

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.1059 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 04.10.2012 of the learned Senior Civil Judge, Punganur, Chittoor District, passed in I.A.No.353 of 2012 in O.S.No.87 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 26 X 7864. Along with the suit, the plaintiff had filed an interlocutory application in I.A.No.353 of 2012 for temporary injunction. On 12.09.2012, 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 04.10.2012.

4. The said interim order reads as follows: -

"Heard the petitioner counsel. Petition discloses that petitioner availed financial assistance of Rs.7,45,746/- from defendants company on 16.08.2010 under hire purchase agreement and the same is repayable with interest by way of 42 installments of Rs.28,066/- per month commencing from 20.09.2010. The petitioner has paid 24 installments till 20.08.2012 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 20.08.2012 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 September, 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 04.10.2012.”

(Reproduced verbatim)

On 04.10.2012, the trial Court had passed the following order:

“Sri BVM, advocate filed vakalat for R1 to R3. Extension memo filed and but not extended since lodgment schedule filed and returned as amount was not correctly mentioned of due instalments and order not complied. Hence, injunction not extended. For counter call on 17.10.2012.”

[Reproduced verbatim]

5. When a conditional order was passed by the Court below at the first instance, it is for the petitioner/plaintiff to submit a lodgment schedule with correct figures and when a lodgment schedule was filed and returned with objections, the petitioner ought to have either re-presented it with correct figures or satisfied the Court that the lodgment schedule filed is correct by making proper submission that the lodgment schedule is filed with correct figures. The petitioner/plaintiff had failed to do so. For whatever reasons, the conditions imposed by the Court below in the interim order dated 12.09.2012, were not complied with and, therefore, the interim order stood vacated. Therefore, this appeal, which is filed assailing the order or the conditions imposed in the order dated 12.09.2012, after the orders stood vacated and were not extended, is not going to serve any useful purpose. In case the petitioner/plaintiff was aggrieved of the conditions imposed in the order dated 12.09.2012 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. Though the petitioner/plaintiff had filed a lodgment schedule, the same was returned by the trial Court with office objections and later no *bona fide* attempt was made to comply with the conditions imposed in the aforementioned order of the trial Court. Admittedly, the vehicle was taken on hire purchase and 42

monthly installments at the rate of Rs.28,066/- are payable. Even according to the pleaded case of the petitioner/plaintiff, only 24 installments were paid up to 20.08.2012. The trial Court, while granting the interim order had directed the petitioner/plaintiff to pay 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
Bvv