SUPREME COURT OF INDIA

Kishor Kirtilal MehtaI

Vs.

Lilavatikirtilal Mehta Medical Trust

Civil Appeal No. 2917of 2007

(Tarun Chatterjee and P.K.Balasubramanyan)

09/07/2007

JUDGEMENT

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. When the Petitions for Special Leave to Appeal challenging the orders of the High Court came up for admission, the contesting respondents appeared to oppose them. So, with the consent of parties and taking note of the limited issue that is before this Court, we are disposing of these matters finally here and now.

3. The suit out of which these appeals arise is one filed by Mrs. Charu Kishor Mehta, the appellant, in the two appeals arising out of Petitions for Special Leave to Appeal - CC Nos. 5818 and 5819 of 2007. The dispute relates to the administration of a trust named Lilavati Kirtilal Mehta Medical

Trust governed by The Bombay Public Trust Act, 1950. The suit challenged a notice dated 27.4.2006 issued for convening a meeting of the trustees on 29.4.2006 to resolve certain disputes and sought a declaration that the resolution allegedly adopted by that meeting was illegal and void and other incidental reliefs. By an order of this Court dated 26.3.2007 in Civil Appeal No. 1575 of 2007, the suit was directed to be taken up and disposed of as expeditiously as possible and at least within a period of six months from that date. An interim arrangement was also made by that order. It is the common case that pursuant to the direction of this Court, the trial has commenced, the plaintiff examined in part, and her examination remains incomplete, to be continued later. As of now, a witness for the plaintiff is being examined. It is also submitted that as per the direction of this Court, the suit has to be disposed of before 26.9.2007.

4. Defendant No. 11 in the suit is the husband of the plaintiff and defendants 12 and 13 are their children. They were impeded by way of an amendment of the plaint. Defendant No. 11 filed a written statement supporting the case of the plaintiff. Defendants 12 and 13 filed a joint written statement. They also essentially supported the plaintiff. According to the contesting defendants, the written statements filed, sought to introduce averments not germane to the plaint and seeking to widen the scope of the controversy. They therefore filed an application seeking to have such pleadings in the two written statements struck out. Defendants 11 to 13 opposed that prayer. The trial court passed an order dated 30.4.2007 striking out paragraphs 4 to 31, 35 and 36 of the written statement of defendant No. 11 and paragraphs 4, 7, 11 and 12 from the joint written statement of defendants 12 and 13. Feeling aggrieved, defendants 11 to 13 filed W.P. No. 4407 of 2007 before the High Court purporting to invoke Article 227 of the Constitution of India, challenging the said order. While the High Court issued notice on the Writ Petition returnable by 20.7.2007, it refused to stay the suit or the operation of the order dated 30.4.2007. It is this refusal to grant an interim order of stay that is impugned in SLP (C) No. 10954 of 2007.

5. Meanwhile, the plaintiff filed an affidavit in lieu of her chief-examination in terms of Order XVIII Rule 4 of the Code. The contesting defendants filed an application for striking out that part of the evidence in the affidavit, which, according to them, travelled outside the pleadings in the plaint. The plaintiff filed an objection to that application. By order dated 13.6.2007, the trial court accepted the plea of the contesting defendants and struck out paragraphs 11, 21 to 25, 27 and 29 in the affidavit of examination-in-chief filed by the plaintiff. Feeling aggrieved by that order, the plaintiff filed W.P. No. 4698 of 2007 invoking Article 227 of the Constitution of India, challenging the order of the trial court. Though the High Court admitted the Writ Petition and issued notice returnable on 20.7.2007, it declined to grant a stay of trial of the suit or of the operation of the order dated 13.6.2007. Feeling aggrieved by the refusal of the High Court to grant an interim order pending disposal of the Writ Petition, the plaintiff has come up to this Court by way of Petition for Special Leave to Appeal arising out of CC No. 5818 of 2007.

6. The plaintiff, confronted with the order dated 13.6.2007 striking out a portion of her affidavit evidence in chief-examination, moved an application for amendment of the plaint. By the proposed amendment, she sought to add paragraphs 3(a), 3(b) as also paragraphs 7(a)(i) and 7(a)(ii) to the plaint. The contesting defendants opposed that application on various grounds. The trial court, by

order dated 16.6.2007, dismissed the application. Challenging the said order, the plaintiff filed W.P. No. 4697 of 2007 in the High Court under Article 227 of the Constitution of India. The High Court while admitting the said Writ Petition and issuing notice returnable by 20.7.2007, declined to stay the suit or the operation of the order dated 16.6.2007. This declining to grant stay is challenged in the Petition for Special Leave to Appeal arising out of CC No. 5819 of 2007.

