IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No.739 of 2021 in Arb. Case No.53 of 2018
Reserved on: 04.09.2023
Date of Decision:18.09.2023

M/s Rudra-XI Infrastructure Pvt. Ltd.

....Petitioner/non-applicant.

Versus

Municipal Corporation Shimla

.....Respondent/applicant.

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the petitioner/non-applicant :		Mr. Vivek Sharma, Advocate.
For the respondent/applicant	:	Mr.Nitin Thakur, Advocate.

Rakesh Kainthla, Judge

OMP No.739 of 2021 in Arb. Case No.53 of 2018

Municipal Corporation, Shimla has filed the present application under Section 151 of CPC to seek appropriate directions in Arbitration Case No.53 of 2018. It has been asserted that M/s Rudra XI Infrastructure Pvt. Ltd. filed an application under Section 9 of the Arbitration and Conciliation Act,1996

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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before this Court in view of the issuance of termination notice dated 14.06.2018 by M.C. Shimla. M/s Rudra XI Infrastructure Pvt. Ltd. had submitted a Bank guarantee of ₹40,00,000/-valid till 11.9.2018 at the time of entering into the contract with M.C. Shimla. The Company made a specific prayer to restrain the M.C. Shimla from terminating the contract without the invocation of the arbitration clause. It was further prayed that M.C. Shimla be restrained from invoking and realizing the performance security deposited by the Company. The Company did not commence the work at the site till the filing of the arbitration case before this Court. M.C. Shimla issued a notice terminating the concessionaire agreement executed between the parties. This Court passed a status quo order on 08.08.2018. The matter was listed on 06.09.2018. The learned counsel for the M.C. Shimla sought time to file a reply and the matter was adjourned till 13.09.2018. Interim protection was further extended. The matter was listed on various dates and was ultimately dismissed as withdrawn on 06.12.2018. The Company was protected by order of the Court and no coercive action could be taken against the Company for encashing the Bank guarantee. The validity of the Bank guarantee expired on 11.09.2018 and the M.C. Shimla was

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unable to act upon the Bank guarantee after its expiry. M.C. Shimla issued a letter dated 28.12.2018 to the Company to renew/submit a fresh Bank guarantee of ₹40,00,000/-; however, no action was taken by the Company, despite several reminders, hence, the present application.

2. The application was opposed by filing a reply taking preliminary objections regarding lack of maintainability, and M.C. Shimla being estopped from filing the present application due to its acts, conduct, omission and commission. The contents of the application were denied on merits. However, it was admitted that the bank guarantee was furnished by the Company for ₹40,00,000/- at the time of entering into the contract with the M.C. Shimla. It was also admitted that an application under Section 9 of the Arbitration and Conciliation Act was filed for restraining the M.C. Shimla from terminating the contract without the invocation of the arbitration clause. It was asserted that the vacant possession of the site was not handed over to the Company and M.C. Shimla defaulted in performing its part of the contract. The Company requested M.C. Shimla to remove the hindrances on the project site. The site was made available to the Company in 2017. No objection was

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raised when the orders were passed by this Court. Therefore, it was prayed that this application be dismissed.

3. I have heard Sh.Vivek Sharma, learned counsel for the M.C. Shimla and Sh.Nitin Thakur, learned counsel for the Company.

4. Sh.Vivek Sharma, learned counsel for the M.C. Shimla submitted that the Company filed an arbitration petition before this Court under Section 9 of the Arbitration and Conciliation Act. The Court passed an order of status quo. M.C. Shimla could not enforce the Bank guarantee furnished by the Company at the time of execution of the agreement. The Company had misused the process of law and the Bank guarantee stood expired. The stay order has been vacated after the withdrawal of the application and the principle of restitution requires that parties be put in the same situation in which they were before the passing of the order.Hence, he prayed that the present application be allowed and necessary directions be issued.

