

Court No. - 17

Case :- WRIT - A No. - 8926 of 2023

Petitioner :- Rajendra Kumar

Respondent :- National Insurance Company Ltd. Thru.
Divisional Manager Lko And Another

Counsel for Petitioner :- Diwakar Singh, Virendra Pratap Rana

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Diwakar Singh, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 20.06.2023 and orders passed in consequential recovery proceedings dated 12.10.2023 and 30.10.2023.

3. It is submitted by learned counsel for the petitioner that Claim Petition No. 882 of 2014 - Smt. Shalini Singh and Others Vs. Rajendra Singh and three others, under Section 166/140 of the Motor Vehicle Act was filed before the Motor Accident Claims Tribunal, Lucknow. The Tribunal after hearing the parties, decided the said case and allowed the claim of the claimant by means of order dated 19.01.2019, thereby National Insurance Company Pvt. Ltd. was directed to comply with the aforesaid orders. Against order dated 19.01.2019, review application was filed seeking modification/correction of order dated 19.01.2019. The review application was allowed and order dated 20.04.2019 was passed and liability was imposed upon the petitioners for payment of compensation under the provisions of Motor Vehicles Act.

4. It is in the aforesaid circumstances, the petitioner approached this Court by means of Writ Petition No. 12485 of 2020, assailing the order dated 18.12.2019, passed in Claim Petition No. 882 of 2014, wherein this Court by means of interim order dated 07.08.2020, has stated the impugned order dated 18.12.2019.

5. It is next submitted by learned counsel for the petitioners that despite interim order passed by this Court on 07.08.2020, the respondents have proceeded to recover the amount from the petitioners and which orders have been assailed in present writ petition.

6. It is noticed that Motor Accident Claims Tribunal by means of order dated 30.10.2023, has proceeded with the recovery proceedings, despite objections having been filed by the petitioners without taking into consideration the interim order passed by this Court on 07.08.2020, on the ground that in the meanwhile as per judgment of Hon'ble Supreme Court rendered in the case of Asian Resurfacing of Road Agency Pvt. Ltd. and Another Vs. Central Bureau of Investigation - Criminal Appeal Nos. 1375 - 1376 of 2013 (decided on 18.03.2018), all the interim orders passed in criminal or civil matters pending before the High Court in exercise of power under Article 226 of the Constitution of India stood vacated. The relevant extract of judgment of Apex Court is reproduced as under :-

"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."

7. It is in the aforesaid circumstances, that Motor Accident Claims Tribunal was of the opinion that interim order passed by this Court stands vacated as per aforesaid judgment of Apex Court and accordingly there is no embargo to proceed with the execution proceedings.

8. This Court has put a query to learned counsel for the petitioner as to when order dated 18.12.2019, has already been assailed by the petitioner before this Court in Writ Petition No. 12485 of 2020 and an interim order was passed, then second writ petition challenging the recovery proceedings emanating from the order dated 18.12.2019, would not be maintainable. In

reply it is submitted that it is due to urgency and paucity of time as the petitioner could not move fresh application in pending writ petition, hence he has filed present writ petition.

9. In the aforesaid circumstances, this Court is of the considered view that once petitioner has already approached this Court by means of Writ Petition No. 12485 of 2020, wherein order dated 18.12.2019 has already been assailed, then another writ petition assailing consequential recovery proceedings arising out of order dated 18.12.2019, would not be maintainable. Even otherwise, because it was always open for the petitioner to approach this Court by moving appropriate application in the earlier writ petition and seeking extension of stay order and then the order passed by the Apex Court would not come into operation deeming the vacation of interim order dated 07.08.2020.

10. In view of above discussion this Court is of the view that once order dated 18.12.2019 has been assailed by the petitioner, then all subsequently proceedings are also subject matter of challenge in the writ petition already preferred by the petitioner and hence in such circumstances the second writ petition would not be maintainable. If this is permitted, it will cause multiple writ petitions being filed in the same matter, being liable to be decided independently. In the present case, merely assailing the recovery proceedings, would not be maintainable. It is always open for the petitioner to approach this Court in the previous writ petition being Writ Petition No. 12458 of 2020 and seek appropriate directions.

11. The writ petition being devoid of merits is **dismissed**, interim order, if any, stands discharged.

Order Date :- 22.11.2023

A. Verma

(Alok Mathur, J.)