

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA No.315/2006

% Date of decision : 30th January, 2015

M/S LUCKNOW MEDICAL AGENCIES Appellant
Through: Mr. V.K. Mishra, Adv.

versus

MOHAN SINGH & ANR. Respondents
Through: Mr. Anup J. Bhambhani,
Senior Advocate as amicus
curiae with Ms. Lakshita
Sethi, Adv.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant instituted a suit for recovery of Rs.84,000/- which was dismissed by the learned Civil Judge on 15th September, 2005. The appellant preferred an appeal against the aforesaid judgment which was dismissed by the learned Additional District Judge on 25th May, 2006. The appellant has approached this Court in second appeal.

2. There was no appearance on behalf of the respondents and therefore, this Court appointed Mr. Anup J. Bhambhani, Senior Advocate as amicus curiae to assist this Court. Learned amicus curiae has made detailed submissions in the matter.

3. The relevant facts in brief are that respondent no.1 was an employee of the appellant till 16th July, 1985 when he abandoned

the job. After more than a year thereafter, respondent no.1 made a complaint to the Labour Commissioner, which resulted in a reference to the Labour Court on 9th March, 1987. The Labour Court passed an ex-parte award in favour of respondent which was challenged by the appellant before the High Court. The High Court set aside the award and remanded the matter to the Labour Court. The Labour Court vide order dated 9th May, 2003 dismissed the respondent's complaint.

4. On 11th May, 2004, the appellant instituted a suit for recovery of Rs.84,000/- as damages for malicious proceedings. The breakup of the amount claimed by the appellant is Rs. 900/- towards fee paid to the first authorized representative; Rs. 1,100/- towards fee paid to the second authorized representative; Rs. 6,000/- towards fee paid to the Advocate in the High Court; Rs. 10,000/- towards cost paid to respondent No. 1 in the High Court; Rs. 16,000/- towards expenditure on conveyance and Rs. 50,000/- towards loss of business reputation, mental and physical agony.

5. The appellant examined one witness, namely, PW-1, Sunit Kumar, partner of the appellant firm who reiterated the averments made in the plaint. The PW-1 proved the certified copy of the judgment of the Labour Court as Ex. PW-1/3. However, no documentary evidence was placed on record to prove the compensation claimed by the appellant. In cross-examination respondent no.1 questioned PW-1 as to the proof of the claims made by the appellant to which the PW-1 could not give any satisfactory reply. PW-1 admitted that the payments to the authorized representative and the Advocate were made by cheque

but could not explain why the proof and particulars of the same were not placed on record. PW-1 also admitted that he has no documentary proof with respect to the claim of Rs.16,000/- towards the conveyance. PW-1 also admitted that no application for claiming cost was filed before the concerned Labour Court and High Court.

6. The Learned Trial Court held that the plaintiff has not led any evidence to prove the compensation/damages and, therefore, was not entitled to any compensation/damages from the respondents. The Trial Court further observed that the plaintiff also failed to file any certificate for pleader fees or cost before the Labour Court. The learned Trial Court further observed that the appellant should have pressed for costs before the concerned Labour Court. The relevant portion of judgment of the Trial Court is reproduced hereunder:

"The plaintiff has totally failed to prove the damages as claimed by him. *It is a common knowledge that the costs allowed in an action are hardly ever a real indemnity. The true reason is that litigation must end somewhere. If A may sue B for bringing a vexatious action, then if A fails to persuade the Court that B's original suit was vexatious. B may again sue A for bringing this latter action, and so ad infinitum. Thus the plaintiff is debarred from claiming cost. Hence keeping in view the entire evidence & the cited authorities I am of the view that the plaintiff is not entitled to any amount claimed in this suit. Hence this issue is decided in favour of the defendant and against the plaintiff.*

"Even otherwise the plaintiff was within his rights to have pleaded for the cost in the previous suit

itself having failed to do so he cannot be allowed to filed a separate suit for claiming the cost. Even in the judgment filed (sic) by the plaintiff, the Ld. Presiding Officer of Labour Court has stated that it seems that the suit was filed by the workers just to extort money from the plaintiff. The Ld. Presiding Officer of Labour Court after giving this findings (sic) has not imposed cost upon the plaintiff. Even no fee certificate was filed by the present plaintiff, however, only on the basis of this statement it cannot be said that the suit filed by the defendant was without any reasonable and probable cause which means a genuine belief based on the reasonable grounds that the proceedings are justified. The burden to prove the absence of reasonable and probable cause was also on the plaintiff which in my considered view has not been discharged."

(Emphasis Supplied)

7. The appellant challenged the judgment of the Civil Judge before the District Court. However, his appeal was dismissed by the learned Additional District Judge vide judgment dated 25th May, 2006. The learned Additional District Judge after detailed discussion concurred with the finding of the Civil Court. The relevant portion of the judgment of District Court is reproduced hereunder:

"After considering the stand of both the parties, the appropriate Government referred the dispute for adjudication in accordance with the scheme of the industrial dispute (sic) which is the only way as was available to the first respondent to raise his grievances. It is a different matter, that he has not been able to succeed. The mechanism of Industrial Disputes Act as it exist also authorises the Labour Court u/s 11 (7) of the ID Act to award cost of the proceedings which in this case has not been done. The appellant was entitled to

challenge the order of the Labour Court in higher forum to claim the cost in case he so wanted the (sic) peculiar facts of this case."

(Emphasis Supplied)

8. In a claim for "malicious civil proceedings", the plaintiff has to establish that the defendant acted with malice; the defendant acted without reasonable and probable cause; the proceedings from which the claim for malicious civil proceedings arise, have terminated in the plaintiff's favour; the proceedings interfered with the plaintiff's liberty, property, or affected plaintiff's reputation; and lastly the plaintiff has to prove the damages suffered.

9. The essential requirements of the claim for malicious civil proceedings have not been satisfied by the appellant in the present case. That apart, except one head of claim, namely claim for Rs.50,000/- on account of damages to the business, reputation, mental and physical agony, all other heads of claim are in the nature of "costs" for recompense or reimbursement. The Labour Court before whom the first proceedings were carried on, in spite of making certain adverse observations against the respondents, did not even consider it fit to award costs to the appellant. Having filed the initial proceedings before the Labour Court, but having lost in there, the respondents did not persist in appeal or other subsequent proceedings in higher Court. Costs in the High Court were awarded against the appellant and in favour of the respondents in the writ petition since the High Court found fault with the conduct of the appellant. In the writ petition filed by the employer against the employee seeking to set aside an ex parte

award, the Division Bench of this Court observed as under:

"Though it appears from the record that the petitioner has not been very diligent in pursuing proceedings before the Labour Court but in view of the explanation given in the application for setting aside ex parte award that the petitioner was misled by its authorised representative who did not inform the correct position of the case to the petitioner and the concerned file was given to the petitioner on 9th March, 1992, and, therefore, the application for setting aside ex parte award was made on 12th March 1992. and also for another reason, namely, long illness of a partner of the petitioner, we feel ends of justice will be met by imposing heavy costs on the petitioner for setting aside ex parte award. Thus, having regard to the facts and circumstances of the case, we grant to the petitioner an opportunity to contest the proceedings subject, however, to payment of costs to the workman."

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"Consequently we set aside the impugned order and the impugned ex parte award subject to payment of Rs.10,000/- as costs by the petitioner to the workman."

(Emphasis Supplied)

It is, thus, apparent that the prolonged proceedings in the dispute between the parties were, at least in major part, on account of lack of diligence on the part of the appellant.

10. The appellant has also failed to prove the damages. As discussed in para 5 above, PW-1 could not prove the fees paid to the authorized representatives and the Advocate. Since the Appellant admitted that the fees was paid by cheque, the receipt or atleast the accounts books could have been produced to prove the

payment and the name of the person to whom the payment was made could have been given in evidence. With respect to the claim of Rs.16,000/- spent on conveyance also, no evidence whatsoever was led, not even the accounts books/vouchers were produced. The cost of Rs.10,000/- was imposed on the appellant for setting aside of the *ex parte* award. No case for refund of cost of Rs. 10,000/- is made out in view of the observations made in the order dated 1st November, 1996 of the Division Bench of this Court, reproduced in para 9 above. With respect to claim of Rs.50,000/- towards loss of business reputation, mental and physical agony, no evidence was led as to on what basis the compensation was being claimed. The findings of fact by the two Courts have become final and the Second Appellate Court cannot delve into questions of fact.

11. There is no infirmity in the concurrent findings of the Courts below. The appeal is, therefore, dismissed.

12. This Court appreciates the assistance rendered by Senior Advocate Mr. Anup J. Bhambhani, learned amicus curiae.

**J.R. MIDHA
(JUDGE)**

JANUARY 30, 2015
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