RAIS AHMAD

v.

STATE OF U.P. AND ORS.

AUGUST 13, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Constitution of India, 1950—Article 225—Allahabad High Court—Rules of Court 1952—Chapter VI Rule 15—Writ Petition filed by appellant—Dismissed on merits in the absence of appellant's counsel—Leave of absence already granted by Chief Justice—Illness slip sent by counsel not brought to the knowledge of Court—Whether the dismissal of writ petition on merits correct—Held, No.

Appellant's Counsel had sought for adjournment of his cases and sent an illness slip to the High Court. The Chief Justice had granted the application of the Appellant's Counsel for adjournment on the ground of his illness for the period upto 23rd April, 1996.

A writ petition filed by the Appellant before the Court however was dismissed on 24th April, 1996 on merits in the absence of his Counsel in spite of an illness slip. An application for setting aside the order was dismissed by the High Court.

The High Court rejected the application on the ground that the 'illness slip' sent by the Appellant's Counsel was not brought to the notice of the Court.

In appeal to this Court, the Appellant contended that if the mistake was that of the office of the court in not bringing to the notice of the court the illness slip sent by the Appellant's Counsel, the Appellant cannot be made to suffer and in that situation the High Court would retain its jurisdiction to recall an erroneous order under its inherent powers, that the High Court while considering the writ petition under Article 226 of the Constitution exercised constitutional powers and that therefore even if merits of the writ petition were considered in the absence of the Counsel for the Appellant the judgment passed on that basis can still be recalled.

The Respondent contended that the facility of adjournment available to

A **the Counsel on the ground of "illness slip" is a facility which has been abused more often than not so much so that interim orders once obtained have been continued for long time and that the facility of adjournment on this basis should be abolished so that the litigant whose Counsel has fallen ill, may make alternative arrangement and the hearing of the case may not be affected.**

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Allowing the appeal, this Court

HELD : 1. Since leave of absence to the Counsel had already been granted by the Chief Justice upto 23rd April 1996, it is quite understandable that on 24th April 1996 when the case was listed, the Counsel was still unwell and could not come to the court and, therefore, could not conduct the case which, in keeping with the high and noble tradition, should have been adjourned on the "illness slip" of that Counsel. This having not been done has resulted in serious miscarriage of justice. [441-B-C]

C

D **2. Litigants in the country are generally poor (agriculturists) coming from rural areas or they are Government servants or workmen in an industrial establishment or the like and they cannot afford to manage the luxury of engaging another Counsel. This privilege is available only to the Central or State Governments who not only have Standing Counsel but also standby Counsel. The contention of the Respondent is therefore rejected as absurd and inappropriate. [440-G-H]**

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3. The judgment and order of the High Court is set aside and the case is remanded to the High Court for a fresh decision of the writ petition in accordance with law after giving an opportunity of hearing to the Counsel for the parties. [441-D-E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4446 of 1999.

From the Judgment and Order dated 27.8.97 of the Allahabad High Court in C.M.A. No. 32328 of 1996.

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W.A. Normani and S.K. Mishra for the Appellant.

R.C. Verma, Kamlendra Misra, Chatanya Siddharth and R.B. Misra for the Respondents.

H The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted. A

Appellant's writ petition in the Allahabad High Court which was listed on 24.4.1996 was disposed of in the absence of his counsel and was dismissed on merits. An application filed thereafter for setting aside the order dated 24.4.1996 was dismissed on 27.8.1997. It is against this order that the present appeal has been filed. B

The writ petition in which the above order was passed was listed before the High Court on 24.4.1996. The counsel appearing on behalf of the appellant had sent an "Illness Slip". This is not disputed. It is also not disputed that the counsel was ill. It is further not disputed that the Chief Justice of the Allahabad High Court had granted the application of the appellant's counsel C for adjournment of his cases on the ground of his being ill. The court, however, did not adjourn the case and proceeded to hear and dispose of the writ petition on merits in the absence of the appellant's counsel. The writ petition, as pointed out earlier, was ultimately dismissed and when an application for recall of the order dated 24.4.1996 was given, it was also rejected by the D High Court on the ground that the "Illness Slip" sent by the appellant's counsel was not brought to the notice of the court. The court also observed that the writ petition has been decided on merits and, therefore, there was no occasion to recall that order.

