

W.P.Nos.100648-100649/2019

BVNJ:

10.01.2019

ORDER

Heard.

Issue notice to the respondent.

Sri Sadiq N.Goodwala, learned counsel for the petitioner submit that being aggrieved by the judgment and decree passed in O.S.No.34/1999 by the Court of the Additional Civil Judge, Sr.Dn., Hoshiarpur, an appeal was preferred before the Additional District Judge, Hoshiarpur and that on 30.05.2017, an interim order of stay of the judgment and decree impugned was granted until further orders. However, the decree holder has instituted Execution Petition No.10/2015 before the Court of the Civil Judge, Sr.Dn. at Lakshmeshwar, on transfer of the judgment and decree of the Civil Judge, Sr.Dn., Hoshiarpur. In the said Execution Petition, the impugned order has been passed by which the impugned judgment and decree of the Civil Court, Sr.Dn., Hoshiarpur, is sought to be executed and arrest notice has been issued against

the petitioner herein who is judgment debtor No.1 in the suit. He submits that the impugned order has been passed by the Executing Court despite there being stay of the trial Court's judgment and decree by the Appellate Court, namely the Additional District Judge, Hoshiarpur, until further orders, by placing reliance on Circular No.7/2018 issued by the Registrar General of this Court in the context of judgment in Criminal Appeal Nos.1375-1376/2013 (Asian Resurfacing of Road Agency Pvt. Ltd., and another Vs. Central Bureau of Investigation) dated 28.03.2018 passed by the Hon'ble Supreme Court). Learned counsel for the petitioner, Sri Goodwala, contended that the aforesaid judgment of the Hon'ble Supreme Court at paragraphs 35, 36 and 37 expressly refers to stay of trial and does not have any relevance where there is a stay of the judgment and decree impugned before the Appellate Court, on lapse of six months from the date on which stay has been granted by the Appellate Court. He contended that the Executing Court was not right in placing reliance on Circular No.7/2018 issued by this Court and thereby

order for issuance of arrest notice against the petitioner herein.

Having heard the learned counsel for the petitioner and on perusal of the material on record, it is noted that the Hon'ble Supreme Court at paragraphs 35, 36 and 37 in the case of Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation (supra) has categorically referred to stay of proceedings at the stage of trial by using the expression "proceedings of a civil or criminal trial" in paragraph 35, "stay of proceedings in a pending trial is operating" in paragraph 36 and "trial stage" in paragraph 37. The said paragraphs are extracted as under for immediate reference:

"35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an

attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an

order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. *The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage.*"
(underlining by me)

On a direction issued by this Court, the Office has made available a copy of the General Circular No.7/2018 dated 06.08.2018 issued by this Court wherein paragraphs 35 and 36 extracted above have been quoted and it has been further observed as under:

"All the Principal District and Sessions Judges in the State including the Principal City Civil and Sessions Judge, Bengaluru, Chief Judge Court of Small Causes, Bengaluru, Pri. Judges of all the Family Courts, Presiding Officers of Labour Courts and Industrial Tribunals in the State shall ensure that directions at Paragraph 35 and 36 are followed and also requested to communicate the aforesaid directions to all the Judicial Officers in their respective Units for information and necessary action."

From the above it becomes clear that the reference to paragraphs 35 and 36 in the aforesaid Circular is with

regard to stay of trial. The same cannot be understood to mean that although the judgment and decree of a trial Court impugned before the Appellate Court is stayed by the Appellate Court, the said stay of the judgment and decree of the trial Court is only for a period of six months and on the expiry of six months, the stay would automatically stand vacated which would enable the Executing Court to continue with the executing proceedings. Such an understanding of the judgment of the Hon'ble Supreme Court and Circular issued by this Court is not proper.

Though an appeal is stated to be a continuation of a suit, it is so for the purpose of applicability of the provisions of the Code of Civil Procedure, 1908. A trial is quite distinct from an appeal, as a trial is an original proceeding, whereas an appeal is an appellate proceeding arising from the judgment and decree passed in an original proceeding such as a suit.

It is needless to observe that when a superior Appellate Court stays the operation of the judgment and decree of a trial Court impugned in the appeal, the executing court cannot proceed to execute the judgment and decree which is stayed. This is contrary to Order XLI Rule 5 of the Code of Civil Procedure, 1908. Further continuation of any execution proceedings when the judgment and decree impugned is stayed by the Appellate Court, is in violation of such an interim order of stay of an appellate or superior Court.

In the circumstances, so long as the judgment and decree impugned before the Additional Civil Judge, Sr.Dn., Hoshiarpur is stayed by the said Court, there has to be a stay of execution of the said judgment and decree. In the circumstances, there shall be stay of further proceedings in Execution No.23/2017 pending on the file of the Senior Civil Judge and JMFC, Lakshmeshwar until the stay granted by the appellate Court in Hoshiarpur is vacated.

It is thus clarified that the judgment of the Hon'ble Supreme Court as well as Circular No.7/2018 apply only when the proceedings of trial are stayed. Further, if any particular order of the trial Court or the Court subordinate to the High Court is stayed and the proceeding of the trial is not stayed, in such circumstances the judgment of Hon'ble Supreme Court would not apply. For instance, if an order for impleadment has been allowed by the trial Court and the same is assailed by the aggrieved party and the same has been stayed by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India, the said stay would be subject to further orders of the High Court. In such a case, there would be no stay of the proceedings in trial and there would be no impediment for the trial Court to continue with such proceeding.

It is necessary to observe that when once a superior Appellate Court has granted stay of the

operation of the judgment and decree impugned before it in an appeal, the trial court cannot insist that despite such stay of the operation of the judgment and decree, it would execute the same. In such Cases, the trial Court or any other Court subordinate to the High Court cannot insist that there has to be a further order made by the High Court continuing the stay of such orders on the expiry of six months from the date on which stay order was passed.

It is further clarified that if any Appellate Court in the State in any Regular Appeal or this Court in a Regular First Appeal or Regular Second appeal grants an interim stay of an impugned judgment and decree either of the trial Court or of the first Appellate Court, as the case may be, then so long as the said stay of the execution of the judgment and decree is in force, there can be no execution of the judgment and decree whose operation has been stayed based on General Circular No.7/2018.

In the circumstances, there shall be stay of proceedings in Execution Petition No.10/2015 until the stay of the judgment and decree of the trial Court at Hoshiarpur is in force or the regular appeal is disposed off, as the case may be.

**Sd/-
JUDGE**

Jm/-