



IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) NO. 377 OF 2017

AND

TRP(C) NO. 378 OF 2017

In the matter of applications under Section 24 of the Civil Procedure Code, 1908.

Sangita Rani Prusty (in both cases).....

Petitioner

-versus-

Niranjan Sahoo (in both cases).....

Opp. Party

Advocate(s) appeared in this case through virtual mode:-

For Petitioner : M/s. H.N. Mohapatra, A. Samantaray
and A. Nayak, Advocates

For Opp. Party : M/s. B.K. Ghadei, H.P. Das,
D.P.K. Bhuyan D. Panigrahi
and B. Maity, Advocates.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

9th October, 2024

SASHIKANTA MISHRA, J.

Heard Mr. H.N. Mohapatra, learned counsel appearing for the petitioner and Mr. B.K. Ghadei, learned counsel for the opposite party.



2. Both these transfer applications have been filed by the same person seeking transfer of two cases pending before different Courts. In TRP(C) No. 377 of 2017, prayer is to transfer CP No. 262 of 2016 pending in the Court of learned Judge, Family Court, Cuttack to the Court of learned Judge, Family Court, Puri. In TRP(C) No. 378 of 2017, prayer is to transfer CP No. 680 of 2014 pending in the Court of learned Judge, Family Court, Cuttack to the Court of learned Judge, Family Court, Puri. In both the cases, by way of interim orders, further proceedings in the aforementioned cases before the learned Judge, Family Court, Cuttack were stayed. In course of hearing of the present applications, however, it was brought to the notice of this Court that despite such order of stay the Court below proceeded with the hearing of the cases and also disposed of the same.

3. To amplify, in TRP(C) No. 377 of 2017, by order dated 18.12.2017, this Court granted interim stay of further proceedings in CP No. 262 of 2016 pending in the



Court below. In course of hearing of the present application, it was brought to the notice of the Court that the aforementioned case had already been disposed of. The Court below was therefore, directed to submit a report as to how the matter could be disposed of despite operation of the order of stay granted by this Court. Learned Judge, Family Court, Cuttack informed this Court that in consideration of the judgment dated 28.03.2018 of the Supreme Court in ***Asian Resurfacing of Road Agency v. Central Bureau of Investigation*** (Criminal Appeal Nos. 1375-1376 of 2013), further proceedings were resumed on 07.03.2022. Notice was issued to the parties, who appeared on 13.10.2022 for conciliation. The opposite party was precluded on 18.04.2023 for non-filing of the written statement, and thereafter also on 04.12.2023, the petitioner (opposite party in the present case) examined himself ex parte. The judgment was delivered on 04.04.2024.



3.1. Similarly, in TRP(C) No. 378 of 2017, this Court, while issuing notice to the opposite party on 18.12.2017 also granted interim stay of further proceedings in CP No. 680 of 2014 pending in the Court of learned Judge, Family Court, Cuttack. Since it was informed that the proceedings in the Court below had been concluded, on query by this Court, the Court below informed that, in consideration of the judgment in ***Asian Resurfacing of Road Agency*** (supra), further proceedings were resumed on 09.05.2022. As six months had already elapsed and none of the parties appeared, the Court issued 'Court motion notices' to the parties, but none appeared. The proceeding was therefore, dismissed for default on 08.02.2023 due to non-appearance.

4. On the above facts, Shri Mohapatra would argue that the Court below could not have resumed the proceedings and concluded the cases, since this Court was in seisin over the matter and had also granted interim stay of further proceedings. He further submits that the



reference to the judgment of the Supreme Court in the case of ***Asian Resurfacing of Road Agency*** (supra) by the Court below is misconceived, since said judgment has, in the meantime been overruled by a Constitution Bench judgment passed by the Supreme Court in the case of ***High Court Bar Association, Allahabad v. State of U.P.***¹. Referring to the said judgment, Shri Mohapatra would argue that at least the disposal of the case (CP No. 262 of 2016), being after passing of the judgment in the case of ***High Court Bar Association, Allahabad*** (supra), same has to be treated as *non est*.

5. Per contra, Shri B.K. Ghadei, while not disputing the legal position referred to by Shri Mohapatra, would argue that the Court below took note of the ratio in ***Asian Resurfacing of Road Agency*** (supra) at the relevant time, since it was the law of the land. Further, this Court also had issued standing orders/instructions to the Judicial Officers of the State to follow the judgment in ***Asian Resurfacing of Road Agency*** (supra). That apart, CP No.

¹. AIRONLINE 2024 SC 143



680 of 2018 was disposed of, being dismissed for default, on 08.02.2023, which is long before the judgment passed in **High Court Bar Association, Allahabad** (supra). According to Shri Ghadei therefore, TRP(C) No. 378 of 2017 for transfer of CP No. 680 of 2014 is no longer maintainable.

6. As has already been stated herein before, in both the cases this Court, by order dated 18.12.2017, granted interim stay of further proceedings of both the cases in the Court below. As intimated by the Court below, taking note of the ratio decided in **Asian Resurfacing of Road Agency** (supra), proceedings in both the cases were resumed. Same being the law of the land at the relevant time, the Court below cannot be blamed for resuming the proceedings. The decision in **Asian Resurfacing of Road Agency** (supra) came to be overruled by the Constitution Bench judgment in **High Court Bar Association, Allahabad** (supra). Said judgment was passed on 29.02.2024. As regards the effect of the said judgment on



the cases resumed basing on the ratio of **Asian Resurfacing of Road Agency** (supra), the Constitution Bench has held as follows:-

“38. We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of Asian Resurfacing, the orders of automatic vacation of stay shall remain valid.”

7. Thus, the position that emerges is, in all those cases, which were resumed basing on the decision in the case of **Asian Resurfacing of Road Agency** (supra) and have concluded, the same would remain valid. To such extent therefore, the argument of Shri Ghadei, that disposal of CP No. 680 of 2014 by way of dismissal for default on 08.02.2023, cannot be questioned. But, insofar as CP No. 262 of 2016 is concerned, it is seen that the judgment was delivered on 04.04.2024, which is after the pronouncement of the judgment in the case of **High Court Bar Association, Allahabad** (supra). Once the judgment of the Supreme Court is passed overruling the earlier judgment, it, being the law of the land, is to be respected



and followed by all the inferior Courts and Tribunals as per Article 141 of the Constitution of India. Therefore, once the judgment of the Constitution Bench came to be pronounced, the Court below ought to have stayed the proceedings in compliance of the earlier order of stay passed by this Court, more so, as this Court had not passed any further order modifying or altering the earlier order of stay. In such a situation, as has been rightly argued by Shri Mohapatra, disposal of the case, despite order of stay, would be treated as *non est* in the eye of law. It is well settled that any order passed contrary to an interim order passed by the superior Court is *non est* and nullity in the eye of law. Consequently, the parties would be restored to their former position, i.e., restoration of status quo ante.

8. In the case of ***Manohar Lal (dead) by LRs v. Ugrasen (dead) by LRs***,² the Supreme Court, relying upon an earlier decision, held that any order passed by any authority (Court), in spite of the knowledge of the interim

² (2010) 11 SCC 557



order of the Court, is of no consequence, as it remains a nullity and therefore, the parties are to be brought back to the same position as if the order had not been violated. In other words, in such cases, restoration of *status quo ante* is the appropriate relief to be granted.

9. It is, therefore, held that disposal of CP No. 262 of 2016 by the Court below as per judgment delivered on 04.04.2024 is *non est* in the eye of law and declared as such and is therefore, set aside. Consequently, the proceedings must be held to be pending from the stage they were stayed as per order passed by this Court.

10. The contention advanced that the transfer application [TRP(C) No. 377 of 2017] has become infructuous, is therefore untenable.

11. Coming to the prayer for transfer, the petitioner, being a woman, claims to have no income of her own and therefore unable to maintain herself and her father, who is also an old man. Further, despite order passed by the learned SDJM, Cuttack in DV Misc. Case No. 95 of 2015



for payment of maintenance to the petitioner, along with compensation and house rent, the opposite party has not yet paid the same. For all these reasons therefore, it is difficult on the part of the petitioner to attend the Court at Cuttack on each date of posting of the case, she being a resident of Puri.

12. It has been argued on behalf of the opposite party that since earlier the petitioner had herself instituted a case against the opposite party before the learned SDJM at Cuttack, her plea that she would face difficulty in attending the Court at Cuttack, cannot be accepted.

13. Taking note of the facts of the case and the submissions made, this Court is of the view that given the financial status of the petitioner, which incidentally has not been disputed by the opposite party, this Court is of the considered view that it would be more inconvenient to the petitioner than the opposite party, if the case is allowed to continue at Cuttack. This Court is, therefore, inclined to allow the prayer for transfer.



14. In the result, TRP(C) No. 377 of 2017 is allowed. It is directed that the proceedings in CP No. 262 of 2016 pending before the learned Judge, Family Court, Cuttack shall be transferred to the Court of learned Judge, Family Court, Puri, who, after issuing notice to both parties, shall proceed in accordance with law. However, for the reasons stated earlier, TRP(C) No. 378 of 2017 is dismissed as infructuous.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 9th October, 2024/G.D.Samal