
(2010) 07 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 7899 of 2010

Karam Chand Thapar Brothers (C.S.) Ltd.

APPELLANT

Vs

Nandini Roofing System Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) CriLJ 4745 : (2011) 7 RCR(Criminal) 1906

Hon'ble Judges : Shyam Shankar Tiwari, J

Bench : Single Bench

Judgement

Shyam Shankar Tiwari, J.—Heard learned Counsel for the Petitioner and the learned AGA and perused the record.

2. This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India for quashing the orders dated 9.11.2009, 7/8.2.2010 and 30.4.2010 (filed as Annexure-6 to the writ petition) passed by the learned trial court in Case Crime No. 1780 of 2006 (Karam Chand Thapar and Brothers (C.S.) Ltd. v. Nandini Roofing System Pvt. Ltd. and Ors. and also to issue a mandamus commanding the learned trial court to proceed with the trial in the aforesaid case immediately without any further delay.

3. Briefly stated the facts giving rise to the present petition are that the Petitioner required a supplier having the capacity and expertise of the manufacturing/fabrication of customized GCI sheets, which were required by the Petitioner for construction work at Tehri Dam. The Respondents misrepresented to the Petitioner that they had the required expertise of manufacturing/fabrication of customized GCI sheets. They were fully aware of the fact that their representation was false only in order to induce the Petitioner to part with their property. They falsely represented to have that capacity. The Petitioner parted with a huge money amounting to Rs. 24 lacs and further an amount of Rs. 18 lacs towards raw materials. The Respondents failed to deliver the GCI sheets to

the Petitioner as per requirement. The Respondents retained the entire amount of money with them. The Petitioner demanded the money back from them, but they not only refused to, return that money, but also threatened to sell the entire raw materials and the machinery in the open market.

4. The Petitioner instituted criminal proceedings against the Respondents before the court of learned CJM, Ghaziabad. A Criminal Case was registered on Case Crime No. 7780 of 2006 against the Respondents. Subsequently, the learned Special CJM (CBI), Ghaziabad by an order dated 31.7.2006 directed the Respondents to appear before the-court. The Respondents did not appear. Accordingly, process of bailable warrant was issued against them by the trial court.

5. The Respondents challenged the above proceedings pending before the court below u/s 482 Code of Criminal Procedure. before this Court, which was registered as Criminal Misc. Application No. 12371 of 2006 (Nandini Roofing System Pvt. Ltd. v. Special Judicial Magistrate (CBI) on 17.10.2006. An interim stay order was granted by this Court on 17.10.2006 in the aforesaid Criminal Misc. Application in favour of the applicants, who were Respondents before the court below. This interim stay order was extended till the next date of listing by an order dated 13.3.2008. Thereafter, Criminal Misc. Application No. 12371 of 2006 was listed for hearing on several dates, but the interim stay order was not extended.

6. Since, further proceedings before the trial court came to stand still on account of the interim stay order dated 17.10.2006, the Petitioner accordingly, filed an application before the trial court in Case Crime No. 1780 of 2006 with a prayer to proceed with that case further, as there was no stay order in existence in respect of the proceedings pending before the court below. The learned trial court declined to proceed further with the trial pending before it hence the present petition has been filed.

7. It is submitted by the learned Counsel for the Petitioner that since there is no stay order in existence, the learned trial court has wrongly declined to proceed further with that case. There is no justification for not proceeding with the case before trial court.

8. A very short question of law is involved in this case as to whether an interim stay order granted by this Court earlier on a particular date is still in existence justifying the trial court not to proceed with the case pending before it, though that stay order has not been specifically extended on future dates.

9. A perusal of the record reveals that after 20.3.2008 no extension of interim stay order has been granted by this Court. It is also apparent from the record that in the beginning proceedings pending before the court below were stayed by order dated 17.10.2006 and lastly it was extended on 13.3.2008. Subsequently, on future dates it was not extended. A perusal of the ordersheet of the learned court below filed on record shows that the proceedings before the court are being

adjourned with the remark that the proceedings are stayed by this Court. Even after the Petitioner moved an application before the court below specifically stating that there is no stay order, the trial court did not take any notice of it rather continued to mention in the order-sheet that further proceedings are stayed by this Court, in this regard order dated 9.11.2009, 7/8.2.2010 and 30.4.2010 may be mentioned. It is apparent from the record that the interim stay order granted earlier has not been extended after some dates, but the proceedings before the court below are still being adjourned on the ground that the proceedings are stayed by this Court.

10. It is further argued by the learned Counsel for the Petitioner that once the interim stay order granted is discontinued on record, though, there is no specific mention that the stay order is not extended it has got the same force and it should be treated that there is no interim stay order staying further proceedings pending before the court below. This matter has been considered at length by a Division Bench of this Court in the case of State of U.P. and Others Vs. Committee of Management, D.A.V. Inter College and Another, in which it has been observed as follows :

It cannot be said that an interim order passed for a limited period would continue automatically, if for the one or the other reason the case could not be taken up by the court. If the court has passed an interim order for a limited period unless that order is extended, it would not continue automatically.

11. The Hon"ble Apex Court in the case of Ashok Kumar and Others Vs. State of Haryana and Another, has held as follows :

There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise ; the same would continue to operate. We, therefore, are of the opinion that the judgment of the High Court cannot sustain, which is set aside accordingly.

12. Similar view has been taken by the Apex Court in the case of Arjan Singh Vs. Punit Ahluwalia and Others, In that case it was held as follows :

We agree with the High Court on this issue, if the order of injunction was operative up to a particular date, technically the order of injunction shall not remain operative thereafter.

13. In that case an injunction order was passed for a limited period and thereafter, it could not be extended. Since on the date fixed the Presiding Officer was on leave and later on, the case having been transferred to another court, the order was neither extended nor vacated. Despite the fact that even the application for extension was pending. The High Court took the view that once no order of extension of the interim order was passed and the interim order was operating till particular date it would not continue automatically and would cease on the date on which it was granted.

14. In the present case it appears that lastly, the interim order was granted on 13.3.2008 by this Court. Thereafter, the case had been listed for hearing on 20.3.2008, 25.8.2008, 1.9.2008, 17.10.2008, 6.11.2008, 17.11.2008, 17.2.2008 and on 7.4.2009 and so on but the interim order was never extended on those dates.

15. In view of the foregoing discussions and the facts and circumstances of the case, the impugned order passed by the learned trial court on 9.11.2009, 7/8.2.2010 and on 30.4.2010 cannot be justified and accordingly, the order passed by the learned court below is hereby set aside. There should be no doubt in the mind of the court below that interim stay order once granted by this Court for a limited period will not continue to be effective even in future though not specifically extended on future dates. The case is remanded back to the trial court to pass a fresh order in the light the law laid down by the Apex Court in the aforementioned case and to proceed further with the case.

16. With the aforesaid observations, the petition is finally disposed of.