

A QUANTUM SECURITIES PVT. LTD. & OTHERS

v.

NEW DELHI TELEVISION LTD.

(Civil Appeal Nos. 4914-15 of 2015)

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JULY 01, 2015

**[VIKRAMAJIT SEN AND ABHAY MANOHAR SAPRE, JJ.]**

*Code of Civil Procedure , 1908 – Order XXXIX, r. 3A*  
C – *Interim order pending Notice of Motion in civil suit – Contempt petitions by the plaintiff against the defendants alleging violation of interim order – Notice issued in the contempt petition – On appeal, held: Once the pleadings in reply to the Notice of Motion were complete, the court which*  
D *was seized of the main case, should have disposed of Notice of Motion in the light of mandate contained in Order XXXIX r. 3A – Direction to High court to dispose of the main Notice of Motion early – Any finding by this court would cause prejudice to the parties – The contempt proceedings to be decided*  
E *after the disposal of the main case – Contempt of Court.*

**Disposing of the appeals, the Court**

**HELD: 1. It is always in the larger interest of the parties to the Lis to get the main case (Lis) decided first**  
F **on its merits as far as possible rather than to pursue their off-shoot proceedings on merits by keeping the main case undecided. It is more so when any decision rendered in the main case has a bearing over the pending off-shoot proceedings. There is no justification on the**  
G **part of parties to keep the main Notice of Motion pending and prosecute its off-shoot proceedings in preference to the main case. [Paras 17 and 21] [147-G; 148-F-G]**

**2. The order dated 06.08.2013 was an ex-parte one.**  
H **In such circumstances, no sooner the defendants**

(appellants) entered appearance in the civil suit and filed their pleadings in reply to the Notice of Motion, the Court which is seized of the main case, should have made sincere endeavour to dispose of the Notice of Motion on merits in the light of the mandate contained in Order XXXIX Rule 3A CPC which in clear terms provides that the Court shall make an endeavor to finally dispose of the application within 30 days from the date on which the ex-parte injunction was granted. [Para 18] [147-H; 148-A-B]

3. Once the Notice of Motion is finally decided on merits, in accordance with law, one way or the other, then the parties to the lis can always work out their rights by taking recourse to legal remedies available to them for pursuing their grievance to higher fora either in appeal or revision, as the case may be, and may also prosecute the contempt proceedings arising out of the main case, if need arises. [Para 20] [148-E]

4. When the issue on merits is seized of by the original court in civil suit/proceedings and rights of the parties are still not decided on merits, then it is not proper for this Court to probe into the facts and record any finding on any of the issues arising out of collateral proceedings else the observation of this Court may cause prejudice to the parties while prosecuting their case before the original court on merits. [Para 23] [149-C-D]

5. The High court is requested to dispose of the notice of motion pending before it, after affording an opportunity to both the parties, on merits strictly in accordance with law. Since pleadings in the said Notice of Motion were complete long back, there does not appear any kind of prejudice being caused to any of the

- A parties, if direction is issued for early disposal of the notice of motion on its merits. The Single Judge is requested to decide Notice of Motion on merits in accordance with law preferably within three months from the date of receipt of copy of this judgment. Till it is
- B decided, the contempt proceedings out of which these appeals arise, are stayed. After the disposal of the Notice of Motion, the contempt proceedings may be decided in accordance with law including its maintainability etc. [Paras 16 and 24] [147-E-F; 149-F]
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*Welset Engineers & Anr. Vs. Vikas Auto Industries & Ors.* 2006 (32) PTC 190(SC) – referred to.

