NIRANKAR NATH WAHI AND OTHERS

v.

FIFTH ADDL. DISTRICT JUDGE, MORADABAD AND ORS.

June 7, 1984

[A.P. SEN AND M.P. THAKKAR, JJ.]

Code of Civil Procedure 1908 Order 17 and Order 20—Adjournment—Request for further adjournment to engage Senior Counsel refused—District Judge keeping judgment ready and pronouncing judgment dismissing appeal—Procedure whether just, fair and reasonable.

Practice and Procedure : Adjourment—Request for by appellant to engage Senior Counsel—Refused of—District Judge keeping judgment ready and delivering judgment—Whether there is denial of reasonable opportunity of hearing—Whether procedure adopted by District Judge in preparation and pronouncement of judgment vitiated.

The appellant in the appeal was the landlord. He sought an adjournment of the hearing of his appeal that was pending before the Additional District Judge on the ground of indisposition of his senior counsel. The respondent tenant was a leading member of the local bar. The Additional District Judge refused the prayer, but granted three days' time for making alternative arrangements and directed that the appeal be posted for hearing of further arguments and that on failure to urge arguments, the judgment would be pronounced. On the adjourned date, the appellant again sought adjournment on the ground that he could not secure the services of his out-station senior counsel and that his counsel would not be able to appear for at least a month and that he may be granted further time to engage another senior counsel. The Additional District Judge refused the adjourment on the ground that more than sufficient time had been garnted for additional arguments, and added : "The judgment is ready which is delivered". The appeal was dismissed by pronouncing the judgment which had been kept 'ready for being delivered'.

A writ petition to the High Court by the appellant under Art. 227 was rejected *in limine*.

In the appeal to this Court, it was contended on behelf of the appellant that: (1) as the respondent was a leading and influential member of the local bar, members of the local bar were not willing to appear in the matter and that the appellant was genuinely handicapped in securing the services of an out-station senior counsel and (2) that even though the appeal was fixed for making further oral submissions on the adjourned date, the Additional District Judge kept the judgment ready and pronounced it when the appellant appeared and requested for further time to engage a senior counsel.

Allowing the appeal,

HELD : The judgment rendered by the District Judge is vitiated by reason of the failure to grant reasonable opportunity of hearing to the appellant and by reason of the procedure adopted in connection with the preparation and pronouncement of the judgment. The High Court also erred in rejecting the writ petition summarily. The judgment and order passed by the High Court as well as those passed by the Additional District Judge are set aside and the matter remitted to the Court of the District Judge for being disposed of, after affording a reasonable opportunity of hearing to both the parties.

[924—G—925 B]

In the eyes of litigant a senior member of the bar when shed personally, might enjoy certain amount of sympathy with the members of the judiciary before whom he is practising day in and day out. This aspect cannot be overlooked having regard to the realities of life. [922 D]

The learned Judge should have shown awareness of this dimension of the matter and bearing in mind the adage that 'justice must also appear to have been done', ought to have dealt with the request for a short adjournment with a degree of understanding. [922 E]

It is common knowledge that when a leading member of the Bar is sued or sues in a personal capacity, the members of the Bar where he is practising are more than reluctant to accept a brief against the colleague and friend on account of personal relations or on account of likelihood of embarrassment. In a matter like this, the litigant pitted against a leading member of the Bar, may also want to engage a counsel of his choice and confidence for it may well appear to him that not every member of the Bar might present his case with the degree of zeal, enthusiasm sincerity and conviction which ordinarily a litigant expects from his advocate. [922 H ; 923 A]

The learned Judge could not have armed himself with a readymade judgment dismissing the appeal when further arguments on behalf of the appellant were yet to be heard. And apparently there was no time-compulsion to pronounce the judgment on that very day. The Judgment rendered by the learned Judge is thus vitiated by reason of the failure to grant reasonable opportunity of hearing to the appeallant and by reason of the procedure adopted in connection with the preparation and pronouncement of the judgment. [924 F—G]

It was also not difficult to realise that a landlord is the last person interested in prolonging the eviction proceedings or the appeal arising from the order passed in such proceedings. The Additional District Judge should have shown awareness of this dimension of the matter, and under the circumstances, might well have granted a short adjournment to enable the appellant to engage a senior counsel of his choice and confidence. [922 F—G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2562 of 1984.