5. Sh. Nitin Thakur, learned counsel for the Company submitted that there was no *mala fide* in filing the application. The Company was protecting its rights. M.C.Shimla has a right

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to take recourse to law. The present application is not maintainable; hence, he prayed that the present application be dismissed.

6. I have given considerable thought to the rival submissions at the bar and have gone through the records carefully.

7. A perusal of case file No. 53 of 2018 shows that the Company filed a petition under Section 9 of the Arbitration and Conciliation Act for interim measures for restraining the M.C. Shimla from terminating the contract without invocation of the arbitration clause and realizing the performance security deposited by the company by way of Bank guarantee issued by PNB, The Mall, Shimla. The Court passed an order on 08.08.2018 directing the parties to maintain the status quo, qua the status of the contract and any action taken or proposed to be taken pursuant to the dispute between the parties arising out of the contract till the next date of hearing. This order was extended from time to time and the learned counsel for the Company withdrew the petition under the instruction of the Company.

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8. It is apparent from the perusal of the record that the Company had sought and obtained an interim order seeking to restrain the M.C. Shimla from enforcing the bank guarantee furnished by the Company. This order lapsed after the petition was permitted to be withdrawn by the Court. It was laid down by the Hon'ble Supreme Court in ***Bansidhar Sharma v. State of Rajasthan*, *(2019) 19 SCC 701 : (2020) 4 SCC (Civ) 784: 2019 SCC OnLine SC 1420***, that where an order of the Court is varied or set aside, the principle of restitution demands that the party, who had received the benefit of the decree should make restitution to the other party for what he had lost. It was observed:

> "**14.** The scope of post 1976 amended Section 144 CPC has been considered by this Court in ***Neelathupara Kummi Seethi Koya Phangal Vs. Montharapalla Padippua Attakoya [Neelathupara Kummi Seethi Koya Phangal Vs. Montharapalla Padippua Attakoya, 1994 Supp (3) SCC 760]*** in para 3 as under: (SCC p. 762)
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> > "3. In the 1976 Amendment Act suitable amendment was made and Explanations (*a*) to (*c*) were added but they have no relevance for the purpose of the case. The question, therefore, is whether the transferee executing court is a "court of first instance" within the meaning of Section 144(1) CPC. A bare reading of sub-section (1) does indicate that the application for restitution would lie when the decree executed is reversed or varied or modified. The doctrine of restitution is based upon the high cardinal principle that the acts of the court

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should not be allowed to work in injury or injustice to the suitors. Section 144, therefore, contemplates restitution in a case where property has been received by the decree-holder under the decree, which was subsequently either reversed or varied wholly or partly in those proceedings or other proceedings. In those set of circumstances,the law raised an obligation on the party that received the benefit of such reversed judgment to restitute the property to the person who had lost it. In that behalf in sub-section (2) a right of the suit was taken out and an application under sub-section (1) was contemplated for the execution of the decree by way of restitution. Sub-section (1) clearly indicates that it is a "court of first instance" in which the proceedings in the suit had been initiated and a decree was passed or the suit was dismissed, but subsequently on appeal decreed or vice versa. The court of first instance would, therefore, mean the court which passed the decree or order. The transferee executing court is not the court that passed the decree or order, but the decree was transmitted to facilitate the execution of that decree or order since the property sought to be executed or the person who is liable for execution is situated or residing within the jurisdiction of that executing court. Therefore, the court which is competent to entertain the application for restitution is the court of first instance i.e. Administrator's Court (Subordinate Judge) that decreed the suit, and not the court to which the decree was transmitted for execution. The court of first instance of the administrator is now designated as the Court of Subordinate Judge, but the application for restitution was filed in the executing court, namely, the Court of District Munsif at Androth. Thus in the face of the language of Section 144, the District Munsif at Androth, by no stretch of imagination be considered to be court of

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> first instance. Its order of restitution is without jurisdiction and, therefore, it is a nullity. The High Court is accordingly right in its conclusion that the order for restitution is clearly vitiated by error of law and lack of jurisdiction. We do not find any ground warranting interference. The appeal is dismissed but in the circumstances without costs."

