

01 05.02.2021

Ct. No. 02

akd

F.A. 61 of 2014

with

CAN 1 of 2020

Smt. Pramila Bhattacharya & Ors.

Vs.

Smt. Reba Bhattacharya & Ors.

Mr. Arijit Bardhan,

Mr. Jayanta Samanta,

Ms. Karunamoyee Samanta (Saha).

... for the appellants.

Mr. Sounak Bhattacharya,

Mr. C. N. Sarkar.

... for the respondent nos.

21 and 23.

Mr. Yasin Ali,

Mr. Arindam Ghosh.

... for the respondent nos.

32 and 33.

It is a sordid state of affairs that a member of the noble profession has taken the Court for a ride making the Trial Court to believe the existence of a fact which to his knowledge is not correct.

The revisional application under Article 227 of the Constitution of India was filed assailing the interlocutory order passed in a suit and the same was pending in the docket of the Court for a pretty long time until the said member of the profession appeared and prayed for withdrawal of the same with liberty to file afresh on the self-same cause of action. The Court passed an order on 11th January, 2012 permitting the appellants/petitioners herein to withdraw the revisional application with liberty to file afresh.

The subsequent application for revision was filed on 15th February, 2012 and the wrongdoings as it appears to have been done during the interregnum. A letter was issued by him on 14th February, 2012 indicating that the revisional application, which was

withdrawn earlier, is still pending before the Court and the request was made to his counter part in the Trial Court appearing for the appellants to seek for an adjournment on such ground.

Naturally, the moment a communication from a responsible officer of the Court had come before the learned Judge in the Trial Court, the question of disbelief did not arise, but the objection was raised by the other side on the veracity, correctness and genuinity of the statements made in the said letter, which precisely invited the Court to fix another date to produce the supporting documents. The date was fixed by the Court for such purpose when the true and correct state of affairs was made known to the learned Judge who felt that he had been miscommunicated and dismissed the suit which is impugned in the instant appeal.

The same Advocate, who wrote such letter, has filed the instant appeal and is unable to offer any explanation for such conduct except that he committed a mistake and ought not to have written such letter.

There is no decision on the issues involved in the suit nor on the respective pleadings of the parties, but the dismissal is made solely on the ground that there was a conscious miscommunication by the Advocate on record of the appellants making the learned Judge to believe the same to be true and correct.

We initially thought not to interfere with the impugned order, but when pondered further we thought that for the laches, lapses and callousness on the part of Advocate, the litigant should not suffer. A litigant has reposed confidence upon a member of the legal fraternity with the pious

intention that his interest would be best taken care of and misconduct of Advocate should not shut down the right or the remedies claimed in the suit. A litigant has reposed confidence on the judicial system and the minimal expectation one can have is to get a decision on merit.

We appreciate the sentiment of the learned Judge, who was made to believe the fact to exist and subsequently such fact was found to be false and incorrect, which prompted the learned Judge to dismiss the suit filed by the appellants. The Court proceeding is guided and regulated by the procedure applicable thereto. If the procedure is silent on a particular aspect, though the inherent power is reserved therein, but the same has to be exercised for the ends of justice and should not be used to penalize a litigant or shut the door for all time to come.

A meritorious matter cannot be dismissed without any adjudication on the rights and the reliefs claimed by a person, which would not only affect him but the posterity to come.

Simply on the ground that there was no decision on merit or the issues framed in the suit and that the laches, lapses and negligence of the Advocate should not be used against the litigant, we decided to interfere with the impugned judgement, which, in fact, has been done by setting aside the same.

At the same time, we cannot overlook the lapses on the part of Advocate in writing the letter containing incorrect statements and allow him to walk merrily on the corridor of the Court without any sense of remorse. We find that this is the first and solitary incident as submitted by the learned

Advocate, who has assured the Court that the said casual approach would not be repeated in future and we propose to impose a costs of Rs.1,000/- to percolate the sense in him. Such costs shall be deposited in the Lawyers' Benevolent Fund within a week from date.

We experienced in course of judicial dispensation that there is a recent trend developed amongst the members of the legal fraternity to write a letter indicating that a matter is pending before this Court and adjournment should be secured. Although the amendments have been brought in the Code of Civil Procedure in the year 1999 and 2002 indicating that mere pendency of the proceeding in the High Court or the higher forum shall not tantamount to stay of all further proceeding in the Trial Court, yet there is a reluctance shown to proceed with the matter the moment a communicating letter from a member of the Bar is produced before a Judge in seisin of the suit. The reasons may be multiple but we do not venture into such arena except with a note of caution that in absence of any express order staying all further proceeding passed by the higher forum, there is no impediment on the part of the Judge in the Trial Court to proceed with the suit.

We are grappling with the menace of heap of pendency of matters through out the country. The adjournments appear to be a major tool for the same and, therefore, the time has come when a Court has to realize that a litigant, who has approached the Court, should not wait for adjudication of his right or the reliefs claimed therein for decades.

The Registrar General of this Court is directed to circulate this order to all the District Judges, so that

the judicial officers manning different Courts within the District are made aware of the observations recorded hereinabove and to act accordingly.

Since we have set aside the judgement impugned in the instant appeal, the suit is restored to its original file and number and the learned Judge in the Trial Court is requested to make efforts to dispose of the suit as expeditiously as possible without granting unnecessary adjournments to either of the parties.

The appeal and application are disposed of accordingly.

Let this matter be listed as To Be Mentioned after a week to ascertain whether the costs have been deposited or not.

(Harish Tandon, J.)

(Kausik Chanda, J.)