

Vishwas Krishnarao Kale	...	Petitioner
Vs.		
M/s. Ashoka Group, Ashok Buildwell and Developers Pvt. Ltd.	...	Respondent

CORAM : R. G. KETKAR, J.
DATE : 25TH FEBRUARY, 2015

Heard Mr. Gite, learned Counsel for petitioner at length.

3. The Petition is instituted in this Court on or about 23.04.2014 challenging the orders passed on 30.12.2004. In paragraph 12, the petitioner has contended that after the passing of the impugned orders, the petitioner immediately approached one Advocate Mr. Ashok Jadhav

at Nashik for filing appropriate proceedings before this Court. The petitioner was under impression that appropriate proceedings were filed in this Court and the same are pending. The petitioner, however, came to know from the concerned Advocate that he has not filed any proceedings against the impugned orders before this Court when he tried to find the status of the matter in I.T. Library in Nashik Court. He came to know that the concerned Advocate did not file any proceedings against the impugned order. The petitioner was, therefore, constrained to file complaints against the concerned Advocate before the District Court at Nashik as also before the Bar Council of Maharashtra and Goa. In my opinion, the petitioner has not substantiated the assertions made in paragraph 12 of the Petition. No correspondence between 2004 and 2013 between Advocate Jadhav and the Petitioner is produced on record, that is to say, between the period when the impugned orders were passed and when the complaints were made to the District Court, Nashik as also Bar Council of Maharashtra and Goa.

4. Mr. Gite submitted that the draft Petition was prepared some time in the year 2005 and was not lodged in this Court. However, no explanation is given in the entire Petition as regards the steps taken by the petitioner between 2005 till lodging complaint against the concerned Advocate as also till filing of the Petition in this Court. It is also not explained as to why the petitioner has approached Advocate Jadhav, who was not concerned with proceedings before the Labour Court at Nashik. There are no details as to when the petitioner found out the details from I.T. Library, Nashik. The assertions are as vague as possible. In other words, the petitioner cannot claim to be an innocent litigant who took all the requisite steps and there was total negligence on the part of the concerned Advocate. Between 2004 and 2005 or for that matter, between 2005 and 2013, no explanation is given for filing the

Petition in this Court in 2014. In my opinion, the petitioner has not explained the delay in filing the Petition and has merely blamed the Advocate, who was nowhere concerned with the proceedings before the Labour Court at Nashik. In **Salil Dutta vs T.M. and M.C. Private Ltd**, (1993) 2 SCC 185, the Apex Court considered its earlier decision in **Rafiq Vs. Munshilal**, (1981) 2 SCC 788 and reproduced paragraph 3 thereof:

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job...

... The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or mis-demeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."

5. The Apex Court thereafter observed, in paragraph 8, as under:

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. **It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is not such absolute rule that a party can disown its advocate at any time and seek relief. No such**

absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in *Rafiq* must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they 'chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

(emphasis supplied)”

6. Apart from that, on merits, the Labour Court has dismissed the Reference as also application under Section 33-C(2) of the Act. Perusal of the order in Reference shows that the petitioner claimed that he has put in 240 days in every calendar year and the said fact was not substantiated by leading evidence. The Labour Court, therefore, rightly dismissed the Reference. As far as the order dismissing the application is concerned, perusal of paragraph 9 of the order clearly shows that the petitioner did not produce any document in support of his case that he had earned leave, wages and bonus and the same were not paid. In view thereof, on merits, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India, particularly when the petitioner was ignorant in filing the Petition. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)