Before S.S. Sudhalkar, J.

NAND SINGH,—*Appellant*

versus

SHANKAR DASS & ANOTHER,—*Respondents*

C.M. No. 2381-C of 2000

in *R.S.A. No.* 1791 of 1999

26th May, 2000

Code of Civil Procedure, 1908—S.10—Res judicata—Application for stay filed alongwith appeal—Stay not granted—Whether at a subsequent stage second stay application is maintainable—Held, yes.

Held, that on the case of Arjun Singh v. Mohindra Kumar and others, AIR 1964 S.C. 993, the question of resjudicata of the order passed at different stages in a suit was under consideration. It has been held therein that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually taken. It is also held that they do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. It was also held that such orders are certainly capable of being altered or varied by subsequent applications for same relief, though normally only on proof of new facts or new situations which subsequently emerge. It is further held therein that as they donot infringe upon the legal rights of parties to the litigation the principle of resjudicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of.

(Para 8)

Further held, that the arguments were heard in this case and judgment reserved by my learned predecessor. However, the judgment was not pronounced. When the matter came up before me, I admitted the matter. Admission of the matter is certainly a new event and if it can show that there is a *prima facie* case in favour of the appellant, it can also be seen that though arguments were heard in the appeal on 2nd June, 1999, the matter could not be decided. When the matter was admited on 6th April, 2000, the parties were present in person because the lawyers were on strike and on considering the arguments, the authorities cited and after going through the record the matter was

admitted. This being the position, the principle in the case *Arjun Singh* v. *Mohinder Kumar and others* will apply and the application for stay cannot be thrown away on the ground of *resjudicata.*

(Para 11)

Viney Mittal, Sr. Advocate with Arvind Bansal, Advocate, *for the appellant.*

R. C. Setia, Sr. Advocate with Anish Setia, Advocate, *for the respondents.*

JUDGMENT

S.S. Sudhalkar, J.

(1) This is an application for staying the operation of the judgment and decree against which this appeal has been filed. Respondent Shankar Dass had filed a suit against appellant Nand Singh and respondent No. 2 with a prayer for declaration that in the capacity of Mahant and Mohitmeem he is owner of the agriculture land and that the appellant and respondent No. 2 have no right title interest or concern in the land in dispute and also for restraining the appellant and respondent No. 2 from interfering with the symbolic possession of the respondent over the suit land. Further injunction was prayed for getting the suit land mutated in favour of the respondent-defendants. The suit was decreed for possession of the suit land and the appellant and respondent No. 2 were restrained from getting the suit land mutated in their favour in any manner.

(2) The appellant filed an appeal in the district court. Learned Additional District and Sessions Judge was pleased to dismiss the appeal. When this appeal came up for hearing before learned Single Judge on 2nd June, 1999, he heard the argument and reserved the order. However, the matter was again taken up on 28th September, 1999 and the records were called for. Thereafter, the matter was adjourned to various dates uptil 23rd March, 2000 when another single judge of this court had directed that the matter be listed before some other Bench. On 27th March, 2000 the matter was put up before another Bench and because of strike of members of bar, it was adjourned to 5th April, 2000. However, *vide*,—CM 2268-C of 2000 the appellant prayed for preponment of date to 3rd April, 2000. The said CM was allowed and the case was listed for 4th April, 2000.

(3) It may be mentioned that during this period, the appellant had prayed for stay by moving CM 6541 of 1999 which was rejected, *vide* order dated 1st October, 1999. No fresh application was made

and, therefore, stay was not granted on the oral request on 4th April, 2000. On that day, the members of bar were on strike and the parties were present in person and they were not in a position to argue the matter and the matter was adjourned to 6th April, 2000. On 6th April, 2000 both the parties appeared in person and the appellant contended that the right of tenancy cannot be forfeited even if the tenant pleads his own right as owner and denied the title of the land owner. After hearing the parties inperson and going through the papers on the file I admit the case. It is after this, that the CM 2381-C of 2000 is filed in which the stay has been asked for.

(4) I have heard learned counsel for the parties.

(5) The first question that requires to be decided is that when the stay is declined, whether at a subsequent stage, the application for stay can be considered.