From the Judgment and Order dated 21.7.1983 of the Allahabad High Court in WP No. 8933 of 1983.

R.B. Mehrotra Advocate for the appellants.

K.P. Gupta Advocate for the respondents.

The Judgment of the Court was delivered by

THAKKAR, J. "Justice", we do not tire of saying, "must not only be done", but "must be seen to done". And yet at times some Courts suffer from temporary amnesia and forget these words of wisdom. In the result, a Court occasionally adopts a procedure which does not meet the high standards set for itself by the judiciary. The present matter falls in that unfortunate category of cases. That is the reason why, though we do not feel very happy in doing so, we have had to grant special leave for disposing of the appeal not on merits, but only for the purpose of setting aside the impugned judgment rendered by the learned Additional District Judge, Moradabad. To set it aside on the ground that the procedure adopted by the learned Judge at the hearing of the appeal was not just and fair. And in order to consequently remand the matter for hearing the appeal afresh with a view to dispose it of on merits in accordance with law.

The order-sheet of May 20, 1983 of the record of the appeal in the Court of the learned District Judge shows that the appellant sought adjournment on the ground of indisposition of his senior counsel from Saharanpur with a request that the appeal be adjourned to some date in July. The learned Additional District Judge refused the prayer but granted three days' time for making alternative arrangement and directed that the appeal be posted for hearing of further arguments on May 23, 1983. He further directed that in the event of failure to urge arguments on May 23, 1983, 'the judgment will be pronounced." Even so, the appellant again sought an adjournment on the ground that he could not secure the services of his senior counsel from Sharanpur as he was not able to appear till the month of July, and prayed for some time to engage a senior counsel from Moradabad. The learned Additional District Judge refused the adjournment on the ground that more than sufficient time had been granted for additional arguments, rejected the prayer for adjournment, and then added :

"The judgment is ready which is delivered."

The appeal was dismissed by the learned Additional District Judge by pronouncing the judgment which the learned Judge had kept ready for being delivered. As the Act does not provide for any further appeal or revision, the High Court was approached under Art. 227 of the Constitution of India, but the High Court rejected the Writ Petition *in limine*. Hence the present appeal by special leave.

A The following facts emerge from the order-sheet :

(1) On May 12, 1983 the learned Additional District Judge had felt that the request made by the appellant for further arguments was justified and had granted it.

(2) On May 20, 1983 the Court granted only three days' B time to make alternative arrangement in view of the fact that the senior counsel from Saharanpur engaged by the appellant was not in a position to appear on account of illness.

(3) On 23rd May, 1983, the arguments were to be heard. C Notwithstanding that the arguments were yet to be heard on this date, the learned Judge had kept the judgment ready for pronouncing, which he pronounced forthwith wilst refusing the prayer for adjournment made by the appellant with a view to engage a senior advocate from the local bar since the Advocate from Saharanpur D already engaged by him was not available.

Two infirmities have been pointed out to us in support of the plea that the procedure adopted was not just and fair :

(i) Even though the appellant was genulnely handicapped in securing the services of a senior advocate to appear for E him in the matter having regard to the fact that respondent No, 3 Kailash Sahai Mathur was a leading and influential member of the Moradabad Bar and members, of the local Bar were not willing to appear against him in his personal matter, the learned Additional District Judge did not afford him a reasonable opportunity for engaging F an Advocate ;

(ii) Even though the appeal was fixed for making further oral submissions, on the day fixed for this purpose, the learned Additional District Judge had kept his judgment ready and prononced it when the appellant applied for further G time to engage a senior member of the Bar to represent him.