Learned counsel for the appellant has contended that if the mistake was E that of the office of the Court in not bringing to the notice of the court that the counsel for the appellant had sent an "Illness Slip", the appellant cannot be made to suffer and in that situation the High Court would retain its jurisdiction to recall an erroneous order under its inherent powers. It is also contended that the High Court while considering the writ petition under F Article 226 of the Constitution exercises Constitutional powers which are not fettered by any constraints and, therefore, even if merits of the writ petition were considered in the absence of the counsel for the appellant, the judgment passed on that basis, can still be recalled.

Article 225 of the Constitution provides as under: G

> "Jurisdiction of existing High Courts — Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof H

A in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

[Provided that any restriction to which the exercise of original
B jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]"

C This Article provides that the jurisdiction of the High Court, the law administered therein and the respective powers of Judges in relation to the administration of justice shall be the same as they were immediately before the commencement of the Constitution. Thus, the power of the High Court as they were before the Constitution have been preserved. One of the powers
D so preserved is the power to make rules of court and to regulate the sitting of the Courts.

Even before the Constitution came into force, the High Court of Allahabad had already made the Rules for regulating its business etc. in the Court. We would not trace the history whether there did exist rules made
E under Section 108 of the Government of India Act, 1915 or under the Government of India Act, 1935. The present Allahabad High Court has been reconstituted on amalgamation of the erstwhile Oudh Chief Court with the High Court in 1948. In exercise of the power under Article 225 of the Constitution, the High Court has framed Rules known as "Rules of Court,
F 1952" which came into force with effect from 15.9.1952. Chapter VI of the Rules provides for hearing and adjournment of cases. Rule 15 of this Chapter provides as under :

"Chapter VI, Rule 15 - Hearing and Adjournment of Cases (Rules of Court):

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(1) The Chief Justice may on the application of an advocate postpone his case for such time as he may deem proper, if he is satisfied that such postponement is necessary on account of a marriage, death and illness or any other unavoidable or urgent reason.

H (2) An application under this Rule shall be accompanied by a list of

cases desired to be postponed specifying the occasion or occasions, if any, when any such case was previously postponed under this Rule. It shall also indicate the cases in which the date of hearing has been fixed by a Bench. If any omission or inaccuracy in this regard is discovered, the application (or if any advocate whose such application has been allowed is found to have appeared before any of the Benches of the Court or before any other Court or Tribunal except where the postponement has been ordered specifically on ground of appearance before any particular Court or Tribunal, in any case, whether for orders, admission or hearing), the application for postponement of cases shall stand rejected automatically."

The Chief Justice has the exclusive jurisdiction under the Constitution to distribute the business of court among various Judges for purposes of disposal of cases. It is the Chief Justice who constitutes and decides about the composition of Division Benches or the Judges who would sit single. This is part of his administrative functions. This Rule gives effect to the administrative powers of the Chief Justice and it enables the Chief Justice to adjourn the cases provided an application is given to him on the grounds set out in the Rule. This power obviously has been conferred upon the Chief Justice to facilitate the listing of cases. If a counsel on account of the reasons set out in the Rule, which also includes his illness, is unable to attend the court on any particular day or for any particular period of time, he can make an application to the Chief Justice that his cases may not be listed either on that day or during the period mentioned in the application. Once this application is allowed, it becomes the duty of the Registry to give effect to this order by not listing the cases of that counsel before the Court. If, however, such a case is listed by mistake, the litigant or the counsel cannot be the sufferer, in accordance with the saying that "the mistake of the court would not harm a litigant."

