

NAGARAJAH AND OTHERS
v
RAJADURAI AND OTHERS

COURT OF APPEAL
AMARATUNGA, J.
BALAPATABENDI, J.
C.A. 1437 / 2000
D.C. MALLAKAM 2/MISC
NOVEMBER 13 AND 14, 2003

Validity of a 'Judgment' written at a time when a Stay Order is issued by a Superior Court? – Civil Procedure Code section 186A – Applicability – Is it a illegal Judgment?

In a transfer application, the Court on 25.5.98, issued an order staying further proceedings in the trial Court till 24.7.98. The Judgment in the trial Court was fixed for 1.6.98. The trial Judge was aware of the stay order issued by the Court of Appeal, and he forwarded the record along with his Judgment to the Court of Appeal. After the transfer application was dismissed, and the record returned to the trial Court, the District Judge who functioned at that time delivered his order stating that, the Judgment is not a valid judgement, as it was written after the Court of Appeal issued a stay order, and refused to pronounce the judgment written by his predecessor.

The defendant-petitioner moved in Revision.

Held:

- (i) Writing the judgment is a very vital step in judicial proceedings. An order from this Court directing the stay of proceedings has the effect of tying the hands of the Judge as far as the case is concerned.
- (ii) The learned Judge has written his "Judgment" in violation of a lawful order, validly made by this Court, which he was bound by law to obey and as such in the eyes of the law, the purported Judgment was ultra vires and illegal. A Judge's first duty is to obey the law.

APPLICATION to Revise an order of the District Court of Mallakam.

Cases referred to:

1. *Waseela Umma v Sally* – 1954 56 NLR 425
2. *Edward v De Silva* – (1945) 46 NLR 342
3. *Attorney-General v Sillem* – 11 Eng. Reports at 1208
4. *The Queen v Gnanaseeha Thero and others* – (1968) 73 NLR 154

R.E. Thambirathnam for petitioners

P. Sivaloganathan for respondent.

January 21, 2003

GAMINI AMARATUNGA, J.

This is an application to revise an order dated 10/5/2000 and delivered on 21/9/2000 by the learned Additional District Judge of Mallakam. The background facts relevant to this application are as follows: 01

The plaintiff-respondent (the plaintiff) filed action in the District Court of Mallakam against the defendant-petitioners (the defendants) praying for a declaration that the Special Meeting of the Mahajana College Tellippalai Old Students' Association convened by the 1st defendant and held on 2/11/1996 was invalid. The plaintiff also sought injunctive relief against the Executive Committee elected at the said meeting to prevent them from collecting money on behalf of the Association. 10

At the trial after the plaintiff's case was closed, further trial was fixed for 6/5/1998 for the defendant's evidence. On 6/5/1998, the learned counsel for the plaintiff expressed his dissatisfaction over the manner in which the learned Judge conducted the proceedings of the case and requested the learned Judge to transfer the case to another Judge. When this request was not acceded to, the learned counsel and the plaintiff walked out of Court. The trial continued with the defendants leading their evidence.

In the meantime the plaintiff filed an application in this Court bearing No. 390/98 seeking an order transferring the case. This Court, having considered the application on 25/5/1998, issued an order staying further proceedings in the District Court case till 24/7/1998. 20

Meanwhile the case had been called in the District Court on 28/5/1998 for the defendants' written submissions and after the same were filed, the judgement was fixed for 1/6/1998. This is reflected in journal entry No. 58. There is another journal entry made on the same day at 11.00 a.m. It states that the Attorney-at-Law for the plaintiff brought to the notice of Court that the Court of Appeal in application No. 390/98 has issued a stay order staying the proceedings in the case. The learned Judge has initialled this entry. The petition does not state the date on which the District Court received the official communication sent by this Court. However the learned Judge, without pronouncing his judgment on 1/6/1998, has forwarded the record to this Court, along with his judgment in a sealed envelope. 30

On 10/5/1998, this Court has dismissed the plaintiff's transfer application holding that the Court did not accept that there was no fair trial up to the time the plaintiff and his counsel walked out of Court. When the record was returned to the District Court an application was made by the defendants that since the learned Judge who heard the case and wrote the judgment has since retired, the Judge who functioned at that time (time of the application) should pronounce the judgment written by his predecessor, but not pronounced in view of the stay order issued by this Court. This application was objected to by the plaintiff. After both parties filed written submissions on that matter the learned Judge delivered his order on 21/9/2000. By the said order the learned Judge held that

- i. since the learned Judge who heard the case has written the judgment after the Court of Appeal issued a stay order it was not a valid judgment;
- ii. in view of the judgment in the Court of Appeal, the proceedings in the case up to 6/5/1998 were proper and impartial.
- iii. If both parties consent to continue proceedings from 6/5/1998, proceedings would be continued from the point reached by 6/5/1998 but if one party does not consent, the proceedings should commence before the present District Judge.

The defendants seek revision of that order. Both parties have filed written submissions and have consented to accept an order made after considering the written submissions. The question to be decided in this application is the validity of the 'judgment' written at a time when the stay order issued by this Court was in force. The validity of an act done by a Court at a time when a stay order issued by a superior court was in operation had been considered in the case of *Waseela Umma v Sally*⁽¹⁾. In that case a party to a partition action moved the Supreme Court by way of revision to obtain a direction to the trial Judge to permit that party to prove her claim to the corpus. The judgment in the partition action was fixed for 12th June. On 29th May the Supreme Court ordered notice on the respondents and directed to call for the record. On 30th May the Registrar, by letter called for the record from the District Judge. The learned District Judge delivered judgment on 12th June and forwarded the record.

It appears from the judgement that the Supreme Court was prepared to accept the position that although the Registrar's letter had

been received in the Registry of the District Court, it would have been lying there without the fact that such a letter had been received being brought to the Judge's notice until he delivered his judgment.

It was contended by the learned Counsel for the respondent that the Judge had jurisdiction to continue the proceedings though the Supreme Court may have called for the record. Nagalingam S.P.J., finding that there was no authority on the point, cited with approval what Soertsz A.C.J., said in *Edward v De Silva*⁽²⁾ on the question of jurisdiction of an inferior court to continue proceedings after a petition of appeal addressed to the Supreme Court had been filed. Soertsz A.C.J.'s words quoted by Nagalingam S.P.J. are as follows:

80

"Now the ordinary rule is that once an appeal is taken from the judgment and the decree of an inferior court, the jurisdiction of that Court in respect of that case is suspended, except of course, in regard to matters to be done and directions to be given for the perfecting of the appeal and its transmission to the Court of Appeal. As Lord Westbury, Lord Chancellor (1864) observed in *Attorney-General v Sillem*⁽³⁾ at 1208, 'the effect of a right of appeal is the limitation of the jurisdiction of one Court and the extension of the jurisdiction of another'. It follows as a corollary that on that right being exercised, the case should be maintained in status quo till the appellate court has dealt with it and given its decision."

90

Having quoted those words, Nagalingam S.P.J. having said that he did not see any difference in principle between appeals and applications for revision, said further that,

"when this Court by its order of 29th May 1953, directed notice to issue and directed the Registrar to call for the record, this Court had acquired seisin over the case and acquired jurisdiction over it, immediately effecting thereby a limitation of the jurisdiction of the District Judge to continue subsequent proceedings." P. 247. The learned District Judge's judgment was held to be ultra vires and was set aside.

100

In the instant case, the defendants' written submissions were filed on 28/5/1998 and the judgment was fixed for 1/6/1998. On the same day at 11.00 a.m. the Judge was informed of the stay order issued by this Court. The only inescapable inference to be drawn from the above facts is that the learned Judge has written his judgment knowing very

110

well that this Court has issued a stay order. Can one contend that the stay order cannot affect the Judge's freedom to write his judgment either in chambers or at home? I do not think so. Writing the judgment is a very vital step in judicial proceedings. An order from this Court directing the stay of proceedings has the effect of tying the hands of the Judge as far as that particular case is concerned. Therefore it is my considered conclusion that the learned Judge has written his "judgment" in violation of lawful order, validly made by this Court, which he was bound by law to obey and as such in the eyes of the law, the purported judgment was ultra vires and illegal.

120

The purported judgment is like a confession recorded by a Magistrate at a time when he had no power under the law to record it. In *The Queen v Gnanaseeha Thero and others* (4), the Supreme Court has decided that such a confession has no legal value.

The learned Counsel for the defendant-petitioners has relied on section 186A of the Civil Procedure Code to contend that the judgment written by the learned Judge is valid. Section 186A reads as follows.

"Where a Judge pronounces a judgment written by his predecessor but not pronounced as provided in section 185, such judgment shall, if such predecessor was a judicial officer within the meaning of Article 114(6) of the Constitution, at the time such judgment was written, not be deemed to be invalid by reason only of the fact that such predecessor had no jurisdiction to write such judgment."

130

The section may cater to a situation where the Judge had no territorial jurisdiction at the time he wrote the judgment as a result of a transfer given to him. It is my view that section 186A cannot be invoked to salvage an illegal judgment written in blatant violation of a stay order issued by this Court. A Judge's first duty is to obey the law.

For the reasons set out above, I uphold the learned Judge's order that the judgment written by his predecessor was not valid as it had been written when the stay order was in force. I accordingly dismiss this revision application with costs in a sum of Rs. 5000/-.

140

BALAPATABENDI, J. - I agree.

Application Dismissed.