

B.S. KRISHNA MURTHY AND ANR .

V.

B.S. NAGARAJ AND ORS .

(Special Leave Petition (C) No. 2896 of 2010)

JANUARY 14 , 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA , JJ .]

Alternative disputes redressal : Mediation - Disputes involving family and business relationships - Resolution of , by mediation - Responsibility of lawyers - Held : It is the C responsibility of lawyers to advise their clients to try for mediation for resolving the disputes , especially where relationships like family and business relationships are involved , otherwise the litigation would drag on for years and decades - Lawyers as well as litigants ought to follow D Mahatma Gandhi's advice in the matter and try for arbitration / mediation - This is also the purpose of s.89 - In the instant case , dispute was between the brothers - Matter referred to the Bangalore Mediation Centre - Code of Civil Procedure , 1908 - s.89 .

' My Experiments with Truth ' by Mahatama Gandhi referred to .

CIVIL APPELLATE JURISDICTION : SLP (CIVIL) No. 2896 of 2010 .

From the Judgment & Order dated 17.09.2009 of the High Court of Karnataka at Bangalore in RFA No. 1387 of 2004 .

G.V. Chandrashekar , N.K. Verma (for Anjana Chandrashekhar) for the Petitioners .

P. Vishwanatha Shetty , Vijay Kumar Pardesi , Mahesh Kumar . G.N. Reddy for the Respondents .

A The following order of the Court was delivered

ORDER

Heard learned counsel for the appearing parties .

B This is a dispute between brothers . In our opinion , an effort should be made to resolve the dispute between the parties by mediation .

C In this connection , we would like to quote the following passages from Mahatma , Gandhi's book ' My Experiments with Truth ' :

" I saw that the facts of Dada Abdulla's case made it a very strong indeed , and that the law was bound to be on his side . But I also saw that the litigation , if it were persisted in , would D ruin the plaintiff and the defendant , who were relatives and both belonged to the same city . No one knew how long the case might go on . Should it be allowed to continue to be fought out in Court , it might go on indefinitely and to no advantage of either party . Both , therefore , desired an immediate termination E of the case , if possible .

I approached Tyeb Sheth and requested and advised him to go to arbitration . I recommended him to see his counsel . I suggested to him that if an arbitrator commanding the confidence of both parties could be appointed , the case would be quickly finished . The lawyer ' fees were so rapidly mounting up that they were enough to devour all the resources of the clients , big merchants as they were . The case occupied so much of their attention that they had no time left for any other work . In the meantime mutual ill - will was steadily increasing . I F became disgusted with the profession . As lawyers the counsel on both sides were bound to rake up points of law in support of their own clients . I also saw for the first time that the winning party never recovers all the costs incurred . Under the Court Fees Regulation there was a fixed scale of costs to be allowed G

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as between party and party , the actual costs as between attorney and client being very much higher . This was more than I could bear . I felt that my duty was to befriend both parties and bring them together . I strained every nerve to bring about a compromise . At last Tyeb Sheth agreed . An arbitrator was appointed , the case was argued before him , and Dada B Abdulla won .

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F But that did not satisfy me . If my client were to seek immediate execution of the award , it would be impossible for Tyeb Sheth to meet the whole of the awarded amount , and there C was an unwritten law among the Porbandar Memons living in South Africa that death should be preferred to bankruptcy . It was impossible for Tyeb Sheth to pay down the whole sum of about 37,000 and costs . He meant to pay not pie less than the amount , and he did not want to be declared bankrupt . There was only one way . Dada Abdulla should allow him to pay in moderate installments . he was equal to the occasion , and granted Tyeb Sheth installments spread over a very long period . It was more difficult for me to secure the concession of payment by instalments than to get the parties to agree to arbitration . But both were happy over the result , and both rose in the public estimation . My joy was boundless . I had learnt the practice of law . I had learnt to find out the better side of human nature and to enter men's hearts . I realized that the true function of a lawyer was to unite parties riven asunder . The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases . I lost nothing thereby - not even money , certainly not my soul . "

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In our opinion , the lawyers should advise their clients to try for mediation for resolving the disputes , especially , where relationships , like family relationships , business relationships , are involved , otherwise , the litigation drags on for years and decades after ruining both the parties .

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A Hence , the lawyers as well as litigants should follow Mahatma Gandhi's advice in the matter and try for arbitration / mediation . This is also the purpose of Section 89 of the Code of Civil Procedure .

B Let the matter be referred to the Bangalore Mediation Centre . The parties are directed to appear before the Bangalore Mediation Centre on 21.02.2011 .

List after receiving report from the Mediation Centre .

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C D.G.

Matter Pending .