

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAW] No.1265 of 2018
in
Writ Petition No.5844 of 2016

Kiran w/o Ajaykumar Agrawal
 vs.
 Shyam Co-operative Housing Society Limited and others

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

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Court's or Judge's Orders

Shri R.L. Khapre, Advocate for the Petitioner.
 Shri K.P. Mahalle, Advocate for Respondent No.1.

CORAM : S.B. SHUKRE, J.
DATE : 19th JUNE, 2018.

This Court, on 5th October, 2016 granted interim relief in the nature of stay of the proceedings before the Cooperative Court. This interim relief got it's six months' period of expiry on 4th March, 2017, as per the judgment of the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. vs. Central Bureau of Investigation, in Criminal Appeal Nos.1375-1376 of 2013 delivered on 28th March, 2018

02] As the period of stay expired in terms of the judgment of the Hon'ble Apex Court, the Cooperative Court issued a notice dated 04/06/2018 to proceed with the proceedings.

03] In the aforesaid case, the Hon'ble Apex Court has observed thus.

“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.”

04] It is clear that it is only in exceptional cases that the stay already granted can be continued and the primary reason for continuation of the stay should be no less than the one which speaks about the fact that the grant of stay in a given situation is

more important than having the trial finalized. So, while deciding this present application, it would be necessary for this Court to examine if any exceptional case has been made out and whether the reason of importance of the stay exists in the present case or not.

05] Shri Khapre, learned Counsel for the petitioner has invited my attention to the observations of the Maharashtra State Cooperative Appellate Court made in its impugned judgment, appearing in paragraph 28 thereof, in order to make out an exceptional case. Shri Mahalle, learned Counsel for respondent No.1 submits that the parties are in the negotiating process for striking out a possible amicable settlement between the parties.

06] In paragraph 28 of the impugned judgment delivered by Maharashtra State Cooperative Appellate Court, Mumbai, Bench Nagpur, it has been categorically found that the Cooperative Court has no jurisdiction to entertain the dispute. A perplexing fact, however, appears after recording of such a finding. The Cooperative Appellate Court also opines that in spite of it having no jurisdiction, the Cooperative Court must answer and decide the remaining issues. The relevant observations of the Cooperative Appellate Court, as they appear in paragraph 28, are as follows :

“28. Considering the ratios as referred above, though it is held that, the Cooperative Court has no

jurisdiction to entertain the dispute, even then the Cooperative Court is bound to answer and decide the remaining issues as per the provisions of O XIV R 2 of the Code of Civil Procedure as per the principle laid down in cases reported in AIR 1985 SC 736 & AIR 1984 Bombay 60, wherein it is held that, “when several contentions factual and legal are urged and when there is scope of appeal from the decision of the Court, it is desirable to avoid delay and protraction of litigation that, the Court should when dealing with any matter dispose of all the points and not merely rests its decision on one single point.”

07] It would be clear from the above observations that the Cooperative Appellate Court records a finding along side it's one finding regarding lack of jurisdiction in the Cooperative Court to the effect that so far as the other issues are concerned, the Cooperative Court does have the jurisdiction to decide the same. Once it is held in a sweeping manner that the Cooperative Court has no jurisdiction, it is difficult to *prima facie* accept the finding that still the Cooperative Court is bound to decide all those issues except the issue of jurisdiction. I must say it here that the issue of jurisdiction strikes at the root of the Court and divests the Court of its power to decide the matter on merits. This aspect, it appears, *prima facie* has not been given it's due consideration by the Cooperative Appellate Court.

08] The contradictory findings recorded by the Cooperative Appellate Court, as discussed earlier, in my considered view, would enable me to *prima facie* find that staying of the trial before the Cooperative Court is more important than letting it be finalized. The another reason for this conclusion is provided by the learned Counsel for respondent No.1, when he says that serious talk about compromising the dispute outside the Court is going on between the parties. In the circumstances, I am inclined to allow this application.

09] The application is allowed. There shall be stay to the proceedings before the Cooperative Court until further orders. The application is disposed of accordingly.

JUDGE

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