15. It has been further considered by other Coordinate Bench of this Court in the recent past in ***Murti Bhawani Mata Mandir v. Ramesh[Murti Bhawani Mata Mandir v. Ramesh, (2019) 3 SCC 707 : (2019) 2 SCC (Civ) 408]*** as under: (SCC p. 710, para 9)

> "9. Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed."

16. It clearly transpires that Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the court in making restitution is bound to

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restore the parties, so far as they can be restored, to the same position as they were in at the time when the court by its action had displaced them."

9. This position was reiterated in ***Bhupinder Singh v. Unitech Ltd., 2023 SCC OnLine SC 321 = AIR 2023 SC 1626*** and it was held:

> "**8.** On the principle of restitution, the decision of the Constitution Bench of this Court in the case of ***Indore Development Authority v. Manoharlal, (2020) 8 SCC 129*** is required to be referred to. In paragraphs 335 to 339, it is observed and held as under:—
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> > "**335.** The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In ***South Eastern Coalfields Ltd. v. State of M.P. [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648]***, it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case *lis* is lost. The interim order passed by the court merges into a final decision. The validity of an interim order passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In the exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts the

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applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in ***South Eastern Coalfields [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648]*** thus : (SCC pp. 662-64, paras 26-28)

> "*26.* In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in the execution of a decree or order of the court or in direct consequence of a decree or order (see ***Zafar Khan v. Board of Revenue, U.P. [Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505]***). In law, the term "restitution" is used in three senses : (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315).*The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:

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> 'Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.'

The principle of restitution has been statutorily recognised in Section 144 of the Civil Procedure Code, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...

27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (***A. Arunagiri Nadar v. S.P. Rathinasami [A. Arunagiri Nadar v. S.P. Rathinasami, 1970 SCC OnLine Mad 63]***). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court

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would not have so acted had it been correctly apprised of the facts and the law. ... the concept of restitution *is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by an award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

(emphasis supplied)

336. In ***State of Gujarat v. Essar Oil Ltd. [State of Gujarat v. Essar Oil Ltd., (2012) 3 SCC 522]***, it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed: (SCC p. 542, paras 61-62)

"61. The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within the third category of common law remedy, which is called quasi-contract or restitution.

62. If we analyse the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434)."

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337. In ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam [A. Shanmugamv.Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam,(2012) 6 SCC 430]***, it was stated that restitutionary jurisdiction is inherent in every court, to neutralise the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained. The Court observed : (SCC pp. 451-55, para 37)

> "37. This Court, in another important case in ***Indian Council for Enviro-Legal Action v. Union of India [Indian Council for Enviro-Legal Action v. Union of India,(2011) 8 SCC 161]*** (of which one of us, Dr. Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder: (SCC pp. 238-41 & 243, paras 171-76 & 183-84)
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> > '170.***
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> > 171. In***Ram Krishna Verma v. State of U.P. [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620]*** this Court observed as under: (SCC p. 630, para 16)
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> > > "16. The 50 operators, including the appellants/private operators, have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in ***Jeewan Nath Wahal case [Jeewan Nath Wahal v. State of U.P., (2011) 12 SCC 769]*** and the High Court earlier thereto. As a fact, on the expiry of the initial period of the grant after 29-9-1959, they lost the right to obtain renewal or to ply their vehicles, as

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this Court declared the scheme to be operative. However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending the hearing of the objections. This Court in ***Grindlays Bank Ltd. v. CIT [Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191: 1980 SCC (Tax) 230]*** held that the High Court while exercising its power under Article 226, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to a hearing of the objections filed by them to the draft scheme dated 26-2-1959."

172. This Court in ***Kavita Trehan v. Balsara Hygiene Products Ltd. [Kavita Trehan v. Balsara Hygiene Products Ltd., (1994) 5 SCC 380]*** observed as under : (SCC p. 391, para 22)

"22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers, where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:

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> '144. Application for restitution.—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,....'

