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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 239 of 2016

Gulab Kunwar wife of Deen Dayal, aged about 28 years, resident of Village-
Tungva, Police Chowki-Balangi, Tahsil Wadrafnagar, District- Balrampur
(earlier Surguja) (C.G.),

---Appellant

versus

1. State of Chhattisgarh Through the Secretary, Department of Woman and Child Development, D.K.S. Bhawan, Raipur (C.G.) now Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Commissioner, Surguja Division, Surguja (C.G.)
3. The Additional Commissioner, Surguja Division, Surguja (C.G.)
4. The Collector, Balrampur (C.G.)
5. The Collector, Surguja (C.G.)
6. The Chief Executive Officer, Janpad Panchayat, Wadrafnagar, District-Balrampur (earlier Surguja) (C.G.)
7. Rajmati wife of Shyam Kartik, Caste Vaisya, R/o Tungva, Tahsil-Wadrafnagar, District-Balrampur (earlier Surguja) (C.G.)

---- Respondents

And

Writ Appeal No. 247 of 2016

Gulab Kunwar w/o Deen Dayal, aged about 28 years, r/o Village-
Tungva, Police Chowki-Balangi, Tahsil Wadrafnagar, District- Balrampur(C.G.),

---Appellant

versus

1. State of Chhattisgarh Through the Secretary to the Government of Chhattisgarh Department of Women and Child Development, Mahanadi Bhavan, Naya Raipur, Village-Rakhi, District Raipur (C.G.)
2. The Commissioner, Surguja Division, Surguja, District Surguja (C.G.)
3. The Additional Commissioner, Surguja Division, Surguja, District Surguja (C.G.)
4. The Collector, Balrampur, District Balrampur

5. The Collector, Surguja, District Surguja (C.G.)
6. The Chief Executive Officer, Janpad Panchayat, Wadrafnagar, District-Balrampur (C.G.)
7. Rajmati w/o Shyam Kartik, r/o Gram- Tungva, Tahsil- Wadrafnagar, District- Balrampur (C.G.)

---- Respondents

For Appellant	:	Shri D.N. Prajapati, Shri Anurag Dayal Shrivastava and Shri Jitendra Shrivastava, Advocates
For State/Respondents 1 to 5	:	Shri Vinod Deshmuk, Government Advocate
For Respondent No. 7	:	Shri Shakti Raj Sinha, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

Per Deepak Gupta, Chief Justice

19/07/2016

1. These two appeals are being disposed of by this common judgment since both the appeals have been filed by the same Appellant Gulab Kunwar against the judgment delivered by the Learned Single Judge of this Court in Writ Petition (S) No. 2642 of 2012.

2. The writ petition was filed by the petitioner Gulab Kunwar challenging the order dated 2.7.2012 passed by the Commissioner, Surguja Division. The ground for dismissing the appeal taken by the Commissioner, Surguja Division was that she had earlier filed an appeal against the order impugned before the Commissioner and that appeal was pending in the Court of Additional Commissioner. According to the appellant, she withdrew the appeal before the Additional Commissioner on the ground that it did not have jurisdiction and thereafter filed an appeal before the Commissioner. However it is not disputed that no liberty was

taken from the Additional Commissioner and the appeal was withdrawn without reserving any liberty whatsoever.

3. When the appeal came up for hearing before the Commissioner on 2.7.2012, it was brought to his notice that earlier, appellant Gulab Kunwar had challenged the same impugned order before the Additional Commissioner, which was dismissed as withdrawn and another appeal against the same order was not maintainable. The Commissioner on the basis of this objection rejected the appeal as not maintainable. Before the Learned Single Judge, it was urged that appellant Gulab Kunwar had withdrawn the appeal from the Court of Additional Commissioner on the assumption that the Additional Commissioner had no jurisdiction to hear the appeal. However it is not disputed that no liberty was sought to file an appeal before the appropriate forum. A specific ground was taken that appellant Gulab Kunwar was playing hide and seek with the appellate authority and had mischievously filed one appeal after another.

4. The learned Single Judge relying on the observations made by the Apex Court in the case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P. Gwalior and others {1987} 1 SCC 5** held that once the petitioner had withdrawn the earlier appeal without reserving any liberty to file fresh appeal before any authority, the second appeal was not maintainable. The Learned Single Judge also held that the appellant was guilty of concealment of facts before the Commissioner. Assuming that the appellant was entitled to file second appeal before the

Commissioner, a duty was cast upon her to state in the second appeal that she had earlier filed an appeal before the Additional Commissioner and that appeal had been withdrawn and thereafter fresh appeal was filed. This fact withheld from the Court.

