HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.19367 of 2010

ORDER:

Both Sri M.L.Narasimham, Learned Counsel for the petitioner, and Sri R.Vinod Reddy, Learned Standing Counsel appearing on behalf of the respondents, agree that the subject matter of this Writ Petition is covered by the Division Bench judgment of this Court in **Jairaj Ispat Ltd. v. A.P. Regulatory Commission, Hyderabad**[1]. Sri R. Vinod Reddy, Learned Standing Counsel, would however contend that, against the said order of the Division Bench, the respondents therein have carried the matter in appeal; and, while interim stay was granted, the appeal is still pending before the Supreme Court. It is well settled that, when a Court of appeal stays the operation of the judgment, it stays the further implementation as between the parties, of the operative portion thereof, and thereby the ratio of the said decision cannot be said to be wiped off.

In **K. Venkata Reddy v. Land Acquisition Officer**[2], a Division Bench of this Court observed:

> " ..... When the matter came up before our learned brother Kodandaramayya, J., he felt a doubt **whether, having regard to the fact that the judgment of the Full Bench is the subject-matter of an appeal before the Supreme Court and the operation of the said judgment is suspended, the dicta laid down by the Full Bench would be binding on this Court and has to be followed, and referred the matter to the Bench. We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended the only effect of such suspension is that that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein are binding on all Courts including the single Judges and Division Benches of this Court**. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. We, however, do not feel any such doubt that in so far as the acquisition of the land of a person, whose holding is less than the ceiling area and is personally cultivating the same, is concerned, he is entitled to the payment of market value in lump sum. Payment of compensation in instalments is violative of the provisions of clause (2) of article 31-A(1) of the Constitution. ..... " (emphasis supplied)

---

[1] 2012 (2) ALD 739 (DB)
[2] 1983 (67) STC 424

In **Government of Andhra Pradesh v. N. Rami Reddy**[3], a Division Bench of this Court held:-

"..... **It is now a well settled principle of law that the ratio of a judgment is the reason assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped off**.

.....This aspect of the matter is no longer res integra in view of the decision of a Three-Judge Bench of the Apex Court in **M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association** (AIR 1992 SC 1439), wherein the Apex Court has laid down the law in the following terms:

"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. **While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence**. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because inspite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending....." (emphasis supplied)

Again in **Government of Andhra Pradesh v. P. Gautam Kumar**[4] a Division Bench of this Court observed:

" ..... **The other aspect of the contention, ie., that on account of "stay of operation of the judgment", the Prakash Singh's case (supra), directive is itself not binding, is a contention that is wholly misconceived. Acceptance of this contention would lead to utter chaos and a de-construction of the principle of stare decisis, an essential integer of our system of law**.

To illustrate, if a judgment of the Supreme Court is referred to and relied upon for conclusions or grant of relief in a judgment by a High Court; and the High Court judgment is appealed against and a stay granted by the Supreme Court, according to the learned Advocate-General the binding authority of the earlier judgment of the Supreme Court is rendered inoperative and the earlier Supreme Court judgment ceases to have a precedential value, during currency of the order of stay. Such a proposition is productive of universal and unmitigated mischief and therefore does not merit acceptance.

From the guidance derived from the precedents referred to, we are of the view that the stay of operation of the Yadav's case (supra), judgment only disables execution of the consequences of the judgment to the parties thereto. Grant of stay does not extinguish the norm(s) predicated in the judgment ..... " (emphasis supplied).

---

[3] 2001 (1) ALD 443(DB)
[4] 2012 (6) ALD 458 (DB)

Mere pendency of the appeal before the Supreme Court would not justify this Court ignoring the law declared by the Division Bench and, till the aforesaid order of the Division Bench in **Jairaj Ispat Ltd**[1] is set aside in appeal by the Supreme Court, this Court is bound by the law declared in the said judgment.

Following the order of the Division Bench in **Jairaj Ispat Ltd**[1], and in terms thereof, this Writ Petition is also allowed. However, in the circumstances, without costs. The Miscellaneous Petitions pending, if any, shall also stand dismissed.

RAMESH RANGANATHAN, ACJ.

Date:08.12.2017.
cs