
(1992) 09 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeal No. 3932 Of 1992

Modern Food Industries (India) Ltd. and Another	APPELLANT
Vs	
Sachidanand Dass and Another	RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Citation : (1995) 4 SCC 464 Supp

Hon'ble Judges : M. N. Venkatachaliah, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. M/s. Modern Food Industries (India) Ltd. and its Chairman-cum-Managing Director seek special leave to appeal to this Court from the order dated 3rd July 1992 made by the High Court of Patna in M.J.C. No. 555 of 1992.

We have heard Shri Mukul Mudgal, learned counsel for the petitioners. The respondents, though served, have remained unrepresented. Special Leave granted.

2. The learned single Judge of the High Court by his order dated 10th January 1992 quashed the order of termination of the services of the first respondent, by the appellants and directed his reinstatement and payment of back-salary. Appellants preferred an appeal to the Division Bench and also sought a stay, pending appeal, of the operation of the learned single Judge's order. The Division Bench did not take up the appeal for admission nor considered the prayer for interlocutory stay. In the meanwhile, on the allegation that the learned single Judge's order had not been obeyed, the first respondent moved for initiation of proceedings for contempt against the appellants pursuant to which the High Court directed the Chairman of the first appellant to appear in person so that the complaint of contempt be proceeded with.

3. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to

examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice, this is the view taken in *State of J. and K. vs. Mohammad Yaqoob Khan*, (1992) 2 SCALE 424.

4. In the present case, under the threat of proceedings of contempt, the appellants had had to comply with the order of the learned single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is virtually rendered infructuous by the steps they had to take on threat of contempt.

5. We, accordingly, direct that all further proceedings in the contempt proceedings be stayed. It will be appropriate for the High Court to take up and dispose of the application for stay without reference to the developments in the interregnum, namely, that the respondent had had to obey the order of the learned single Judge under pain of proceedings of contempt. Depending upon the outcome of the appellants' application for stay, the further question whether or not the reinstatement should be reversed would arise.

6. The appeal is disposed of accordingly.