

**A** T. ARIVANDANDAM

v.

T. V. SATYAPAL & ANOTHER

October 14, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

**B** Civil Procedure Code (Act V. 1908), section 35A, Order VII, rule 11 and 10—Duties of the court in curbing frivolous and vexatious cases.

**C** Respondent No. 2 in partnership with his minor son the petitioner contested an eviction petition filed by the landlord-respondent No. 1 in respect of the premises where the partnership firm was located, and lost it at the trial, appellate and revisional stages. The High Court gave six months' time to vacate the premises. Thereafter, the petitioners filed a suit before the Fourth Additional First class Munsif, Bangalore for a declaration that the order of eviction which has been confirmed right upto the High Court and resisted by the second respondent throughout was one obtained by fraud and collusion and sought an injunction against the execution of the eviction order. During the hearing of the prayer for further time to vacate the premises filed by respondent No. 2, the learned Judge of the High Court, taking pity on the tenant persuaded the landlord for giving time for vacating the premises on the basis that the suit newly and sinisterly filed by the petitioner would be withdrawn. Another five months' time was granted accordingly. But, the petitioner instituted another suit before another Munsif making a carbon copy of the old plaint and obtained an ex-parte injunction which was, however, got vacated later by the respondent No. 1. An appeal against the said order having failed, the petitioner managed to get an ex-parte injunction once over again in revision from the High Court. At the hearing of the application for vacating the temporary injunction filed by respondent No. 1, the petitioner submitted that the said learned Judge having decided the earlier revision case should not hear the petition on the plea of bias referring to an affidavit filed by him to that effect. But the learned Judge heard the arguments, went into the merits and dismissed the revision.

**E** Dismissing the petition for special leave, the Court,

**F** HELD: (1) If on a meaningful—nor formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he (Munsif) should exercise his power under Order VII rule 11, C.P.C. taking care to see that the ground mentioned therein fulfilled. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Chapter X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot-down at the earliest stage. The penal Code (Chapter XI) is also resourceful enough to meet such men and must be triggered against them.

**G** In the instant case, the suit pending before the First Munsif's Court, Bangalore being a flagrant misuse of the mercies of the law in receiving plaints having no survival value, the court directed the Trial Court to dispose of it forthwith after giving an immediate hearing of the parties concerned and to take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and is altogether groundless, reminding itself of sec. 35A of the C.P.C. [744 E—G, 745 A]

*Observation:*

**H** The pathology of litigative addition ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. The sharp practice or legal legerdemain stultifies the court process and makes a decree with judicial seals *brutum fulmen*. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients and remembering that an advocate is an officer of justice and its society not to collaborate in shady actions. [743 B, C, 745 B]

[The Court expressed its hope that the Bar Council of India would activate this obligation.]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 4483 of 1977.

From the Judgment and Order dated 19-7-1977 of the Karnataka High Court in Civil Misc. Petition No. 943 of 1977

*P. R. Ramasesh* for the Petitioner.

The Order of the Court was delivered by—

KRISHNA IYER, J. The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.

Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. The contempt power of the Court is meant for such persons as the present petitioner. We desist from taking action because of the sweet reasonableness of counsel Sri Ramasesh.

What is the horrendous enterprise of the petitioner? The learned Judge has, with a touch of personal poignancy, Judicial sensitivity and anguished anxiety, narrated the sorry story of a long-drawn out series of legal proceedings revealing how the father of the petitioner contested an eviction proceeding, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court. But the Judge, in his clement jurisdiction gratuitously granted over six months' time to vacate the premises. After having enjoyed the benefit of this indulgence the maladroit party moved for further time to vacate. All these proceedings were being carried on by the 2nd respondent who was the father of the petitioner. Finding that the court's generosity had been exploited to the full, the 2nd respondent and the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the *Fourth* Additional First Class Munsif, Bangalore, for a declaration that the order of eviction, which had been confirmed right up to the High Court and resisted by the 2nd respondent throughout, was one obtained by 'fraud and collusion'. He sought an injunction against the execution of the eviction order. When this fact was brought to the notice of the High Court, during the hearing of the prayer for further time to vacate, instead of frowning upon the fraudulent stroke, the learned judge took pity on the tenant and persuaded the landlord to give more time for vacating the premises on the basis that the suit newly and sinisterly filed would be withdrawn by the petitioner. Gaining time by another five months on this score, the father and son belied the hope of the learned judge who thought that the litigative skirmishes would come to an end, but hope can be dupe when the customer concerned is a crook.

**A** The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely guilibility of the new Munsif to grant an ex parte injunction. The 1st respondent entered appearance and exposed the hoax played upon the court by the

**B** petitioner and the 2nd respondent. Thereupon the Munsif vacated the order of injunction he had already granted. As appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again. The 1st respondent promptly applied for vacating the temporary injunction and when the petition came up for hearing before Mr. justice Venkataramayya, counsel for the petitioner submitted that he should not hear the case, the pretext put forward being that the petitioner had cutely mentioned the name of the judge in the affidavit while describing the prior proceedings. The unhappy Judge, who had done all he could to help the tenant by persuading the landlord, found himself badly betrayed. He adjourned the case to the next day. The torment he underwent is obvious from his own order where he stated :

**D** "I spent a sleepless night yesterday."

Luckily, he stabilised himself the next day and heard arguments without yielding to the bullying tactics of the petitioner and impropriety of his advocate. He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.

**E** We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif

**F** must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer

**G** to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi :

**H** "It is dangerous to be too good."

The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit

has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. A

We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of *ex parte* orders tempts gamblers in litigation into easy courts. A judge who succumbs to *ex parte* pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy. B  
C

S.R.

*Petition dismissed.*