

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 7 OF 2019.

ADELAIDE M. DE SOUZA AND 4 ORS., ... Appellants

Versus

LUCIO NEVILLE JUDE DE
SOUZA A.K.A. LUCIO DE SOUZA
AND 14 ORS., ... Respondents

Shri J. E. Coelho Pereira, Senior Advocate with Shri V. Braganza,
Advocate for the appellants.

Shri J. Mulgaonkar, Advocate for respondent nos.1 to 4.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 14th February 2020

P.C.

The Procedural History:

In 1985, the members of a family took out the Inventory Proceedings. In those Inventory Proceedings, the auction purchaser was permitted to deposit the bid amount. That was about seven years after the auction took place.

(a) SLP and the Interim Order:

2. Aggrieved, the appellants challenged that order before this Court in Writ Petition No.671/2010. This Court, through its order dated 10.8.2012, confirmed the trial Court's directive—the directive of permitting the auction purchaser to deposit the bid amount. Then, further aggrieved, the appellants' approached the Supreme Court in

Special Leave Petition No.148 of 2013. The Supreme Court ordered *status quo*. That order is not available on record, though.

(b) This Court's View:

3. Later, the respondents applied to the trial Court to continue with the Inventory Proceedings. They contended that the *status quo* affects the property and not the proceedings. As the trial Court was inclined to resume the proceedings, the petitioners filed Writ Petition No. 288/2016. Through its judgment dated 16.11.2016, this Court held thus:

"Para 5. Mr. Usgaonkar, the learned senior advocate, could be justified to contend that there was no bar to continue with the proceedings in case no assets were disposed of in the said proceedings.

Thus the subject plot is the only asset *of the estate leaver further steps in such proceedings would be based on the outcome of such proceedings.*

4. In the light of what could be called this Court's clarification of the Supreme Court' *status quo*, order again the trial Court has kept the proceedings in abeyance.

(c) Deemed Dissipation of Interim Stays:

5. In the course of time, precedentially the Supreme Court in *Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation*¹ has decried the long pendency of cases. It has, in fact, declared that "in all pending cases where stay against proceedings of a civil

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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.”

6. Based on the *Asian Resurfacing’s* directive, the respondents once again applied to the trial Court for the resumption of the proceedings. Thus, the issue of trial before the Inventory Court despite the status quo in the SLP has resurfaced.

(d) Challenge to Resumption & the Supreme Court’s Order:

7. When the trial Court insisted that the petitioners should proceed with the matter, they have filed this Appeal from Order No.7/2019. Besides that, they have also filed an interlocutory application before the Supreme Court in Special Leave Petition No.148/2013. In that application, the appellants complained that the trial Court has been insisting on continuing with the proceedings despite the *status quo* ordered by the Supreme Court. In response, the Apex Court, through an order dated 1.4.2019, besides issuing notice, directed as follows:

“In the meanwhile, status quo with regard to the plot in question to continue”

8. Eventually, the Supreme Court disposed of the Appellants’ interlocutory application on 27.9.2019, reaffirming the *status quo* order:

“I. A. No.1/2013 in SLP(C) No.148/2013 is allowed in terms of prayer (a), i.e., our status quo order dated 07.05.2013 *qua the plot in*

question, will continue until the disposal of the special leave petition in this Court.”

(italics supplied)

9. In fact, when this Appeal from Order has been pending, the above developments took place. That is to say, pending this Appeal, the appellants approached the Supreme Court on the same cause, secured an initial interim order of *status quo*, and later had the interlocutory application disposed of with the same order made absolute.

Parties’ Contentions:

10. Shri Pereira, the learned Senior Counsel for the appellants, has submitted that there is only one property and the Supreme Court's *status quo* prevents any proceedings affecting that property. So the Inventory Court's insisting on the resumption of proceedings is illegal and contemptuous of the Superior Court's orders. In response, Shri Mulgaonkar, the learned counsel for the respondent nos.1 to 4, has submitted that it is erroneous to contend that only one property remains in the inventory proceedings. According to him, at least three immovable properties are involved. Besides, he has also contended that though in 2013 the appellants wanted the Supreme Court to stay the entire proceedings, the Court has consciously confined the relief to the property in question and, thus, not affected the proceedings. Even regarding the property, only *status quo* was ordered.

11. Shri Mulgaonkar has also further contended that even when the appellants sought clarification in the IA No.6629 of 2019, the Supreme Court only reiterated its earlier stand—that *status quo* should be confined to the property. Thus, he urges to this Court not to interfere with the trial Court's desire to proceed with the matter in the light of the Supreme Court judgment in *Asian Resurfacing of Road Agency Private Limited*.

