

Bihar State Electricity Board And Ors. vs Bhowra Kankanee Collieries Ltd. And ... on 10 September, 1981

Equivalent citations: AIR1982SC60, 1984(SUPP)SCC597, AIR 1982 SUPREME COURT 60, (1982) PAT LJR 22.2, (1982) GUJ LH 168, (1982) BLJ 160, (1981) 3 SERVLR 148, (1982) BLJ 143

Bench: Baharul Islam, D.A. Desai

JUDGMENT

1. We have heard learned Attorney-General for the appellants and learned Counsel Mr. K.J. John for the respondents.

2. In our opinion, this is not a matter which should have been dealt with in a highly technical manner as has been done by the High Court. To identify the hyper technicality resorted to by the High Court, a few facts may be stated.

3. Respondents filed a suit against the appellants and the suit ended in a declaration that the present appellants have no right to charge the amount claimed and a refund was decreed to the extent of Rs. 70,897. Against this decree in favour of the respondents, the appellants preferred an appeal, being FA 1248/1972, in the High Court of Patna (Ranchi Bench). During the pendency of the appeal from 1972 to 1978. it transpired that the letter of authority (Vakalatnama) of the learned advocate appearing for the present appellants, was not placed on record. It appears that there was an order to remove this defect and the order appeared to be of a peremptory character, probably, there was some laxity on the part of the appellants and the defect was not removed and the appeal was dismissed on Jan. 2, 1978 on the short ground of failure to remove the defect and non-compliance with the peremptory order No. 10 made by the Court on Sept. 30, 1975.

4. An application for restoration of the First Appeal being MJC 17/1978 was moved on behalf of the appellants. Again, there was some peremptory order On Dec, 10, 1979 and it transpired that there was some failure to comply with the same and the miscellaneous application stood dismissed. A fresh application No. MJC 12 of 1980 (R) was moved for restoration of First Appeal No. 1248/1972. This application was strenuously opposed on behalf of the respondents.

5. It appears that in the meantime the appeal migrated from Patna, to Ranchi and the contention was raised that there was no notice of transfer of the appeal from Patna to Ranchi and therefore the appeal should be restored to file. The High Court was not impressed and it dismissed the application observing that in view of the fact that MJC 17/1978 was filed for restoration of First Appeal 1248/1972 and which was dismissed for non-compliance of a peremptory order, another application for restoration of the First Appeal is not maintainable. With this observation the application was dismissed, resulting in confirmation of the order dismissing the First Appeal. Hence this appeal by special leave,

6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction more so such a simple one as filing Vakalatnama. The decision in the appeal on merits, (sic) appellants will pay the costs of the respondents.