

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 32928 OF 2009

[CC NO.18257 of 2009]

Satyapal Singh

... Petitioner

Vs.

Union of India & Anr.

... Respondents

O R D E R

R.V. Raveendran, J.

Delay condoned. We find no ground to interfere with final order dismissing the writ petition. But the direction to the writ petitioner to pay exemplary costs of Rs.50,000/- to the High Court Legal Service Committee, deserves to be addressed.

2. The petitioner, an employee of the Government Ordnance Factory, Muradnagar, Ghaziabad (UP), was transferred to Dehradun on 6.10.1998. As he did not vacate the residential quarters at Muradnagar, the Estate Officer by order dated 15.6.2000, directed him to vacate the quarters. The petitioner filed an appeal against the order of eviction. On 1.7.2000, the Appellate authority (District Judge, Ghaziabad) admitted the appeal, noting that there were 'arguable points in the appeal' and granted interim stay in regard to order of eviction, pending disposal of the appeal. The appeal was pending for several years and was finally heard and dismissed on 21.4.2009. The petitioner challenged the order

of the appellate authority by filing a writ petition on 28.4.2009. The High Court, on preliminary hearing, dismissed the writ petition by the impugned order dated 22.5.2009, holding that the petitioner was under a legal obligation to hand over the possession of the quarters on transfer and having failed to do so, the order of eviction was justified. The High Court also felt that the conduct of the petitioner in retaining the accommodation for 10 years amounted to indiscipline and that cannot be tolerated and he should therefore be 'saddled with exemplary costs'. The operative portion of the order of the High Court levying exemplary costs is extracted below:

"Accordingly, this writ petition is dismissed with costs of Rs.50,000/- (Rupees fifty thousand only). The costs so imposed must be deposited by the petitioner through a bank draft in favour of Registrar General of this Court, within one month from today, failing which the District Magistrate shall ensure recovery of the said amount of Rs.50,000/- as arrears of land revenue within a further period of one month and shall transmit the money so collected to the Registrar General. The costs recovered shall be placed in the accounts of the High Court Legal Services Committee, Allahabad."

3. The petitioner sought leave to challenge the order of the High Court both in regard to upholding of the eviction and levy of exemplary costs. But when the matter came up today, the learned counsel for the petitioner stated that the petitioner vacated the residential quarters on 19.5.2009 and his only grievance was in regard to award of Rs.50,000/- as costs.

4. It is true that the case of the petitioner was ultimately found to be without merit, but the appellate court chose to admit the appeal and grant stay, stating "there are arguable points in appeal, admit

and register". The appellate court did not vacate the interim order even when the respondents resisted the appeal. The continuation by the petitioner in the quarters after the order of eviction, was in pursuance of an interim order granted by the District Court on 1.7.2000 which was continued till the dismissal of the appeal on 21.4.2009. The appellate court while dismissing the appeal did not consider it a fit case for levy of any costs. The petitioner challenged the order of the appellate authority by filing a writ petition. The High Court found no merit in it and dismissed it by impugned order dated 22.5.2009. The question is whether levy of such costs and that too for the benefit of legal service authority is proper.

5. Exemplary costs are levied where a claim is found to be false or vexatious or where a party is found to be guilty of misrepresentation, fraud or suppression of facts. In the absence of any such finding, it will be improper to punish a litigant with exemplary costs. When the appellate court did not choose to levy any costs while dismissing the appeal filed by the petitioner after nine years of pendency with interim stay, the High Court, while dismissing the writ petition at preliminary hearing, ought not to have levied exemplary costs with reference to the period of pendency before the Appellate Court. We do not find any ground on which the exemplary costs of Rs.50,000/- could be sustained. Levy of exemplary costs on ordinary litigants, as punishment for merely for approaching courts and securing an interim order, when there was no fraud, misrepresentation or suppression is unwarranted. In fact, it will be

bad precedent.

5. Even if any costs are to be levied on a petitioner, for any default or delaying tactics, where the respondents have entered appearance, costs should be ordered to be paid to the respondents, who were the affected parties on account of the litigation. There is no justification for levying costs of Rs.50,000/- on the petitioner payable to the High Court Legal Service Committee. There is also no justification for directing the state government to act as the collecting agent for the costs payable to the Legal Services Committee. Directing a government servant, an ordinary employee, to pay Rs. 50,000/- as costs within one month and further directing the use of coercive process for recovery of costs as arrears of land revenue was unwarranted. The levy of such exemplary costs in favour of the High Court Legal Services Committee, is not a healthy practice.

6. The costs may be justifiably made payable to the High Court Legal Services Committee or other Legal Services Authorities, where before the other side is served or represented, the court wants to penalise a petitioner for lapses/omissions/delays, as for example, where the petitioner fails to pay the process fee for service of respondents, or fails to cure defects or comply with office objections, or where there is delay in refiling of petitions. Once the other side is represented, the costs levied by reason of any attempt by a party to delay the proceedings, should normally be for the benefit of the other party who has suffered due to such conduct. Only where both the parties are at fault, costs may be ordered to be paid to Legal Services Authority. At

all events, the power to levy exemplary costs, it is needless to say, should be used sparingly to advance justice. It should not be threatening and oppressive.

7. In view of the above, we delete the direction for payment of exemplary costs of Rs.50,000/-. Subject to such deletion, the Special leave petition is dismissed.

(R V Raveendran) J.

New Delhi;
November 23, 2009.

(K S Radhakrishnan) J.