SUPREME COURT OF INDIA

Mohan Lal Aggarwal

Vs.

Atinder Mohan Khosla

(R.C. Lahoti and A.Lakshmanan JJ.)

12.03.2004

ORDER

1. Respondent has made appearance on caveat and takes notice.

2. Leave granted.

3. We are in a dilemma. Whether we allow or dismiss the appeals it would be an unpleasant duty done.

4. A brief factual backdrop. The suit premises are situated in Jalandhar city. The respondent is the landlord and appellant is the tenant. On 15.4.1996, the respondent initiated proceedings for eviction of the appellant from the suit premises on the ground that the premises were required bona fide to satisfy the requirement of the respondent and his family members. On 24.5.2000, the Rent Controller directed the appellant to be evicted. An appeal preferred by the respondent came to be dismissed by the Appellate Authority. The respondent filed a revision petition in the High Court under Section 15(5) of the East Punjab Rent Restriction Act, 1949. The learned single Judge before whom the matter came up for hearing on admission seems to have heard the learned counsel for the petitioner with patience and dealing with all the pleas raised before him directed the revision to be dismissed by a speaking order as, in his opinion, it was not a fit case warranting interference in exercise of revisional jurisdiction of High Court. However, the appellant was allowed six months time for vacating the premises. The appellant then moved an application seeking review/recall of the revisional order of the High Court on the ground that at one stage of the litigation between the same parties the learned single Judge, who heard and decided the revision, had appeared in the High Court as counsel for the landlord-respondent and, therefore, he should not have heard the revision petition. The review petition was filed by changing the counsel. The learned single Judge dismissed the review petition stating that this fact was not brought to his notice when he heard the revision and decided the same on merits. Feeling aggrieved by the revisional order dated 2.12.2003 and the subsequent order dated 8.1.2004 dismissing the review/recall petition these two appeals have been filed by special leave.

5. The facts of this case call for some observation being made in the interest of preventing ripples being caused in the stream of justice by unscrupulous litigants indulging into

misadventures - playing the game of hide and seek; first, willingly submitting to the hearing by a Judge and taking a chance of success and then turning around seeking recall of inconvenient decision when they have failed. It appears that between the same parties there was some litigation in the year 1994-95 pertaining to restoration of amenities under Section 10 read with Section 19 of the E.P. Rent Restriction Act 1949. The learned single Judge while practicing at the Bar had argued a revision on behalf of the respondent but the same was dismissed. Between the date of decision of that earlier revision and the date of hearing in the present revision petition a long period of more than eight years had elapsed. It is not the case of the appellant that the learned Judge, whilst at the Bar had at any time appeared for the respondent at the trial or was personally known to him. The learned Judge cannot be expected to have remembered unless reminded that he had been a counsel for any of the parties at some state in some litigation between these very parties. If only the appellant would have brought this fact to the notice of the learned Judge at or before the hearing we have no reason to doubt that the learned Judge would have certainly reclused himself from hearing the revision. But that was not done by the appellant and he must, therefore, bear burden of the fault entirely on himself.

6. The appellant must have known that the counsel who had appeared for his opponent in some litigation between these very parties and touching these very premises was elevated and was now a Judge in the High Court in which he was filing the revision. He should have told his counsel that in the event of the revision petition coming up for hearing before such Judge he should bring the fact to the notice of the learned Judge. This must be taken as a duty to speak on the part of the litigant failing which he cannot be heard to raise grievance if the result of the litigation goes against him. The appellant would have never filed the review/recall petition if only he would have succeeded in the revision. He became wiser only after the revision was dismissed. We cannot countenance such activity of misadventure on the part of the litigants almost laying traps for the Judges who are already overburdened with heavy list of the matters for hearing and many a times have to rush through to clear the day's cause list. In our opinion, the learned Judge was right in hearing and deciding the revision on merits when it was argued before him without any demur and without seeking reclusion from the Judge. We cannot find fault even with the view taken by the learned single Judge in dismissing the review petition.

7. However still, on the principle that justice should not only be done but also seen to have been done, we are inclined to set aside the two orders passed by the learned single Judge and restore the revision petition for hearing afresh before the High Court albeit by another Judge. However, the appellant must pay costs for his conduct which has resulted in the valuable time of the Court being wasted and the respondent being dragged before this Court in these proceedings.

8. The appeals are allowed. The impugned order dated 2.12.2003 in Civil Revision No. 5618/2003 and the order dated 8.1.2004 passed in Review Petition No. 6/2004 are set aside subject to the condition that the appellant shall within a period of four weeks from today deposit in the High Court an amount of Rs. 25,000/- by way of costs and on such costs being deposited, the revision petition shall stand restored and taken up for hearing expeditiously.

From out of the amount so deposited, an amount of Rs. 20,000/- shall be made over to the State Legal Aid Services Authority and an amount of Rs. 5,000/- shall be paid to the respondent. We make it clear that failure on the part of the appellant to deposit the amount of costs as directed hereinabove shall forfeit his right of hearing and the Civil Revision in the High Court shall remain dismissed. For a period of four weeks from today, the status quo in the matter of possession over the suit property shall be maintained.