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Hanuman Lal v. Munish Chand Jain (Rajasthan)(DB)(Jaipur Bench) : Law Finder Doc Id # 709840

2015(4) W.L.C. 304 : 2015(3) W.L.N. 508 : 2015(37) R.C.R.(Civil) 28

RAJASTHAN HIGH COURT

(DB)(Jaipur Bench)

Before:- [Sunil Ambwani](#) and [Veerendr Singh Siradhana, JJ.](#)

D.B. Civil Special Appeal (Writ) No. 29 of 2015. D/d. 24.4.2015.

Hanuman Lal and another - Appellants

Versus

Munish Chand Jain - Respondent

For the Appellants :- C.P. Sharma, Advocate.

For the Respondent :- Mahesh Gupta with Kuldeep Sharma, Advocates.

Constitution of India, 1950 Article 227 Rajasthan High Court Rules, 1952, Rule 134 - Indian Evidence Act, 1872 Section 44 Fraud practised on Court - Ex parte judicial order obtained by withholding a relevant document - Allegedly report commissioner contains a document witnessing the presence of both parties - By suppressing said document the respondent-plaintiff obtained ex parte order to consider the objection to report commissioner - Special appeal - Held, withholding the relevant material is playing sharp practice on the Court - Single Bench issued direction to consider objection in absence of opposite party - When the party obtained order by concealing a material document on the Court then Division Bench cannot ignore the fraud played on the Court to remove its effect - Bar on entertaining Special Appeal against orders under Article 227 is lifted - A curative action in this regard can be brought by an application for recall or by filing an appeal or even suo motu after it is brought to its notice - Impugned order set aside - Appeal allowed - Matter remanded to Single Judge to decide petition afresh.

[Paras [10](#) and [12](#)]

Cases Referred :-

[Abdul Sami v. Additional District Judge No.8, D.B. Special Appeal\(Writ\) No.357 of 2010., Decided on 24.11.2010.](#)

[Abhishek Mundra v. Navratan Mal Jain, 2011 WLC\(Raj.\) UC 163.](#)

[Sukh Dev v. Prakash Chandra, 2010\(2\) WLC\(Raj.\) 500.](#)

JUDGMENT

We have heard learned counsel appearing for the parties.

2. A preliminary objection has been raised that the impugned order dated 27.11.2014, passed by learned Single Judge is an interlocutory order, and thus, the Special Appeal, under the Rules of the Court, is not maintainable.

3. It is contended that the order has been passed under Article 227 of the Constitution of India, against which the Special Appeal is not maintainable. Reliance has been placed on *Sukh Dev v. Prakash Chandra, 2010(2) WLC(Raj.) 500*; *Abdul Sami v. Additional District Judge No.8 & Another [D.B. Special Appeal(Writ) No.357/2010]*, decided on 24.11.2010, and *Abhishek Mundra v. Navratan Mal Jain (DB CIVIL SPL APPEAL(W) NO.29/2015 & Ors., 2011 WLC(Raj.) UC 163*.

4. It is submitted by learned counsel appearing for the appellants that the judgment of learned Single Judge was obtained by playing fraud on the Court. The respondent played a sharp practice on the Court and obtained an ex parte order, by which without setting aside the order of the trial Court, a direction has been issued to decide the objections to the Commissioner's report, afresh.

5. The respondent filed a Writ Petition No.11651/2014, challenging an interlocutory order of the trial Court, dated 09.10.2014, rejecting the objection to the Commissioner's report. The order was challenged on the ground that the Commissioner's report was prepared without securing the presence of the plaintiff-respondent, and that the site plan was not prepared by the Commissioner on the spot. It was submitted that the site plan was prepared by the Commissioner after he had left the spot and in which incorrectly depicted the site to the advantage of the defendant.

6. It is further submitted that the respondent, who was the petitioner in the writ petition, did not file the complete copy of the Commissioner's report. The first page of the report was the notice to the parties, and the second page of the report was the document, which witnessed the presence of both the parties. Shri Munshi Chand Jain, the plaintiff in the suit, had signed on both the documents, namely on the notice as well as the document witnessing the presence of both the parties, and in which it was clearly written that the report was prepared on the spot. This document was withheld from the Court in obtaining an order for deciding the objections, afresh.

7. Learned Single Judge, without issuing notices, or calling for the report, believed the contention of the writ-petitioner and without setting aside the order dated 09.10.2014 rejecting objections, directed the trial Court to decide the objections against the Commissioner's report afresh on merits. Paragraphs 3, 4 and 5 of the order of learned Single Judge, are quoted as below:-

"3. Counsel for the petitioner/plaintiff submits that the learned court below has rejected the objections raised by the petitioner against the report of the Commissioner without considering the same on merits and the signatures obtained of the plaintiff, Munshi Chand Jain, was only taken for showing that he was present on the site, when the Commissioner allegedly prepared his report. Neither proper measurements were taken nor the "Mauka" report was prepared in presence of the petitioner. He, therefore, argued that the objections raised by the petitioner have wrongly been rejected by the learned court below in a cursory manner.

4. Though at such interlocutory stage, interference under Article 227 of the Constitution of India is not usually called for in the narrow and limited jurisdiction, however, this Court is inclined to observe that the learned trial court should consider the objections of the plaintiff against Commissioner's report on its own merits and then pass appropriate fresh orders accordingly.

5. With these observations and directions, the writ petition filed by the petitioner is disposed of without calling upon the respondents. No costs. A copy of this order be sent to the concerned parties and the court below forthwith."

8. Learned counsel appearing for the respondent submits that he had placed the entire documents before the Court, and that after the Court was satisfied that the report was prepared in the absence of the plaintiff-respondent, the trial Court was directed to pass a fresh order on the Commissioner's report.

9. Learned counsel appearing for the respondent, who was the petitioner in the writ petition, did not deny that the second page of the report which witnessed the presence of the parties and mentioned that the report was prepared on the spot in the presence of the parties, was not filed with the writ petition. He submits that even if this document was not filed, the order of learned Single Judge does not suffer from any error of law.

10. We find that the only question raised before learned Single Judge was, that the trial Court did not consider, as to whether the Commissioner's report was prepared after securing the presence of both the parties, and that the report was not prepared on the spot. In this connection, the second page of the report, which witnessed the presence of both the parties, and on which the Commissioner had clearly written that the report was prepared in the presence of the parties, was the only relevant document and which was deliberately concealed from the Court. The order was, thus, obtained by withholding the relevant material, which virtually amounts to playing sharp practice on the Court, and which could be revealed after the notices were issued to the respondents in the writ petition.

11. The principles of natural justice are ingrained in the proceedings of the Court. No Court can pass an order even if it is an innocuous order, in the absence of the opposite party. The making of an ex parte order is not ordinarily permitted in judicial system. The anxiety of the Court to do quick justice, many a times, results into a party succeeding in playing a fraud by concealing the relevant facts and the documents from the Court. The Court should not fall into such trap, and thereby permit it to be defrauded by which the stream of justice is polluted.

12. In the present case, learned Single Judge dropped the guard, and passed an order without issuing notice and securing presence of the respondents, which permitted the petitioner to mislead the Court, and to obtain an order by concealing the relevant part of the report of the Commissioner. The order of learned Single Judge, passed in the absence of the respondents, based on incomplete report of the Commissioner, is thus, a void order, which must be erased from the records of the Court. In such circumstances, a bar on entertaining the Special Appeal against orders under Article 227 of the Constitution of India is lifted. A Division Bench of this Court, cannot ignore the fraud played on the Court, and to remove its effect. A curative action in this regard can be brought, either by an application for recalling the order, or by filing an appeal, or even suo motu after it is brought to its notice, as fraud vitiates all solemn actions and nullify any advantage gained.

13. In the aforesaid facts and circumstances, the Special Appeal is allowed. The order of learned Single Judge is set aside and the matter is remanded to learned Single Judge, to decide the writ petition, afresh, after securing the presence of the parties and the report, in accordance with law.

Appeal Allowed.

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