

W.P. No.2934/2013 & W.P. No. 283/2014**W.P. No.2934/2013****Shyama
Vs.
Godawari****W.P. No. 283/2014****Smt. Rama
Vs.
Shyama****09.12.2015**

Shri Akshay Jain , Advocate for petitioner.

Shri R.P. Rathi Advocate for the respondents no.1
and 2..

With the consent of the parties, the matter is heard
finally.

In W.P. No. 2934/13(I) the petitioner has challenged
the validity of the order dated 26.02.2013, by which the
application preferred by the petitioner u/S 10 of the Code
of Civil Procedure has been rejected, whereas in W.P. No.
No. 283/14, the petitioner has challenged the validity of the
order dated 24.02.2012, by which the application filed by
the respondent u/S 10 of the Code of Civil Procedure has
been allowed.

Facts giving rise to filing of these petitions, briefly
stated, are that respondent/plaintiff in W.P. No. 2934/13

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and petitioner/plaintiff in W.P. No. 283/14 had instituted suits against the defendant (Shyama) for seeking compensation for death of their son Gabbar in W.P. No. 2934/13 and Dheeraj in W.P. No. 283/2014. The plaintiffs in both the cases pleaded that the defendant being the owner of the boat was rowing the boat in a negligent manner, despite being aware of the leakage in the boat, due to which it overturned in the river Chambal, as a result of which, sons of plaintiffs died. The intimation about the aforesaid accident was given to the police. Thereupon, crime no. 64/2006 was registered for an offence punishable u/S 304-A of the Indian Penal Code against the defendant. The plaintiffs in the suits sought compensation to the tune of Rs.2,00,000/- each. The defendant in both the suits, filed a written statement on 09.05.2008 and denied the averments made in the plaint. It is the stand of the defendant that he did not have any boat as claimed by the plaintiffs.

After four years of filing of the written statement in both the cases, the defendant moved an application u/S 10 read with Sec 151 of the Code of Civil Procedure on 27.02.2012 in Civil Suit No. 2-A/2014 on the ground that

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since a criminal case u/S 304-A of the Indian Penal Code is pending against the defendant and the cause of action in respect of the civil suit as well as the criminal case is the same, therefore proceeding in the suit be stayed. The trial Court dismissed the aforesaid application vide order dated 26.02.2013, which is the subject-matter of challenge in W.P. No. 2934/213. The application filed by the defendant was allowed by the trial Court in another suit namely Civil Suit No. 1-A/2011 vide order dated 24.02.2012. The aforesaid order is the subject-matter of challenge in W.P. No. 283/2014. In the aforesaid factual background, the petitioners have approached this Court.

Learned counsel for the petitioner while placing reliance on the Division Bench decision of this Court in case of ***Ved Prakash & Others Vs. Guru Granth Saheb Sthan & Another*** reported in ***2009(1) MPWN 104*** submitted that since civil suit and criminal proceeding are based on the same cause of action, therefore the civil suit should be stayed till criminal case is decided. On the other hand, learned counsel for the respondent submitted that in both the cases, the defendant has filed written statement on 09.05.2008 and thereafter, after a period of four years,

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the defendant had submitted an application u/S 10 of the Code of Civil Procedure which has wrongly been allowed in Civil Suit No. 1-A/2011 and has rightly been rejected in Civil Suit No. 2-A/2014.

I have considered the respective submission made by the learned counsel for parties and perused the record. The Supreme Court in the case of ***M.S. Sheriff Vs. The State of Madras & Others***[AIR 1954 SC 397], while dealing with the question of stay of proceedings namely civil or criminal, held the embarrassment to be a relevant aspect and after having regard to certain factors, the Supreme Court found expedient in the case of *M.S. Sheriff(supra)* to stay civil proceedings. However, it was made clear that it was not hard and fast rule and special considerations present in any particular case might make some other course more expedient and just. The decision rendered in the case of *M.S. Sheriff(supra)* was considered by the Supreme Court subsequently in the case of ***Kishan Singh Thru LR's Vs. Gural Singh & Others*** [2010(8) SCC 775] and in the case of ***Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash*** 2013(7) SCC 622 and it was held that the

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decision in *M.S. Sheriff's* case does not lay down invariable rule that simultaneous prosecution of criminal proceedings and civil suit will embarrass the accused or that invariably the proceedings in the civil suit should be stayed, unless disposal of criminal case.

In the backdrop of aforesaid well settled legal position, the facts of the case may be seen. In the instant case, admittedly, the petitioner filed application under Section 10 of the Code of Civil Procedure after filing of the written statement. It is pertinent to mention here that applications under Section 10 of the Code of Civil Procedure were filed after a period of four years. By that time, sufficient progress must have been made in the proceedings before the trial Court in criminal case. The defendant has failed to disclose as to how the continuance of the civil proceedings would cause an embarrassment to him. The impugned order dated 24.02.2012 passed in Civil Suit No. 1-A/2011 suffers from error apparent on the face of record, whereas, the trial Court has rightly rejected the application u/S 10 of the Code of Civil Procedure, in another civil suit.

In view of preceding analysis, the W.P. No.

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2934/2013 is dismissed and the order dated 24.02.2012 passed in Civil Suit no. 1-A/2011 is quashed. Accordingly, W.P. No. 283/2014 is allowed. The trial Court is directed to proceed with the trial of the aforesaid expeditiously in accordance with law.

With the aforesaid directions, petition stands disposed of.

Certified copy as per rules.

(Alok Aradhe)
Judge

sh/-