

Rameshwar Vs. Vth Additional District Judge, Basti and Others

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Court : Allahabad

Decided On : May-28-1998

Reported in : 1998(3)AWC2025

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rules 3 and 4 - Order 39, Rules 1 and 2; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 13293 of 1998

Appellant : Rameshwar

Respondent : Vth Additional District Judge, Basti and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.P. Chaudhary, Adv.

Judgement :

D.K. Seth, J.

1. An application for substitution was filed in Suit No. 357 of 1982. By an order dated 8.1.1998 the learned trial court recorded an order that in view of stay of further proceeding of the suit granted by this Court in Writ Petition No. 11841 of 1984 the said substitution application could not be disposed of, inasmuch as until

stay of further proceeding is vacated the Court cannot proceed with the proceeding. Learned counsel for the petitioner Sri P. P. Chaudhary, contends that disposal of the application for substitution will not decide any controversy between the parties and would not amount to a case decided and neither it will affect the rights of the parties.

2. I have heard Shri P. P. Chaudhary, learned counsel for the petitioner at length.

3. The contention that the decision on an application for substitution will not amount to a case decided does not seem to be sound. A decision on an application for substitution is surely a case decided. Such decision affects the rights of the parties to continue with the suit. It decides controversy between the parties with regard to the rights of the parties to be allowed to be substituted in the proceeding. If it is substitution of the defendants then it would amount to right of the plaintiff to proceed with the suit against the substituted defendants. If it is a substitution of the plaintiff it decides the rights of the substituted plaintiff to continue with the suit. If there is controversy between the parties the same will very well be decided in such proceeding. But however even it is decided, the controversy between the parties affect the rights of the parties, but it does not affect the decision on merits of the suit or the proceeding, it is only an interlocutory matter in aid of the proceeding. There are various kinds of interlocutory matters such as application for injunction, appointment of receiver, attachment before judgment, maintenance pendente lite in matrimonial proceeding, substitution of parties, addition of parties and so on and so forth which are all interlocutory matters without affecting the decision on merits of the suit or proceeding. Whether such interlocutory matters would have any impact or affect on the decision of the merit of the suit or proceeding is a question which is dependent on the facts and circumstances of the case depending on the nature of the proceedings and the substance of the controversy between the parties, the issues involved and the relief sought. If the decision on such interlocutory matter does not affect in any way the decision on the merit, in that event, the stay of further proceeding granted by the superior court would not prevent the Court to decide such interlocutory matters.

4. Therefore, when an interlocutory application is filed it is duty of the Court to see the intent and purpose of the said application and to determine as to whether it will have any impact on the decision on merit of the proceeding. If it is found by the Court that the determination of interlocutory matter would touch the merits of the case, in that event, such matter cannot be decided during the period when the stay of further proceeding granted by the superior court is in operation.

5. Then again the object and purpose of the stay of further proceeding is also a relevant factor which also requires to be looked into. It would depend on the nature and character of the proceeding that is pending before the superior court as well as the nature and character of the order challenged before the superior court and the object and purpose of grant of stay of further proceeding having relevance to the proceeding pending before the superior court. If the interlocutory matter does touches the decision of the merit of the suit or proceeding or encroaches upon the scope and ambit of the issues involved in the proceeding pending before the superior court or in other words, if it affects adversely the outcome of the proceeding pending before the superior court or the decision of the superior court is expected to have an impact in the matter by reason of the decision on the interlocutory matter that is to say that if there appears to be any conflict apprehended or expected having regard to the decision in the interlocutory matter in relation to that of decision or outcome of the pending proceeding before the superior court, in that event, such interlocutory matter cannot be proceeded with.

6. Our experience shows that on many occasions for some reason or other further proceedings are stayed, in order to carry on the process of the suit certain steps are to be taken in aid of the proceedings or any other measures to keep the proceedings alive. The purpose of grant of stay is not the purpose to delay the process. If the interlocutory matters are decided and the suit is kept ready to proceed further as seen the stay of further proceeding cease to be operative from a stage which could have arrived to ripen the case by disposing of interlocutory matter in between without affecting the merit of the case would be in aid of the judicial process and as such not unwelcomed. On the other hand it would shorten the time and help the parties to make the suit ready.

7. Shri P. P. Chaudhary, learned counsel for the petitioner has relied on the decision in the case of Madanlal Agarwal v. Smt. Kamlesh Nigam, AIR 1975 MP 132, in support of his contention that in view of such stay order the Court may not proceed with the trial of the suit on merits but it can certainly take such other steps which are collateral or which may be protective or which may be proposed for keeping this alive, such as in application under Order XXII, Rule 3 or 4 or application under Order XXXIX. Rule 1 or 2, or application under Order XL. Rule 1 or application under Order XXXVIII. Rule 6 of the Code of Civil Procedure, would be maintainable before the trial court inspite of stay of such suit.

8. The decision of the Madhya Pradesh High Court is relied upon by the Calcutta High Court in the case of Dilip Kumar Biswas v. Kamalendu Chanda, AIR 1987 Cal 172, in the said case pending stay granted by the superior court, an application for interim injunction was filed. On this context, the Calcutta High Court has held that an order of stay granted by the superior court does not preclude the trial court from entertaining an application of an urgent nature namely application for temporary injunction, application for appointment of receiver, application for attachment before the judgment and like, although the trial court would have no jurisdiction to proceed with the trial of the suit on merits and had thus agreed with the reasoning in the case of Madanlal Agarwal (supra) of the Madhya Pradesh High Court.

9. Similar view was taken by the Apex Court in the case of Amita Kaushish and others v. Sanjay Kaushish, JT 1995 (8) SC 507, in the said decision, it has been held that the stay of trial does not preclude the respondents to seek such appropriate interlocutory reliefs as may be available and warrant in the facts and circumstances of the case.

10. Having drawn inspiration from the aforesaid decisions, to my mind it appears that such right is not confined only to the respondents but is available to both the parties for the purpose of keeping the proceeding alive and to allow it to progress and also to obtain necessary orders in respect of interlocutory matters which are of imperative necessity depending on the facts and circumstances of the case having regard to the dispute pending before the superior court and the impact of the decision of such interlocutory or other matters on the merits of the suit or the

proceeding itself affecting the decision as observed earlier. Though in the present case it was open to the petitioner to approach this Court in the pending proceeding to obtain necessary modification in the order of stay but then it would be too technical matter, it is for the parties to say before the trial court that it is out of the scope and ambit of the stay so granted by the superior court or within such ambit as the case may be by the contending parties, in such circumstances it is the duty and responsibility of the learned court below to examine the scope and ambit of the stay granted having regard to the interlocutory matters which would have no impact on the said decision and shall not affect the decision on merits of the case. Consequently the application for substitution does not affect the decision on merits of the case but some time it does depending on the facts and circumstances of each individual case; If it is a case of first nature, in that event, it is open to the trial court to proceed with the proceeding and the order of stay will not preclude the Court to the above extent as indicated above.

11. In view of the discussion made above, this petition is allowed. The order dated 8.1.1998 passed by the learned Civil Judge, Junior Division. Basti in O. S. No. 356 of 1992 is set aside. The trial court is hereby directed to decide the application for substitution as early as possible or such interlocutory application if there is any that may have been or may be filed by either of the parties, the decision on which may not affect the decision on merit of the suit and shall not have any impact having regard to the decision in respect of the Issues involved in 11841 of 1994 in the light of the observation made hereinabove. This petition therefore succeeds and is accordingly allowed to the above extent.

12. There will however be no order as to cost.

Let a certified copy of this order be supplied to the learned counsel for the petitioner on payment of usual charges within three days.

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