

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS*

CIVIL MISCELLANEOUS APPEAL No.616 of 2015

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This civil miscellaneous appeal under Order XLIII Rule 1 C.P.C. arises out of the order dated 30.07.2015 passed by the learned Judge, Additional Family Court, Hyderabad, in I.A.No.407 of 2015 in O.P.No.879 of 2015.

The appellant is the first respondent in the said O.P. The first petitioner in the O.P. claimed to be his lawfully wedded wife and that petitioners 2 to 4 therein were their children. She sought a declaration in the O.P. to that effect. The petitioners in the O.P. also sought an injunction to restrain the third respondent therein, the employer of the appellant/first respondent from releasing his retirement benefits to him or to any third party. By way of I.A.No.407 of 2015, they asked for a temporary injunction restraining the third respondent in the O.P. from releasing the said retirement benefits. By the order under appeal, the trial Court granted the temporary injunction as prayed for.

Heard Sri A. Ravi Shankar, learned counsel for the appellant/first respondent, and Sri Ali Farooq, learned counsel for respondents 1 to 4/petitioners.

Sri A. Ravi Shankar, learned counsel, would point out that his client divorced the first respondent/first petitioner and thereafter, married the fifth respondent/second respondent in the O.P. and that he has children from the second marriage also.

Perusal of the order under appeal reflects that the trial Court was of the opinion that the petitioners therein would suffer irreparable loss if

an injunction is not granted as they, being the family members, would have a claim over the retirement benefits of the first respondent. However, it is to be noted that the appellant/first respondent, a Muslim, admittedly had two wives and that both branches of his family would have rights in relation to his retirement benefits. Even if the petitioners' claim is to be accepted, it would only extend to 50% of the retirement benefits as the other half thereof would fall to the share of the other branch. We therefore see no justification for the trial Court to restrain the release of the retirement benefits of the appellant/first respondent in their entirety. The temporary injunction granted by the trial Court is therefore restricted to 50% of the retirement benefits due and payable by the third respondent to the appellant/first respondent.

The appeal is accordingly allowed to the extent indicated above. The third respondent shall release 50% of the retirement benefits due and payable to the appellant/first respondent in accordance with the due procedure expeditiously. The learned Judge, Additional Family Court, Hyderabad, shall endeavour to dispose of the main O.P. as early as possible.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

ANI S, J

Date: 17.10.2016

GJ