

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.997 of 2012

JUDGMENT:-

This is an appeal, under Order XLIII Rule 1 of the Code of Civil Procedure by the appellant/plaintiff/petitioner, assailing the order dated 04.07.2012 of the learned Senior Civil Judge, Punganur of Chittoor District passed in I.A.No.261 of 2012 in O.S.No.66 of 2012.

2. I have heard the submissions of the learned counsel for the appellant/petitioner. I have perused the material record.

3. The petitioner/plaintiff had brought the suit against the defendants for perpetual injunction to restrain the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule property, which is a lorry bearing registration no. AP 02 W 5409. Along with the suit, the plaintiff had filed an interlocutory application in I.A.No.261 of 2012 for temporary injunction. On 04.07.2012, the trial Court had passed an interim order imposing certain conditions to be complied with by the petitioner/plaintiff and had *inter alia* observed in the said order that on the failure of the petitioner/plaintiff to comply with the said conditions imposed therein, the interim order granted would stand vacated by the date of the next adjournment and had fixed the next date of hearing as 24.08.2012.

4. The said interim order reads as follows:-

"Heard the petitioner counsel. Petition discloses that petitioner availed financial assistance of Rs.700000/- from defendants' company on 24.08.2011 under hire purchase agreement and the same is repayable with interest by way of 42 instalments of Rs.24,500/- per month commencing from 24.08.2011. The petitioner has paid 10 installments till 24.06.2012 but the respondents' company have not issued some receipts. Now the respondents highhandedly trying to take away the vehicle without following the due process of law. Hence interim injunction may be granted.

As the petitioner pleaded that he paid installments till 24.06.2012 and respondents are trying to seize the vehicle, interim injunction is granted directing the respondents not to interfere petitioner's peaceful possession and enjoyment over the property

with a condition that the petitioner shall deposit all the subsequent installments from July, 2012 and also the petitioner shall deposit all the future installments before the Court regularly. The respondents are at liberty to withdraw the said amounts on giving proper acknowledgements in the name of the petitioner. If the petitioner fails to comply the condition by next adjournment, the interim order will be deemed to be vacated. Issue urgent notice to the respondents in compliance with Order 39 Rule 3 (a) of CPC, call on 24.08.2012.”

(Reproduced verbatim)

5. On 24.08.2012, the trial Court had noted that though the Vakalat has been filed for the opposite party, the petitioner/plaintiff had failed to comply with the conditional order of the Court made on 04.07.2012. In view of the fact that the order is a conditional order and the conditions are not complied with by the petitioner/plaintiff, the order stood vacated. Therefore, this appeal, which is filed assailing the conditions imposed in the order dated 04.07.2012, after the orders stood vacated, is not going to serve any useful purpose. In case the petitioner/plaintiff was aggrieved of the conditions imposed in the order dated 04.07.2012 and was of the view that the conditions are onerous, he ought to have moved the trial Court for modification of the conditions imposed stating that they are onerous; or in the alternative he could have challenged the said interim order while it was in force. But, the petitioner/plaintiff did not do so. Admittedly, the vehicle was taken on hire purchase and 42 monthly installments at the rate of Rs.24,500/- are payable. Even according to the pleaded case of the petitioner/plaintiff, only 10 installments were paid up to 24.06.2012. The trial Court, while granting the interim order, directed the petitioner/plaintiff to pay the installments from July, 2012 onwards including the future installments regularly and gave liberty to the defendant/respondent to withdraw the said amount. This condition, in the facts and circumstances, is not onerous and is a just and fair term in view of the fact that admittedly the future installments are payable and are to be paid by the petitioner/plaintiff when he wants to have the possession and the beneficial use of the lorry purchased with the financial assistance provided by the defendant.

6. Thus, judged from any angle, this Court finds that there is no merit in the appeal and that, therefore, the same is liable to be dismissed.

7. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

M. Seetharama Murthi, J

01st July, 2015

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