



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 9/3/2015
C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

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C.R.P.PD (MD) No.219 of 2015
and
MP(MD).No.2 of 2015

Mrs.S.Janaki Banu ... Petitioner/Petitioner

Vs

J. Sivakumar ... Respondent/Respondent

Petition filed under Article 227 of the Constitution of India call for the records and set aside the impugned order dated 10/12/2014 made in I.A.No.558 of 2014 in H.M.O.P.No.12 of 2007 on the file of the Family Court, Madurai.

For petitioner ... Mr.R.Prabhakaran

For respondent ... Ms.M.Kanchammal

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ORDER

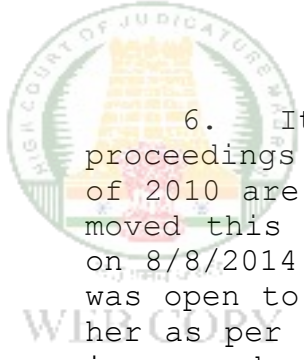
The wife in a matrimonial proceedings is the revision petitioner herein.

2. The respondent/husband had filed H.M.O.P.No.12 of 2007 under Section 13 (1) (i a) of the Hindu Marriage Act. Pending the proceedings, the revision petitioner had filed I.A.No.558 of 2014 under Section 10 of the Code of Civil Procedure to stay all further proceedings in the H.M.O.P.

3. According to the petitioner, she had given a complaint against her husband under Section 498 A, 506 (i) of I.P.C and also under Section 4 of the Dowry Prohibition Act which were registered as Crime No.4 of 2007. Thereafter, charge sheet was filed and the case was taken on file as C.C.No.73 of 2007 before the learned Judicial Magistrate No.I, Madurai. After elaborate trial, the husband was acquitted. Against which, CrI.R.C.(MD) No.545 of 2002 is filed by the petitioner herein before this Court and the same is pending. In the meanwhile, in H.M.O.P, the trial had commenced. Therefore, the wife has filed this application for stay of further proceedings.

4. The respondent had contested the same contending that the application is vexatious and the same is not maintainable and prayed for the dismissal of the same.

5. The Family Court, Madurai, after considering the facts and evidence dismissed the application. Aggrieved, the revision has been filed.



6. It is the contention of the petitioner herein that parallel proceedings including the one of Dowry Prohibition Act and Crl.R.C.No.769 of 2010 are all pending against the respondent. Earlier, the parties had moved this Court in C.R.P.(MD) No.1019 of 2014 which was later reviewed on 8/8/2014. While disposing the C.R.P., this Court had observed that it was open to the revision petitioner to raise all the grounds available to her as per Law and the lower Court shall consider the same on merits and in accordance with law and also directed the Family Court to dispose of the O.P on or before 30/1/2015. Therefore, the petitioner had contended that unless the other proceedings are pending or disposed of, it will be difficult for the petitioner to contest H.M.O.P. The petitioner has sought for stay of all further proceedings in H.M.O.P under Section 10 of the C.P.C., in view of the pendency of the other criminal proceedings.

7. Section 10 of the Code of Civil Procedure is as follows:-

"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

8. Section 10 of the Code of Civil Procedure contemplates only the stay of trial of any suit in which the issue involved is the same and also between the same parties, then the subsequent proceeding can be stayed. Section 10 of the Code further contemplates a suit pending in any Court having jurisdiction to grant the relief claimed or in any Court beyond the limits of established or continued by the Central Government or having like jurisdiction.

9. The learned counsel for the petitioner contended further that the relief sought for under Hindu Marriage Act is civil in nature whereas the complaint given by the wife viz., the dowry harassment and other complaints are all criminal proceedings. Therefore, civil proceedings as well as the criminal proceedings can proceed simultaneously. The petition had been filed by the husband under Hindu Marriage Act for dissolution of marriage. Whereas the proceedings initiated by the wife is under criminal procedure including that of the penal code and the burden of proof is on the prosecution. Section 10 of C.P.C., only contemplates the stay of proceedings in any other Court in India having jurisdiction to grant the relief claimed.

10. In this case, though the parties before the civil and the criminal proceedings are the same but the procedure are different from each other. The Family Court or the Civil Court alone has got the right to grant the decree for divorce. The Criminal Court will not have the

11. Unless the Court before which the subsequent proceeding is pending has also got the jurisdiction to grant the relief, Section 10 of the C.P.C., will not have an applicability. In this regard, the learned counsel for the respondent also pressed into service to GURU GRANTH SAHEB STHAN MEERGHAT VANARAS Vs. VED PRAKASH AND OTHERS reported in {2013 (7) SCC - 622}, wherein in paragraph Nos.17 and 18 it has been held as follows:-

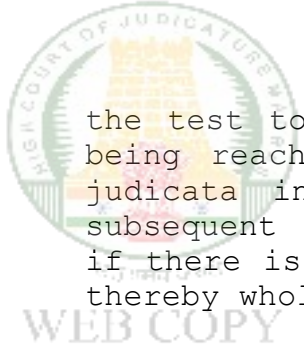
"17. In K.G.Premshanker the effect of the above provisions (Sections 40 to 43 of the Evidence Act) has been broadly noted thus: (SCC p.97, para30)

"30.... (4) if the criminal case and civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein."