5. It is contended before us on behalf of the private respondents that in fact, the appeal before the Additional Commissioner had been withdrawn only after the appeal before the Commissioner was filed. We are not going into the merits but the fact remains that appellant Gulab Kunwar did not inform the Commissioner while filing second appeal that she had earlier approached the Additional Commissioner or she had withdrawn the appeal which had been filed before the Additional Commissioner.

6. The matter does not end there. After the judgment of Learned Single Judge dismissing the writ petition filed by appellant Gulab Kunwar, she filed an appeal, which is numbered as Writ Appeal No. 239 of 2016 through Shri D.N. Prajapati, Advocate. She also filed another appeal, which is numbered as Writ Appeal No. 247 of 2016 through Shri Anurag Dayal Shrivastava and Shri Jitendra Shrivastava, Advocates. When these appeals came up for hearing before us on 13/06/2016, we had passed the following order:-

“Appellant Gulab Kunwar has filed two writ appeals being Writ Appeals No. 239 of 2016 and 247 of 2016 against impugned judgment of the Learned Single Judge through two different Learned Counsel.

Let the Appellant file affidavit stating how she has filed these two appeals.

The affidavit be filed in Writ Appeal No. 239 of 2016 within two weeks.

In case no affidavit is filed then necessary consequences shall follow.

List these matters on 28.6.2016.”

7. Now affidavit has been filed in Writ Appeal No. 239 of 2016 in which averments are as follows:

“2. I state that I have filed writ petition before the Hon'ble Single Bench, through earlier counsel. After dismissal of writ petition, I recieved the case file from earlier counsel and thereafter contacted to the Office of Advocate Mr. D.N. Prajapati for filing appeal before the Hon'ble Division Bench and handed over the case file to Mr. D.N. Prajapati. Thereafter the certified copy of impugned order was applied through counsel Mr. D.N. Prajapati and after obtaining the same, the appeal memo was drafted and after drafting memo of appeal, I was again visited to the office of Mr. D.N. Prajapati for execution of affidavit and other formalities and thereafter the writ appeal has been filed before the Hon'ble Division Bench, through counsel Mr. D.N. Prajapati on 20.04.2016. Today, I have visited to the High Court premises for swearing and filing this affidavit.”

8. As far as this affidavit is concerned, it does not deal with the query raised by this Court and does not answer the question as to why appellant Gulab Kunwar filed the second appeal. She had not answered the query made by this Court in Writ Appeal No. 239 of 2016.

9. In Writ Appeal No. 247 of 2016, appellant Gulab Kunwar has filed I.A. No. 2 of 2016 seeking perimission to withdraw the appeal in which the relevant paragraphs read as follows:

“1. The Appellant/Petitioner respectfully submits that the writ petition preferred by her was dismissed on 18-03-2016. The said order of dismissal was communicated to her by the Counsel. To prefer the appeal she had met with another Counsel and had instructed him to present the

appeal. The appeal was prepared and it was filed on dated 20-04-2016. Since the said appeal was in default and due to this reason was not placed for hearing the appellant was under bonafide impression that the appeal was not filed before this Hon'ble Court.

2. Under these circumstances she contacted her previous Counsel and requested him to prepare the appeal. Due to bonafide omission, she missed to inform him about previous instructing to another Counsel. The appeal was, thus, prepared and it was filed which has been registered as present Writ Appeal no 247 of 2015.
3. The earlier appeal also is registered as Writ Appeal no 239 of 2016. The Appellant respectfully submits that due of her omission of intimation to the Counsel regarding the previous filing of appeal the subsequent appeal has been filed. It is bonafide mistake of Appellant and for that she regrets and tenders her apology. Under these circumstances the appellant respectfully craves leave of the Hon'ble Court to permit her to withdraw the present appeal and proceed with the writ appeal no 239 of 2016."

10. According to appellant Gulab Kunwar since her earlier appeal was lying in default and was not listed for hearing, she was under the bonafide impression that her appeal had not filed. She has not stated a word as to from whom she came to know that her matter was in default and that her matter had not been listed. She has not stated that she had contacted Shri D.N. Prajapati to find out the status of her case. Her explanation is that she omitted to inform Shri Shrivastava about the previous appeal filed through Shri D.N. Prajapati, appears to be absolutely false. We are dealing here with a litigant who also had followed a similar tactic of not disclosing proper facts to the Appellate authority and now also she is guilty of very same offence. It is apparent that either she is forum hunting or trying to take advantage of filing more than one appeal and hoping to get favourable order at least in one appeal. The Writ Petition was rightly dismissed on the

ground of concealment of facts. Against the order the Learned Single Judge, two appeals have been filed, which itself amounts to abuse of process of law.

11. In view of above, the writ appeals are also dismissed. The only reason why we have not imposed any cost is that the appellant is a lady.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE