

Neutral Citation No. - 2024:AHC-LKO:6657

Court No. - 8

Case :- MATTERS UNDER ARTICLE 227 No. - 212 of 2024

Petitioner :- Gyan Prakash Gupta

Respondent :- Principal Judge Family Court Lko. And Another

Counsel for Petitioner :- Sameer Singh, Sakshi Singh

Hon'ble Jaspreet Singh, J.

1. Heard Shri Sameer Singh, learned counsel for the petitioner.
2. The instant petition has been preferred under Article 227 of the Constitution of India seeking the following reliefs:-

(i) Exercise its supervisory jurisdiction under Article 227 of Constitution of India and conduct an enquiry against opposite parties, considering the fact that the opposite party no.2 has acted negligently and the opposite party no.1 has no administrative control over Family Court Lucknow and the other facts mentioned in the present petition and thereafter, this Hon'ble Court may kindly be pleased to take suitable and appropriate action against the opposite parties.

(ii) Issue any other order or direction which this Hon'ble Court may deem just and necessary in the facts and circumstances of the case.

3. The petitioner is a practicing Advocate at Family Court, Lucknow and has a standing of 35 years. It is the case of the petitioner, that a matrimonial dispute was pending between Deepshikha Singh and Dr. Pawan Singh wherein the present petitioner was the counsel appearing before the Family Court on behalf of Dr. Pawan Singh. It is also the case of the petitioner that a petition under Section 27 of the Hindu Marriage Act was filed by Smt. Deepshikha Singh which was registered as Case No.235-C of 2012. It is said that the said case was heard and reserved for orders on 05.12.2022. However, the orders were not pronounced. Thereafter, the matter was

listed for disposal of the said case, however, on 26.07.2023, the Presiding Officer of Additional Principal Judge-II, Family Court, Lucknow is said to have preferred an application for transfer of the said case from the said Court to some other Court and the said application was moved before the Principal Judge, Family Court, Lucknow.

4. It is, at this stage, that the petitioner appeared before the Additional Principal Judge-II, Family Court, Lucknow on 04.10.2023 and gained information that the Miscellaneous Case No.235-C of 2012 was pending and the Court of Additional Principal Judge, Family Court-II had showed reluctance to continue with the said case and that the Court had already written to the Principal Judge, Family Court to pass appropriate orders placing the matter before some other court.

5. The petitioner further contends that in the transfer application moved by the Additional Principal Judge, Family Court-2 Lucknow instead of mentioning the case under Section 27 of the Hindu Marriage Act bearing number 235-C of 2012, it described the case as one under Section 13 (ia)(ib) of the Hindu Marriage Act, 1955 though the case between the said parties which was under Section Hindu Marriage Act was bearing Case No.1467 of 2012.

6. It has further been stated that the Additional Principal Judge, Family Court-II, Lucknow in the application given to the Principal Judge, Family Court, Lucknow indicated that the matter is pending for

final disposal, whereas the case under Section 13 of the Hindu Marriage Act which was referred had already been decided on 05.07.2014.

7. This Court deems appropriate to make it clear, at this stage, that the reference made to the case already decided was in context with the petition under Section 13 of the Hindu Marriage Act relating to Case No.1467 of 2012 and it did not relate to the Case No.235-C of 2012 which admittedly was pending on the said date.

8. It is in the aforesaid backdrop that it is stated that the application moved by the Additional Principal Judge-II, Family Court, Lucknow was mischievous and it also did not indicate the correct section or the status which apparently indicates that there has been a complete non-application of judicial mind while moving the said application before the Principal Judge, Family Court. It is in the aforesaid context that certain averments have been made in the petition and the same are being reproduced hereinafter for ready reference:-

"4. That the petitioner is a practicing Advocate at Family Court Lucknow, since last 35 years he is regularly practicing before learned Family Court Lucknow, with utmost integrity and have assisted the Hon'ble Family Court on judicial and administrative side for proper functioning since last several decades.

5. That the petitioner is contesting the case no.235C/2012 under section 27 of Hindu Marriage Act (Deepshikha Singh Vs. Dr. Pawan Singh), in the aforesaid case the petitioner is assisting the Hon'ble Family Court on behalf of Dr. Pawan Singh.

6. That the above noted case under section 27 of Hindu Marriage Act was reserved for final orders firstly on

05.12.2022 and thereafter, several dates were fixed for final disposal of the application under Section 27 of Hindu Marriage Act, 1955 but surprisingly on 26.07.2023 the learned opposite party no.2 preferred an application for transfer of aforesaid case from her court to some other court before the learned opposite party no.1.

7. That the client of the petitioner i.e. Dr. Pawan appeared before learned opposite party no.2 on 04.10.2023 and thereafter, the learned counsel by showing the transfer application has informed that the Hon'ble Court has requested the transfer of the present case to some other court and therefore, no order in the present case can be passed.

8. That the learned opposite party no.2 in the transfer application has mentioned the case Under Section 13(ia)(ib) of Hindu Marriage Act, 1958, despite the fact that the aforesaid case has already been decided on 05.07.2014. True/typed copy of the order dated 05.07.2014 passed in case No.1467 of 2012 Under Section 13(ia)(ib) of Hindu Marriage Act, 1955 (Deepshikha Singh Vs. Dr. Pawan Singh) is being annexed herewith as Annexure no.2. to this petition.

9. That the learned opposite party no.2 has mentioned in her transfer application dated 26.07.2023 that case no.235C of 2012 under Section 13(ia)(ib) of Hindu Marriage Act, 1955 (Deepshikha Singh Vs. Dr. Pawan Singh) is pending for final orders, in this regard it is pertinent to mention here that no such case was pending on 26.07.2023. As already the aforesaid matter has been decided vide order dated 05.07.2014 in case no.1467 of 2012.

10. That the learned opposite party no.1 without perusing the records has transferred the aforesaid case, which is not even pending before the Hon'ble Court, while transferring the matter the petitioner has not been informed, the learned opposite party no.1 has also acted negligent while passing the order dated 04.10.2023, as no matter under Section 13(ia)(ib) of Hindu Marriage Act, 1955 was pending on the aforesaid date.

11. That the case under Section 27 of Hindu Marriage Act was pending since 2012 and the matter was kept for final disposal since 05.12.2022, the petitioner has filed his written argument on 11.11.2022, despite of passing the order in the aforesaid case the learned opposite party no.2 has preferred a transfer application in a negligent manner without perusal of record, it reflects that the opposite party no.2 is not inclined towards disposal of cases pending

before the Hon'ble Court, rather than she is inclined towards ignoring the judicial work and functioning in a negligent manner.

12. That the learned opposite party no.1 has also not perused the records while transferring the matter and the same reflects his negligence over administrative functioning at Family Court, Lucknow.

13. That the petitioner being a counsel in the aforesaid case under Section 27 of Hindu Marriage Act and senior member of Bar has preferred a complaint dated 10.10.2023 before learned Principal Judge, Family Court Lucknow. True/Typed copy of the complaint dated 10.10.2023 before learned Principal Judge Family Court Lucknow iws being annexed herewith as Annexure no.3 to this petition.

14. That the Administrative Officer of Family Court Lucknow vide letter dated 20.10.2023 informed the petitioner that in terms of complaint dated 10.10.2023 the learned opposite party no.1 has called the petitioner on 31.10.2023 at 04:30 PM. True/Photocopy of the letter dated 20.10.2023 of Administrative Officer, Family Court Lucknow is being annexed herewith as Annexure No.4 to this petition.

15. That the petitioner vide letter dated 20.12.2023 and 21.10.2023 requested the report and relevant documents from learned opposite party no.1 for proper explanation and placing his contention at the time of enquiry. True/Photocopy of the letter dated 20.12.2023 and 21.10.2023 are being collectively annexed herewith as Annexure no.5 to this petition.

16. That the learned opposite party no.1 has never provided any report or explanation sought from learned opposite party no.2, the same was required for placing the factual aspect of the present subject matter; the learned opposite party no.1 has not conducted any fair and proper enquiry in terms of the present subject matter.

17. That the petitioner has been practicing before learned Family Court Lucknow since last more than three decades and such negligent act of judicial officers never been seen by him.

18. That the learned opposite party no.2 has preferred an application for transfer without perusal of record and the same has been allowed by opposite party no.1, both the judicial officers has acted negligent and therefore, some action are required to be taken by this Hon'ble Court."

9. In light of the aforesaid averments, the petitioner has claimed

10. The Court had required the learned counsel for the petitioner to address the Court on maintainability and in furtherance thereof Shri Sameer Singh, learned counsel for the petitioner has relied upon the decision of the Apex Court in ***R. Muthu Krishnan Vs. Registrar General, High Court of Judicature at Madras, (2019) 16 SCC page 407*** and he has relied upon paragraphs-18, 19 and 43 of the said report, which reads as under:-

"18. It is basically the lawyers who bring the cause to the Court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the rule of law. Considering the significance of the Bar in maintaining the rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases.

19. Role of the Bar in the legal system is significant. The Bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest Judges and not to ruin their reputation and at the same time to ensure that corrupt Judges are not spared. However, lawyers cannot go to the streets or go on strike except when democracy itself is in danger and the entire judicial system is at stake. In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt Judges to the appropriate administrative authorities and not to level such allegation in the public. Corruption is intolerable in the judiciary.

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43. The members of the Bar are recognised as intellectuals of the society. They enjoy respect in the society being the protector of law as they fight for equality. The advocate has to fearlessly uphold the interests of his clients by all fair and honourable means without regard to any unpleasant consequences to himself or any other. An advocate is supposed to find a solution to the very real problem as “justice hurried is justice buried” and “slow justice is no justice”. It has become professionally embarrassing and personally

demoralising for an advocate to give an answer to his client as to the outcome of the matter and why it is pending and when it is to come up for hearing. When a member of the Bar is elevated to the Bench first relief which is felt is of answerability to the client on the aforesaid aspects which is in fact too inconvenient and embarrassing but still problem subsists and is writ large, it has to be solved every day. In such circumstances too, the tool of adjournment is used to kill justice. Adjournment poses a question mark on whether such kind of advocacy is acceptable?"

11. In order to buttress his submissions, it is urged by Shri Sameer Singh that the lawyers are the sentinel and guardian of the judiciary, it is, they who have to answer to their clients and in case the manner in which the proceedings have been held by the Additional Principal Judge-II, Family Court, Lucknow as well as the Principal Judge, Family Court, Lucknow raises a question mark over their working. In the aforesaid circumstances, the petitioner claims and seeks an appropriate direction be issued so that an enquiry can be held against the Additional Principal Judge-II, Family Court who is alleged to have acted negligently and that the Principal Judge, Family Court, Lucknow also failed in its duty as he did not exercise the administrative control over the Family Court, appropriately.

12. The Court has considered the submission of the learned counsel for the petitioner and has also perused the material on record.

13. At the outset, it may be noticed that the petitioner appears to be nursing some grudge. However, be that as it may, this Court is confining the matter to the pleadings and the relief sought by the petitioner.

14. The record would indicate that the petitioner who claims to

have a standing of 35 years at the Bar and the instant petition which has been filed has also been drafted and filed by a counsel. However, the respondents who have been impleaded are Principal Judge, Family Court, Lucknow and the Additional Principal Judge-II, Family Court, Lucknow. No caution has been taken to implead the officers concerned by name despite the fact that personal allegations regarding the working of the said officers have been made.

15. A specific query was put to the counsel for the petitioner that in the petition reference has been made to an alleged transfer application which is said to have been moved by the Additional Principal Judge-II, Family Court to the Principal Judge, Family Court, Lucknow, to which it has been stated that the document brought on record as annexure no.1 is the transfer application dated 26.07.2023.

16. What this Court finds is that the said letter is written by the Additional Principal Judge, Family Court-II to the Principal Judge, Family Court. However, there is no mention as to how the said letter was acquired by the petitioner. The aforesaid letter apparently is an inter office correspondence between the Presiding Officer of the Additional Principal Judge and address to the Principal Judge, Family Court, Lucknow.