7. Learned counsel for the plaintiff and defendants 11 to 13, the appellants before us, submitted that having admitted the challenge to the orders of the trial court, the High Court was not justified in refusing to stay the operation of the respective orders. Counsel specifically submitted that they were not seeking a stay of the trial of the suit but were only seeking a stay of the operation of the orders refusing the amendment of the plaint, striking out portions of written statements of defendants 11, 12 and 13 and a part of the chief-examination of the plaintiff covered by the affidavit. Counsel submitted that if ultimately the petitions under Article 227 of the Constitution of India filed by the plaintiff and defendants 11 to 13 challenging the orders of the trial court are to be allowed, then during the examination of the witnesses, all those aspects covered by the amendment and the untruncated written statement and that covered by the chief-examination affidavit, would have to be elicited in the examination of the witnesses, and if meanwhile the evidence is concluded, this will result in considerable confusion and the evidence will have to be reopened, witnesses recalled and these matters covered all over again. Counsel therefore submitted that the operation of the relevant orders may be stayed pending disposal of the writ petitions by the High Court. This would cause no prejudice to anyone.

8. Learned Senior Counsel appearing for the contesting respondents submitted that the High Court was in error in admitting the petitions under Article 227 of the Constitution of India since the amendment brought to Section 115 of the Code was not intended to be one opening the floodgates to enable every order to be challenged under Article 227 of the Constitution of India. Article 227 of the Constitution of India was concerned with correcting errors of jurisdiction and the High Court ought not to have entertained the writ petitions filed by the plaintiff and defendants 11 to 13. The plaintiff and defendants 11 to 13, if so advised, had an opportunity to challenge these orders in terms of Section 105(1) of the Code, in any appeal against the decree that they may be forced to file. Counsel pointed out that in view of the proviso to Order VI Rule 17 of the Code introduced in the year 2002, the amendment of the plaint sought for could not be granted in this case, since the evidence had already commenced when the application was made and there was no extraordinary circumstance justifying the allowing of the amendment. Similarly, the orders striking out portions of the written statements and the affidavit in chief-examination also could not be interfered with. It is not for us to consider these arguments at this stage and it is for the contesting defendants to raise these contentions before the High Court wherein the orders of the trial court are under challenge. The High Court which is entertaining the challenge to the orders of the trial court, we are sure, would consider those contentions as well while it takes up the writ petitions for final disposal.

9. Learned counsel for the contesting respondents further submitted that an order of stay of the operation of the orders impugned before the High Court would result in impediment to the trial of the suit and such an order cannot be passed in the light of the specific directions earlier issued by

this Court. Counsel further submitted that the High Court had the jurisdiction either to grant an interim stay pending an adjudication or not to grant it and it is not for this Court exercising jurisdiction under Article 136 of the Constitution of India to entertain such Petitions for Special Leave to Appeal and to pass orders interfering with the orders of the High Court. Counsel submitted that if any stay is granted by this Court that would lead to an argument that the Supreme Court had found merit in the challenge of the plaintiff and defendants 11 to 13, to the orders of the trial court and that would send a wrong signal. Counsel submitted that on the facts and in the circumstances of the case, there was no reason to interfere with the orders of the High Court refusing to grant a stay of operation of the orders passed by the trial court.

10. It is true that it is not for this Court to interfere with each and every interim order passed by the High Court. But, there may be occasions when this Court is called upon to step in, in its corrective jurisdiction. But that, of course, will depend upon the facts and circumstances of a particular case and they may be rare. While therefore we agree with the submission of learned Senior Counsel for the respondents that normally this Court should not interfere with the refusal to grant a stay by the High Court in a particular proceeding, we cannot assume the position that this Court will never do so whatever be the circumstances. Whether an appropriate circumstance exists in this case, is another matter.

