

P. Swaroopa Rani vs M. Hari Narayana @ Hari Babu on 4 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1884, 2008 (5) SCC 765, 2008 AIR SCW 2106, (2008) 6 ALLMR 12 (SC), (2008) 5 CTC 358 (SC), 2008 (5) CTC 358, 2008 (3) SRJ 595, 2008 (3) SCC(CRI) 79, 2008 (3) SCALE 501, (2008) 65 ALLINDCAS 258 (SC), 2008 (6) ALL MR 12 NOC, (2008) 106 CUT LT 539, (2008) 2 ALLCRIR 1661, (2008) 3 MAD LJ(CRI) 1596, (2008) 6 MAH LJ 509, (2008) 4 MPLJ 512, (2008) 3 RAJ LW 2293, (2008) 2 RECCRIR 492, (2008) 3 SCALE 501, (2008) 2 UC 1064, (2008) 72 ALL LR 171, (2008) 2 ANDH LT 123, (2008) 3 CAL HN 95, (2008) 2 ALLCRILR 493

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Bench: S.B. Sinha, V.S. Sirpurkar

CASE NO.:

Appeal (civil) 1734 of 2008

PETITIONER:

P. Swaroopa Rani

RESPONDENT:

M. Hari Narayana @ Hari Babu

DATE OF JUDGMENT: 04/03/2008

BENCH:

S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 1734 OF 2008 [Arising out of SLP (Civil) No. 15670 of 2006] WITH CIVIL APPEAL NO. OF 2008 [Arising out of SLP (Civil) No. 16215 of 2006] S.B. SINHA, J :

1. Leave granted.

2. Appellant is the owner of a cinema theatre. An agreement of sale dated 28.03.2001 was entered into by and between the parties hereto in respect of the said property for a consideration of Rs. 64 lakhs. Respondent made part payment of Rs. 32,97,000/- of the said amount. A suit for specific performance of the contract was filed as no deed of sale was executed in terms of the said agreement dated 28.03.2001.

3. During hearing of the said suit, a receipt was filed showing payment of a sum of Rs. 4,03,000/- to the appellant herein. The said receipt was marked as Exhibit A.15. On the said basis, allegedly, possession of the theatre was obtained by the respondent. The learned Trial Judge, however, dismissed the said suit by an order dated 29.04.2006 inter alia opining:

"45. Therefore, in the circumstances I find that there is no evidence produced by the plaintiff which is sufficient to outweigh the opinion and the evidence of D.W.4. Further it is to be seen that though after execution of Ex. A.15 he came to know about huge debts by defendant under the said mortgage deeds, taxes dues and other statutory liabilities and that defendant were not cooperating and adopted evasive attitude in clearing the debts, dues and other liabilities and were not allowing him to discharge the mortgage debt to the Union Bank of India, he kept quite till filing of the suit, without even issuing a notice to the defendant. Even if he was in possession as claimed by him with effect from the date of Ex.A.15, in view of the huge debts and liabilities, which to his knowledge the defendant was not in a position to discharge and not making any efforts to discharge the same he would not have kept quite in the normal circumstances without issuing any notice to the defendant. Thus there is no mention about this Ex.A.15 dated 18.09.2002 in the written form anywhere till he filed the plaint on 05.12.2002. Therefore, these circumstances also render the oral evidence of P.W.1 and P.W.2 highly doubtful on this aspect. Therefore, in these circumstances I find that the evidence of D.W.4 and the contents of Ex.C.4 opinion and Ex.C.5 reasons for opinion are sufficient to prove that the signature of D.W.1 is forged in Ex.A.15. Therefore in the circumstances it shall be held that the contention of the plaintiff and the evidence of P.W.1 that on 18.09.2002 he paid Rs. 4,03,000/- towards part of sale consideration and D.W.1 delivered possession of plaint schedule theater to him is not true. Therefore, in the circumstances it also shall be held that the plaintiff failed to prove that he came into possession of the plaint schedule property in pursuance of the part performance of the contract covered by Ex.A.4."

It was furthermore opined:

"Therefore, following this decision of the Honourable High Court of Andhra Pradesh it shall be held that the plaintiff, since failed to prove that he paid Rs. 4,03,000/- towards part payment of sale consideration of D.W.1 and she delivered possession of plaint schedule to him on 18.09.2002 and passed Ex.A.15 receipt. It shall be held that though the time is not the essence of the contract and the plaintiff is justified in not making further remaining part of sale consideration by 31.12.2001, since he approached the court with unclean hands he cannot be granted a decree for specific performance. Since it is a specific case that he came into possession of plaint schedule property in part performance of Ex. A.4 agreement of sale, on 18.09.2002 under Ex. A.15 and failed to prove the same, it is irrelevant and not necessary to decide how he came into possession of the plaint schedule property. Therefore, in the circumstances he is also not entitled for protection under section 53-A of Transfer of Property Act

and hence is not entitled to seek perpetual injunction."

