

PETITIONER:
M/S. CHETAK CONSTRUCTION LTD.

Vs.

RESPONDENT:
OM PRAKASH & ORS.

DATE OF JUDGMENT: 20/04/1998

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

AND

In the matter of reference of Hon'ble Single Judge of the High Court of Madhya Pradesh, Bench at Indore dated 16th May, 1997 submitted in Misc. Appln. No. 1437/1994).

J U D G M E N T

DR. ANAND, J.,
Special leave granted.

This judgment will dispose of the appeal arising out of S.L.P. (C) NO. 13190 of 1997 and an 'order' made by a learned single Judge (Mr. Justice R.D. Vyas) of the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal 143 of 1994 directing the appeal to "be referred to" this Court for deciding it "finally" since both matters arise out of the same order.

Notice of some salient facts is necessary for disposal of the matter before us.

Dispute between the parties relates to land bearing No.8/1 and 8/2, M.G. Road, Indore. According to the appellant, the suit land belongs to various members of Hindu Undivided Family, who had entered into an agreement with it to sell that land. An agreement containing various stipulations is stated to have been executed between the parties. According to the appellant, it had paid certain amounts, out of the total sale price and had got registered a sale deed executed for 13 out of 28 portions of the suit land the execution of sale deeds, in respect of remaining portions of the suit land, however, remained pending. According to the appellant, there was interference, by the respondents, with the appellant's possession of the suit land and it therefore filed a suit for declaration and permanent injunction in the Trial Court. The suit was resisted by the contesting respondents on various rounds. Initially, the Trial Court granted an ex parte temporary injunction to the appellant but the same came to be vacated after hearing both sides by an order dated 15.3.1994. Against, the order of the Trial Court dated 15.3.1994, the appellant filed Misc. Appeal No. 143 of 1994. That appeal was decided by a learned single Judge (Mr. Justice R.D. Vyas) on 20.2.1995. Against, the order of the learned single Judge, Civil Appeal No.7460 of 1995 arising out of

S.L.P. (C) No.8590 of 1995 was filed in this Court. The order of the learned single Judge dated 20.2.95 was set aside on 21.8.1995 and Misc. Appeal No. 143/1994 was remanded for its fresh disposal. After the order of remand, the appeal was again listed before the learned single Judge (Mr. Justice R.D.Vyas). It appears that due to the absence of Shri Andhayarujina, Senior Advocate, who had partly argued the appeal on behalf of the appellants but could not appear to continue with the arguments as his wife had to undergo some urgent surgery, the part-heard appeal was dismissed on 25.6.1996. (We are refraining from dealing with various proceedings which took place before the learned single Judge after order of remand dated 21.8.1995 or the merits of the order dismissing the appeal on 25.6.1996 as the same are not relevant for the purpose of this order). Aggrieved, by the order of the learned single Judge dated 25.6.1996, dismissing Misc. Appeal No. 143 of 1994, after remand, the appellant once again approached this Court by filing SLP (C) No. 15262 of 1996. It was inter alia pleaded that failure of Shri Andhayarujina to continue with the arguments, on account of the illness of his wife, was bonafide and that instead of dismissing the appeal, the learned single Judge could have adjourned it. Civil Appeal No. 13201/96 arising out of S.L.P. (C) No. 15262 of 1996 was allowed by this Court on 11th October, 1996, on a concession made by learned counsel for the respondents and the case was once again remanded to the learned single Judge for hearing arguments of the parties and deciding the appeal on merits. While disposing of C.A. No.13201/96, this court inter alia observed:-

"In view of the concession made by learned counsel for the respondents the Order dated 25.6.96 in M.A. No. 143 of 1994 is hereby set aside. The case is remanded to the learned Judge counsel for the appellant is directed to appear before the learned Judge of the High Court who was hearing the arguments and who made the impugned order, either personally or through his counsel, on 4th of November 1996. We request the learned Judge to take up the matter on that date and if that date is not convenient to the Bench, to fix some other date for continuation of the arguments. The appellant shall not seek any further adjournment while the arguments are being heard on the date fixed by the learned Judge. The learned Judge shall after hearing the arguments make a fresh order in accordance with law."

