

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5448 of 2015

ORDER:

The appellants in AS.No.96 of 2015 on the file of the learned VI Additional District Judge, Visakhapatnam preferred this civil revision petition under Article 227 of the Constitution of India being aggrieved of the order dated 02.11.2015 of the said learned Judge passed in IA.No.1151 of 2015 in IA.No.820 of 2015 in AS.No.96 of 2015 filed under Section 148 read with Section 151 of the Code of Civil Procedure requesting to extend the interim stay granted earlier vide orders dated 04.09.2015 in IA.No.820 of 2015 in AS.No.96 of 2015 by that Court.

2. I have heard the submissions of the learned counsel for the revision petitioners/appellants/defendants and the learned counsel for the respondents/plaintiffs. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

Assailing a decree for eviction obtained by the plaintiffs against the defendants, the defendants had preferred the aforementioned first appeal suit before the court below. As a caveat lodged by the plaintiffs was in force, the court below while considering the request for granting of stay of the execution of the decree granted by the trial court had granted stay for a limited period by an interim order passed in IA.No.820

of 2015. As the interim stay granted for a limited period had expired, the appellants had filed IA.No.1151 of 2015 for extension of the said interim orders till the final disposal of the first appeal suit. By the impugned orders, the request for grant of extension of stay was refused on the ground that no grounds are urged in support of the said request and that the appellants are not getting ready for disposal of the first appeal suit. Therefore, the appellants are before this court.

4. The learned counsel for the appellants submitted that the judgment and decree impugned in the first appeal are for eviction and that if during the pendency of the first appeal suit, the stay orders are not extended, the very purpose of filing the first appeal would be defeated and that the appellants would be put to serious and irreparable loss, if stay orders are not extended as the appellants have got fair chance of success in the first appeal suit. Therefore, he would make a request to this Court to extend the stay for a limited period and direct the court below to dispose of the first appeal suit within the time frame.

5. On the other hand, the learned counsel for the plaintiffs, by drawing the attention of this Court to the affidavit filed in support of the petition in IA.No.1151 of 2015, would submit that absolutely no grounds are urged in support of the request for extension of stay and that the court below was, therefore, correct in not extending the stay orders.

6. I have bestowed my attention to the facts and the submissions. Admittedly the trial court decreed the suit and

granted a decree for eviction of the appellants/defendants directing them to vacate the suit schedule property. Having been aggrieved of the said decree and judgment of the trial court, the aforementioned first appeal suit was preferred by the unsuccessful defendants before the court below. Considering the nature of the decree that was granted and as the court of first appeal is a last court of fact, this Court is of the considered view that it is just and fair to extend the stay orders which were earlier granted by the Court below for a limited period, as otherwise and as rightly contended, the first appeal suit becomes infructuous in case of eviction of the defendants from the property during the pendency of the first appeal. Hence, this Court finds acceptable merit in the submissions of the learned counsel for the revision petitioners. Viewed thus, this Court finds that the order impugned brooks interference.

7. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.1151 of 2015 in IA.No.820 of 2015 in AS.No.96 of 2015 is allowed in part extending the stay orders earlier granted by the Court below in IA.No.820 of 2015 for a period of three (03) months from today. However, the Court below is directed to dispose of the first appeal suit as expeditiously as possible and preferably within the said period of three (03) months on merits and in strict accordance with the procedure established by law. It is made clear to the appellants that no further extension of stay would be granted. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil

revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:24.02.2016

Note: Issue CC in three days.

(B/o)

Vjl