4. Appellant, in view of the said observations, lodged a First Information Report, which was marked as Crime No. 79 of 2006, in the Kadapa Police Station alleging that the said receipt (Ex. A.15) was a fabricated document.

5. Respondent, however, preferred an appeal against the said judgment and decree dated 29.04.2006. In the said appeal preferred by the respondent, an application for interim stay of the operation of the said judgment was filed. A Division Bench of the High Court by a judgment and order dated 24.05.2006 directed:

"Going by the principle that an appeal is a continuation of the suit and the state of affairs obtaining during the pendency of the suit must be continued, as far as possible, during the appeal also, we grant an interim direction to the effect that the petitioner shall be entitled to remain in possession of the suit schedule theatre, subject to the condition that it shall deposit a sum of Rs. 30,000/- (Rupees thirty thousand only) per month, commencing from June 2006, until further orders. It shall also be open to the respondent to withdraw the amount without furnishing any security."

6. Respondent filed Miscellaneous Petition in the said appeal, being ASMP No. 995 of 2006, for modification of the order dated 24.05.2006, which was allowed by an order dated 17.07.2006.

7. By another order dated 17.07.2006, the High Court stayed the proceedings in Crime No. 79 of 2006.

8. Appellant is, thus, before us.

9. Mr. V.R. Reddy, learned Senior Counsel appearing on behalf of the appellant in Civil Appeal arising out of SLP (C) No. 15670 of 2006, would submit that the High Court committed a serious illegality in staying the investigation of a criminal case.

10. Mr. P.S. Narsima, learned counsel appearing on behalf of the appellant in Civil Appeal arising out of SLP (C) No. 16215 of 2006, would submit that keeping in view the observations made by the learned Trial Judge and furthermore in view of the fact that the respondent had not approached the court with clean hands, no interim order in his favour should have been passed.

11. Mr. Bhaskar Gupta, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that the court has power to grant injunction even in respect of a proceeding which is stricto sensu not the subject matter of the proceedings before the High Court.

12. The High Court indisputably is a final court of fact. It may go into the correctness or otherwise of the findings arrived at by the learned Trial Judge. A' fortiori it can set aside the findings of the court below that the Ex. A.15 is a forged document or its authenticity could not be proved by the

respondent.

13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. [See *M.S. Sheriff v. State of Madras* AIR 1954 SC 397, *Iqbal Singh Marwah v. Meenakshi Marwah* (2005) 4 SCC 370 and *Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants* (2005) 12 SCC 226]

14. It is furthermore trite that Section 195(1)(b)(ii) of the Code of Criminal Procedure would not be attracted where a forged document has been filed. It was so held by a Constitution Bench of this Court in *Iqbal Singh Marwah* (supra) stating:

"25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in *Sachida Nand Singh* after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In *Statutory Interpretation* by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong."

In regard to the possible conflict of findings between civil and criminal court, however, it was opined:

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein "

It was concluded:

"33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis."

15. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.

16. The High Court, therefore, in our opinion, was not correct in staying the investigation in the said matter.

Reliance has been placed by Mr. Gupta on *Mahar Jahan and Others v. State of Delhi and Others* [(2004) 13 SCC 421] wherein this Court was dealing with a proceeding under Section 145 of the Code of Criminal Procedure. This Court noticed that a civil dispute was given the colour of a criminal case. As therein a proceeding under Section 145 of the Code of Criminal Procedure was pending, when a civil suit was also pending before a competent court of law, it was opined:

"4. It is not disputed by the learned counsel for the parties that this very property which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 CrPC may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit."

It was furthermore observed:

"7. We have simply noted the contentions raised by the parties. The civil court, in our opinion, would be the most appropriate forum to take care of such grievances and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil court exercising the power conferred on it by Sections 94 and 151 of the Code of Civil Procedure."

It was, therefore, a case where this Court quashed a proceeding under Section 145 of the Code of Criminal Procedure as the matter pending before it arose out of a civil proceedings. Such observations were made keeping in view the fact that possession of the parties over the property in suit was in question.

17. The impugned order, therefore, cannot be sustained which is set aside accordingly. Civil Appeal arising out of SLP (C) No. 15670 of 2006 is allowed.

18. We, however, are of the opinion that the High Court should be requested to hear the appeal as early as possible and preferably within a period of three months from the date of receipt of a copy of this order. This, however, may not be taken to mean that we have entered into the merit of the matter.

19. It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible.

20. In view of the aforementioned observations, we are of the opinion that the interim order dated 24.05.2006 as modified by an order dated 17.07.2006 need not be interfered with particularly in view of the fact that according to the respondent it had made a payment of Rs. 35,47,000/- besides the disputed payment of Rs. 4,03,000/- and made deposits of Rs. 67,54,088/-.

21. For the reasons aforementioned, Civil Appeal arising out of SLP (C) No. 16215 of 2006 is dismissed.