

Jayaraman Vs. Lalitha and ors.

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Court : Chennai

Decided On : Jan-30-1999

Reported in : (1999)2MLJ561

Appellant : Jayaraman

Respondent : Lalitha and ors.

Judgement :

ORDER

A. Ramamurthi, J.

1. The petitioner is the third defendant in O.S. No. 101 of 1990 on the file of Sub Court, Kancheepuram. The respondents/plaintiffs filed a suit, claiming a sum of Rs. 5 lakhs by way of damages, from the petitioner and other persons. The petitioner (3rd defendant) and the 4th defendant filed unnumbered I.A. SR. No. 6199 of 1998 under Section 10 of the Code of Civil Procedure, to stay all further proceedings in the case till the final disposal of C.A. No. 467 of 1 992 on the file of this Court. The respondents opposed the application and after hearing both sides, the trial court dismissed the petition and aggrieved against this, the petitioner (3rd defendant), has filed the present revision.

2. The learned Counsel for the petitioner contended that the court below erred in dismissing the petition under Section 10 read with 151 of the Code of Civil Procedure. The issue involved in the suit as well as in the criminal appeal is one

and the same and the decision in the criminal appeal would be binding while disposing of the suit. The learned Counsel also relied upon a decision in *Kusheshwar v. Bharat Coking Coal Limited* : (1988)IILLJ470SC and also another decision in *P.S. Kandasami Mudaiiar v. T.N. Ranganathan* : AIR1973 Mad476 in support of his contention.

3. It is seen from *Kusheshwar's* case : (1988)IILLJ470SC , that there were simultaneous proceedings in the criminal court as well as disciplinary proceedings taken by the department. It is only under such circumstances since both actions were initiated on one and the same set of facts, the disciplinary proceedings could be stayed. Similarly in respect of the other case where one party has filed a petition before the Tahsildar for registering his name as a tenant in R.T.R., the suit filed by the other party can be stayed under Section 10 of the Code of Civil Procedure. There is no dispute about the proposition, but the applicability of the same depends upon the facts and circumstances in each case.

4. The first respondent/plaintiff filed a petition W.P. No. 2938 of 1985 on the file of this Court and it was held by a Division Bench of this Court that Vadivelu, the husband of the first respondent has not been let off from the police custody after he had been taken to the police station. The petitioner and others were directed to produce the said Vadivelu before the Court on 11.7.1988. Since he was not produced, this Court on 7.12.1988 passed an order, directing the State Government to pay an interim compensation of Rs. 50,000 and also observed that the interim compensation will not preclude the party from bringing a suit to recover from the State and its erring officers. Later only, the respondents have come forward with the present suit seeking damages, I am unable to agree with the contention of the learned Counsel for the petitioner. It is also admitted that the petitioner and other persons have been convicted by the trial court and the matter is pending in appeal in C.A. No. 467 of 1992 on the file of this Court. The learned Counsel further pointed out that the disposal of the appeal is relevant to be considered in the trial of the suit. However it may be, the civil case is based on damages, whereas the criminal case relates to the punishment imposed on the accused persons concerned. There may be some identity in respect of both the cases, but I am of the view that Section 10 of the Code of Civil Procedure cannot

be made applicable to the case on hand. The suit was filed in the year 1990 and now more than nine years have passed. It cannot be said that the matter in issue is directly and substantially concerned with the other matter. The disposal of the criminal appeal may be incidentally relevant to be considered, but on this ground the trial of the suit cannot be stayed. Hence, I find no reason to interfere in the order passed by the trial court.

5. For the reasons stated above, the revision fails and is dismissed. The trial court is directed to expedite the trial in a period of three months from the date of receipt of the records, uninfluenced by any of the observations made in this order and dispose the same in accordance with law. It is open to the petitioner to raise the defence available to him according to law, at the time of the trial. Consequently, C.M.P. No. 1086 of 1999 is also dismissed.

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