

(2003) 05 MP CK 0058

In the Madhya Pradesh High Court

Case No : Civil Revision No. 101 of 2003

Smt. Sudharani Agrawal

APPELLANT

Vs

Surendra and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115, 151
Penal Code, 1860 (IPC) — Section 498

Citation : (2003) ILR (MP) 1224 : (2003) 3 MPHT 364 : (2003) 3 MPLJ 563 :
(2003) 4 RCR(Criminal) 590

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; R.P. Khare, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.

Being aggrieved by the order dated 16-12-2002, passed by ADJ, Jabalpur in C.S. No. 1-B/2001 allowing the application u/s 151, CPC for stay of suit, this revision u/s 115, CPC is preferred by the petitioner.

Madhu was married to respondent Surendra. Respondent Ashadevi, Basant Kumar, Ramkumar and Shiv Kumar are family members of respondent Surendra Kumar. As a result of harassment and demand of dowry, Madhu committed suicide on 19-4-2000. Therefore, on a complaint made to the police, criminal case was registered against the respondents. Respondents were tried in S.T. No. 194/2000, Court of ASJ, Jabalpur for offence under Sections 498A and 304B of IPC. Vide judgment dated 27-8-2001 respondents were acquitted of the charge u/s 304B, IPC. However, respondents Surendra and Smt. Ashadevi on conviction u/s 498, IPC, were sentenced to R.I. for a period of three years and pay fine of Rs. 5,000/-. Against the conviction and sentence, respondents Surendra, Ashadevi have preferred a criminal appeal pending in High Court. Plaintiff/petitioner Sudharani being mother of Madhu instituted C.S. No. 1-B/2001 (Annexure P-1)

in the Court of 4th ADJ, Jabalpur for recovery of Rs. 13,21,000/- towards Stridhan of Madhu and damages etc. The suit has been resisted by the respondent by filing written statement (Annexure P-2). After framing of issues when the trial was at the stage of evidence, respondent filed application (Annexure P-4) u/s 151, CPC requesting to stay the proceedings of C.S. as the criminal appeal arising out of the judgment passed in S.T. No. 194/2000 has been preferred by the respondents Surendra and Smt. Ashadevi and the same is pending in the High Court. This petition was contested by the petitioner, however, vide impugned order dated 16-12-2002 it was allowed and suit has been stayed u/s 10 of CPC till the decision of criminal appeal arising out of judgment passed in S.T. No. 194/2000. Being aggrieved, this revision is preferred on the ground that the order impugned suffers from material irregularity.

Civil proceedings can be stayed u/s 151, CPC when criminal proceedings in respect of same subject-matter is pending on the ground that the continuance of civil proceedings would embarrass and prejudice the accused in effectively contesting the criminal case. C.S. No. 1-B/2001 (Ex. P-1) has been instituted and the respondents have filed their written statement (Annexure P-2), the issues were settled and at the stage of evidence application for stay of suit (Annexure P-4) was filed. Trial in S.T. No. 194/2000 in the Court of ASJ, Jabalpur since has been concluded. Respondents Surendra, Ashadevi have been convicted u/s 498, IPC. The appeal against the conviction/sentence has already been preferred and is pending in High Court. It cannot be said that the proceeding in instant suit would embarrass and prejudice the respondents in effectively contesting the criminal case, i.e., appeals arising out of conviction the sentence/acquittal are in High Court. S.T. No. 194/2000 since has been disposed of vide judgment dated 27-8-2001, no embarrassment, prejudice would be caused to the respondents. In the judgments *Sheetal K. Bandi v. Rishi*, reported in 1998 (2) MPLJ 6 and *Anand Bakshi v. Tanviruddin Rizvi* 2002 (4) M.P.H.T. 65 (CG), it has been held that pendency of civil suit cannot be the impediment to proceed with the civil suit.

On facts and circumstances of the case, the proceedings in C.S. No. 1-B/2001 ought not to have been stayed by allowing the application u/s 151, CPC. The impugned order suffers from material irregularity and deserves to be set aside.

Revision is allowed. Order impugned is set aside. Instead, the Court below is directed to proceed with the suit. Parties to bear their costs. Counsel fee as per rules or certificate (whichever is less).