(2011) 09 BOM CK 0120

In the Bombay High Court

Case No : Civil Application No. 3994 of 2011 in First Appeal No. 1811 of 2011

Times Global Broadcasting Co. Ltd. and Another APPELLANT

Vs

Parshuram Babaram Sawant RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 1(3), Order 41 Rule 5, Order 41 Rule 5(5)

Citation : (2011) 113 BOMLR 3801

Hon'ble Judges : Nishita Mhatre, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : I.M. Chagla, with Mr. A.S. Doctor instructed by M/s. Kanga and Co, for the Appellant; Aspi Chinoy and Mr. D.D. Madon, with Mr. S.K. Sen instructed by y Mr. V.P. Sawant, for the Respondent

Judgement

1. By this application, the applicants-defendants pray for stay to the operation and execution of the decree dated 26/4/2011 and under challenge in First Appeal No. 1811 of 2011, during the pendency of the said appeal.

2. We have heard the learned counsel for the respective parties at length. Mr. Chagla, the learned Senior Counsel for the applicants has relied upon the decision of this court in the case of Rustom K. Karanjia and Another Vs. Krishnaraj M.D. Thackersey and Others, as well as the decision of the Supreme Court in the case of Malwa Strips Pvt. Ltd. Vs. Jyoti Ltd., in support of his prayer for unconditional stay to the decree under challenge. As per Mr. Chagla, the scheme of Order 41 Rule 1(3) is directory in nature and not mandatory and it is, therefore, left to the discretion of this court that the impugned decree could be stayed without furnishing any security or without directing the deposit of any amount, if sufficient reasons have been made out by the appellants. It was submitted that the subject telecast of the plaintiff''s photograph, per se, has not caused damage to the reputation, integrity, standing or character of the plaintiff and the photograph was telecast for 15 seconds without any repeat on the channel (Times Now) on 10/9/2008. It was also urged before us that it was a

totally unintended inadvertence and at the earliest opportunity corrective steps, including writing a letter to the plaintiff, were taken.

3. Mr. Chinoy, the learned Senior Counsel appearing for the plaintiff invited our attention to the provisions of Rule 1 and 5 of Order 41 of CPC and submitted that when it comes to granting stay to the execution of the decree, this court has the discretion only to direct deposit of the decretal amount or to direct furnishing security for the said amount. It was also submitted that Order 41 Rule 1 would operate when the appeal is admitted, but when it comes to granting stay to the decree under challenge, Rule 5 of Order 41 of CPC would come into play.

4. There is no doubt that in the case of Malwa Strips Pvt. Ltd. (Supra), the Supreme Court proceeded on the assumption that although the word "shall" has been used in Order 41 Rule 1(3) of the Code, the same is not mandatory in character and thus, may be read as directory. However, in the case of Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai and Co., , the Supreme Court on the power of the Appellate Court to stay the decree in first appeal stated thus, "Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5), a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases."

5. Mr. Chagla pointed out that in the first letter dated 15/9/2008, the plaintiff had claimed by way of compensatory damages an amount of Rs.50 crores and the said amount was increased in the subsequent letter dated 27/9/2008. The suit was filed for claiming damages of Rs.100 crores and the same has been allowed. It was further submitted that if the entire amount is directed to be deposited or the defendants are called upon to furnish security for the said amount, their right to appeal is defeated and the appeal would remain pending for years together. Mr. Chagla, therefore, urged that this is a fit case to stay the decree unconditionally during the pendency of First Appeal No. 1811 of 2011.

6. In rebuttal, it has been pointed out that the suit telecast was on 10/9/2008 at about 6.30 p.m. The photograph of the plaintiff was displayed while telecasting news relating to the "Provident Fund Scam" allegedly involving some Judge of

the Calcutta High Court. On the instructions of the plaintiff, his Secretary Mr. Kamat had called the channel between 6.30 to 8.30 p.m. on the same day. Despite this telephone call, the channel did not take any corrective / clarificatory steps. Nothing was done for another 4-5 days and on 15/9/2008 the plaintiff addressed a letter to the channel which was received on 18/9/2008 as has been proved in the evidence. The clarificatory telecast was done for the first time on 23/9/2008 i.e. after 5 days from the receipt of the letter of the plaintiff. Mr. Chinoy, therefore, submitted that the defendants'' behaviour was nothing short of a reckless attitude and, therefore, no case has been made out to exercise the discretion to reduce the amount of deposit or security in any manner.

7. We have considered the arguments advanced by the parties and the enunciations relied upon. We allow the application in terms of prayer clauses (a) and (b), subject to the condition that an amount of Rupees twenty crores is deposited by the applicants-defendants with the Registry of this court within 6 (six) weeks from today and a bank guarantee of a nationalized bank for the remaining amount of Rupees eighty crores is furnished to the Registry of this court within a period of 10 (ten) weeks from today. The deposited amount shall be invested in a fixed deposit initially for a period of one year with a nationalised bank.

