STATE OF J & K

v.

MOHD. YAQOOB KHAN AND ORS.

AUGUST 26,1992

[LALIT MOHAN SHARMA, S.MOHAN AND N. VENKATACHALA, JJ.]

Constitution of India, 1950—Article 136—Appeal against order made in a contempt proceeding—Disposal of contempt proceeding while the stay petition and the writ petition pending—Legality of—Initial ex-parte stay order whether gets confirmed by subsequent orders passed in contempt proceeding—Direction to High Court.

Contempt of Courts Act, 1971—Sections 11, 14, 19—Disposal of contempt proceedings, while stay petition and writ petition pending—Legality of—Initial ex-parte stay order whether gets confirmed by subsequent orders passed in contempt proceeding—Direction to High Court.

Respondent No.1 in the appeal, filed a writ petition under Article 226 of the Constitution for the implementation of a decree which was modified subsequently by a compromise between the parties.

An ex-parte interim order was passed by the High Court on 19.03.90 directing notice to be issued to the respondents in the writ petition as also in the stay matter, with a direction that the case be listed in the second week of May, 1990. The Government was further directed to give the writ-petitioner, on his furnishing a bond, 50% of the timber out of the agreed timber referred to in the compromise.

The writ-petitioner, without waiting for the next date in the case, filed on 02.04.90, an application for initiation of a proceeding for contempt of court against the appellant-State and two of its officers, for non-compliance of the direction issued by the Court under its order dated 19.3.1990.

On 26.7.91, two Commissioners were appointed for submitting a report, and a report was submitted.

The contempt proceeding was disposed of in the light of the Commissioner's report, directing the appellant-State to implement the

A interim direction issued on 19.3.91.

In the appeal by special leave by the State it was contended that the appellant and its officers were expecting that they were not required to immediately obey the interim direction, as the stay matter was fixed to be heard in the second week of May, 1990; that there was no time indicated B for compliance of the direction in the order; that stay application was still pending final disposal and the appellant was to be heard; that so long as the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed.

C

The respondent-writ petitioner opposed the appeal contending that the orders passed in the contempt proceedings should be treated to have disposed of the stay matter in the writ petition also; that the counsel for the respondents in the writ petition had been heard before the orders were issued; that the order dated 19.3.1990 in the circumstances, was to be D treated to have become final and, binding on the State; and that the High Court was right in issuing the further direction by way of implementation of its earlier order.

Allowing the appeal, this Court,

E HELD : 1.01. The orders passed in the contempt proceeding were not justified, being pre-mature, and, must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being F guilty of having committed contempt of Court. [48-C]

1.02. The respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the Court was in a position to consider the objections and record a finding, G *prime facie* in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent is entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. [47-G]

1.03. The scope of a contempt proceeding is very different from that H of the pending main case, yet to be heard and disposed of (in future).

Besides, the respondents, in a pending case are at a disadvantage, if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter. [47-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3472 of 1992.

From the Judgment and Orderd dated 19.3.1992 of the Jammu & Kashmir High Court in C.O.A.No. 25 of 1990.

Mr. Harish N. Salve and Ashok Mathur for the Appellant.

M.C. Bhandare and S.K. Bhattacharya for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. Heard the learned counsel for the parties, Special leave is granted.

2. The appeal is directed against the order dated March 19,1992 (signed by the Hon'ble Judge on March 20, 1992) passed on an application of the respondent no.1 being C.C.A. 25 of 1990 for initiating a proceeding for contempt of court against the appellant-State and two of its officers, namely, Shri S.S. Billoria, Secretary to Government of Jammu and Kashmir and Shri N.R.Gupta, Commissioner/Secretary, Government of Jammu and Kashmir for non-compliance of the direction issued by the Court under its order March 19,1990. In view of the order which we are proposing to pass, it is not necessary to deal with all the facts leading to the present case in detail and it will be sufficient for the purposes of the appeal to set out the circumstances briefly, as mentioned hereafter.

3. The respondent No.1 filed a writ petition under Article 226 of the Constitution registered as Writ Petition No. 133 of 1990 for the implementation of, what has been described by Mr. Bhandare, the learned counsel for the respondents, as a decree modified subsequently by a compromise between the parties. On 19.03.90 an ex-parte interim order was passed by the High Court directing notice to be issued to the respondents in the writ petition as also in the stay matter with a direction that the case would be listed in the second week of May, 1990. The order further said that in the

A meantime, out of the agreed timber in accordance with the compromise entered into between the writ petitioner and the Government, 50% of the timber shall be given to the writ petitioner on his furnishing a bond. According to Mr. Salve, the learned counsel for the appellant, the appellant and its officers were expecting that they were not required to immediately obey the interim direction, as the stay matter was fixed to be heard in the second week of May, 1990, and specially as there was no time indicated for compliance of direction. However, the writ petitioner, without waiting for the next date in the case, filed the application on 02.04.90 on which the impugned order was passed. According to Mr. Salve the stay application was still pending final disposal and the appellant was to be heard. Then again, there was no occasion for assuming that the ex-parte order, which did not even mention any period for compliance, had to be obeyed immediately. At this stage it has to be appreciated that the aforesaid direction although passed as an interim order in a pending interlocutory matter was, in substance, a final order allowing the writ petition in part without hearing the other side. The direction was not for maintainance of *status quo;* nor again was it restraint order on the State authorities forbidding from taking any step to which the writ petitioner could have an objection. As a result of the interim direction, the writ petitioner was to receive the fruits of the decree (in the language of the learned counsel for the respondents before us, that is, the writ petitioner) to the extent of half. The facts disclose that the stakes in the case are very high. According to the State it had already paid a huge amount of money. Mainly it has discharged its obligation in full. Hence it is not liable to pay anything furhter or to deliver any timber as claimed by the writ petitioner. That issue remains to be decided at the time of the final hearing of the writ petition.

4. The matter was pending for some time. By an order passed on 26.07.91 in the contempt matter two commissioners were appointed by the Court for submitting a report as indicated in the order. The commissioners accordingly submitted a report. The contempt proceeding was disposed of by the impugned order whereby the State has been asked to implement the interim direction issued on March 19,1991 in the light of the commissioner's report. Dealing with the objections raised on behalf of the State, the High Court made certain observations against its case, but followed it by declaring that,

"It is no stage to go to the merits of the case which factum

is required to be adjudicated upon in the main writ petition but the petitioner is required to be provided 50 per cent timber, to be assessed with increments, in light of the abovesaid Government orders."

5. We find great force in the argument of Mr. Salve that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed. Mr. Bhandare appearing on behalf of the writ petitioner, who is respondent before us, has strenuously contended that the orders passed in the contempt proceedings should be treated to have disposed of the stay matter in the writ petition also. He laid great emphasis on the fact that the counsel for the respondents in the writ petition had been heard before the orders were issued. He invited our attention to the merits of the claim. It is argued that the order dated March 19,1990 must, in the circumstances, be treated to have become final and, therefore, binding on the State and the High Court was right in issuing the further direction by way of implementation of earlier order.

We do not agree. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

6. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the Court was in a position to consider the objections and record a finding, *prima facie* in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent is entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put in execution

A when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute, therefore, will be covered by section 47 of the Code of Civil Procedure. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution B at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being pre-mature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall C proceed to consider whether the State and its authorities could be accused of being guilty of having commited contempt of Court.

7. Accordingly the appeal is allowed and the impugned judgment is set aside. The High Court may now proceed with the case in accordance with the observations made above. The respondent No. 1 shall pay the cost D of this appeal to the appellant-State which are quantified at Rs.5,000.

V.P.R. Appeal allowed.