

R.F.A. No.1344 of 2012

BVNJ & HTNPJ :
15.03.2019

ORDER

I.A. No.1 of 2019 has been filed by the appellant seeking stay of the operation of judgment and decree dated 11.06.2012 passed in O.S. No.45 of 2011 by the Court of Senior Civil Judge, Virajpet.

Learned counsel for the appellant drew our attention to the fact that on 03.10.2012 this Court had stayed drawing up of the final decree until further orders.

However, the trial Court is proceeding with the matter by placing reliance on the dictum of the Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Pvt. Ltd., & Another v. Central Bureau of Investigation (Crl. A. Nos. 1375-76 of 2013)***, by observing that the interim stay granted by this Court is only for a period of six months from the date of the said order and until the same is extended by a speaking order the trial Court is empowered to continue with the final

decree proceedings and draw a final decree also as the interim stay granted by this Court has expired automatically on lapse of six months. He, submits that this Court may stay further proceedings in the final decree proceedings.

Learned counsel for the respondents submits that this Court has stayed drawing up of final decree only and till that stage the final decree proceedings could continue.

However, it is noted from the order dated 03.11.2018, a copy of which is furnished by learned counsel for appellant, that the trial Court is under an impression that on the lapse of six months the interim stay granted by this Court would automatically expire unless extended by a speaking order. In saying so, the trial Court has placed reliance on the judgment of the Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd., & Another vs. Central Bureau of Investigation***. The said judgment has been considered by this Court in W.P. Nos.100648-649 of 2019 by one of us (*Nagarathna J.*), and it has

been observed that the implication of the direction of Hon'ble Supreme Court is restricted to the stay of the proceedings in trial. It does not extend to any interim stay granted by an Appellate or Superior Court in an appeal arising out of a judgment and decree passed in a suit or other proceeding.

The relevant portion of the order dated 10.01.2019 passed in W.P.Nos.100648-100649/2019 reads as under:

"Having heard the learned counsel for the petitioner and on perusal of the material on record, it is noted that the Hon'ble Supreme Court at paragraphs 35, 36 and 37 in the case of Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation (supra) has categorically referred to stay of proceedings at the stage of trial by using the expression "proceedings of a civil or criminal trial" in paragraph 35, "stay of proceedings in a pending trial is operating" in paragraph 36 and "trial stage" in paragraph 37. The said paragraphs are extracted as under for immediate reference:

"35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that

continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter.

Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal

appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage."

(underlining by me)

On a direction issued by this Court, the Office has made available a copy of the General Circular No.7/2018 dated 06.08.2018 issued by this Court wherein paragraphs 35 and 36 extracted above have been quoted and it has been further observed as under:

"All the Principal District and Sessions Judges in the State including the Principal City Civil and Sessions Judge, Bengaluru, Chief Judge Court of Small Causes, Bengaluru, Prl. Judges of all the Family Courts, Presiding Officers of Labour Courts and Industrial Tribunals

in the State shall ensure that directions at Paragraph 35 and 36 are followed and also requested to communicate the aforesaid directions to all the Judicial Officers in their respective Units for information and necessary action.”

From the above it becomes clear that the reference to paragraphs 35 and 36 in the aforesaid Circular is with regard to stay of trial. The same cannot be understood to mean that although the judgment and decree of a trial Court impugned before the Appellate Court is stayed by the Appellate Court, the said stay of the judgment and decree of the trial Court is only for a period of six months and on the expiry of six months, the stay would automatically stand vacated which would enable the Executing Court to continue with the executing proceedings. Such an understanding of the judgment of the Hon'ble Supreme Court and Circular issued by this Court is not proper.

Though an appeal is stated to be a continuation of a suit, it is so for the purpose of applicability of the provisions of the Code of

Civil Procedure, 1908. A trial is quite distinct from an appeal, as a trial is an original proceeding, whereas an appeal is an appellate proceeding arising from the judgment and decree passed in an original proceeding such as a suit.

It is needless to observe that when a superior Appellate Court stays the operation of the judgment and decree of a trial Court impugned in the appeal, the executing court cannot proceed to execute the judgment and decree which is stayed. This is contrary to Order XLI Rule 5 of the Code of Civil Procedure, 1908. Further continuation of any execution proceedings when the judgment and decree impugned is stayed by the Appellate Court, is in violation of such an interim order of stay of an appellate or superior Court.

In the circumstances, so long as the judgment and decree impugned before the Additional Civil Judge, Sr.Dn., Hoshiarpur is stayed by the said Court, there has to be a stay of execution of the said judgment and decree. In the circumstances, there shall be stay of further proceedings in Execution

No.23/2017 pending on the file of the Senior Civil Judge and JMFC, Lakshmeshwar until the stay granted by the appellate Court in Hoshiarpur is vacated.

It is thus clarified that the judgment of the Hon'ble Supreme Court as well as Circular No.7/2018 apply only when the proceedings of trial are stayed. Further, if any particular order of the trial Court or the Court subordinate to the High Court is stayed and the proceeding of the trial is not stayed, in such circumstances the judgment of Hon'ble Supreme Court would not apply. For instance, if an order for impleadment has been allowed by the trial Court and the same is assailed by the aggrieved party and the same has been stayed by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India, the said stay would be subject to further orders of the High Court. In such a case, there would be no stay of the proceedings in trial and there would be no impediment for the trial Court to continue with such proceeding.

It is necessary to observe that when once a superior Appellate Court has granted stay of the operation of the judgment and decree impugned before it in an appeal, the trial court cannot insist that despite such stay of the operation of the judgment and decree, it would execute the same. In such Cases, the trial Court or any other Court subordinate to the High Court cannot insist that there has to be a further order made by the High Court continuing the stay of such orders on the expiry of six months from the date on which stay order was passed.

It is further clarified that if any Appellate Court in the State in any Regular Appeal or this Court in a Regular First Appeal or Regular Second appeal grants an interim stay of an impugned judgment and decree either of the trial Court or of the first Appellate Court, as the case may be, then so long as the said stay of the execution of the judgment and decree is in force, there can be no execution of the judgment and decree whose operation has been stayed based on General Circular No.7/2018.”

In the circumstances, placing reliance on order dated 10.01.2019 in the aforesaid petitions, it is observed that interim stay of drawing up of final decree only granted by this Court on 03.10.2012 has not expired or lapsed on lapse of six months. The observations of the Hon'ble Supreme court do not apply to cases such as the present one where the interim stay is relating to proceedings post judgment and decree in a suit or other proceeding and they apply to suits and other proceeding pending trial. Hence the interim stay granted by this Court on 03.10.2012 has not expired and does not enable the trial Court to draw up a final decree. The proceedings could continue till the stage of drawing up of a final decree.

The interim stay is only limited to the drawing up of final decree, until then all proceedings in the final decree proceedings could continue in the instant case as there is no complete stay of final decree proceeding as such.

I.A. No.1 of 2019 is accordingly disposed off.

Registry to circulate a copy of this order to all Principal District Judges in the State including Principal City Civil and Sessions Judge, Bengaluru, for onward communication to all Judges concerned.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

hnm