
(2005) 03 AHC CK 0137
In the Allahabad High Court
Case No : Writ Petition No.1573 (M/S) of 2005

Mudit Verma and Others

APPELLANT

Vs

Cooperative Tribunal and Another

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Citation : (2005) 03 AHC CK 0137

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard learned counsel for the parties. Rejoinder Affidavit filed, taken on record. Since short question is involved in the present writ petition, with the consent of parties" counsel I proceed to decide at admission stage. The question involved is whether a Court has got power to extend the time bound interim order in case it lapses on account of nonresumption of work by the Court on a working day?

2. Against an order dated 20.1.2005 passed by Deputy Registrar, Cooperative Societies (opposite party No.2) petitioner had preferred an appeal under Section 98 of the Cooperative Societies Act before the Appellate Authority (opposite party No.2). During the pendency of appeal a time bound interim order was passed by the Cooperative Tribunal laying the order of surcharge passed by Deputy Registrar, Cooperative Societies. The time bound interim order was for the period upto 14th March 2005. On 14th March 2005 in the absence of quorum the Tribunal had not resumed its work. A copy of questionnaire has been filed as Annexure 8 to the writ petition. The questionnaire shows that the appeal was adjourned for want of quorum. Accordingly, the interim order passed by the Tribunal could not be extended on 14th March 2005. Petitioner had moved an application for extension of interim order on 16th March 2005. The petitioner's application was heard by Cooperative Tribunal on the same day and it was rejected. The order dated 16th March 2005 passed by the Cooperative Tribunal as contained in Annexure1 to the writ petition is reproduced as under:

?Rejoinder filed by appellant Adj. application by L.C. Mr. S.P. Shukla and Mr. Rakesh Srivastava Fix 18.3.2005 for further final arguments.

The appellant has moved an application to extend the stay order dated 7.3.2005. We have heard the L.C. for the parties. The stay was not extended after 14.3.2005, hence now there is no ground to extend.?

3. Feeling aggrieved with the aforesaid order petitioner had approached this Court under Article 226/227 of the Constitution of India. The submission of the learned counsel for the petitioner is that when the Tribunal had not resumed its work on 14.3.2005 it was highly unjustified on its part to reject the petitioner's application. Further submission of Shri Umesh Chandra assisted by Shri S.P. Shukla learned counsel for the petitioner is that no one should suffer from any inaction or the fault on the part of Court. Once Tribunal had not resumed its work on 14th March 2005 an application was moved in a short period, on 16th March 2005 then it was incumbent upon the Tribunal to extend the interim order which was lapsed on 14th March 2005.

4. While defending the impugned order Shri S.N. Shukla, learned Standing Counsel had relied upon the judgment of this Court reported in 2003(21) LCD 304, Iqbal Husain v. District Judge, Moradabad and submitted that after expiry of the interim order the Tribunal was not competent to extend the stay which was already lapsed on 14th March 2005.

On the other hand, petitioner's counsel submits that the judgment relied upon by the Standing Counsel on Iqbal Husain's case shall not be applicable under the facts and circumstances of the present case.

5. The further submission of the learned counsel for the petitioner is that in one another case reported in 2001 (1) UPLBEC 693: (2001(19) LCD 484), Vishnu Dutt Sharma v. Regional Joint Director of Education, Agra, the same Hon'ble Single Judge of this Court had considered similar aspect of the matter and arrived to the conclusion that once time bound interim order is passed it shall not expire and court has got right to extend the same on motion of appropriate application.

6. I have given my anxious consideration to the argument advanced by the parties counsel. While delivering the judgment of Vishnu Dutt's (supra) His Lordship Justice V.M. Sahai had considered the various statutory provisions provided under the rules of the Court, coupled with various judgments of this Court, and arrived to the following conclusion:

?The law thus appears to be settled, so far this Court is concerned, that time bound stay orders do not cease to be effective by efflux of time. The result in law is that a time bound order has the same effect as an order till further orders of the Court. In other words it continues to operate till it is recalled, vacated or modified. The rules also do not provide for time bound stay orders. Yet the confusion prevails and every day large number of applications are filed for

extension of such orders consuming lot of Court's time. In the circumstances it has become necessary not only to dispose of this application but also to issue following directions to the office:

The request for extension of interim order is disposed of by saying that no order is necessary as the time bound interim orders do not exhaust after expiry of time mentioned in the order. The Registrar General of the Court is directed to issue necessary directions to the office within one week that in view of the decision of this Court the applications for extension of time bound interim orders need not be listed. But if the petitioner applies for questionanswer from the office to find out whether his application was pending and interim order was continuing even after expiry of time mentioned in the order the answer be given by the office in the affirmative.?

