

(1990) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Civil Revision No. 30 of 1987

Union Bank of India

APPELLANT

Vs

M/s Shiv Dall Mill and Others

RESPONDENT

Date of Decision : 14-02-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 02 MP CK 0015

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : S.K. Rao, for the Appellant; A.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—This revision u/s 115 of the CPC has been preferred by the applicant/plaintiff against the order dated 19.6.1987 of the trial Court staying the proceedings in the suit pending decision of criminal case alleged to be on similar nature.

2. The necessary facts are that the plaintiff, which is a Bank filed a suit for recovery of an amount of Rs. 12,41,535.34, against the non-applicant. It has been pleaded/inter alia in the plaint that the N.A.2 Kanhaiyalal Sippi cheated the bank presenting false and bogus bills and thus obtained a facility loan of Rs.5,50,00,000 from bank. The plaintiff bank has reported the matter to the police. The respondent No.2 is alleged to have made an application to the High Court for grant of anticipatory bail, which was pending. At this stage an application dated 8.12.1986 was filed in the present sit for stay of the proceedings in the suit pending decision of the criminal case. In the application for stay it was stated by the respondent No.2 that his defence in the criminal case would be prejudiced if the proceedings in the civil suit are allowed to go on. The nature of that prejudice was, however, not stated.

3. The applicant/plaintiff opposed that application on the ground, amongst

others, that the stay has been sought with a mala fide purpose to avoid the passing of the decree and to fritter away the mortgaged property, on the basis of which the loan was advanced. The plaintiff also informed the Court that the police had not taken any action against the respondent No.2 and the bank was required to file a criminal complaint which is pending in the "Court of Judicial Magistrate First Class. A copy of the order sheet dated 3.7.1987 filed along with the memorandum of revision, of the proceedings of the Court of J.M.F.C. Sehora, shows that the proceedings in the complaint were stayed for a period of three months awaiting filing of a police challan in the same matter.

4. On the date of the filing of the application for stay by the defendants in the pending suit in this case, there had been only a report of the alleged offence made to the police and the offence was said to have been registered against the respondent No.2 by the police, but no criminal case had commenced in Court of law. The complaint case filed by the Bank had not been registered and the proceedings on the same were also later on stayed by order dated 3.7.1987, referred to above.

5. In the circumstances of the case, the question before me is whether the trial Court committed any error of jurisdiction or procedure in staying the proceedings of the suit for indefinite period awaiting decision of the so called criminal case, the details of which have not been mentioned by the Court. The trial Court in staying the suit has placed reliance on a decision of the Supreme Court reported in *M.S. Sheriff Vs. The State of Madras and Others*, The learned counsel appearing for the applicant Bank submits that the Court clearly exceeded its jurisdiction in staying the whole proceedings of the suit. The grant of stay is likely to cause irreparable harm or injury to the plaintiff inasmuch as the action of the respondents with regard to their assets and properties may ultimately frustrate the execution of the decree likely to be passed against the defendants, on the basis of the loan advanced. The counsel for the applicant submits that there were not circumstances existing making it expedient for the trial Court to stay the entire proceedings of the suit for an indefinite period of time.

6. The learned counsel appearing for the N.As. support the order of stay passed by the trial Court on the ground that continuance of the civil proceedings would prejudice the defence of N.As. in the criminal case instituted against them and would embarrass the trial. It is also argued that an adverse decision or judgment in the civil case would bind the criminal Court and would hard the defence of the N.As. The counsel also argued that the trial Court was right in placing reliance on the decision of the Supreme Court in the case of *M.S.Sheriff (supra)* in which similar course was adopted in staying the civil case pending decision of the criminal case. The learned counsel for the N.A.s placed reliance on the decision in (i) *P.S. Velayutham Chetty. In re*, AIR 1924 Mad 516 (ii) *Varadaraja Chettiar v. Swami Maistry and others*, AIR 1948 Mad 49; and (iii) *In the matter of a pleader*, 17 Cri LJ 153, for the proposition that judgments in civil cases are relevant indisposing of criminal cases. Reliance has also been placed on an unreported

decision of Hon"ble Faizanuddin J. in Civil Revision NO. 1170/80 decided on 16.1.1981 Mohanla v. Sheoram, in which relying on the decision of the Supreme Court in the case of M.S.sheriff (supra), proceedings in the suit were stayed.

7. Having considered the submissions of the counsel appearing for the parties and having gone through the decision of the Supreme Court as also other rulings relied on by the parties, I am of the view that in the present case, the trial Court committed serious error of jurisdiction in staying the whole suit for an indefinite period of time awaiting decision of the so-called criminal case, stage of which was not known to the trial Court at the time of passing of the stay order. The decision of the Supreme Court in the case of M.S.Sheriff(supra), relied on by the trial Court cannot be taken to be a decision laying down a rule of law that whenever there are criminal and civil cases pending on the same subject-matter, the civil case has to be stayed pending decision of the criminal case. The decision of the Supreme Court on the contrary clearly lays down that the decision in a civil case is not binding in a criminal case and the only relevant consideration in likelihood at embarrassment to the party concerned. CPC also does not permit stay of civil suit pending decision of a criminal case of same or similar nature. It would be relevant to quote the observations of the Supreme Court in the case of M.S.Sheriff (supra) as under:

"This however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or other criminal proceeding may be so near its end as to make it expedient to stay it in order to give precedence to a prosecution ordered u/s 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

8. In the instant case, the stage of criminal case is not yet known. The stage of taking defence by the N.As. has not also been reached. The stay of the suit, therefore, is likely to cause irreparable injury to the plaintiff bank, more so when there are allegations of fraud and cheating against the defendants. The plaintiff/bank cannot be made to wait for an indefinite period of time for taking necessary steps for recovery of the loan advanced by seeking attachment and/or sale of the mortgaged property or to proceed against the sureties or securities. In my opinion, therefore, the trial Court committed serious error in not at all taking into consideration the relevant factors before ordering an absolute stay of the suit. It may be noticed that even in some of the judgments of this Court in Civil Revision No.215/80 decided on 14.8.1980 (Mohanlal v. Smt. Kalabai) and Civil Revision No,1170/80 decided on 16.1.1981 (Mohanlal v. Sheoram), the suits were stayed only till the recording of defence evidence in the prosecution case. In these cases also there was no absolute stay of Civil suit pending final decision of the criminal cases. The course adopted by the trial Court was most unjust and highly prejudicial so far as the interests of the bank in the amount of loan advanced was concerned. This, is, therefore, a fit case for interference u/s 115 of the C.P.C.

9. Consequently, the revision succeeds and is hereby allowed. The impugned

order dated 19.6.1987 passed by the trial Court is hereby set aside. The trial Court is directed to proceed expediently with the trial of the suit in which no progress has been made since the date of the passing of the order in the year 1987. In the circumstances of the case, the parties shall bear their own costs of this revision.