Case Law Reference

- D 2006 (32) PTC 190(SC) referred to. Para 15
- CIVILAPPELLATE JURISDICTION : Civil Appeal Nos. 4914-15 of 2015.
- E From the Judgment and Order dated 26.02.2014 in Contempt Petition (L) no. 105 of 2013 in Motion of Motion (L) no. 1553 of 2013 in Suit (L) no. 677 of 2013 and Interim Order dated 31.10.2014 in Contempt Petition no. 29 of 2014 of the High Court of Judicature at Bombay.
- F P. V. Kapur, Dinkar Singh, Sauabh Kupal, Gagan Gupta for the Appellants.
- G C. A. Sundaram, Ajit Warriar, Aashish Gupta, Aditya Mukherjee, Animesh Bisht, Suresh A. Shroff & Co. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1) Leave granted.

- H 2) These appeals are filed against the Interim Order

dated 26.02.2014, passed by the High Court of Judicature at Bombay in Contempt Petition (L) No. 105 of 2013 in Notice of Motion (L) No. 1553 of 2013 in Suit (L) No. 677 of 2013 and Interim Order dated 31.10.2014 in Contempt Petition No. 29 of 2014 in Notice of Motion No. 488 of 2014 in Suit No. 284 of 2014.

3) The facts of the case, which lie in a narrow compass, however, need mention in brief to appreciate the issue involved in these appeals.

4) The appellants are the defendants whereas the respondent is the plaintiff.

5) The respondent (plaintiff) has filed one suit being Civil Suit (L) No. 677 of 2013 (renumbered as Civil Suit No. 284/2014) against the appellants (defendants) in the High Court of Bombay on its original side for claiming the following reliefs:

**“a. that the Defendants and each of them (by themselves and by/through their servants, employees, affiliates, associates and agents) be permanently restrained/injuncted by an order of this Hon’ble Court, from in any manner writing to third parties, letters that are defamatory in nature against the Plaintiff, its management and/or its promoters;**

**b. that the Defendants be directed to issue an unconditional public corrigendum, withdrawing the letters and e-mails written by it to third parties. Independent Directors and Regulatory Authorities, and apologizing for the defamatory actions on its part;**

**c. that the Defendants jointly and severally be decreed to pay to the Plaintiff damages of Rs. 25**

A **Crores, as set out at Exhibit A herein, or such other amount as this Hon'ble Court seems just and appropriate;**

B **d. that pending the hearing and final disposal of the Suit, the Defendants and each of them (by themselves and by/through their servants, employees, affiliates, associates and agents) be restrained, by order and injunction of this Hon'ble Court, from in any manner further issuing any**  
 C **defamatory letters, notices, emails, etc., in connection with and/or pertaining to and/or relating to the Plaintiff, its senior officials and promoters;**

D **e. interim, ad-interim and ex-parte ad-interim reliefs in terms of prayer (a) (b) and (d) above,**

**f. for costs;**

E **g. for such further and other reliefs as this Hon'ble Court deems appropriate in the nature and circumstances of the case."**

F 6) The respondent in the aforementioned pending civil suit filed notice of motion being Notice of Motion (L) No. 1553 of 2013 (renumbered as 488 of 2014) against the appellants herein under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure 1908 (in short "the Code") and sought ad-interim relief in terms of prayers (a), (b) and (d) as extracted above during the pendency of the Suit.

G 7) By interim order dated 06.08.2013, the Single Judge granted *ex parte* ad-interim relief in terms of prayer (a) to the respondent. The appellants herein on receiving the summons filed their detailed reply to the Notice of Motion on 21.08.2013 denying *inter alia* all the material allegations made by the  
 H respondent. The respondent, in turn, filed their rejoinder on

06.09.2013 to the reply filed by the appellants to the notice of motion. A

8) In this way, the pleadings in Notice of Motion No. 488/2013 taken out by the respondent against the appellants are complete. However, we are at pains to find out that till date, the hearing in the Notice of Motion has not been concluded and since the last two years it is pending for its final disposal on merits. B

9) In the meantime, the respondent, felt aggrieved by certain communication alleged to have been made by or/and on behalf of the appellants, which according to the respondent were made by the appellant in violation of the *ex parte* interim order dated 06.08.2013, filed contempt petition under Section 12 of the Contempt of Courts Act, 1971 against the appellants being Contempt Petition No. 105/2013 (renumbered as 29/2014) in the High Court. C D

10) In the contempt petition, the respondent has, *inter alia* averred that the appellants have deliberately and willfully violated the *ex parte* interim order dated 06.08.2013 passed by the Single Judge under Order XXXIX Rules 1 and 2 of the Code in the aforementioned Notice of Motion and thereby rendered themselves liable for having committed contempt of Court's order dated 06.08.2013. It is, therefore, prayed that the appellants be accordingly punished under the Contempt of Court Act for commission of violation of order dated 06.08.2013. E F

11) The Single Judge, on hearing the respondent, entertained the contempt petition and by order dated 26.02.2014, observed that on reading the averments made in the contempt petition, a *prima facie* case for issuance of contempt notice is made out against the appellants and hence rule be issued against them in the contempt notice making it H

A returnable on 26.03.2014. It was also observed that these proceedings would not come in the way of the appellants to prosecute any pending proceedings. The appellants have filed their reply affidavit to the contempt petition on 24.03.2014. The contempt petition is pending.

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12) During the pendency of this contempt petition, the respondent herein filed one additional affidavit on 31.10.2014 in the contempt petition complaining therein that the appellants have again committed fresh contempt by willfully violating/disobeying the *ex parte* interim order dated 06.08.2013 and hence another notice of contempt be issued against the appellants to show cause as to why they be not punished for having committed fresh contempt of order dated 06.08.2013.

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13) The Single Judge, on perusal of the additional affidavit filed by the respondent herein on 31.10.2014, directed issuance of notice to the appellants to show cause as to why action under the provisions of the Contempt of Court Act be not initiated against them for committing violation of orders dated 06.08.2013 and 26.02.2014. The notices were made returnable on 08.12.2014. The Single Judge also issued an order restraining the appellants from issuing any defamatory letter, notice, e-mail, advertisement and publication of any nature in connection with the respondent herein. This matter is also pending.

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14) Felt aggrieved by these two interim orders, i.e., 26.02.2014 and 31.10.2014, the appellants have filed these appeals by way of special leave before this Court.

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15) We have heard Mr. P.V. Kapur, learned senior counsel for the appellants and Mr. C.A. Sundaram, learned senior counsel for the respondent at considerable length. Both the learned senior counsel very ably argued the myriad legal issues arising in the case some seemingly of public

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importance in support of their respective submissions. Learned senior counsel for the appellants also in his submission doubted correctness of the decision of this Court in **Welset Engineers & Anr. Vs. Vikas Auto Industries & Ors.**, 2006 (32) PTC 190(SC), which was relied on by the learned senior counsel for the respondent against the appellants contending for dismissal of these appeals. According to learned counsel for the appellants, the said decision is *per incuriam* and thus requires to be reconsidered on the issue decided therein. A B

16) Having heard the learned counsel for the parties and on perusal of the record of the case, we consider it appropriate and in the interest of both the parties to defer our recording of findings on several issues arising in the case and more so legal issues on which lengthy arguments were addressed and request the learned Single Judge of the High Court, who is seized of Civil Suit No. 677/2013 renumbered as 284/2014 and of Notice of Motion No.1553/2013 renumbered as 488/2014, to first take up Notice of Motion No. 1553/2013 renumbered as 488/2014 filed by the respondent (plaintiff) under Order XXXIX Rules 1 and 2 of the Code and dispose of the same, after affording an opportunity to both the parties, on merits strictly in accordance with law. Since pleadings in the said Notice of Motion are complete long back, there does not appear any kind of prejudice being caused to any of the parties, if direction is issued for early disposal of the notice of motion on its merits. C D E F

17) In our considered opinion, there is no justification on the part of parties (without blaming any one) to keep the main Notice of Motion pending and prosecute its off-shoot proceedings in preference to the main case such as the one out of which these appeals arise. G

18) In our considered view, when admittedly the order dated 06.08.2013 was an *ex parte* one then in such H

A circumstances, no sooner the defendants (appellants) entered appearance in the civil suit and filed their pleadings in reply to the Notice of Motion, the Court which is seized of the main case should have made sincere endeavour to dispose of the Notice of Motion on merits in the light of the mandate contained  
B in Order XXXIX Rule 3A of the Code which in clear terms provides that the Court shall make an endeavor to finally dispose of the application within 30 days from the date on which the *ex parte* injunction was granted.

