

**Ved Prakash and ors. Vs. Guru Granth Saheb Sthan and anr.**

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**Court :** Madhya Pradesh

**Decided On :** Nov-24-2008

**Reported in :** AIR2009MP134

**Judge :** K.K. Lahoti and ;Sushma Shrivastava, JJ.

**Appellant :** Ved Prakash and ors.

**Respondent :** Guru Granth Saheb Sthan and anr.

**Judgement :**

ORDER

1. This petition is filed challenging the order dated 21-4-2008 by First Additional Judge to the Court of First Additional District Judge, Panna in Civil Suit No. 10-A/2006 by which the trial Court rejected the application filed by the petitioners under Section 10 read with Section 151 of CPC, seeking stay of the civil suit during the pendency of criminal proceedings, in respect of subject-matter of the suit.

2. The learned Counsel for the petitioners submitted that till the decision in criminal proceedings, the proceedings of the civil suit ought to have been stayed by the trial Court. He placed reliance to the judgment of the single Bench of this Court in New Bank of India v. Radhakishan and Co. 1988 JLJ 678. It was further submitted by Shri Das that when civil suit and the criminal case were based on same cause of action, the civil suit ought to have been stayed and filing of the written statement

was of no consequence.

3. Shri Ajay Ojha, the learned Counsel for respondent, submitted that the petitioners had filed their written statement in the case and now only evidence is to be recorded. In the written statement, the petitioners have already disclosed their defence. In these circumstances, there was no necessity of staying the civil suit. He placed reliance to the Supreme Court's judgment in State of Raj as than v. Kalyan Sundaram Cement Industries Ltd. : (1996) 3 SCC 87).

4. To appreciate the aforesaid contentions, the factual position may be stated:

The plaintiff/respondent filed a civil suit against the petitioners and some other persons seeking declaration of title, perpetual injunction and possession in respect of the disputed lands of which details were furnished in para 2 of the plaint. In para 6 of the plaint, the plaintiff stated that the defendants 1 to 7 in collusion fabricated a Will in the name of Devki Nandan, which was un-registered Will, filed an application seeking mutation before the Tehsildar, Ajaygarh and sought declaration about the will and also that the order of mutation dated 24-11-1999 by the Tehsildar, Ajaygarh directing mutation of the names of the petitioners on the basis of the Will, be declared as null and void.

The petitioners contested the suit and set up their title on the basis of Will. Thereafter, the plaintiff commenced its evidence and when the evidence was going on, the petitioners filed an application for staying proceedings of the civil suit because of pendency of criminal case. The trial Court by the impugned order dated 21-4-2008 found that the proceedings of Civil suit and Criminal case are not based on same facts and because of proceedings of the civil suit, there is no possibility of causing any prejudice to the defendants. The defendants have filed written statement and the case is at the stage of evidence. On these grounds, the trial Court dismissed the application filed by the petitioners. Reliance was placed by the trial Court to the apex Court judgment in State of Rajasthan v. Kalyan Sundaram Cement Industries Ltd. : (1996) 3 SCC 87.

This order is under challenge in this petition. In this case, the factual position is not in dispute that the defendants were claiming their title on the basis of Will dated 2-

7-1997 in respect of which a mutation order dated 24-11-1999 was passed by the Tehsildar. The plaintiff in para 6 of the plaint specifically challenged the Order and sought relief for declaring that the mutation order be declared null and void., The defendants though have filed written statement may be required to appear in the witness box to prove their contentions, stated in the written statement.

5. In Kalyan Sundaram Cement's case (supra), two Judge Bench of the apex Court, considering the question, held that the pendency of criminal proceedings relating to the same matter, there is no impediment to proceed with the civil suit. The Criminal Court would deal with the offence punishable under the relevant Act. On the other hand, the Courts rarely stay the criminal cases, only when the compelling circumstances require the exercise of their power. The Apex Court further observed that 'we have never come across stay of any civil suits by the Courts so far'. The aforesaid judgment is applicable in the set up of the present facts. But the learned Counsel appearing for the petitioners placed reliance to a judgment of the Apex Court in M.S. Sheriff v. State of Madras : AIR 1954 SC 397, which is a judgment of five Judges of the Apex Court. The Apex Court in paras 15 and 16 of the judgment held thus:

15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decision in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of the Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public Interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be

absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

The aforesaid legal position was not brought into the notice of the apex Court in the case of Kalyan Sundaram Cement (supra); In these circumstances, when five Judges Bench of the apex Court held that in these circumstances, the civil suit should be stayed till the criminal proceedings, in our considered opinion, the larger bench judgment is to be followed by the Courts. In the case of Kalyan Sundaram Cement, the judgment of the M. S. Sheriff was not placed for consideration and being a larger bench judgment of the apex Court, it is having a binding effect. A five Judge bench of this Court in Jabalpur Bus Operators Association v. State of M.P. 2003 (1) MPJR 158 held thus:

In case of conflict between two decisions of the apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and Large Bench decisions, the decisions of Larger Bench are binding on the High Courts and the Subordinate Courts. No decision of apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and the Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and Subordinate Courts should lack competence to interpret decisions of apex Court since that would not only defeat what is envisaged under Article 141 of

the Constitution of India, but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in Balbir Singh's case AIR 2001 MP 268 (supra) which holds that if there is conflict of views between the two co-equal Benches of the apex Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in the preceding paragraph of this judgment, does not lay down the correct law as to application of precedent and is, therefore, overruled on this point.

In view of the settled position, we are bound to the decision of the apex Court in M. S. Sheriff, which is a Judgment of five Judges of the apex Court.

6. The judgment of M.S. Sheriff is fully applicable in the present case. The petitioners, who have set up their case on the basis of Will in respect of which the plaintiff has made allegation that it is a forged and fabricated and in that regard criminal proceedings are pending against the petitioners, in our considered opinion, the proceedings in Civil Suit deserve to be stayed. At this stage, Shri. Ojha, the learned Counsel appearing for the respondent submitted that the plaintiffs evidence has already commenced and if at this stage, the proceedings in civil suit are stayed, it shall cause serious prejudice to the plaintiff. It is submitted by him that even if the proceedings are to be stayed, then the plaintiff should be permitted to conclude its evidence and thereafter, after the decision in criminal case, the defendants may commence their evidence. Though the aforesaid contention appears to be just and proper, but in view of the specific mandate in the case of M.S. Sheriff (supra), we are unable to accept the aforesaid contention. The apex Court has very specifically held that in such situation, the proceedings of civil suit should be stayed. This petition is accordingly allowed. The order passed by the 1st Additional District Judge to the Court of Additional Judge, Panna dated 21-4-2008 in Civil Suit No. 10-A/2006 is hereby set aside and it is directed that till the

decision of criminal case, the proceedings in Civil Suit No. 10-A/2006 shall remain stayed.

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