7. Later on while considering similar dispute in Iqbal Husain's case a judgment of Apex Court was relied upon by His Lordship, Justice V.M. Sahai. While relying upon the judgment of Apex Court reported in 1992 Supp. (2) SCC 644, *Dr. Luis Proto Barbosa v. Union of India and others*, finding has been given to the effect that once an interim order lapse then it can not be extended except by moving afresh application.

In the case of *Luis Proto Barbosa* (supra) the Apex Court had proceeded to held as under:

?10. It is relevant to recall that the said Writ Petition No.492 of 1990 was filed by a certain Dr. Wilfred De" Souza who sought a declaration that the appellant and several others had incurred the disqualification and had ceased to be the members of the House. Apart from the somewhat ironical situation that appellant should take shelter under an interlocutory order in a writ petition which itself sought a declaration of appellant's disqualification, it is doubtful whether the order for maintaining ?status quo?, made in the said writ petition, could be said to be subsisting on December 14, 1990 on which date the order of disqualification was made. The order on which Shri Parekh relies reads:

?Last time when the matter was listed before this Court, Mr. Jethmalani appearing for respondents had settled that until the end of July; disputes would not be adjudicated. This matter could not be taken up by this Court because of the exigencies of the work. In that view of the matter, the matter will be taken up as soon as the situation of the list of this Court permits. List the matter on October 30, 1990. In the meantime, status quo as on today will continue.?

11. Respondent 3, who was elected under and for the purpose of the proviso to Paragraph 6 of the Tenth Schedule asserts that he was not a party to the said writ petition and that the said order did not bind him. Shri Sharma, his learned Counsel, however, contends that even assuming that respondent could be attributed with the Knowledge of this order, the order cannot be held to survive beyond October 30, 1990. Shri Sharma urges that the expression ?in the meantime? limits, in point of time, the operation of the order only till 30, 1990

and that, at all events, that order was not passed for the benefit or at the instance of the appellant to entitle him to take advantage of it.

12. 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. The order was not made either at the instance nor for the benefit of the appellant. In the facts of the case we do not think we are justified in construing the 'status quo' order to continue to operate even after October 30, 1990 or even if did, it enured to the benefit of the appellant.

8. Relying upon the aforementioned judgment of Apex Court in the case of Iqbal Husain Hon. Mr. Justice V.M. Sahai had proceeded to hold as under:

'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. Judge who granted time bound stay order.'

9. A close reading of the Apex Court judgment at the face of record shows that the Apex Court was not cease (sic seized) with the matter where an interim order was not extended on account of the fact that Court had not resumed work. In the present case, the interim order was not extended only on account of fact that in the absence of quorum the Tribunal had not resumed work on 14th March 2005. The facts and circumstance raised by petitioner's counsel in the present case seem to be different than the fact which was adjudicated by this Court in Iqbal's case. Otherwise also the Apex Court had not dealt with the power of a Court to extend time bound interim order after its expiry. Hence, Courts shall not be powerless to extend the time bound interim order under the particular facts and

circumstance of a case.

10. However, the further submission is that in the event of two conflicting judgments of this Court of the coordinate Benches, the Court may follow the judgment which appears to lay down the correct law. Learned counsel for the petitioner had relied upon the Full Bench judgment of this Court reported in 1991(9) LCD 149, Ganga Saran v. Civil Judge. The relevant portion from Ganga Saran's case is reproduced as under:

?Similar situation arose before a Full Bench of Punjab and Haryana High Court in the case of M/s Indo Swiss Time Limited, Dundahera v. Umrao and others, AIR 1981 P and H 213. What the Full Bench in the said case held is extracted below:

?Now the contention that the latest judgment of a coordinate Bench is to be mechanically followed and must have preeminence irrespective of any other consideration does not commend itself to me. When judgment of the superior Court are of coequal benches and, therefore, of matching authority then their weight inevitably must be considered by the rational and the logic thereof and not by the mere fortuitous circumstances of the time and date of which they were rendered. It is manifest that when two directly conflicting judgment of the superior Court and of equal authority are extant then both of them cannot be binding on the court below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the superior Court are earlier or latter is a consideration which appears to me as hardly relevant.?