We do not consider it necessary to delve deep into the facts. It is sufficient for our purposes to say that the said Respondent, on his own showing, is a leading and influential member of the H Moradabad Bar as is evident from the following passage extracted from the written objections filed by the said Respondent himself at the trial:

"He has been a member of the State Bar Council for a number of years and also been Vice President of the U.P. Lawyers Conference. The opposite party has been Secretary, Vice-President and President of the Bar Association, Moradabad. He is also manager of S.R.A.N. Intermediate College, Moradabad. He is a founder life-member of the Moradabad Civil Courts Club. He has been President of the Moradabad Rotary Club and is its member for the last about 33 years. He has also been Worshipful Master of the Masonic Lodge."

"He has been member of the Senate, Law Faculty and Board of studies of the Agra University. He is also connected with other Clubs and social and educational institutions. The opposite party was also the founder Secretary of the Moradabad Branch of the Indian Law Institute. In his various capacities, the opposite party has to meet a variety of persons, junior lawyers, teachers, rotarians, social worker, clients etc. each day. He has also a huge library and so stated above a fairly good number of family members staying with him, all this makes even the space at the disposal of the opposite party such too cramped."

It has also been established that the appellant was finding it extremely difficult to engage a lawyer to represent him as he was pitted against a senior and influential member of the Bar personally, and was seeking his eviction from premises in his personal occupation for use as his residence-cum-office. A leading member of the Bar had already returned the brief, and a senior member of the Bar from Saharanpur Bar engaged by the appellant had been repeatedly asking him to seek adjournments instead of appearing in the Court to argue the matter on the appointed day. The adjournments were sought presumably because of his understandable reluctance to appear against a professional brother in a matter where he was personally concerned.

We have no hesitation in assuming that no Court would ever be influenced by the fact that the Respondent was a leading member of the Bar and influential person inasmuch as in the eye of law all citizens are entitled to equal treatment having regard to the doctrine of equality before law. If a case for eviction was made out under the relevant statute, the Court would not hesitate to

release the accommodation by ordering eviction against the respondent notwithstanding his status in the legal world or in the society. If on merits, the application under Sec. 21 (1) (a) and/or under Sec. 21 (1A) of the Act deserved to be disallowed, the appeal would be dismissed just as it would be dismissed against any other tenant by reason of the fact that it was wanting in merits, not because the respondent enjoyed a particular status in the profession or in the society. This is what everyone associated with the world of law is doubtless expected to know. But a litigant who is pitted against such an influential member of the Bar having such a high status in the society, who himself mentions in his affidavit these facts, can be excused for not being aware of the doctrine of equality before law, not only in theory but also in practice.

So also the learned Judge might well have realised that the appellant was fighting a litigation in which a very senior member of the bar was personally impleaded as a defendent (respondent) and that it was understandable if he was labouring under a psychological complex. The complex is understandable because in the eyes of a litigant a senior member of the bar when sued personally, might enjoy certain amount of sympathy with the members of the judiciary before whom he is practising day in and day out. This aspect cannot be overlooked having regard to the realities of life.

The learned judge should have shown awareness of this dimension of the matter and bearing in mind the adage that 'justice must also appear to have been done', ought to have dealt with the request for a short adjourment with a degree of understanding. More particuiarly as it was not difficult to realise that a landlord is the last person intersted in prolonging the eviction proceedings or the appeal arising from the order passed in such proceedings. The learned Additional District Judge, under the circumstances, might well have granted a short adjounrment to enable the appellant to engage a senior counsel of his choice and confidence. For this reason: It is common knowledge that when a leading member of the Bar is sued or sues in a personal capacity, the members of the Bar where he is practising are more than reluctant to accept a brief against their colleague and friend on account of personal relations or on account of likelihood of embarrassment. In a matter like this, the litigant pitted against a leading member of the Bar may also want to engage a counsel of his choice and confidence for it may well appear to him that not every member of the Bar might

present his case with the degree of zeal, enthusiasm, sincerity and conviction which ordinarily a litigant expects from his advocate.

