

Allahabad High Court

Basant Lal And Anr. vs Lakshmi Chand on 1 September, 2006

Equivalent citations: AIR 2007 All 32

Author: S Mehrotra

Bench: S Mehrotra

ORDER S.P. Mehrotra, J.

1. Second Appeal No. 2576 of 1983 was filed on 11-11-1983. By the order dated 22-2-1984, the Second Appeal was admitted and notices were directed to be issued.

2. It further appears that a Stay Application, namely, Civil Misc. Application No. 4247 of 1983 (dated 11-11-1983) was also filed along with the Second Appeal. By the order dated 22-2-1984 passed on the said Application, notices were directed to be issued on the said Application, and in the meanwhile, the operation of the decree of the lower Court was stayed. The said order dated 22-2-1984 is reproduced below:

Issue notice.

Meanwhile the operation of the decree of the lower Court shall remain stayed.

3. It further appears that by the order dated 24-4-1984, the said Interim Order dated 22-2-1984 was confirmed subject to certain directions. The said Order dated 24-4-1984 is quoted below:

Heard learned Counsel for the parties. The interim order dated 22-2-1984 staying the operation of the decree of the lower Court is confirmed subject to the direction that as regards possession status quo shall be maintained and the appellant shall not transfer the land in dispute to any party until further orders of this Court.

4. It further appears that in the said Second Appeal, an Application, namely, Civil Misc. Application No. 196968 was filed on behalf of Kishan Singh (applicant).

5. The said Application was accompanied by an affidavit, sworn by the said Kishan Singh (applicant) on 25-9-2005.

6. In paragraph 2 of the said affidavit, it was, inter alia, stated that Lakshmi Chand (plaintiff-respondent in the Second Appeal) had died on 24-5-2005 in Lok Nayak Hospital, New Delhi leaving behind the said Kishan Singh as his sole heir and legal representative.

7. In view of the averments made in paragraph 2 of the said affidavit, the Court by its order dated 23-1-2006 directed the Office to submit Report as to whether any Substitution Application had been filed to bring on record the heirs and legal representatives of the said Lakshmi Chand (plaintiff-respondent).

8. Pursuant to the order dated 23-1-2006, the Office submitted its Report dated 20-2-2006. A perusal of the said Office Report showed that no Substitution Application had been filed for bringing on record the heirs and legal representatives of the said Lakshmi Chand (plaintiff-respondent).

9. In the circumstances and keeping in view the fact that the said Lakshmi Chand was the sole plaintiff-respondent, the Court by its order dated 6-2-2006 held that the Second Appeal stood dismissed as having abated.

10. It further appears that the following Applications were thereafter filed on behalf of the defendants-appellants.

1. Civil Misc. (Restoration) Application No. 42282 of 2006

2. Civil (Substitution) Application No. 93025 of 2006

3. Civil Misc. (Delay Condonation) Application No. 93028 of 2006

4. Civil Misc. Application No. 154037 of 2006

11. The prayer made in the aforementioned Restoration Application (shown at Sl. No. 1 above) is for recalling the said order dated 6-2-2006 dismissing the Second Appeal as having abated and for restoring the Second Appeal to its original number.

12. The prayer made in the aforementioned Substitution Application (shown at Sl. No. 2 above) is that Sonu and Pillo, stated to be the sons of the late Lakshmi Chand (plaintiff-respondent) be substituted in place of the said Lakshmi Chand (plaintiff-respondent).

13. The aforementioned Application (shown at Sl. No. 4 above) has been held along with a Supplementary Affidavit giving correct address in respect of the aforesaid Sonu and Pillo, stated to be the sons of the said Lakshmi Chand (plaintiff-respondent).

14. The aforementioned Delay Condonation Application (shown at Sl. No. 3 above) has been filed, inter alia, praying for condoning the delay in filing the aforementioned Substitution Application (shown at Sl. No. 2 above).

15. By the order dated 18-8-2006, notices have been directed to be issued on the aforementioned Applications (shown at Sl. Nos. 1, 2, 3 and 4 above). It has further been directed by the said order dated 18-8-2006 that notices would be issued to the aforesaid Sonu and Pillo, stated to be the sons of the late Lakshmi Chand (plaintiff-respondent) as well as to the aforesaid Kishan Singh (applicant in the aforementioned Civil Misc. Application No. 196968 of 2005).

16. Civil Misc. (Injunction) Application No. 167798 of 2006 has now been filed on behalf of the defendants-appellants, inter alia, praying that the Injunction Order dated 24-4-1984 be continued during the pendency of the aforementioned Applications filed on behalf of the

defendants-appellants.

17. The said Injunction Application is supported by an affidavit, sworn on 19-8-2006.

18. Copy of the said Injunction Application has been served in the Office of Shri R. B. Singhal, learned Counsel for the said Kishan Singh (applicant in Civil Misc. Application No. 196968 of 2005) on 21-8-2006.

19. As the matter is an urgent one, I am proceeding to pass appropriate order on the said Injunction Application without prejudice to the right of the said Kishan Singh (applicant in Civil Misc. Application No. 196968 of 2005) or the said Sonu and Pillo to file counter -affidavit in reply to the said Injunction Application, if so advised.

20. I have heard Shri Vinod Sinha, learned Counsel for the defendants-appellants and Shri R. B. Singhal, learned Counsel for the said Kishan Singh (applicant in Civil Misc. Application No. 196968 of 2005), and perused the record.

21. Shri Vinod Sinha, learned Counsel for the defendants-appellants submits that by the said order dated 24-4-1984, the Interim Order dated 22-2-1984 was confirmed subject to certain directions. The said order dated 22-2-1984 as confirmed by the order dated 24-4-1984 continue throughout till the Court by its order dated 62-2006 held that the Second Appeal stood dismissed as having abated.

22. In the circumstances, the submission proceeds, it is in the interest of justice that the said order dated 22-2-1984 as confirmed by the order dated 24-4-1984 be continued till the decision on the aforementioned Applications (shown at Sl. Nos. 1, 2, 3 and 4 above), filed on behalf of the defendants-appellants.

23. Shri R. B. Singhal, learned Counsel for the said Kishan Singh (applicant in Civil Misc. Application No, 196968 of 2005) sub mill that as the Second Appeal stood dismissed as having abated, there is no Sec-end Appeal pending at present, and, therefore, no injunction can be continued or granted in the present case.

24. It is further submitted by Shri Singhal that the plaintiff-respondent has already expired, and there is no respondent in the Second Appeal, and as such, there is no person against whom any injunction can be granted at present.

25. It is further submitted by Shri Singhal that the aforementioned Applications, shown at Sl. Nos. 1 to 4 above, are not covered within the expression "proceedings" as occurring in Section 141 of the Code of Civil Procedure. Therefore, the provisions of Section 141 of the Code of Civil Procedure cannot be restored to for passing the order prayed for on behalf of the defendants-appellants in Civil Misc. (Injunction) Application No. 167798 of 2006 under consideration.

26. In rejoinder, Shri Vinod Sinha, learned Counsel for the defendants-appellants submits that even though the Second Appeal has abated, still the Court has power to grant injunction or stay during

the pendency of the aforementioned Applications, filed on behalf of the defendants-appellants. It is submitted that such power can be exercised by the Court in the interest of justice under Section 151 of the Code of Civil Procedure.

27. Shri Sinha further submits that the aforementioned Applications would be covered within the expression "proceedings" occurring in Section 141, Code of Civil Procedure, and by virtue of the provisions of Section 141 of the Code of Civil Procedure, the provisions of the Code of Civil Procedure would apply to the aforementioned Application pending before the Court. Shri Sinha has placed reliance on the following decisions:

1. Devinder Singh v. The State of H.P. through Secretary, Election Department, Government of Himachal Pradesh .
2. J.K. Chowdhury v. Ashis Banerji .
3. T. Panneerselvam v. A. Baylis .

28. I have considered the submissions made by the learned Counsel for the parties, and perused the record,

29. As noted above, the aforementioned Applications including the Restoration Application and Substitution Application have been filed on behalf of the defendants-appellants, and the notices have already been directed to be issued on the said Applications. Prayer made in the aforementioned Restoration Application, as noted above, is for recalling the said order dated 6-2-2006 dismissing the Second Appeal as having abated, and for restoring the Second Appeal to its original number. Again, as mentioned above, the prayer made in the aforementioned Substitution Application is that Sonu and Pillo, stated to be the sons of the late Lakshmi Chand (plaintiff-respondent), be substituted in place of the said Lakshmi Chand (plaintiff-respondent). Further, as noted above, the aforementioned Application, shown at Sl. No, 4 above, has been filed along with a Supplementary Affidavit giving correct address in respect of the said Sonu and Pillo. Again, as mentioned above, the prayer made in the aforementioned Delay Condonation Application is for condoning the delay in filing the aforementioned Substitution Application.

30. In my opinion, the proceedings being taken on the aforementioned Applications will be covered within the purview of the phrase "all proceedings in any Court of Civil Jurisdiction" occurring in Section 141 of the Code of Civil Procedure. Section 141 of the Code of Civil Procedure is reproduced below:

141. Miscellaneous proceedings.- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction.

[Explanation.- In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution].

30A. In my opinion, the phrase "all proceedings in any Court of Civil Jurisdiction" is of wide import, and the proceedings being taken on the aforementioned Applications would fall within the ambit of the said phrase.

31. It is further noteworthy that the Explanation to Section 141 of the Code of Civil Procedure itself provides that expression "proceedings" includes proceedings under Order IX of the Code of Civil Procedure. The said Explanation was inserted by Act No. 104 of 1970 With effect from 1-2-1977.

32. In my opinion the word "includes" used in the said Explanation with reference to proceedings under Order IX of the Code of Civil Procedure clearly shows that the said Explanation has been inserted by way of abundant caution to clarify doubts, if any, in regard to inclusion of the proceedings under Order IX within the expression "proceedings" occurring under Section 141 of the Code of Civil Procedure. The said Explanation insofar as it pertains to proceedings under Order IX of the Code of Civil Procedure is not, in my view, intended to curtail the wide import of the phrase "all proceedings in any Court of Civil Jurisdiction" occurring in the main provision of Section 141 of the Code of Civil Procedure. '

33. In this regard, reference may be made to the relevant portion of the Objects and Reasons for the Code of Civil Procedure (Amendment) Act, 1976 (Act No. 104 of 1976), which is as follows:

Clause 50.- The applicability of Section 141 to various types of proceedings has been the subject of controversy, particularly whether the section applies where an application to set aside or orders of dismissal for default are themselves dismissed for default or decided ex parte. The High Court of Bombay held that in such cases Section 141 applies. The Supreme Court, however, came to a contrary conclusion. In the circumstances, Section 141 is being amended to clarify that the section applies to proceedings under Order IX.

The question whether an application under Article 226 of the Constitution is a "proceeding in any Court of Civil Jurisdiction" within the meaning of Section 141 has been the subject-matter of a controversy. While the Andhra Pradesh High Court holds that Section 141 applies to such proceedings, the Allahabad, Calcutta, Madras and Punjab High Courts have held that Section 141 does not apply to such proceedings. In the circumstances, it is being clarified that Section 141 does not apply to proceedings under Article 226 of the Constitution. "S.O.R. (Act 104 of 1976).

34. Certain judicial decisions dealing with the scope of Section 141 of the Code of Civil Procedure may be noticed.

35. In *Thakur Prasad v. Fakir-Ullah* (1895) ILR 17 All 106 (PC), the Privy Council held that Section 647 of the old Code of Civil Procedure (new Section 141 of the Code of Civil Procedure, 1908) could not be applied to execution of decree,

36. In *Dokku Bhushayya v. Katragadda Ramakrishnayya*, their Lordships of the Supreme Court relied upon the above decision of the Privy Council, and laid down that Section 141 of the Code of Civil Procedure, 1908 was not applicable to execution proceedings.

37. In Ram Chandra Aggrawal v. The State of Uttar Pradesh , their Lordships of the Supreme Court opined as under (paragraph 6 of the said AIR):

...the expression "civil proceedings" in Section 141 is not necessarily confined to an original proceeding like a suit or an application for appointment of a guardian etc., but that it applies also to a proceeding which is not an original proceeding....

38. The proceedings on the aforementioned Applications, shown at Sl. Nos. 1 to 4 above, are not the execution proceedings, nor are the same proceedings in any execution case, Therefore, the decisions in Thakur Prasad case (supra) and in Dokku Bhushyaya case (supra) regarding non-applicability of Section 141 of the Code of Civil Procedure, 1908 to execution proceedings, are not applicable to the proceedings on the aforementioned Applications, shown at Sl. Nos. 1 to 4 above.

39. Further, the decision in Ram Chandra Aggarwal case (supra) shows that Section 141 of the Code of Civil Procedure, 1908 may apply to the proceedings on the aforementioned Applications, shown at Sl. Nos. 1 to 4 above.

40. As the proceedings on the aforementioned Applications (shown at Sl. Nos. 1 to 4 above) are covered under Section 141 of the Code of Civil Procedure, the procedure provided in the Code of Civil Procedure in regard to suits would be followed as far as it can be made applicable in respect of the said proceedings. By virtue of the provisions of Section 107(2) and Section 108 of the Code of Civil Procedure, the Court dealing with Second Appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code of Civil Procedure on Courts of original jurisdiction in respect of suits instituted therein.

41. Reading the provisions of Section 141 with Section 107(2) and Section 108 of the Code of Civil Procedure, I am of the opinion that it is open to the Court to pass appropriate orders for injunction or stay during the pendency of the proceedings on the aforementioned Applications.

42. It is noteworthy that Explanation to Section 141 of the Code of Civil Procedure shows that Section 141 of the Code of Civil Procedure may apply to proceedings being taken, after the Suit or Appeal stands disposed of.

43. Therefore, the Court may pass suitable injunction/stay order in the proceedings being taken after the Second Appeal has stood dismissed as having abated.

44. Even if the provisions of Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure are held to be not applicable because there is no Second Appeal pending at present, still the Court has ample power to pass appropriate orders for injunction or stay in exercise of its inherent powers saved under Section 151 of the Code of Civil Procedure.

45. Section 151 of the Code of Civil Procedure lays down that nothing in the Code of Civil Procedure shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Therefore,

the Court is not powerless in granting suitable orders for injunction or stay during the pendency of the restoration matter or the substitution matter merely on the ground that the Second Appeal has already abated and there is no Second Appeal pending at present.

46. In *Devinder Singh* case (supra), a Division Bench of the Himachal Pradesh High Court laid down as under (paragraphs 3 and 12 of the said AIR):

3. I think it to be beyond dispute that the High Court has inherent jurisdiction to pass appropriate orders in the matter of petitions under Article 226 of the Constitution. The principles on which it will exercise its inherent powers are well settled. They cannot be exercised where it would be inconsistent with or opposed to provisions of the statutory law of procedure or relate to matters on which such statutory law can be said to be exhaustive. They may be exercised wherever justice, equity and good conscience require a Court to act. The Courts in India are not only Courts of Law but also Courts of Equity. Every Court administers justice in accordance with law, but wherever the law is silent a Court will act *ex-debito justitiae* in consummation of the purpose for which it exists. Some of the cases in which it has been recognized that the Court has inherent power are set out in *Hukum Chand v. Kamalanand* (1906) ILR 33 Cal 927 and further instances are mentioned in *Nand Kishore v. Ram Golam* (1913) ILR 40 Cal 955.

12. While being of opinion that a Court passing a decree or order has inherent power to stay the execution or suspend the operation of a decree or order made by it, it is desirable to reiterate that this power is subject to the limitations adverted to earlier, especially those which arise upon a consideration of the relevant statute. It is also necessary to emphasize that the inherent power of a Court should not be capriciously or arbitrarily exercised. It should be exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone the Court exists. The inherent powers should not be used where it would amount to an abuse of the process of the Court. There should be very good ground for staying the execution or suspending the operation of a decree or order. Mere inconvenience or annoyance is not enough to induce the Court to take away from a successful party the benefit of his order.

47. Thus, this decision, *inter alia*, lays down that a Court passing a decree or order has inherent power to stay the execution or suspend the operation of a decree or order made by it.

48. In *J. K. Chowdhury* case (supra), execution proceedings in respect of an *ex parte* decree were initiated by a decree holder. During the pendency of the execution proceedings, the defendant filed an Application under Order IX, Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the *ex parte* decree. The said Application was accompanied by an Application under Section 5 of the Limitation Act for condoning the delay thereof. Another Application under Section 151 of the Code of Civil Procedure for the stay of the execution of the *ex parte* decree was made. The said Application under Section 151 of the Code of Civil Procedure was allowed and the execution proceedings were unconditionally stayed. The request to impose certain conditions by invoking inherent powers made by the decree-holder was refused by the Lower Court.

49. Thereupon, a Revision Petition under Section 115 of the Code of Civil Procedure was filed before the Punjab and Haryana High Court. A learned single Judge of the Punjab and Haryana High Court held that the Court while granting stay should impose conditions if it was necessary in the interest of justice.

50. Thus, this decision shows that even after the passing of ex parte decree, the Court in exercise of its inherent power may stay the execution proceedings subject to certain conditions.

51. In T. Panneerselvam case (supra), the Court below granted interim injunction restraining the appellant from alienating the Suit property pending disposal of the Respondent's Application under Order IX, Rule 9 of the Code of Civil Procedure.

52. An Appeal was filed before the Madras High Court. A learned single Judge of the Madras High Court dismissed the Appeal. It was laid down as under (paragraphs 2 and 3 of the said AIR):

2. At the outset, as pointed out already, this is a mere interim order passed in the presence of both the parties. This will show that no final order has been passed in the application. Nonetheless, Mr. Govindarajan learned Counsel for the appellant very seriously argues that the Court below cannot pass an order of injunction pending an application under Order 9, Rule 9, C.P.C. because the suit itself is no more on the file of the Court. In this context, the learned Counsel for the appellant would rely upon Ram Sarup v. King Emperor AIR 1924 Oudh 345. The learned Judicial Commissioner has held that the Court cannot grant temporary injunction in a suit which has been dismissed for default but for the restoration of which the application is pending. I am unable to agree for several reasons. First of all this decision was rendered as early as 1924. The law is not static but dynamic. It is always on the forward march. The recent of law is that the hypertechnicalities shall not stand in the way of the Court administering justice. In this case the suit is for specific performance. No doubt it was dismissed but then, the respondent-plaintiff came forward with an application under Order 9, Rule 9, C.P.C. He apprehended that taking advantage of the dismissal of the suit, the appellant herein might alienate the property and if he should alienate, the suit itself will become redundant. This was thoroughly and properly appreciated by the learned Subordinate Judge because while the granted time for counter by the present appellant he did not grant interim injunction. In my view, the order is only to advance justice and did not cause any prejudice to either parties.

3. The second argument is that the petition is laid under Order 39, Rule 1, C.P.C. and no suit is pending, the respondent is not entitled to resort to Order 39, Rule 1, C.P.C. It might be that the respondent is not entitled to invoke to his aid Order 39, Rule 1, C.P.C. But the Supreme Court has held that notwithstanding Order 39, Rule 1, Court possesses the power under Section 151, C.P.C. to grant interim injunction if the facts could not be brought within the four corners of Order 39, Rule 1, C.P.C, but in the interests of justice. I have also held that Section 151, C.P.C, is to supplement the powers expressly provided such as Order 39, Rule 1, C.P.C. Then, the Court below had the right under Section 151 to pass the order that is assailed in this appeal.

53. Thus, this decision lays down that even after the dismissal of the suit, the Court, pending consideration of Application under Order IX, Rule 9 of the Code of Civil Procedure, may grant

interim injunction in exercise of its inherent powers saved under Section 151 of the Code of Civil Procedure.

54. The aforesaid decisions, in my opinion, clearly show that even after the disposal of the Suit or Appeal, the Court, may, in appropriate cases, pass suitable injunction or stay order in the interest of Justice in exercise of its inherent powers saved under Section 151 of the Code of Civil Procedure during the pendency of restoration/recall Application before it.

55. Thus, these decisions support the conclusions drawn above in the present order.

56. Shri Singhal has sought to distinguish these cases on the ground that in these cases the question of abatement was not involved while in the present case, the Second Appeal has abated.

57. In my opinion, no such distinction, as sought to be made by Shri Singhal, can be drawn. Only question is as to whether, in case the Suit or Appeal has been disposed of, and a Restoration Application is pending, the Court has power to grant injunction or stay in the matter. The matter in which the Suit or Appeal has been disposed of (such as, by dismissal in default, or by passing ex parte decree/order, or by abatement, etc.) is not material for deciding the said question.

58. As regards the submission of Shri Singhal that the plaintiff-respondent having already expired, there is no respondent in the Second Appeal, and as such, there is no person against whom any injunction can be granted at present. I find myself unable to accept the said submission. In my view, in case, the circumstances so require in the interest of justice, the injunction may be issued against person/persons, who are sought to be substituted as the heirs and legal representatives of the Late Lakshmi Chand (plaintiff-respondent) (namely, the said Sonu and Pilloo) by the aforementioned Civil Misc. (Substitution) Application No. 93025 of 2006 as also against the said Kishan Singh (applicant in Civil Misc. Application No. 196968 of 2005), who alleging himself to be the heir and legal representative of the said Lakshmi Chand (plaintiff-respondent) is seeking impleadment in the Second Appeal as the heir and legal representative of the said Lakshmi Chand (plaintiff-respondent) by the said Civil Misc. Application No. 196968 of 2005. Injunction may also be issued against any person alleging/claiming himself to be the heir or legal representative of the said deceased Lakshmi Chand (plaintiff-respondent) as his claim is through the said deceased Lakshmi Chand (plaintiff-respondent).

59. In the present case, as noted above, by the order dated 6-2-2006, it has been held that the Second Appeal stands dismissed as having abated.

60. The aforementioned Restoration Application, namely, Civil Misc. (Restoration) Application No. 42282 of 2006 has been filed, inter alia, praying for recalling the said order dated 6-2-2006 dismissing the Second Appeal as having abated and for restoring the Second Appeal to its original number.

61. During the pendency of the said Restoration Application besides other Applications mentioned above, it is open to the Courts to pass appropriate orders for injunction or stay in the interest of

justice keeping in view the principles mentioned above.

62. Coming now to the merits of the aforesaid Civil Misc. (Injunction) Application No. 167798 of 2006, it will be noticed that the said Interim Order dated 22-2-1984, as confirmed by the said order dated 24-4-1984, continued throughout the pendency of the Second Appeal.

63. It is on account of abatement of the Second Appeal that the said order dated 22-2-1984, as confirmed by the said order dated 24-4-1984, may be said to have come to an end. However, the aforementioned Substitution Application has already been filed on behalf of the defendants-appellants.

64. In view of the aforesaid circumstances, I am of the opinion that it is in the interest of justice that suitable injunction/stay order be passed in the matter so as to safeguard the interest of all the concerned parties in respect of the subject-matter of the present case.

65. It is, accordingly, directed that until further orders of the Court, status quo as of date in regard to possession of the property involved in the present case will be maintained by the defendants-appellants as well as by the aforesaid Sonu and Pilloo, stated to be the sons of the late Lakshmi Chand (plaintiff-respondent) and the said Kishan Singh (applicant in Civil Misc. Application No. 196968 of 2005) as also by any other person alleging himself to be the heir or legal representative of the deceased Lakshmi Chand (plaintiff-respondent). It is further directed that until further orders of the Court, the defendants-appellants will not alienate in any manner the property involved in the present case.