After remand the appeal was listed for continuation of arguments before the learned single Judge.

It transpires from the record that on 2.11.96, an affidavit was filed by the company Secretary of the appellant, before the learned single Judge (Mr. Justice R.D. Vyas) stating therein that respondent No.3 in the appeal had been residing in flat No. 101 of Nikita Apts. and that the appellant had now learnt that said flat had been purchased by the learned single Judge and had been let out by him to The State Bank of Indore. It was stated that this information was not available with the appellant earlier and

had not been disclosed by respondent No.3 either. The learned single Judge was, therefore, requested to take an appropriate decision whether to hear the appeal or not. To the said affidavit, Respondent No.3 filed a counter affidavit on 4.11.1996 stating therein that he had shifted from the flat in question. It was, however, not disclosed in the counter affidavit as to in which capacity Respondent No.3 had been living in the flat which had been purchased by the learned single Judge. In the counter filed by respondent No.3, there was also no denial of the fact that the flat in question had in fact been purchased by the learned single Judge, during the pendency of the appeal. Proceedings of the court reveal that after the counter was filed by respondent No.3, the appeal was, adjourned by the court "to enable the parties to reach at some settlement". On the next date, however, it was reported to the court that no settlement could take place and the learned single Judge thereupon directed the hearing of the appeal on merits.

On 30.11.1996, the company secretary of the appellant filed an application, I,A, No. 6079/96 in Misc. Appeal No. 143/94.

In paragraph 1 of the application it was averred:

"That on the last date of hearing i.e. on 4.11.1996 the present appellant had respectfully drawn your Lordship's kind attention to the fact that the flat No.101, situated in Nikita apartments, at 3, R.K. Puram Colony, near Amaltas Hotel on A.B. Road, Indore, was occupied by the respondent No.3 Shri Vijay Khandelwal and appear to have been purchased by your Lordship and that this transaction had not been disclosed by the respondent No.3 at any time during the pendency of the present appeal. On this date appellant had requested your Lordship to decide appropriately in the matter whether your Lordship would hear the matter. With the said application the appellant had also submitted a copy of the documents evidencing service of summons of the suit in the trial court on the respondent No.3 on 24.4.1993 at the flat in question. The appellant had also submitted a copy of the voters list showing the respondent No.3 to be the resident of the said building. The appellant had also submitted copy of the letter written by your Lordship to the State Bank of India offering this flat on rent and the appellant had mentioned that Shri A.N.Borkar, an officer of the Bank was residing in this flat as your Lordship's tenant."

In paragraph 5 of the application, it was stated:-

"That on 22.11.1996 the appellant has obtained a certified copy of the sale deed by which your Lordship has purchased this flat.

The sale was made by an attorney in favour of your Lordship giving the purchaser's address as 5, High Court Judges Bungalows, Vastrapur, Ahmedabad, Gujarat. Para 2 page 4 of the sale deed states that the apartment was in a incomplete condition having been constructed only upon the stage of column, beam, and roof slab and that all the balance construction work of the flat was yet to be done. The sale consideration as mentioned in para 3 is Rs. 1,93,009/-, out of which Rs. 10,000/- is stated to have been received cash while Rs. 1,83,009/- is stated to have been received on various dates by various modes. It is significant that it is not stated whether the aggregate amount of Rs. 1,83,009/- was paid by cheque/cash. Para 4 of the sale deed also mentions that the possession of the Flat had been handed over to your Lordship on "1994".

In paragraph 7 of the application it was stated that receipt of consideration mentioned in the sale deed was "vague" and that though the total sale consideration was stated to be Rs. 1,93 lakhs, the learned single Judge had "obtained a loan of Rs.3.25 lakhs on this flat from the Housing Development Finance Corporation Limited, Indore."

In paragraph 8 it was stated:-

"That the sale deed mentions that the possession of the flat was delivered to your Lordship in 1994. Hence, the payment of Rs.1,83 lakhs must have been made before this date. On the other hand it appears from the record that the respondent No.3 was living in this flat upto two months prior to 4.9.1995."

It was thus, implied that respondent No.3 was living in the flat in question even after the flat was purchased by the learned single Judge and possession delivered to him.

The application ended with the following prayer:

"In view of the above facts and circumstances, the appellant humbly requests your Lordship to reuse or relieve yourself from hearing this case and to direct that the matter may be listed before any other Hon'ble Judge of this Court for hearing."

Ms. Indira Jaisingh, senior advocate argued this application and drew the attention of the learned single Judge to the facts contained therein. Copy of the sale deed evidencing purchase of Flat No.101, Nikita Apartments, at 3, R.K. Puram Colony, by the learned single Judge along with a copy of the letter written by the learned single Judge to the state Bank of Indore, offering that flat on rent as well as report of the process server with regard to service of summons in the suit on respondent no. 3 on 24.4.1993 at the address of the flat in question and certain other documents were relied upon and referred to in the court with a view to

support the averments contained in the application. Ms. Jaisingh, learned senior advocate for the appellant therefore, requested the learned single Judge to recuse himself from the appeal and let the appeal be heard by some other Judge "in the interest of Justice". The learned single Judge, seems to have taken an exception to the request of the learned counsel, the existence of various documents etc., notwithstanding. It was at this stage that the learned single Judge (Vyas, J.), made the order, impugned in SLP (c) No. 13190 of 1997.

In the course of the impugned order, the learned single Judge observed in paragraph 9:-

"Certain things were tried to be argued in the said application, which has no concern with this case, only to twist the matter and malign me & proceedings. But I did not make that as an issue of prestige, since I am in no obligation to the appellant to clarify his misrepresentations. I have pointed out to Miss Jaisingh that no reasonable person would have any apprehension much less great or genuine apprehension about my purchase of the flat after my clarification in the open court as aforesaid, she would still persist on my recusing the matter and direct it to be placed before some other judge.

Again in paragraph 12 of the impugned order it was observed:-

"Prior to the filing of affidavit dated 1.11.96 by Shri Sharad Kabra for the appellant, and around that time, now I am sure that it must be on behalf of the appellant alone that I was tried to be influenced in the name of lawyer from Ahmedabad, one H.D. Vasavada on S.T.D. Phone. Since I declined, perhaps the application for recusing the matter came to be filed by the appellant. It is only after this application I.A.No.6079/96 has been filed. I feel that the S.T.D. call must have been at the behest of the appellant."

Paragraphs 14 of the order reads:-

"14. However, looking to the controversy as it has developed as also from the fact that in Indore and elsewhere there is a group persons (including possibly some lawyers since there are genuine reasons for me and my other brothers Judges to feel so) who are out to malign or browbeat the judges to act to their tune. Few of the Pamphlets were circulated with respect to some of the Honorable Judges including of the Judges sitting in the apex court, which

are kept in file to appreciate the whole position. It is in the wake of such circumstances, I felt that time has come that the courts put a very heavy foot on those who are indulging in the dirty tricks by trying to manipulate the proceedings, choosing or avoiding the forums, through the lawyers, who cannot argue, but for their active interest indulge in such activities.

In paragraph 15 of the order, it is observed:

15. In some of the instances in M.P. & Other High Courts, the High Courts had to sentence the Advocates and litigants for contempt of the court in such circumstances and the orders of sentence are confirmed by the Honorable the Supreme Court. I feel that this is the fittest case to refer to the Supreme Court for taking appropriate actions including contempt of court proceedings and demarcate the lines for conduct by the lawyers and the litigants in the courts."

Dealing with the conduct of lawyers and litigants in the court, this Court in *Jaswant Singh Vs. Virender Singh* (1995 (supp.1) SCC 384), observed:

"It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person he does not get a licence thereby to commit contempt of the court by intimidating the Judge or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the courts and for touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith, in proper language, do not attract any punishment for contempt of court. However, when from the criticism deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of

the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of court by the use of objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice."

Indeed, no lawyer or litigant can be permitted to brow beat the court or malign the presiding officers with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot, be allowed to "terrorize" or "intimidate" judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand.

At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done.

In the instant case, the learned single Judge, having been apprised of the facts and circumstances of the case, rightly did not continue to hear the appeal and in doing so he acted in a manner expected of the Judge. However, while technically recusing himself, the learned Judge appears to have given vent to his feelings and made comments, which we say with respect to the learned Judge, were uncalled for and unwarranted - those betray objective consideration and to an

extent demonstrates subjective predilections. It is subversive of judicial sobriety. The order of the learned single Judge radiates more heat than light.

We are unable to appreciate or fathom the reasons for the 'general' observations made by the learned Judge in paragraphs 14 and 15 of the impugned order (supra). Generalisations are best avoided. We are at a loss to understand the necessity to refer to certain "pamphlets", unconnected with the case and to make one of those pamphlets concerning a sitting Judge of this Court (since retired) a part of the judicial record when it had no relevance to the instant case. In doing so, there appears to be something more than what meets the eye. Reference made is totally out of context what some lawyer had been doing in the past, was hardly of any consequence for deciding the merits of the application - IA No. 6079/96 - which was being heard by the learned single Judge and was disposed of by the impugned order. The only question before the learned single Judge was : whether on the facts, as disclosed in the application and supported by documentary evidence, the learned single Judge should have continued to hear the appeal or recused himself?

We have also not been able to appreciate the object of the "disclosure" made in paragraph 12 of the order (supra). Did the learned Judge verify the correct position? Was the appellant put on notice or taken to task, if what is attributed to the appellant is correct? Was any record of the STD call maintained? Why all of a sudden this disclosure was made and that too with the emphasis that "now I am sure that it (telephone call) must be on behalf of the appellant alone, that I was tried to be influenced in the name of the lawyer from Ahmedabad" and again "I feel that the STD call must have been at the behest of the applicant". Without any other material on the record, the submission of learned counsel for the appellant that the observations are conjectural in nature and are not backed by any proof of factual accuracy cannot be dismissed as wholly untenable. It was open to the learned Judge to have enquired into the matter and take appropriate action. He did not do so. He let the matter rest. Why then was it suddenly made a part of the impugned order? Paragraph 12 of the order in our opinion conceals more than what it reveals. We do not wish to carry this aspect any further and say nomore.

The learned single Judge completely faltered when he "referred" this appeal (Misc. Appeal No. 143/1994) to this Court for 'final hearing'. The "unusual" direction contained in paragraph 17 of the order reads:

"It is therefore directed that the appeal No. 143/94 be referred to Honorable Supreme Court for deciding it with a suggestion that rather than remand to me or any other judges of any High Court to save judiciary from that maligning and malignant activities; the same be decided there only finally."

(emphasis ours)

We are, to say the least, surprised at this direction. It is without any jurisdictional authority or legal sanction. The learned Judge innovated a procedure unknown to law. It is improper for a Judge of the High Court to "direct" that an appeal pending before him be decided by the Supreme Court itself "finally" and to further suggest that this court should not "remand the appeal" to the learned single Judge or to any other Judge of any High Court". We are unable to find the existence of any authority or power

in a single Judge of the High Court to make such an order of "remand" to the Supreme Court ! ! The direction, to say the least, is subversive of proper judicial discipline. By asking this court to "finally" decide the appeal and not to "remand" it to any Judge in the country, the learned single Judge appears to have arrogated to himself a power which he does not possess. The learned single Judge should have, in the facts and circumstances of the case, referred the appeal to the Chief Justice of the High Court with a request to assign the same to any other Judge in that High Court. That would have been the proper course to follow. If the learned single Judge by making the "direction" (supra) was exhibiting his annoyance over the two earlier remand orders made by different benches of this Court in the same appeal setting aside the orders made by the learned single Judge against the same appellant, it was wholly unjustified and uncalled for. Much ink and paper has been used, besides spending judicial time, to make the order impugned before us when it was otherwise a simple matter. The facts contained in the application (I.A. No. 6079/96) to which reference has been made above supported by documentary evidence, should have made the learned Judge to himself, decline to hear the appeal by a simple order irrespective of the question whether the disclosed facts could have made any difference in the ultimate order to be made by him in the appeal. It would bear repetition to emphasis that justice must not only be done but also be seen to be done. In the established facts and circumstances of the case, it cannot be said that the request of the appellant to the learned single Judge to recuse himself from hearing the appeal on merits was a wholly unjustified request. Even if it be assumed and we have no reason not to so assume, that there was no such connection between respondent No.3 and the learned single Judge as to influence his ultimate judgment in the appeal pending before him but when certain facts were brought to his notice, which could give rise to a reasonable and not fanciful apprehension that the trial may not be fair, the learned single Judge should have recused himself from the appeal in keeping with the highest traditions of the judiciary. Discretion, after all, is better part of valor. We find the reference/ 'direction' untenable and the order devoid of any legal sanctity. We, accordingly set aside the same.

In the course of the impugned "reference" the learned single Judge has also suggested that contempt proceedings be initiated against some of the lawyers who appeared before him besides the appellant. On the basis of what we have noticed above, we find no cause to have been made out to institute contempt proceedings, as suggested. We may notice here that even on an earlier occasion, the learned single Judge (Vyas, J.) had in the same appeal (Misc. Appeal No. 143 of 1994) made a reference to this court for taking action against Shri Girish Desai, senior advocate, representing the appellant besides his instruction counsel and the company secretary of the appellant under the Contempt of Courts Act. On 12.2.96, this court declined to proceed against them for contempt of court. Contempt of court jurisdiction is a special jurisdiction. It has to be used cautiously and exercised sparingly. It must be used to uphold the dignity of the courts and the majesty of law and to keep the administration of justice unpolluted, where the facts and circumstances so justify. "the corner stone of the contempt law is the accommodation of two constitutional values - the right of free speech and the right to independent justice. The ignition of contempt action should

be - substantial and malafide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel," (See 1974 (1) SCC 374). Long long ago in Queen Vs. Grey (1900 2 Q.B. 36 at 40) it was said that 'judges and courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no court could or would treat it as contempt of court.' Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to effect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the court and the like situations. 'The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction.' We have given our careful consideration to the facts and circumstances of the case but are not persuaded to initiate contempt proceeding as suggested by the learned single Judge either against the lawyers or the appellant for this "action" in making request to the learned Judge to reuse himself from the case. The reference to that extent is also declined.

On the basis of what we have said above, we set aside the impugned order/direction/reference.

Misc. Appeal No. 143 of 1994 has already been remanded by us twice to the High Court for its disposal on merits in accordance with law. After the second remand order made in C.A. No. 13201 of 1996, the appeal has not been heard and the case has been "sent back" to this court for 'final' 'hearing'. In the facts and circumstances of this case, we consider it appropriate, to once again remand Misc. Appeal No. 143 of 1994 to the High Court for its fresh disposal in accordance with law. The record of the case shall be sent to the High Court for being placed before the learned Chief Justice of the High Court of Madhya Pradesh at Jabalpur. We request the learned Chief Justice of the High Court to assign the appeal to a learned Judge sitting at Jabalpur (not at Indore or Gwalior) for its disposal in accordance with law expeditiously.

The learned Judge at Jabalpur, to whom the appeal shall be assigned by the learned Chief Justice, shall decide the appeal on its own merits uninfluenced by any observations made by the learned single Judge (Mr. Justice R.D. Vyas) in the impugned order.

Nothing said hereinabove shall also be construed as any expression of opinion on the merits of the appeal.

The appeal and the reference are disposed of in the terms indicated above with no orders as to cost.