11. As far as the submission that an interim order of stay, if it were to be granted by this Court, would influence the High Court or lead it into thinking that there is merit in the petitions filed before it by the plaintiff and defendants 11 to 13, the same does not give enough credit to the judicial approach a High Court has to make or to the experience and familiarity of the concerned judge with the procedure. After all, merely because this Court passes an order of stay in the circumstances of a case deviating from what the High Court has done, it cannot be expected that the High Court will suddenly find merit in the matter pending before it and it will be guided by the interim order passed by this Court. We are confident that any High Court or any judge trained in law will have no difficulty in understanding the scope of the order passed by this Court and in understanding that what it or he is called upon to do, is to decide the matter on merits uninfluenced by the fact that an interim order of stay has been granted by this Court or merely by the reasons if any, stated by this Court in an interlocutory order in a matter that has come up before it at an interlocutory stage. We therefore see no merit in the apprehension of learned Senior Counsel for the contesting respondents that a grant of stay by us would send a wrong signal to the High Court. We have no doubt that the High Court will consider the arguments of both sides on merits uninfluenced by anything we have done here and come to its own independent conclusion on merits.

12. Now coming to the question, whether we should interfere and grant an interim order of stay of operation of the orders refusing the amendment of the plaint, striking out portions of the written statement of defendants 11, 12 and 13 and striking out portions of the chief-examination of the plaintiff from the affidavit tendered in that behalf, we see no reason to stay the operation of the order refusing the amendment of the plaint. Such order of stay would be meaningless since as of

now there is no amendment of the plaint and an amendment would come into existence only if the High Court finds it a case where interference is called for in the light of the relevant arguments that may be raised before it. But, we think that the stay of operation of the orders striking out portions of the written statements of defendant No. 11 and of defendants 12 and 13 and part of the chief-xamination

in the affidavit tendered by the plaintiff would be justified since in case the High Court were to accept the challenge to those orders of the trial court, it would mean that the witnesses will have to be recalled and questions put to them on those aspects now struck out to cover those aspects and this would inconvenience the trial. The consequence of granting a stay would only be that some irrelevant aspects are also covered in the examination of the witnesses. If the High Court were to dismiss the writ petitions, those portions can always be eschewed. By and large, which part of the evidence is to be discarded as being outside the pleadings is something that the court considers when it discuses the evidence. There cannot also be any doubt that no amount of evidence can be looked into on a plea never put forward. (See Siddik Mahomed Shah vs. Mt. Saran and others (AIR 1930 P.C. 57). Therefore, at this stage, if the operation of those two orders are not stayed, it would mean that the examination of the witnesses will cover only that portion of the plea admitted to be put forward by defendants 11 to 13 or in the plaint, and that would cause inconvenience to the trial which has been directed to be expedited by this Court. Merely because some more or not strictly necessary questions are also asked either in cross-examination or in chief-examination, that cannot also prejudice the contesting defendants since they can always plead either that a part of the evidence has to be discarded as not being covered by the pleadings in the case or that it is irrelevant. We do not think that it is necessary at this stage to shut out any evidence. We clarify that what part of the pleadings and what part of the evidence have to be discarded, will have to be considered by the court in the light of the order that may be passed by the High Court and if that part of the evidence is covered by the pleadings that are directed to be struck out then, obviously, that part of the evidence will have to be ignored. So will be the fate of the evidence that might be tendered which is not covered by the pleadings in the plaint. Obviously, the question whether defendants 11, 12 and 13 can enlarge the scope of the suit will also have to be considered both by the High Court while dealing with the issue and by the trial court when it deals with the suit finally. Suffice it to say that in order only to ensure that there is no possibility of a truncated trial, we stay the operation of the orders striking out portions of the written statement of defendants 11, 12 and 13 and portions of the affidavit tendered in chief-examination by the plaintiff. We make it clear that what part of the written statement of defendant No. 11 and of defendants 12 and 13and what part of the evidence are to be ignored, are matters that will depend upon the decision to be rendered by the High Court in the matters pending before it and to be considered by the trial court when it finally disposes of the suit and if its order were to be upheld by the High Court, to be consistent with the order it has already passed.

13. At the same time, we think it necessary to clarify that the trial of the suit will go on and there will be no impediment to it. We find that the High Court has posted the matter on 20.7.2007 and all parties agreed before us that they will be ready to argue the matter that day. We request the High Court to ensure that the writ petitions covering such simple issues, be taken up on 20.7.2007 itself and disposed of in accordance with law immediately.

14. The orders of the High Court are thus slightly modified and the appeals are disposed of with the above direction. The parties are directed to suffer their respective costs.