C 19) It was not done by the Court may be due to myriad reasons despite the appellants (defendants) entering appearance as back as 21.08.2013 in the main suit and completing their pleadings on 05.09.2013. As a result, the *ex parte* ad-interim order dated 06.08.2013 remains in operation.  
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20) In our view, once the Notice of Motion is finally decided on merits in accordance with law one way or the other then the parties to the Lis can always work out their rights by taking recourse to legal remedies available to them for pursuing  
E their grievance to higher fora either in appeal or revision, as the case may be, and may also prosecute the contempt proceedings arising out of the main case, if need arises.

21) In our considered opinion, It is always in the larger  
F interest of the parties to the Lis to get the main case (Lis) decided first on its merits as far as possible rather than to pursue their off-shoot proceedings on merits by keeping the main case undecided. It is more so when any decision rendered in the main case has a bearing over the pending off-  
G shoot proceedings.

22) In our view, the defendant in such case has a right to point out in the Notice of Motion, that the plaintiff has neither  
H any *prima facie* case in their favour nor there is any likelihood of plaintiff to suffer any irreparable loss/injury in relation to

subject matter of the suit, if injunction is declined to the plaintiff A  
and that no balance of convenience lies in the plaintiff's favour  
and, therefore, the Court should not have granted *ex parte*  
injunction to the plaintiff and even if it has granted then it should  
now be either recalled or modified, as the case may be. It is  
then for the Court to decide as to whether *ex parte* injunction B  
granted to the plaintiff should be confirmed or recalled or varied  
etc. and if so on what grounds.

23) We are also of the considered view that when the  
issue on merits is seized of by the original court in civil suit/ C  
proceedings and rights of the parties are still not decided on  
merits then it is not proper for this Court to probe into the facts  
and record any finding on any of the issues arising out of  
collateral proceedings such as the one here else our  
observation may cause prejudice to the parties while D  
prosecuting their case before the original court on merits.

24) It is for these reasons we are of the considered  
opinion that it would be apposite to request the learned Single  
Judge to decide Notice of Motion No. 1553/2013 renumbered E  
as 488/2014 arising out of Civil Suit No. 677/2013  
renumbered as 284/2014 on merits in accordance with law  
preferably within three months from the date of receipt of copy  
of this judgment. Till it is decided, we are inclined to stay the  
contempt proceedings out of which these appeals arise. After F  
the disposal of the Notice of Motion, the contempt proceedings  
may be decided in accordance with law including its  
maintainability etc.

25) Needless to say, since we have refrained from G  
giving finding on merits on any of the issues and hence the  
concerned Courts, which are seized of the civil suit/  
proceedings in question, would decide the matter on merits  
strictly in accordance with law without being influenced by our  
observations made herein. H

A           26) We also make it clear that all the issues which were argued in these appeals including the issue as to whether the remedy of the appellants lie in filing statutory appeal under Section 19 of the Contempt of Courts Act against the impugned orders etc. are kept open for being decided at the appropriate stage, if occasion arises.

B           27) It is for these reasons, we do not consider it necessary to discuss in detail the submissions urged by both the learned senior counsel nor we consider it apposite to deal with several case laws cited at the bar.

C           28) With these observations and the directions, the appeals stand accordingly disposed of. No costs.

D           29) A copy of the order be filed before learned Single Judge in main case as also in contempt proceedings to enable the appropriate Benches to decide the cases accordingly.

Kalpana K. Tripathy

Appeals disposed of.

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