17. At this stage, Shri Sameer Singh submits that he has indicated in paragraph-7 as to how the petitioner has got the copy of the said letter and for ready reference paragraph-7 of the petition is being reproduced hereinafter for ready reference:-

"7. That the client of the petitioner i.e. Dr. Pawan appeared before learned opposite party no.2 on 04.10.2023 and thereafter, the learned court by showing the transfer application has informed that the Hon'ble Court has requested the transfer of the present case to some other court and therefore, no order in the present case can be passed."

18. From the perusal of the said paragraph as well, it would indicate that there is no whisper regarding as to how the petitioner was in custody of the said letter which has been brought on record as annexure no.1, more so when the said letter is not even addressed nor a copy is marked to the petitioner.

19. Be that as it may, the said letter cannot be treated as a transfer application which has been mentioned in the petition repeatedly in various paragraphs. All this is being noticed for the reason that much emphasis was laid by the counsel for the petitioner that the petitioner is a counsel having a standing of 35 years. Yet the petition so filed has these basic deficiencies which are apparent. At best, the said letter is basically a communication from one court to the other on the administrative side indicating that the Court was not inclined to continue to hear the matter pending in its Court which may be placed before another Court. If a Judge for some reason wants to recuse from a case and for the said purpose it had written to the Principal Judge, Family Court on the administrative side then such communication cannot be termed as a transfer application nor the transfer of a case on administrative side can be termed to be *mala fide*.

20. From the perusal of the said letter which appears to be the cause

of concern for the petitioner, would indicate that the Case No.235-C of 2012 has been clearly indicated which is correct and even the parties name is correctly mentioned. The only error which can be seen is the fact that instead of mentioning that it was a case pending under Section 27 of the Hindu Marriage Act, it has been indicated as a petition under Section 13 (ia)(ib) of the Hindu Marriage Act. In this context that the Principal Judge who received the said letter on the administrative side, also passed an appropriate order which has been brought on record at running page 18 of the paper book wherein the same section has been mentioned referring to the Case No.235-C of 2012 as was mentioned in the request letter sent by the Additional Principal Judge, Family Court-II, Lucknow.

21. Another fact that is evident from the record is that the complaint which has been brought on record is under the name of signatures of the petitioner himself. It is not as if the petitioner of Miscellaneous Case No.235-C of 2012 has made any complaint to or against the petitioner nor there is any authority letter given by the petitioner of Case No.235-C of 2012 permitting the present petitioner to espouse his cause or make a complaint. Moreover in absence of such authorization, it is clear that the complaint made by the petitioner is in his personal capacity. The petitioner as a counsel holds information of his client which is privileged communication and it cannot be used as such for his personal purposes without seeking the consent of his client. Needless to say there is no material on record by

which it can be inferred that Dr. Pawan Singh has permitted the petitioner to use such information.

22. Now coming to Annexure no.1 annexed with the petition, it is apparent that the order which has been brought on record is an uncertified copy, it does not even indicate as to how the petitioner has been able to obtain the same. Taking note of the letter of recusal issued by the Additional Principal Judge, Family Court-II, the Principal Judge transferred the matter for disposal before the Additional Principal Judge, Family Court No.3. Since this order transferring the case to another court, passed on the administrative side, was in context with the letter sent by the respondent no.2, consequently it appears that the some reference was made and the same error relating to the section mentioned therein under Section 13 instead of Section 27 of Hindu Marriage Act has crept in. The order clearly indicates the correct parties name and the case number. The only error is in respect of the section under which the said case was pending, was incorrectly mentioned.

23. Learned counsel for the petitioner has further draw the attention of the Court to the complaint written by the petitioner to the Principal Judge, Family Court, Lucknow dated 10.10.2023. This Court finds that the intemperate language used therein does not reflect the maturity which should be exercised by a counsel having a standing of 35 years. The words have been used casually without even pausing for a moment to ponder regarding its true and correct meaning especially

when the person using the same is said to be a person with a legal mind and having a standing of 35 years.

