
(2009) 04 MP CK 0057
In the Madhya Pradesh High Court

Smt. Vandana Tiwari

APPELLANT

Vs

Shri Ajay Pande and Another

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (2009) ILR (MP) 2540 : (2009) 4 MPHT 299 : (2009) 2 MPJR 204 :
(2009) 4 MPLJ 512

Hon'ble Judges : K.K. Lahoti, J;Abhay M. Naik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This petition is directed against an order dated 28-3-2009 by Second Additional District Judge, Bhopal in Civil Suit No. 146-A/05 by which petitioner's application u/s 10 read with Section 151, CPC praying for staying the civil suit filed by the petitioner, was dismissed.

Learned Counsel for the petitioner submitted that though the petitioner lodged an FIR against the defendant which has been quashed by the High Court in Misc. Cr. Case No. 9852/06 on 6-2-2007 but an SLP is pending before the Apex Court and till the decision by the Apex Court, further proceedings in the civil suit deserve to be stayed.

To appreciate the aforesaid contention, record and the impugned order perused.

The facts of the case are that the petitioner filed a suit for declaration, partition and perpetual injunction against the respondent in which the respondent No. 1 set up a case of a Will in his favour. After filing of the written statement, petitioner lodged an FIR at Police Station, Habibganj, which was registered as FIR No. 466, dated 18-5-2006. The respondent No. 1 challenged the aforesaid registration of the criminal case before the High Court in Criminal Case No. 9852/06 and vide order dated 6-2-2007, the aforesaid petition was allowed and the FIR lodged against the respondent No. 1 was quashed by the High Court.

Thereafter, petitioner herein filed an SLP before the Apex Court which is stated to be pending.

The petitioner moved an application before the Trial Court on 24-3-2009 for staying further proceedings before the Trial Court u/s 10 read with Section 151, CPC. The Trial Court found that at present no criminal case is pending against the respondent and the application was dismissed. This order is under challenge in this petition.

From the perusal of the aforesaid fact, it is apparent that the petitioner himself lodged an FIR against the respondent No. 1, though a criminal case was registered against the respondent No. 1 but ultimately it was quashed by the High Court in Misc. Cr. Case No. 9852/06 though against the aforesaid an SLP is pending but this by itself is not sufficient ground to stay the civil proceedings. The Apex Court considered this aspect in M.S. Sheriff Vs. The State of Madras and Others, , and held thus:

15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the Civil and Criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

The aforesaid judgment is fully applicable in the present case. The aforesaid embarrassment in a civil suit may be to the defendant but not to the plaintiff who himself filed the suit and has already pleaded material facts in the plaint.

In view of the aforesaid, the Trial Court rightly found it appropriate to reject the application in which we do not find any error of jurisdiction. This petition is found without merit and is dismissed at the admission stage with no order as to costs.