(6) Learned counsel for the appellant argued that earlier CM 3331-C of 1999 was filed and that has remained undecided. Learned counsel for the appellant further stated that on 6th April, 2000, the appeal was admitted and after the admission of the appeal the appellant got a further chance for asking for stay because on admission of appeal, the matter requires consideration.

(7) Learned counsel for the appellant relied on the case of *Bathini Syam Prasad* v. *Bathini Mastanamma and another* (1). He has relied on para 11 of the judgment wherein it has been held that the order passed under Order 41 Rule 5 C.P.C. staying the execution of the decree is not a final one, but a tentative one and that it does not decide the rights of any parties, but is merely the one giving some interim relief to parties. It is further held therein that if finality should attach to such an order, there will be hardship to the parties concerned in several cases.

(8) He has also cited the cases of *Arjun Singh* v. *Mohindra Kumar and others* (2). In that case the question of *res judicata* of the order passed at different stages in a suit was under consideration. It has been held therein that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. It is also held that they do not, in that sense, decide in any manner the merits of the controversy in issue in the suit

(1) AIR 1954 AP 40
(2) AIR 1964 SC 993

and do not, of course, put an end to it even in part. It was also held that such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. It is further held therein that as they do not infringe upon the legal rights of parties to the litigation the principle of resjudicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of, the court would be justified in rejecting the same as an abuse of the process of court. In that case the Apex Court gives an illustration of this type : If an application made under the provisions of that rule is dismissed and an appeal was filed against the decree in the suit in which such application was made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate court. It is further observed that in that sense, the refusal of the court to permit the defendant "to set the clock back" does not attain finality. It is further observed that though the same court is not finally bound by that order at later stages, so as to preclude its being reconsidered, and even if the rule of *res judicata* does not apply it would not follow that on every subsequent day on which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. It is also observed that the principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of *res judicata.* It is also observed that if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of *res judicata.*

(9) The decision of the Apex Court in the case of *Bathini Syam Prasad* v. *Bathini Mastanamma and another* (Supra) is not much helpful in deciding this case. However, the case of *Arun Singh* v. *Mohindra Kumar and others* (Supra) discusses the issue thoroughly and though it is held that subsequent application on the same ground would be rejected on the same ground on which the original application has been refused though it does not amount to *res judicata* but also considered the question that the application do not decide the rights finally. It is also held that such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerges.

(10) Counsel for the respondent has relied on the case of *Tamil Nadu Electricity Board and another* v. *N. Raju Reddiar and another* (3). It has been held by the Supreme Court in that case that once the application for review is dismissed, no application for clarification should be filed, much less with change of advocate on record.

(11) Here in this case admittedly, the arguments were heard and judgment reserved as mentioned above by my learned predecessor. However, the judgment was not pronounced. When the matter came up before me, as mentioned earlier, after hearing the parties and considering the authorities cited by them, I admitted the matter. Admission of the matter is certainly a new event and if it can show that there is a *prima facie* case in favour of the appellant, it can also be seen that though arguments were heard in the appeal on 2nd June, 1999, the matter could not be decided. When the matter was admitted on 6th April, 2000, the parties were present in person because the lawyers were on strike and on considering the arguments, the authorities cited and after going through the record the matter was admitted. This being the position, the principle in the case of *Arjun Singh* v. Mohindra Kumar and others (Supra) will apply and the application for stay cannot be thrown away on the ground of *resjudicata*. Moreover, now the matter is admitted and requires detailed consideration., it will be in the interest of justice to grant the stay as prayed for.

(12) As a result, the stay which was granted on 8th May, 2000 is made absolute till the decision of this appeal.

(13) This appeal is ordered to be listed for final hearing within one year from today.

J.S.T.

Before H.S. Bedi and A.S. Garg, JJ.

JAGJIT SINGH AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 5053 of 2000

The 6th June, 2000

Punjab Panchayati Raj Act, 1994—S. 99—Punjab Panchayati Raj (Amendment) Act, 2000—S. 99(1)(a) and (b)—Constitution of India, 1950—Arts. 243(C)(2) and 243(C)(3)—Punjab Act of 15 of 1998—

(3) JT 1997 (1) SC 486