appeal is allowed without any order as to costs.