We are afraid that these vital aspects were overlooked by the learned Judge when he granted only three days' time to make alternative arrangement for engaging a local senior counsel by reason of the fact that the Saharanpur Advocate engaged by the appellant was not in a position to appear on the ground of illness. This short adjournment for three days was granted vide order dated May 20, 1983. But on May 23, 1983, the learned Judge refused to grant further time to the appellant who had not been able to make suitable arrangement for engaging a counsel on that date. We are of the opinion that the appellant has been denied a reasonable opportunity of hearing, and that the grievance made by the appellant, as regards the procedure adopted by the learned Judge on this score, is not unfounded. This is one of the two reasons which has impelled us to set aside the order passed by the learned Additional District Judge and to remand the matter for a fresh decision in accordance with law after affording reasonable opportunity of hearing to the parties.

The second ground has also been substantiated in the sense that the appellant cannot be faulted for entertaining the misgiving that the procedure adopted was not in tune with one's sense of justice. The grievance this time arises on account of the fact that even though May 23, 1983 was fixed for hearing of further oral arguments, the learned Judge had kept a judgment ready for being pronounced and he proceeded to pronounce it forthwith whilst refusing the prayer for adjournment made by the appellant. It is not in dispute that on May 23, 1983 the learned Additional District Judge had granted three days' time to the appellant to enable him to engage an advocate to make further oral submissions. Since the matter was posted on 23rd May, 1983, for further oral arguments, the learned Judge could not have commenced writing his judgment till further arguments were heard on that day or the request for adjournment, if any, was refused. No objection could have been taken if on turning down the request for adjournment on May 23, 1983, the learned Judge had commenced writing or dictating his judgment in the Court. But he had kept his judgment (dismissing the appeal) ready for being pronounced. When the appellant made a request for an adjournment for engaging an advocate, the request was turned down and the judgment prepared

A in advance, dismissing the appeal, was straightaway pronounced. As we pointed out earlier, the learned Judge could be expected to be aware of the fact that the appellant being a landlord seeking an eviction order was not interested in unnecessarily prolonging the hearing of the appeal. He also could not have been unaware of the B fact that the respondent was a leading member of the local Bar and an influential person and that under the circumstances a citizen who was pitted against him in a personal litigation was likely to feel that he was not getting just and fair treatment if the judgment was kept ready in anticipation that the request for adjournment was going to be made and was going to be refused. Supposing no request C for adjournment was made and a senior advocate had appeared on behalf of the appellant what would have happened ? Before hearing his arguments, the learned Judge had already made up his mind and kept ready a judgment wherein he had reached the conclusion that there was no substance in the appeal. These embarrassing facts stare one in the eye. We do not think that fault can be found D with the appellant if he felt, as any other litigant would have perhaps felt, that the procedure adopted was lacking in fairness. In fairness to the learned Judge, we must mention that in his order dated May 20, 1983, he had observed as under :—

E "Appeal adjourned to 23-5-83 for additional arguments falling which judgment would be pronounced."

But the fact remains that the learned Judge could not have armed himself with a ready-made judgment dismissing the appeal when further arguments on behalf of the appellant were yet to be heard. F And apparently there was no time-compulsion to pronounce the judgment on that very day. The judgment rendered by the learned Judge is thus vitiated by reason of the failure to grant reasonable opportunity of hearing to the appellant and by reason of the procedure adopted in connection with the preparation and pronouncement of the judgment. We may incidentally observe that we are G also distressed that the High Court rejected the petition summarily in the face of these features and obliged the appellant to approach this Court.

Under the circumstances the appeal must be allowed. The H judgment and order passed by the Allahabad High Court as well as those passed by the learned Additional District Judge are set aside and the matter is remitted to the Court of the District Judge,

Moradabad for being disposed of in accordance with law. In view of what has transpired, we direct that the learned District Judge himself shall hear the appeal, and after affording reasonable opportunity of hearing to both the parties to make their submissions, dispose it of in accordance with law uninfluenced by anything that might have been stated in the judgment which is being set aside. The learned District Judge shall dispose of the appeal as expeditiously as possible, and, in any event, not later than within four months from the date of receipt of a copy of this judgment, which we hereby direct the Office to send to the learned District Judge 'forthwith'.

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There shall be no order as to costs.

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N.V.K. *Appeal allowed.*