This decision was followed by the Bombay High Court in the case of Special Land Acquisition Officer v. Municipal Corporation, AIR 1988 Bombay 9. The majority of judges in the Full Bench held that if there was a conflict between the two decisions of equal benches which cannot possibly reconcile. The courts must follow the judgment which appear to them to state the law accurately and elaborately. We are in respectful agreement with the view expressed by the Full Bench of Punjab and Haryana High Court. In the case of M/s Indo Swiss Time Limited v. Umrao and others (supra) especially when the Supreme Court while deciding Qamruddin's case (supra) did not notice the U.P. amendment to Section 115, Code of Civil Procedure and earlier decision of the Supreme Court.?

11. There is one more reason to apply the ratio of judgment of this Court in Vishnu Dutt's (supra) case. In the aforementioned judgment as discussed hereinabove neither the Apex Court nor this Court had dealt with circumstance where interim order was not extended on account of fact that the Court concerned was not available to adjudicate upon the dispute or to extend the interim order. It has been settled by Apex Court in a case reported in AIR 1966 SC 1631, Jang Singh v. Brij Lal and others that no person should suffer for inaction or the fault on the part of Court. Any injury caused to a person on account of inaction on the part of Court should be remedied appropriately. For

convenience relevant portion from Jang Singh's case is reproduced as under:

It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to court and asks for the assistance of the court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court. If it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: *actus curiae neminem gravabit*.

7. In the present case the Court could have ordered Jang Singh to make the deposit after obtaining a certified copy of the decree thus leaving it to him to find out the correct amount and make the correct deposit. The Court did not do this. The Court, on the other hand, made an order and through its clerk prepared a challan showing the amount which was required to be deposited. Jang Singh carried out the direction in the order and also implicit in the challan, to the letter. There was thus an error committed by the court which the Court must undo and which cannot be undone by shifting the blame on Jang Singh. To dismiss his suit because Jang Singh was also partly negligent does not exonerate the Court from its responsibility for the mistake. Jang Singh was expected to rely upon the Court and its officers and to act according to their directions. That he did so promptly and fully is quite clear. There remains, thus, the wrong belief induced in his mind by the action of the Court that all he had to pay was stated truly in the challan and for this error the court must take full responsibility and it is this error which the Court must set right before the suit of Jang Singh can be ordered to be dismissed.

The Apex Court judgment in Jang Singh's case (*supra*) has been relied upon by this Court in a case reported in 1993 (11) LCD 486, *S.S. Barathokey v. Chairman, U.P. Seeds and Tarai Development Corporation Ltd.* and another, where an *ex parte* interim order was recalled by this Court which was passed without providing opportunity of hearing and serving a notice on the Caveator, in the absence of Stamp Reporter noting.

12. In view of above, I hold that in case an interim order is lapsed on account of nonresumption of work or lapses on the part of Court itself Court has got power to extend such interim orders. Under above facts and circumstance of the present case, it was incumbent upon the Tribunal to extend the interim order when an application was moved before it on 16th March 2005.

Under the above facts and circumstances of the case, the writ petition deserves to be allowed. A writ in the nature of *certiorari* is issued, quashing the impugned

order dated 16th March 2005 passed by opposite party No.1 to the extent it declined to extend the interim order operative till 14th March, 2005. The opposite parties No.1 is directed to reconsider the petitioner's application for extension of interim order and pass appropriate order forthwith in accordance to law in the light of observation made hereinabove. Till a decision is taken by the opposite party No.1 afresh in the light of observation made hereinabove the status quo anti shall be maintained as was existing on 14th March 2005. The Tribunal shall proceed ahead with the appeal in question and decide the same in accordance to law expeditiously. Petitioner shall cooperate so that the appeal may be expedited on an early date.

Writ petition is allowed accordingly. No order as to costs.

(Petition allowed)