

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 930 OF 2019

Miss Shobha Venkatesh Shet	..Appellant
v/s.	
Mr. Vithal Saudagar & Ors.	..Respondents

Ms. Shobha V Shet, for the Appellant.
Mr. Pramod Kumar Vachheta, for the Respondent No. 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 22th JUNE, 2022.

P.C.

1. With consent, heard finally at the stage of admission.
2. The challenge in this appeal is to the order dated 29th July, 2019 whereby the learned Judge, City Civil Court, Greater Bombay, in exercise of powers u/s 151 CPC stayed the Civil Suit No. 2534 of 2016 pending trial and decision in Criminal Complaint No. 9643 of 2016 pending before the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.
3. The Appellant had filed a Criminal Complaint before

the learned Metropolitan Magistrarte, Balard Pier, Mumbai against these Respondents for offences under Section 500 and 506 read with Section 34 of the Indian Penal Code. The learned Magistrate, has framed the charge and the said case is pending trial.

4. The Appellant has also filed a suit against the Respondents for defamation in respect of the same cause of action. The Respondents filed a notice of motion for stay of the Suit, mainly on the ground that simultaneous prosecution of the criminal case and the civil suit based on the same set of facts would cause embarrassment. The Appellant contested the said motion. The learned Judge, observed that the Suit as well as Criminal Complaint is based on the same set of facts. The Criminal Case was prior in point of time and hence, it is essential that charge of defamation is dealt with by the Criminal Court. It is observed that if the charge is held to be proved, then the said findings can be considered by the Civil Court, but if the suit is decided during the pendency of criminal complaint, there is possibility of the evidence in the civil suit being produced before the Criminal Court, which is likely to influence the Criminal Court

and embarrass the Respondents. Hence, relying upon the decision of this Court in *Arvind Kalidas Wadokar Vs. Ramdas Devidas Joshi, 1996 (2) Mh.L.J. 907* and *Ramanand Nanakaram Ladda & Anr. vs. Dr. Kancharulal Amolakchand Lodha, 1998 (2) Mh.L.J.* the trial Court allowed the Notice of Motion and stayed the Suit. Being aggrieved by this order the Appellant has preferred this Appeal.

5. The Appellant submits that the learned Judge has erred in exercising the power under Section 151 of CPC despite there being a specific provision under Section 10 of CPC. The Appellant has relied upon the decision of the Hon'ble Apex Court in *Guru Grantha Saheb Sthan Mirghat Banaras vs. Ved Prakash and Ors. AIR 2013 SC 2022*, to contend that mere possibility of conflicting decisions is not a ground to stay the Civil Suit. She submits that the Respondents had already filed the written statement and that issues have been framed. It was only after the Appellant had filed the affidavit in evidence that the Respondents filed a Notice of Motion. In such a fact situation there can be no embarrassment to the Respondents.

6. *Per contra*, Mr. Pramod Kumar Vachheta, learned Counsel for the Respondent No. 4 states that Respondents will be embarrassed and prejudiced if the Appellant is allowed to proceed simultaneously with prosecution of Criminal proceedings and the Civil Suit. He submits that the order of the trial Court is based on the decision of this Court in ***Ramanand Nanakaram Laddha*** (supra) and the same does not warrant interference.

7. I have perused the records and considered the submission advanced by the learned Counsel for the respective parties.

8. It is pertinent to note that the suit was sought to be stayed only on the ground that the Appellant had filed a criminal case on the basis of the same set of facts and if the Appellant is allowed to proceed with the Suit, the same will cause embarrassment to the Respondents. It is to be noted that in ***Ramanand Laddha*** (supra) this Court has held that if simultaneous prosecution of Civil Suit and Criminal Proceedings would embarrass the defendant, the Suit is required to be stayed till the

disposal of the Criminal Complaint.

9. It is pertinent to note that in the case of ***Guru Grantha Sahib Sthan*** (supra) the question before the Hon'ble Supreme Court was whether the High Court was justified in staying the proceedings in civil suit till the decision in criminal case. Upon considering the constitution Bench decision in ***M.S. Sherif and Anr. Vs. State of Madras and Anr. AIR 1954 SC 397*** the Hon'ble Supreme Court observed that *"The ratio of the decision in M.S. Sherif is that no hard and fast rule can be laid down as to which of the proceedings -civil or criminal - must be stayed. It was held that possibility of conflicting decisions in the civil and criminal courts cannot be considered as a relevant consideration for stay of the proceedings as law envisaged such an eventuality. Embarrassment was considered to be a relevant aspect and having regard to certain factors, this Court found expedient in M.S. Sherif to stay the civil proceedings. The court made it very clear that this, however, was not hard and fast rule; special considerations obtaining in any particular case might make some other course more expedient and just. M.S. Sherif does not lay down an*

invariable rule that simultaneous prosecution of criminal proceedings and civil suit will embarrass the accused or that invariably the proceedings in the civil suit should be stayed until disposal of criminal case”.

10. The Hon’ble Supreme Court has also referred to the decision in ***State of Rajasthan Vs. Kalyan Sundaram Cement Industries Ltd and Ors. (1996) 3 SCC 87*** wherein it is observed that “*It is settled law that pendency of criminal matters would not be an impediment to proceed with civil suit.*” The Hon’ble Supreme Court also referred to the decision in ***K.G. Premshankar AIR 2002 SCC 3372***, wherein a three Judge Bench took into consideration Section 40, 41, 42 and 43 of the Evidence Act and also the decision in ***M.S. Sherif*** (supra) and observed that the decision rendered by the constitution Bench is binding wherein it has been specifically held that no hard and fast rule can be laid down and possibility of conflicting decisions in civil and criminal court is not relevant consideration.

11. The Hon’ble Supreme Court concluded that the High

Court was not justified in staying the proceedings in the civil suit till the decision of the criminal case. It was held that even if there was possibility of conflicting decisions in the civil and criminal courts such an eventuality cannot be taken as a relevant consideration. On the facts of the case it was held that there was no likelihood of any embarrassment as the Defendant has already filed a written statement in the civil suit and based on the pleadings the issues were frame. It was held that the outcome and or findings that may be arrived at by the civil court will not at all prejudiced the defence in the criminal proceedings.

12. In the instant case, as noted above the Criminal Case and the Civil Suit are based on the same set of facts. The charge has been framed and the Respondents having pleaded not guilty, the Criminal Case is pending Trial. In the Civil Suit, the Respondents have already filed their written statement, issues have been framed and the Appellant has filed her affidavit in evidence. The Respondents having filed their written statement and disclosed their defence, there is no likelihood of any prejudice or embarrassment being caused to the Respondents by continuation

of the civil proceedings. Hence, there are no exceptional circumstances for exercise of inherent powers under Section 151 of CPC. Under the circumstances and in view of the dictum of Hon'ble Apex Court in ***Guru Grantha Saheb*** (supra), learned Judge was not satisfied in staying the Suit on the ground that the same would cause embarrassment or prejudice to the Defendants.

13. For the reasons stated above, the impugned order cannot be sustained. Hence, the Appeal is allowed. The impugned order is set aside. The proceedings in the civil suit shall proceed further in accordance with law.

14. Pending Civil Application (s), if any, stand (s) disposed of in view of disposal of Appeal from Order.

(SMT. ANUJA PRABHUDESSAI, J.)