12. In reply Shri Pereira, the learned Senior Counsel, has drawn my attention to the Supreme Court's order, dated 22.7.2019, in *Fazalullah Khan v. M. Akbar Contractor*.² According to the learned Senior Counsel, this order clarifies the directions given in *Asian Resurfacing*.

To Proceed or Not to Proceed:

(a) *Asian Resurfacing*:

13. First, let us see what *Asian Resurfacing* has held. In the context of proceedings under the legislative regime of Prevention of Corruption cases, the Supreme Court in *Asian Resurfacing* has been dismayed at the procedural rigmarole stalling the cases and frustrating the Rule of Law.

14. It has agreed with its own earlier observations in *Ranjeet Singh v. Ravi Prakash*³ that trials of corruption cases are not permitted

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I.A. No.27524 of 2019 in Civil Appeal No(s).

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to proceed further easily. The trial of a corruption case takes even up to 20 years to complete. One major reason for this state of affairs, according to *Ranjeet Singh*, is that the moment a charge is framed, every trial lands in High Court and the order on charge is invariably assailed by the litigants. Flooded with such revision petitions, the High Court would take any number of years in deciding the revision petitions on charge and, till then, the trials would remain stayed.

15. Then, *Asian Resurfacing* has observed that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice, in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases, power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The order granting stay must show application of mind. The power to grant stay ought to be coupled with accountability. Once stay is granted, the Court has further felt, proceedings should not be adjourned but concluded in two or three months.

16. In the above backdrop, *Asian Resurfacing* has adjured all courts across the jurisdictions to remedy the situations where proceedings

remain pending for long on account of stays granted. Remedy is required, it has stressed, not only for corruption cases but also for all civil and criminal cases where on account of stay, the 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.

17. To remedy this, situation, *Asian Resurfacing* has considered it appropriate to direct thus:

[I]n 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.

(b) *Fazalullah Khan:*

18. In *Fazalullah Khan*, the Supreme Court has considered the impact of its directions in *Asian Resurfacing* on the stays granted by itself. In that case, the appellant is a tenant. He claimed that he had an agreement of sale in his favour and wanted its specific performance. The first Appellate Court granted it. The second Appellate Court reversed the decree. Then, the Supreme Court granted leave and

interim protection in March 2009. Based on *Asian Resurfacing*, the landlord wanted to proceed with the eviction proceedings against the appellant-tenant, and the revisional Court felt that on the expiry of six months, the interim stay was no more in force.

19. In the above context, *Fazalullah Khan* has noted that different courts want to rely on the direction in *Asian Resurfacing* “even in respect of interim orders granted by [the Supreme] Court where the period of 6 months has expired. Such a course of action is not permissible”, and if the interim order granted by the Supreme Court is not vacated but continues beyond 6 months, it cannot be said that the interim order would automatically stand vacated.

Back to Brass-Tacks:

20. In the case before me, despite the Supreme Court’s disposing of the IA, still simmers the controversy: Does the *status quo* affects only the property or the whole proceedings? Now, the appellants want to saddle this Court with the unenviable task of clarifying, as it were, the Supreme Court’s order of *status quo*. This Court rather not.

21. That said, we may take a holistic view of the dispute. Indisputably, we must accept that this Appeal from Order and the Interlocutory Application in Special Leave Petition (C)No.148/2013 are for identical purposes: in one sense, to restrain the trial Court from proceeding further with the matter pending the Special Leave Petition,

more particularly, in the face of the *status quo* order the Supreme Court granted in 2013. At any rate, this Court earlier in Writ Petition No. 288/2016 has noted that the property against which the Supreme Court ordered *status quo* in 2013 is the only property that remained in the inventory proceedings. As I understood from paragraph 5 extracted above, this Court, then, wanted the Inventory Court to keep its hands off the case until the SLP is decided. Now, too, the appellants secured an identical order of *status quo* as they did in 2003. This Court in its order, dated 16.11.2012, has already directed the Inventory Court to follow a particular procedure: not to proceed with the matter. It was under identical circumstances. Thus, prudence demands I adopt the same course of action. And, more so, first, *Fazalullah Khan* has circumscribed *Asian Resurfacing's* directional sweep—not to affect the stays granted by the very Supreme Court. Second, the Supreme Court alone can clarify any perceived ambiguity in its orders.

Conclusion:

22. Under these circumstances, as this Court has already held in Writ Petition No. 288/2016, the proceedings shall remain stayed so long as the status quo order continues in the Special Leave Petition pending before the Supreme Court.

23. So, I dispose of this Appeal from Order holding that this Court's direction given earlier in Writ Petition No.288/2016 stands

good even in the face of the subsequent developments, as that order has attained finality. If at all either party to the proceedings desires to have any clarification about the import of the *status quo* order of 2019, it is open for them to approach the Apex Court.

DAMA SESHADRI NAIDU, J.

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