In the instant case, admittedly, the counsel for the appellant had applied to the Chief Justice for his cases being not listed on account of illness and that application was allowed and, therefore, it was the duty of the Registry that the cases in which he was appearing as a counsel were not shown in the cause-list before any court. This case, incidentally, was shown in the cause-list on 24th April, 1996 and was disposed of. It is stated in the application for recall of that order that the counsel had sent an 'Illness Slip', but this plea has not been accepted by the Court on the ground that the Illness Slip was not brought to the notice of the Court. It is important to note that the fact

A that the 'Illness Slip' was sent to the Court is not disputed. What is disputed is that this was not brought to the notice of the Court. The tradition in the Allahabad High Court is that an "Illness Slip" is usually given to the Court Master or the Bench Secretary of the Court and it is expected of the Bench Secretary that he would bring it to the notice of the Court either at the beginning of the day or at the time when the case is called out and taken up for hearing. Once the "Illness Slip" is brought to the notice of the Court, the case, traditionally, is adjourned.

B

"Traditions" of a Court are built upon the edifice of cooperation between Judges and lawyers over a period of years. "Traditions", are doctrines, customs, C practices, beliefs and usages which are handed down from generation to generation. As pointed out earlier, one of the traditions of the Allahabad High Court, which is now more than 130 years old and has seen many generations of lawyers, is that a case would be adjourned on the "Illness Slip" of a counsel. This and other traditions of the Court bind the lawyers and Judges in a sacred relationship of mutual trust and understanding. The adjournment D of a case on the "Illness Slip" reflects the Court's respect for the counsel and its consciousness that a lawyer or counsel, though an officer of the Court, is nevertheless a human being who can fall ill. It also reflects the faith and trust the lawyer has in the Court that the Court would, on his "illness slip", adjourn the case.

E

It is contended on behalf of the respondents that the facility of adjournment available to the counsel on the ground of "Illness Slip" is a facility which has been abused more often than not, so much so that interim orders once obtained have notoriously been found to have continued for a long time merely on the "Illness slip" and, therefore, the facility of adjournment F on this basis should be abolished so that the litigant whose counsel has fallen ill, may make alternative arrangement and the hearing of the case may not be affected. That may be true in rare cases and in that situation the Judges would not act upon the "Illness Slip" if it is found, from a mere look at the running order sheet, that the facility has been misused or abused. But, G isolated examples would not be destructive of the noble tradition. Moreover, litigants in this country are generally poor (agriculturists) coming from rural areas or they are govt. servants or workmen in an industrial establishment or the like and they cannot afford or manage the luxury of engaging another counsel. This privilege is available only to the Central or State Governments who not only have Standing Counsel but also standby counsel (panel lawyers) H and, therefore, only the State counsel can dare plead for abolition of adjournment

on "Illness Slip", which we hereby reject as absurd and inappropriate. A

In the instant case, the counsel for the appellant had applied to the Chief Justice that on the grounds of his illness he would not be able to conduct his cases for a particular period of time and the application was allowed for the period upto 23rd April, 1996. The case was listed on the very next day of the expiry of the leave period. On that day, since the counsel was B still not well, he sent an "Illness Slip" which, unfortunately, was not brought to the notice of the Court with the result that the court on a consideration of the merits of the case dismissed the writ petition. Since leave of absence to the counsel had already been granted by the Chief Justice upto 23rd April, 1996, it is quite understandable that on 24th April, 1996, when the case was C listed, the counsel was still unwell and could not come to the Court and, therefore, could not conduct the case which, in keeping with the high and noble tradition, should have been adjourned on the "Illness Slip" of that counsel. This having not been done has resulted in serious miscarriage of justice.

D

For the reasons stated above, we allow this appeal, set aside the judgment and order dated 24.4.1996 by which the writ petition was dismissed on merits, as also the judgment and order dated 27.8.1997 by which the application for recall of that order was rejected. We remand the case again to the High Court for a fresh decision of the writ petition in accordance with law E after giving an opportunity of hearing to the counsel for the parties. There will be no order as to costs.

V.M. Appeal allowed.