DY. GENERAL MANAGER, REDESIGNATED AS DY. DIRECTOR, ISB ETC.

v.

SUDARSHAN KUMAR AND ORS. ETC.

APRIL 2, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Leave and Licence :

Grant of licence on compassionate grounds—Misuse of—Widow of freedom fighter granted licence of shop—Application for renewal of licence—Show cause notice issued to licensee for ejectment—Writ petition filed challenging the notice—Affidavit filed not signed by writ petitioner licensee—Signature of petitioner obtained by High Court not consistent with the signatures on Vakalatnama and affidavit—Permission for withdrawal of writ petition with liberty to file fresh petition granted—Held, in view of the facts that renewal application was not signed by the licensee, nor were the affidavit and Vakalatnama signed by her, it is obvious that she had taken the licence and assigned the same to someone else who committed forgery and the compassionate grounds and the liberties given are being misused—High Court not right in permitting the petitioner to withdraw the petition and to file another writ petition on same cause of action.

Notary :

Affidavits—Attestation of—Notary issuing false attestation—Registry directed to issue notice to Notary to show cause as to why he should not be prosecuted and punished for attesting false affidavit and why his licence should not be cancelled and he should not be prosecuted for giving false certificate.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7084 of 1996 @ Special Leave Petition (C) No. 6122 of 1995 Etc.

From the Judgment and Order dated 15.11.94 of the Delhi High Court in C.W. No. 2483 of 1994.

Sanjay Poddar, D.K. Malhotra, Ajay K. Jain, Pramod Dayal, V.B. Saharaya and D. Goburdhan for the appearing parties.

The following Order of the Court was delivered :

We have heard learned counsel on both sides.

This case is a misuse of the compassionate grounds on which leave and licence is sought to be granted to the widows of the freedom fighter. The appellant had granted to the first respondent leave and licence on May 15, 1992 the shop (Sales Counter) bearing No. 'H' at Interstate Bus Terminal at a concessional rate of 5% of the licence fee. It is not necessary to go into the allegation regarding her encroachment and misuse of the shop allotted in the name of the respondent. An application was filed on March 21, 1994 for renewal of the leave and licence, which is now found to be not signed by the respondent. A show cause notice was issued on 6.5.1994 to the respondent asking her to hand over vacant possession of the counter on 6.6.1994.

A writ petition No. 2483/94 was filed in the High Court of Delhi on 23.5.1994 for restraining the appellant from ejecting her and issue a direction to renew her leave and licence. The affidavit filed by the respondent in the High Court was not even signed by her. When the notice was issued to the appellants (herein), the appellants filed a counter-affidavit on October 24, 1994 informing the High Court of Delhi of the forgery committed in the pleadings and also her application of renewal. The Court has called upon the respondent to appear before the Court on 2.11.1994 but she did not appear. Ultimately, the respondent appeared on November 15, 1994. The Court has taken her signatures in the open Court and compared with the signatures on the Vakalatnama and affidavits and found to be not consistent with her admitted signatures. At that time, the respondent had sought permission for withdrawal of the writ petition with the liberty to file a fresh petition on the same cause of action. Accordingly, liberty was granted vide order dated November 15, 1994. Thus this appeal by special leave. We are informed that possession of the Koasko was taken.

The respondent also filed a connected appeal seeking for renewal of the licence. The question, therefore, that emerges is : whether the respondent is entitled to the renewal of the leave and licence and whether liberty to withdraw the writ petition was appropriately granted by the High Court? In the rejoinder filed in this Court it is admitted position that she did not sign the rejoinder also. Somebody seems to have signed it on her behalf and attested by a Notary. This is the third case where the Court has come

across that the Notaries have been misusing the liberty given to them by issuing such false attestations and indiscriminately attesting the affidavits to be filed by some party who have not been properly identified. We have seen original rejoinder affidavit filed in the Court. They have approached one Notary who has initially attested it and later he had cancelled it without even verifying the valid ground on which the earlier attestation came to be cancelled, same was again attested by one Sudershan Kumar on November 1, 1994. In view of the admitted position that she herself had not signed and as someone who had signed it, it would obvious that the person who had signed before him was not the respondent nor even the person was known to the Notary. None identified her before the Notary, yet he attested the affidavit. This would show that some Notaries are absolutely misusing the licence granted to them without any proper verification of the persons who has signed the document and are attesting false affidavits of impersonators.

In view of the admitted fact that her renewal application was not signed by her, the affidavit, the Vakalatnama were also not signed by her, it would be obvious that she had taken the licence and assigned to someone who had committed forgery. When we have asked Shri Goburdhan, learned counsel for her, the name of the real person who was actually running the shop, he has stated that the party does not divulge the person who is running the shop.

Under these circumstances, it is clear that the compassionate grounds and the liberties given are being abused by these persons. Therefore, the High Court was not right in giving liberty to the respondent herein to withdraw the writ petition and to file another writ petition on the same cause of action. Hence C.A. No. 7084/96 (@ SLP (C) No. 6122/95) is allowed and the appeal by Sudershan Kumari C.A. No. 7085/96 (@ SLP (C) No. 9464/95) is dismissed with costs. Registry is directed to issue a notice to the Notary to show cause as to Sudarshan Kumar why he should not be prosecuted and punished for attesting false affidavit of impersonators and why his licence should not be cancelled and he should not be prosecuted for giving such false certificates.

Post this matter immediately after service of notice on the Notary.

Appeal No. 7084/96 allowed and
Appeal No. 7085/96 dismissed.