

(2002) 09 AHC CK 0066

In the Allahabad High Court

Case No : C.M. Stay Extension Application No. 80063 of 2002 in C.M.W.P. No. 22025 of 2001

Iqbal Husain

APPELLANT

Vs

District Judge, Moradabad and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 13, 14
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 98, 151

Citation : (2002) 5 AWC 3721

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Vikram Gulati, A.K. Rai and S.N. Singh, for the Appellant; Madhur Prakash, S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—The short questions that arise for consideration in this application are, what is the effect of time-bound stay order? Whether a time-bound stay order can be extended after its expiry?

2. The brief facts are that the predecessor of the Respondents filed a suit for arrears of rent and ejectment against Rijwan, which was decreed ex parte on 28.4.1993. Revision filed by Rijwan was also dismissed on 24.2.1997. In execution, the Petitioner filed objection under Order XXI, Rules 97, 98 and 101 read with Section 151, Code of CPC The objection was allowed on 28.5.2000 and execution was rejected by the trial court. The Respondents filed an appeal and revision, which were allowed by a common order on 10.5.2001. The Petitioner challenged the order dated 10.5.2001, by filing the instant writ petition. This Court on 8.6.2001 granted interim order and stayed the operation of the impugned judgment till the next date of listing and directed the matter to be listed in the third week of July, 2001. On 18.7.2001, this Court extended the stay

order passed on 8.6.2001 till 31.8.2001. The Petitioner moved another application for extension of stay on 30.4.2002, stating that the Court ordered on 18.7.2001 to list this case in the week commencing 20.8.2001 but the case could not be listed and thereafter, there was strike of lawyers in the High Court. It is prayed that the stay order dated 8.6.2001 as extended on 18.7.2001 be extended.

3. I have heard Shri Vikram Gulati, learned Counsel for the Petitioner and Shri Madhur Prakash, learned Counsel appearing for Respondents and standing counsel.

4. The question is as to what is the effect of time-bound stay order? I have given my anxious consideration to the question. Learned Counsel for the Petitioner has placed reliance on the decisions of this Court in *Ashiq Ali v. Mohd. Shakeel and Ors.*, 1985 (3) LCD 362 ; *Shamboo Nath Singh Yadav v. State of U.P.* 1994 (1) ALR 32 ; *Ram Abhilash Misra v. Cane Commissioner and Ors.* 1998 (1) ARC 526 ; Division Bench decision in *Shiksha Prasar Samiti, Allahabad and Anr. v. Registrar, Societies, Chits and Firms, U.P., Lucknow and Ors.* 1998 (1) ESC 367 and *Vishnu Dutt Sharma Vs. Regional Joint Director of Education, Agra and others*, , wherein it has been held that time bound interim order passed either till the next date of listing or for a fixed period would not exhaust or expire on the date fixed by the Court. Even if the matter is listed and the case is not taken up, the stay order will continue till the Court applies its mind to the case. In *Dr. Luis Proto Barbosa Vs. Union of India and others*, , the Apex Court examined whether an interim order granted by the Court survives after expiry of the period for which it was granted. The Court held,

The question as to what is the outer terminal point of the operation of the restraint, when the expression "in the meantime" is used is arguable. That expression takes its colour from the context. They are "words of relation and refer not only to a time that is to begin, but to a time which is also to end. It is difficult to say the period of the restraint spilled over October 30, 1990 and the restraint on altering the "status quo" continued...

This decision does not find mention in any of the decisions relied by the Petitioner. But it leaves no scope for argument that where the interim order is passed, "in the meantime", it would expire on the date fixed by the Court. On this ratio, interim order till the next date of listing or till a particular date would expire on the date when it is listed or on the date fixed by the Court or on expiry of the period mentioned in the order. It cannot be deemed to be extended or treated to be operative from earlier date. If the case is listed on the date fixed by the Court and the stay order is not extended, irrespective of the fact whether the Court was able to take up the case or not, the stay order would expire and the Respondents would be free to execute the impugned order in absence of any extension of the stay. Similar will be the position with regard to the time-bound stay order. When a Court passes a time-bound interim order for a particular period, then such an order cannot be deemed to be extended, unless another

order is passed extending it before expiry of the period for which it was granted or a fresh stay order is passed. Since the stay order granted in favour of the Petitioner had expired on 31.8.2001, it did not survive thereafter. The stay order which had ceased to be operative could not be extended, consequently the application for extension of stay is not maintainable.

5. The learned Counsel for the Petitioner then argued that this application may be directed to be placed before the same Hon"ble Judge who had passed the earlier interim order. This requires examination of Rules 13 and 14 of Chapter v. of the Allahabad High Court Rules, 1952 (in brief rules). They are extracted below :

13. Subsequent application on the same subject to be heard by the same Bench.- No application to the same effect or with the same object as a previous application upon which a Bench has passed any order other than an order of reference to another Judge or Judges, shall except by way of appeal, ordinarily be heard by any other Bench.

The application when presented by or on behalf of the person by whom or on whose behalf such previous application was made shall give the necessary particulars of such previous application, the nature and the date of the order passed thereon and the name or names of the Judge or Judges by whom such order was passed.

14. Tied up cases.-

(1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it.

6. Rule 13 requires an application to the same effect or for same object to be normally placed before the same Judge. Rule 14 provides that an ex parte order would not be treated as tied-up to the Bench, which passed the order. How to reconcile these two rules where time-bound stay order expires. I have already held that in such cases, application for extension of stay is not maintainable. But fresh application for stay can be filed. The question is whether such application can be decided by any Judge or it can be listed only before the Judge who granted time-bound stay order. For this purpose, the two rules are to be so read as to operate harmoniously. In my opinion, in all such cases where interim order is granted after hearing, may be standing counsel only, it would not be an ex parte order and if the interim order is time-bound , etc., it ceases to be operative for any of the reasons, then the remedy of the Petitioner would be to move fresh application for stay and it should be listed before the same Judge who had passed the interim order unless he is not available. In this view of the matter, the

request of the learned Counsel for the Petitioner to list the application for extension before the same Hon''ble Judge cannot be accepted. The period, for which stay order was granted having expired before filing of this application, it has become infructuous. The remedy of the Petitioner is to move fresh stay application before the same Hon''ble Judge who granted time-bound stay order.

7. Subject to the observations made above, the stay extension application is rejected.