

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.6217 of 2012

ORDER:

Heard Ms.V.Uma Devi, learned counsel for petitioner and Sri Varanasi Venkateshwar, learned counsel for respondent.

2. This Civil Revision Petition is filed challenging the order

dt.26-11-2012 in I.A.No.1023 of 2012 in O.S.No.98 of 2012 of the Senior Civil Judge at Jangaon, Warangal District granting interim custody of the tractor and trailer bearing registration Nos.AP-36J 1479 and AP-36J-1480, pending disposal of the suit to respondent.

3. The admitted facts are that the said tractor and trailer were purchased by respondent by availing loan from the petitioner. According to petitioner, the loan was not paid. The respondent contended that the vehicle was forcibly seized from his custody at the instance of petitioner on 27-07-2012. He therefore filed the suit for recovery of possession of the above tractor and trailer from petitioner and for an injunction restraining the petitioner from selling the same.

4. Pending suit, the respondent filed I.A.No.1023 of 2012 seeking interim custody of the said tractor and trailer

pending disposal of the suit.

5. In the affidavit filed in support of said application, the respondent contended that the seizure of the vehicle is illegal and since the vehicle is liable for decay and might become useless, if it is in the custody of petitioner while the suit is pending, their interim custody may be given to him.

6. No counter was filed to this application by petitioner, but the application was opposed.

7. By order dt.26-11-2012, the Court below allowed the said application on the ground that from the R.C. book, respondent is the owner of the vehicle, and therefore interim custody can be granted to him because if it is kept with the plaintiff bank without being used, it will get damaged. It granted interim custody of the tractor and trailer to respondent on his executing bond for Rs.1,50,000/- with a third party security on condition to produce the same as and when required, and on further condition that he would not change the physical features, engine or chasis number or internal mechanism of the vehicle and he would not alienate the vehicle to third parties without permission of the Court.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner contended that the said order could not have been passed by the Court

below since the petitioner was entitled to seize the tractor and trailer in question under the terms of the hypothecation agreement executed by respondent in its favour. The learned counsel for petitioner also contended that such a power to grant interim custody is not vested in the Court below under the provisions of the Code of Civil Procedure, 1908 unlike under Section 451 Cr.P.C.

10. The learned counsel for respondent refuted the above contention and stated that the order passed by the Court below is correct and that forcibly the petitioner was not entitled to take over possession of the tractor and trailer.

11. There is no provision in the Code of Civil Procedure, 1908, unlike Section 451 Cr.P.C, empowering the Court to grant interim custody of vehicles in question, pending suit. The Court below has also not referred to the provisions of the hypothecation agreement between the parties, which according to petitioner, entitle the petitioner to take custody of the hypothecated vehicle. If in the absence of power conferred on the Court below to grant interim custody of the tractor and trailer to respondent, it is allowed to exercise such a power without deciding the legality and validity of their seizure, it would practically amount to decreeing the suit by way of interim order. This is impermissible in law.

12. Therefore, the interim order dt.26-11-2012 in

I.A.No.1023 of 2012 in O.S.No.98 of 2012 of the Senior Civil Judge at Jangaon, Warangal District is set aside. The Civil Revision Petition is accordingly allowed. No costs.

13. Since the suit is of the year 2012, the Court below shall endeavour to dispose of the same expeditiously preferably within a period of 6 months from the date of receipt of a copy of this order.

14. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-07-2015

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