

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.525 of 2015

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JUDGMENT:-

This Civil Miscellaneous Appeal under Order XLIII Rule 1 (r) of the Code of Civil Procedure is filed by the appellants/defendants 1, 2, 3, 5 & 9 assailing the interim *ex parte* orders dated 06.07.2015 of the learned Chief Judge, City Civil Courts, Hyderabad passed in I.A.No.2576 of 2015 in O.S.No.496 of 2015.

2. The impugned order was passed in favour of the plaintiffs/respondents herein in the aforementioned interlocutory application, which is filed for grant of temporary injunction.

3. On 17.07.2015, this Court passed the following interim order in CMAMP No.1084 of 2015.

“Heard the learned counsel for the petitioners.
Perused the material record.

The learned counsel for the petitioners/respondents/defendants nos. 1,2,3,5 and 9 would submit that the order impugned is passed by not recording any reasons much less valid reasons for dispensing with the notice and that the plaintiffs/respondents 1 to 15 herein who had obtained the order have suppressed the facts which are material and had obtained the orders by misrepresentation and that on the same day the injunction order was granted *ex parte*, they had also obtained police protection *vide* orders in IA.No.2577 of 2015 and that by the said orders the Court below had directed the Station House Officer, Punjagutta police station to grant necessary police protection to the plaintiffs in terms of the orders passed in OS.No.154 of 2003 on the file of the learned Chief Judge, City Civil Court, Hyderabad though the said orders are now not in force having been set aside and that under the guise of *ex parte* ad interim injunction orders and the police protection orders, which are simultaneously obtained, the plaintiffs are interfering with the possession of the petitioners herein and are trying to enter into possession

by virtue of the said orders.

A perusal of the order would show that though the recording of reasons is mandatory while granting *ex parte* ad interim injunction and for dispensing with the requirement of notice under Rule 3 of Order 39 of the code, no such reasons are recorded in the impugned order before granting temporary injunction. As contemplated under Rule 3, before granting temporary injunction, the court has to record its reasons which are peculiar to the facts of the case for coming to the conclusion that the object of granting temporary injunction would be defeated by such delay; and such an order has to disclose on the face of it that the court has applied its mind and was convinced and then had issued *ex parte* orders. It is not so in the present case. Further, granting *ex parte* ad interim injunction order and police aid simultaneously will have far reaching consequences. In the impugned order, there is neither a mention nor consideration of the relevant factors.

Having perused the material record and having thus given earnest consideration to the submissions, this Court is satisfied that *ex facie* a case is made out for grant of ad interim suspension orders at this stage.

Accordingly, there shall be interim suspension as prayed for, for a period of three (03) weeks.”

3. When the CMA is taken up today for final hearing the learned counsel for the appellants and the learned counsel for the respondents have fairly submitted that since this is an appeal against the interim *ex parte* order and since the interlocutory application seeking temporary injunction is still pending before the trial Court, the interest of justice would be met if the impugned order is set aside and the trial Court is directed to take up the said application and decide the same on merits, within a period of one month from today.

4. Having regard to the facts and the said submission of the learned counsel for both the sides and keeping in view the order of this Court referred to supra this appeal is allowed and the impugned order is set aside subject to the following directions: “The trial court is directed to decide I.A.No.2576 of 2015 in O.S.No.496 of 2015 on merits and in

accordance with the procedure established by law, within a period of one month from today. Since the appellants herein have not yet filed their counter/s in the said Interlocutory application, the appellants herein are directed to file their Counter/s before the trial Court within a period of two (02) weeks from today. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murthi, J

13th August, 2015
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Note:-
Furnish C.C. by 18.08.2015.
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