Moreover, the judgment, order of decree passed in previous civil proceedings, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the Court has to decide to what extent it is binding or conclusive with regard to the matters decided therein. In each and every case, the first question which would require consideration is, whether the judgment, order or decree is relevant; if relevant, its effect. This would depend upon the facts of each case.

18. In light of the above legal position, it may be immediately observed that the High Court was not at all justified in staying the proceedings in the civil suit till the decision of criminal case. Firstly, because even if there is possibility of conflicting decisions in the civil and criminal courts, such an eventuality cannot be taken as a relevant consideration. Secondly, in the facts of the present case there is no likelihood of any embarrassment to the defendants (Respondents 1 to 4 herein) as they had already filed the written statement in the civil suit and based on the pleadings of the parties, the issues have been framed. In this view of the matter, the outcome and/or findings that may be arrived at by the civil court will not at all prejudice the defence(s) of respondents 1 to 4 in the criminal proceedings."

<https://hcservices.ecourts.gov.in/hcservices> 12. The object of Section 10 of the Code is to prevent the Courts on a concurrent jurisdiction very simultaneously trying two parallel suits between the two parties in respect of the same issue. Therefore,



the test to attract Section 10 of the Code is when a final decision is being reached in a previous suit, such decision would operate as res judicata in the subsequent suits or it will have a bearing in the subsequent suit. Therefore, Section 10 of the C.P.C., would apply only if there is an identity in the matter in issue in both the suits meaning thereby whole of a subject matter in both the proceedings are identical.

13. From the perusal of records, it is seen that the respondent/petitioner had examined himself as P.W.1 in the year 2010. Thereafter, I.A for maintenance was filed. Now, after four years, when P.W.2 is being examined, this application under Section 10 of C.P.C is filed. When the proceeding is so near the end, it is inexpedient to stay the same. Besides it is settled law that the decisions of the Civil Courts are binding on the Criminal Courts, however, the converse is not true. This makes it evident that pendency of criminal matters would not be an impediment to proceed with civil matters. The possibility of conflicting decision in civil and criminal courts is not a relevant consideration for the applicability of Section 10 of Code of Civil Procedure.

14. Section 10 of the Code of Civil Procedure only lays down the rule of procedure. It does not confer any substantial right to the litigant and there is no impediment for the Court to discuss the merits of the matter. A litigant cannot have a say or dictate terms to the Court about the manner in which proceedings to be conducted. It is for the Court to decide the mode of procedure. This principle is dealt with in PUKHRAJ D.JAIN AND OTHERS Vs. G.GOPALAKRISHNA reported in {2004 (3) CTC - 308, wherein in paragraph 4, it has been held as follows:-

"We have heard learned counsel for the parties and have perused the records. In our opinion, the view taken by the High Court is wholly erroneous in law and must be set aside. The proceedings in the trial of a suit have to be conducted in accordance with provisions of the Code of Civil Procedure. Section 10, CPC no doubt lays down that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed. However, mere filing of an application under Section 10, CPC does not in any manner put an embargo on the power of the Court to examine the merits of the matter. The object of the Section is to prevent Courts of the concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The Section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigation to dictate to the Court as to how the proceedings should be conducted, it is for the Court to decide what will be the best course to be



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adopted for expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the Court to decided the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side."

15. As stated earlier, the petitioner wants the O.P to be stayed, in view of the pendency of the criminal proceedings pending before the Court having different jurisdiction. Therefore, there is no necessity for staying the O.P. Besides the petitioner was a party in the earlier revision and also had filed a review and agreed to the direction by this Court for cooperating with the disposal of the O.P on or before 30/1/2015, but in disobedience of the same has come up with this petition asking for a stay which is unacceptable.

16. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition (MD) No.2 of 2015 is also dismissed.

After pronouncing the order, the learned counsel for the revision petitioner expressed his desire to prefer an appeal before the Supreme Court. Hence prayed for stay of delivery of judgment alone in H.M.O.P.No.12 of 2007 till 31st March, 2015.

Accordingly, there will be an order of stay of pronouncement of judgment alone till 31/3/2015.

Sd/-

Assistant Registrar(T & P)

\\True copy\\

Sub Assistant Registrar

To

The Principal Judge, Family Court, Madurai.

+1 CC TO M/S.R.PRABHAKARAN, ADVOCATE SR.NO.11419

+1 CC TO M/S.M.KANCHAMMAL, ADVOCATE SR.NO.11400

C.R.P.PD (MD) No.219 of 2015

AND

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mvs

NA/11/03/2015/P5/4C(IT)