The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

173. This Court in ***Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd. [Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325]*** observed as under : (SCC pp. 326-27, para 4)

> "4. From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and the person who is in wrongful possession draws delight in the delay in the disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of the immovable property, its execution takes a long time. In such a situation, for protecting

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the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

174. In ***Padmawati v. Harijan Sewak Sangh [Padmawati v. Harijan Sewak Sangh, 2008 SCC OnLine Del 1202 (2008) 154 DLT 411]*** decided by the Delhi High Court on 6-11-2008, the Court held as under : (SCC Online Del para 6)

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated ventures involving no risks situations. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One

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> of the aims of every judicial system has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

We approve the findings of the High Court of Delhi in the case mentioned above.

175. The High Court also stated : ***(Padmawati case[Padmawati v. Harijan Sewak Sangh, 2008 SCC OnLine Del 1202 (2008) 154 DLT 411]***, SCC OnLine Del para 9)

> "9. Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in the judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as a real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step, and even if they

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succeed in prolonging the litigation due to their money power, ultimately, they must suffer the costs of all these years-long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts."

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order ***[Padmawati v. Harijan Sewak Sangh, (2012) 6 SCC 460 = (2012) 3 SCC (Civ) 765]*** : (SCC p. 460, para 1)

"1. We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The special leave petition is, accordingly, dismissed."

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183. In ***Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd.[Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325]*** this Court in para 4 of the judgment observed as under : (SCC pp. 326-27)

"4. ... It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and a

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person who is in wrongful possession draws delight in delay in the disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

184. In ***Ouseph Mathai v. M. Abdul Khadir [Ouseph Mathai v. M. Abdul Khadir, (2002) 1 SCC 319]*** this Court reiterated the legal position that : (SCC p. 328, para 13)

"13. ... [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to an extension of statutory protection."""

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There are other decisions as well, which iterate and apply the same principle. ***[Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161; Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191:1980 SCC (Tax) 230; Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620. Also Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325.***]

338. A wrongdoer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In ***Kalabharati Advertising v. Hemant Vimalnath Narichania [Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808]***, it was observed that courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of the court, at his behest, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others — including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality — and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter would profit and be rewarded, with

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> the deemed lapse condition under Section 24(2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.
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> 339. In ***Krishnaswamy S. Pd. v. Union of India [Krishnaswamy S. Pd. v. Union of India, (2006) 3 SCC 286]***, it was observed that an unintentional mistake of the Court, which may prejudice the cause of any party, must and alone could be rectified. Thus, in our opinion, the period for which the interim order has operated under Section 24 has to be excluded for counting the period of 5 years under Section 24(2) for the various reasons mentioned above."

9. As per the settled position of law, the act of the Court shall prejudice no one and in such a fact situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. The maxim *actus curiae neminem gravabit* shall be applicable. As per the settled law, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the Court.

10. The Court passed an interim order restraining the M.C. Shimla from enforcing the bank guarantee. The restraint order continued and the M.C. Shimla was unable to enforce the Bank guarantee. The Bank guarantee lapsed during the continuation of the orders passed by the Court. When the order was vacated, due to the withdrawal of the main petition, the M.C. Shimla was deprived of the Bank guarantee, which was

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enforceable on the date of the application and the initial order passed by the Court. Thus, the principle of restitution demands that the Company should furnish a Bank guarantee to the M.C. Shimla. This would put both the parties in a situation, in which they were before approaching the Court. This would also prevent the Company from taking benefits of the orders passed by the Court.

Final Order:

11. Therefore, the present application is allowed and the Company is directed to furnish a Bank Guarantee of ₹40,00,000/- to the M.C. Shimla within 30 days from today. The present application stands disposed of.

(Rakesh Kainthla)
Judge

18th September, 2023
(pathania)

High Court of H.P.

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