24. Considering the aforesaid as well as the prayer made including from the perusal of the order-sheets which have been annexed with the complaint filed by the petitioner, it could be a cause for a party to express some dissatisfaction to the manner in which the proceedings were being taken forward but nevertheless such aggrieved party can approach the Court for early hearing or for some expedite order or in case an incorrect order is passed it can be assailed before a superior court in accordance with law. The counsel for the petitioner could not demonstrate as to why the aggrieved party did not take recourse to judicial proceedings to get the miscellaneous case decided when it is not disputed that the regular proceedings between Deepshikha Singh and Dr. Pawan Sing had already culminated in a final order dated 05.07.2014 as shall be evident from annexure no.2.

25. Noticing the dictum of the Apex Court in ***R. Muthu Krishnan (supra)***. Needless to say that the role of a counsel in the entire judicial system is one of the great importance. A lawyer is supposed to plead the case of his client most fearlessly before the court to guard the rights of his client but at the same time it is not permissible to use intemperate language with the Court. Certain paras of the aforesaid decision of ***R. Muthu Krishnan (supra)*** also needs to be seen which reflect the manner in which a counsel has to behave in Court:-

"22. There is a fine balance between the Bar and the Bench that has to be

maintained as the independence of the Judges and judiciary is supreme. The independence of the Bar is on equal footing, it cannot be ignored and compromised and if lawyers have the fear of the judiciary or from elsewhere, that is not conducive to the effectiveness of the judiciary itself, that would be self-destructive.

25. The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause.

26. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time.

27. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An advocate's conduct is supposed to be exemplary. In case an advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.

29. The balancing of values, reverence between the Bar and the Bench is the edifice of the independent judicial system. Time has come to restore the glory and cherish the time-tested enduring ideals and principles. For a value-driven framework, it is necessary that perspective is corrected in an ethical and morally sound perspective. The perception of ambulance chasers, money guzzlers and black sheep should not be presumptive. Such public perception as to lawyers undermines the credibility of the legal

profession, all the evils from the system have to be totally weeded out. No human institution is ever perfect. In order to drive towards more perfection, one has to just learn from the mistakes of the past and build upon the present days' good work so as to make out a better tomorrow."

26. Apart from the above, the facts, issue in question and the dictum of the decision in ***R. Muthu Krishnan (supra)*** does not have any bearing to the facts of the instant case, as in ***R. Muthu Krishnan (supra)*** a challenge had been made to the vires of Rules framed by the Madras High Court by a lawyer under Article 32 of the Constitution of India. Hence the said decision may not have much bearing on the instant case, except to highlight as to how a responsible member of the Bar should conduct themselves and if paras 22, 25, 26, 27 and 29 as noticed above are applied then the conduct of the petitioner shall be seen wanting on various parameters, which this Court does not deem expedient to delve in detail.

27. In the aforesaid circumstances, noticing the pleadings, the averments in the petition and the reliefs sought by the petitioner including without furnishing any explanation as to how the petitioner got the copies of Annexure no.1 as filed with the petition and then by invoking the powers of the Court under Article 227 of the Constitution of India does not display *bona fides* but in the humble opinion of the Court is an veiled threat to badger and embarrass the independent functioning of the judicial officers and an attempt to seek the seal of judicial acceptability on the irresponsible action of the petitioner which this Court is unable to persuade itself to accede.

28. It will also be relevant to notice that in terms of the Judges

(Protection) Act, 1985, the functioning of the Judicial Officer is protected in terms of Act No.59 of 1985.

29. In light of the aforesaid discussion as well as noticing the averments made in the instant petition, this Court is not inclined to entertain the aforesaid petition which is *mala fide* and is accordingly **dismissed** with a cost of Rs.25,000/- to be deposited by the petitioner with the U. P. State Legal Services Authority. The said cost will be deposited within a period of three weeks from today. In case if the said cost is not deposited, the District Magistrate, Lucknow shall recover the same from the petitioner as the arrears of land revenue. The Senior Registrar of this Court shall communicate this order to the District Magistrate, Lucknow to ensure its compliance.

Order Date :- January 23, 2024
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