



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CONTEMPT APPLICATION (CIVIL) No. - 99 of 2010

A.F.R.

Ram Shanker Shukla And Another

.....Applicant(s)

Versus

Madhukar Shukla And 7 Ors.

.....Opposite
Party(s)

Counsel for Applicant(s) : Anurag Srivastava, Abhishek Kumar Singh, Anand Dubey, Anurag Dixit, Bhupendra Pratap Singh
Counsel for Opposite Party(s) : Pritish Kumar, Indrapal Singh, N.L.Pandey, Pt. S. Chandra, R.S.Tripathi, S.N. Tilhari, Vivek Sarswal

Court No. - 8

HON'BLE MANISH KUMAR, J.

Heard.

Present contempt application has been preferred against alleged non-compliance of the judgment and order dated 02.09.2009 passed in Special Appeal No. 579 of 2009. The relevant paras of the said judgment and order are being reproduced hereinbelow:-

" We, therefore, set aside the order passed by the learned Single Judge and remit the matter to the learned Single Judge for being decided afresh, after affording opportunity to the appellant, namely, opposite party no. 2 in the writ petition, in respect of the injunction being granted to the respondents.

So far the direction for deciding the recall application is concerned, we do not find any ground to interfere with the same, as both the parties agree that the application may be directed to be considered and disposed of expeditiously.

We expect that the application shall be decided within the time provided by the learned Single Judge.

At this juncture the counsel for the appellant says that the appellant does not intend to sell any property nor is going to sell the same."

Learned counsel for the applicant has submitted that despite the undertaking

given by respondent no. 1 before the appellate court, he has executed the sale deeds on 23.12.2009 and 24.12.2009 during the pendency of the writ petition.

It is further submitted that the respondent no. 1 after giving an undertaking before the Appellate Court was not supposed to execute the sale deed dated 23.12.2009 and 24.12.2009 in the light of the interim order dated 27.07.2009 passed in the Writ Petition. The relevant para of the said interim order is being reproduced hereinbelow:-

"Till disposal of the aforesaid application, the parties shall not change the nature of property in dispute"

On the other hand learned counsel for the respondent no. 1 has submitted that neither any undertaking has been given nor the respondent no. 1 had instructed his counsel to make any statement on his behalf before the Appellate Court hence, it could not be said that the statement made by the learned counsel for the respondent no. 1 in the appeal, where the respondent no. 1 was appellant, was not an undertaking and in support of his submission, he placed reliance upon the judgment of Hon'ble Supreme Court passed in the case of ***Himalayan Cooperative Group Housing Society Vs. Balwan Singh and others reported in (2015) 7 SCC 373.***

It is further submitted that the writ petition was also dismissed as withdrawn by the petitioner, who is the applicant herein on 11.01.2010.

It is further submitted that respondent no. 1 while submitting his reply to the charge has specifically mentioned in the affidavit that the statement given by his counsel is not in his knowledge, otherwise, he would not have sold the property and if the affidavit is read in totality then it has come out that he has not given any instruction to his counsel for making any such statement before the Appellate Court.

After hearing learned counsel for the parties and going through the record of the case, it is found that before the Appellate Court, the counsel for the appellant i.e. respondent no. 1 herein "says that". There is nothing on record that the counsel was instructed by the respondent no. 1 to give any undertaking before the Appellate Court. It is the counsel who seems to have stated before the Appellate Court on his own. The relevant paras of the judgment of Hon'ble Supreme Court relied upon by learned counsel for the

respondent no.1 is being reproduced hereinbelow:-

"21. If for any reason, the writ court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the counsel for the appellant Society, the said request not being the subject-matter of the writ petition required the Court to query whether the counsel for the appellant Society has been authorised to make such a statement by the appellant Society or whether any such resolution has been passed by the appellant Society giving concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the writ court, the directions issued by the writ court suffer from infirmity and hence require to be set aside.

22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment."

The submission of the learned counsel for the applicant that the said

statement/undertaking given by the counsel for the respondent no. 1 before the Appellate Court must be read with interim order dated 27.7.2009 passed in the Writ Petition and the conjoint reading of those would demonstrate that the submission made by the learned counsel for the respondent no. 1 before the Appellate Court amounts to undertaking, the said submission of learned counsel for the applicant is not tenable for the reason that the Appellate Court had set aside the interim order dated 27.07.2009 while remitting the matter to the learned Single Judge, so it can not be read alongwith the same.

It has been held by Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (supra), which has been relied upon by learned counsel for the respondent no. 1 that the lawyers should follow the client's instructions rather than substitute their judgment for that of the client and it is always better to seek appropriate instructions from the client or his authorized agent before making any concession which may, directly or remotely, affect the rightful legal right of the client, which it appears not the case in the present proceedings.

The case of the respondent no. 1 is squarely covered by the judgment of Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (supra). Further the applicant within few months after passing the order in the Special Appeal had withdrawn the writ petition on 11.1.2010. During the period of withdrawal of the writ petition and special appeal, there existed no interim order.

In view of the facts, circumstances and discussion made hereinabove, no contempt is made out against the respondent no. 1, thus, present contempt application is hereby ***dismissed***.

Charge framed against the respondent no. 1 is hereby withdrawn.

Notice issued, if any, stands discharged.

February 13, 2026
Ashish

(Manish Kumar,J.)