

GAHC010018432024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/87/2024

DR. NILUFAR RAHMAN and ANR.
D/O LT. ABIDUR RAHMAN R/O 22, URBAN CITY MALL, G.S. ROAD,
CHRISTIANBASTI, GUWAHATI-5, IN THE DIST. OF KAMRUP M, ASSAM,
ALSO AT PATEL RAMAIAH LAYOUT, MENUR BAGLUR MAIN ROAD,
BYRATHIN CROSS, KOTHANUR, BANGALORE- 566007.

VERSUS

MRS. AFROZA RAHMAN and ANR.
W/O LT. ADILUR RAHMAN @ MAMU

Advocate for the Petitioner : MR P R SARMA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

23.02.2024

Heard Mr. N. Das and Mr. P. R. Sharma, learned counsel for the applicant. Also heard Mr. A. M. Bora, learned Senior counsel assisted by Mr. V. A. Chowdhury, learned counsel for the respondent No. 1 as well as Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent No.2.

2. This Interlocutory Application has been filed seeking for alteration/ vacation/ modification/ cancellation/ rescind of the interim order dated 05.08.2016 passed in I. A. No.1592/2016, in Criminal Petition No.303/2016, whereby, this Court had stayed the proceeding of the Complaint Case bearing No.2040/2015, pending before the Court of learned Special Judicial Magistrate Kamrup (M).

3. It is submitted by the learned counsel for the applicant, Mr. Das that the present applicant as a complainant had filed a Complaint Case No. 2040/2015, under Sections 420/467/468/471 of IPC against the present respondents/petitioners, which is pending before the Court of learned Special Judicial Magistrate, Kamrup (M), wherein, the present respondents had illegally transferred the shares of the applicant/complainant in M/S Rahman Properties; a company incorporated under the Indian Companies Act, 1956, limited to the period between 2007 to December 2013, without her knowledge and by falsifying her signature. Thereafter, the present respondent Nos. 1 & 2 as a petitioner Nos. 1 & 2 had filed a Criminal petition No.303/2016 and accordingly, they approached before this Court, praying for setting aside and quashing of the

Complaint Case No.2040/2015 pending before the Court of learned Special Judge, Kamrup (M) along with an Interlocutory application being registered as I. A. No.1592/2016 whereby, seeking for stay of the said Complaint Case No.2040/2015. After considering the prayer made by the respondents/petitioners, the matters, i.e. Crl.Petn.No.303/2016 and I. A. No.1592/2016 were listed on 05.08.2016, but, inadvertently oversight of the engaged counsel, could not be present and accordingly, the proceeding under the Complaint Case No. 2040/2015 was stayed till the next date fixed.

4. He also submits that after stay of the proceeding, noted above, the case has been listed continuously before this Court and the respondents/petitioners were taking regular adjournment through their engaged counsel in multiple occasion in one pretext or the other and they also sought for extension of the interim order dated 05.08.2016, whereby, this Court had stayed the proceedings of the Complaint Case No.2040/2015.

5. Mr. Das, learned counsel for the applicant further submitted that no speaking order has passed showing that in such an exceptional nature of case, continuing of stay is more important than having the final trial. Thus, the respondents/petitioners are taking undue advantage by misrepresenting the facts and taking continuous adjournment of the matter in one pretext or the other. Also, the stay of the proceeding in Complaint Case No.2040/2015 is affecting the applicant which otherwise cannot be compensated. Accordingly, this interlocutory application has been filed praying for vacating the interim order dated 05.08.2016 passed by this Court, by taking the guideline passed by the Hon'ble Apex Court reported in ***Criminal Appeal No.1375-1376/2013 [Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs. Central Bureau***

of Investigation], wherein, the Apex Court relies on the relevant paragraphs, which read as under;

“.....To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.

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 36 of stay, proceedings can commence unless order of extension of stay is produced.”

6. Accordingly, Mr. Das, learned counsel for the applicants has submitted that the interim order should be vacated which is continuing since 2016.

7. In this context, Mr. A. M. Bora, learned Senior counsel has submitted that on perusal of the record, it is seen that the case has been regularly listed for hearing, but adjournments were taken by both the parties and some time the matter was not heard due to paucity of time. He also submits that, if the applicant/complainant is aggrieved by the interim order of stay, then, he can

approach before the Hon'ble Apex Court for vacating the interim order of stay, as this Court cannot review after its own order. Further, he submitted that there may be prayer for adjournment made by the respondents/petitioners side, but, the same was granted by this court, considering the facts and circumstances of this Court and accordingly, the interim prayer was extended. Further, respondents/petitioners are ready to proceed with the case in any date fixed by this Court, so that the matter can be dispose of expeditiously as early as possible.

8. In this regard, Mr. Das, learned counsel for the applicant/complainant also raised no objection and submitted that he is also ready and willing to proceed with the hearing in any date fixed by this Court.

9. After hearing the submissions made by the learned Advocates of both sides and upon perusing the case record as well as entire facts of the case, it is seen that the Complaint case No. 2040/2015 has been stayed and the same is continuously extended till date, which is pending before the Court of the learned Special Judicial Magistrate Kamrup (M). However, there are various reasons for extending the interim order on stay and thus, the hearing could not be completed due to various reasons. Therefore, this Court direct both the parties to proceed with the hearing on the next date fixed by this Court, without seeking any further adjournment.

10. In terms of above, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant