SUPREME COURT OF INDIA

M/s. Hotel Queen Road Pvt. Ltd.

Vs.

Mr.Ram Parshotam Mittal

C.A.No.5499 of 2013

(Altamas Kabir CJI., Anil R.Dave JJ.)

1607.2013

JUDGMENT

ANIL R. DAVE, J.

1. Leave granted.

2. Though the present litigation has a chequered history, we do not propose to go into the details of the litigation for the reason that by virtue of the impugned order dated 20th April, 2010 passed in FAO (OS) 349 of 2009 by the High Court of Delhi, the appellants i.e. the present respondents had been permitted to withdraw the said appeal.

3. It appears that the appeal was substantially heard by the High Court but as the High Court was not persuaded to grant any relief to the appellants therein, the appeal was withdrawn so as to avail alternative remedy available to the appellants.

4. The appeal was permitted to be withdrawn. In normal circumstances, the present appellants, who were the respondents in the said appeal, should not have been aggrieved by withdrawal of the appeal but they are aggrieved because of certain observations made by the High Court while permitting withdrawal of the appeal. The said observations, which have been objected to, are reproduced hereinbelow :
"…All that we wish to observe is what we have said earlier, that the impugned order does, in fact, partake of a prima facie finding.

> Nothing in these Orders shall preclude or prevent either of the parties to make legal submissions before appropriate Forums.

> On 3.3.2010, we had restrained the Respondent from alienating, selling or creating any third party interest in the Rights issue dated 30.07.2009. When we had passed these Orders, we were desirous only to maintain status quo. We clarify that it was not passed at that stage, weighing the respective strength of the cases. In our view, we think it appropriate and expedient to extend the interim orders upto 10.05.2010."

5. It was mainly submitted that no such observation could have been made by the Court while permitting withdrawal of the appeal and the interim relief which had been granted earlier in the appeal should not have been continued even after withdrawal or disposal of the said appeal. It is clear from the aforestated order that the interim relief which had been granted during the pendency of the appeal had been extended till 10th May, 2010.

6. The parties have been referred to hereinbelow as they had been arrayed before the Division Bench of the High Court.

7. So far as the observations made in the impugned order with regard to the findings of the learned single Judge are concerned, we are of the view that the said observations cannot be said to be incorrect.

8. Upon perusal of the impugned order, we find that while seeking leave to withdraw the appeal, a request was made by the learned counsel appearing for the appellants, which has been recorded by the High Court as under:

> "He seeks leave to withdraw the Appeal with a clarification that the observation and decision contained in the impugned order should not influence the mind of either of the aforementioned Judicial Forums."

9. With regard to the aforestated request made on behalf of the appellants in relation to withdrawal of appeal, the High Court observed as under:-

> "Since the Appeal has been substantially heard, we are not persuaded to make any observation as prayed for by the Appellant. We shall only state that what is palpable from the legal position that the views and decisions contained in the impugned order are perforce of a prima facie nature."

10. Thus, upon reading the impugned order, the High Court did not ask the authority, which was to be approached by the appellants, that the observations

made by the learned single Judge should be ignored. The order of the learned single Judge was to be challenged by the appellants before another forum and therefore, the Division Bench did not state anything on the merits of the order passed by the learned single Judge. In our opinion, the Division Bench had made innocuous observations which cannot be said to be unjust or improper.

11. We have heard the learned counsel appearing for both sides and have also considered the judgments cited by them.

12. So far as the direction with regard to continuation of the interim relief upto 10th May, 2010 is concerned, the learned counsel appearing for the appellants had submitted that upon disposal of the appeal, the High Court had become functus officio and therefore, the High Court ought not to have extended the interim relief upto 10th May, 2010 especially when the appeal had been withdrawn on 20th April, 2010.

13. The learned counsel appearing for the appellants had relied upon certain judgments of this Court to the effect that upon final disposal of a case, the court becomes functus officio and therefore, the court should not extend interim relief. The learned counsel had relied upon the observations made in para 24 of the judgment delivered in the case of Ajay Mohan and Others v. H.N. Rai and Others (2008) 2 SCC 507, which reads as under :

> "24. The order of the City Civil Court dated 13-10-2006 may be bad but then it was required to be set aside by the court of appeal. An appeal had been preferred by the appellants thereagainst but the same had been withdrawn. The said order dated 13-10-2006, therefore, attained finality. The High Court, while allowing the appellant to withdraw the appeal, no doubt, passed an order of status quo for a period of two weeks in terms of its order dated 23-11-2006 but no reason therefor had been assigned. It ex facie had no jurisdiction to pass such an interim order. Once the appeal was permitted to be withdrawn, the Court became functus officio. It did not hear the parties on merit. It had not assigned any reason in support thereof. Ordinarily, a court, while allowing a party to withdraw an appeal, could not have granted a further relief. (See G.E. Power Controls India v. S. Lakshmipathy.)

14. On the basis of the aforestated contents of para 24 in the case of Ajay Mohan (supra), it had been submitted that upon withdrawal of the appeal, the High Court should not have extended the interim relief without assigning any reason, especially when the High Court had not heard the parties on merits.

15. On the other hand, it had been submitted by the learned counsel appearing for the respondents that in the interest of justice the court has inherent power to continue interim relief even after disposal of a case. So as to substantiate the aforesaid submission, the learned counsel appearing for the respondents had relied upon the judgment delivered in Padam Sen and Another v. The State of Uttar Pradesh 1961(1) S.C.R. 884.

16. Similar issue had arisen in the case of The State of Orissa v. Madan Gopal Rungta A.I.R. (39) 1952 S.C.12. A five-Judge Bench had observed in the said judgment that:-

> "…In our opinion, Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80, Civil P.C., and in our opinion that is not within the scope of Art.226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art.226 of the Constitution. In our opinion, the language of Art.226 does not permit such an action. On that short ground, the judgment of the Orissa High Court under appeal cannot be upheld."

17. In view of the aforestated judgments, it is very clear that if a petition is not maintainable and is ultimately withdrawn, the court should not continue interim relief for a period beyond withdrawal of the writ petition. However, the aforestated observation would not apply to a case where the matter is heard on merits and after considering the facts of the case the court permits withdrawal of the case. In such a case, the court is at liberty to extend the interim relief or can grant interim relief for a limited period after recording reasons for the same.

18. In view of the facts of the case, in our opinion, the High Court was not in error while extending the interim relief for some time while permitting withdrawal of the appeal as the High Court has also recorded the reasons for which the interim relief was extended till 10.5.2010.

19. In view of the aforestated legal position, in our opinion, the High Court did not commit any error while extending the interim relief especially when the matter was heard on merits by the court and only to facilitate the appellants therein, the High Court had permitted withdrawal of appeal.

20. In the circumstances, we dismiss the appeal with no order as to costs. Interim relief which had been granted earlier by this Court stands vacated.

S.L.P. (C) No. (CC No.20730) of 2009

1. In view of the fact that FAO (OS) No.349 of 2009 had been permitted to be withdrawn by the subsequent order passed by the High Court of Delhi at New Delhi on 20th April, 2010, the special leave petition does not survive as the impugned order has already been withdrawn. The special leave petition is dismissed as infructuous.