

**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**CIVIL MISCELLANEOUS APPEAL No. 905 OF 2016**

**ORDER:**

This civil miscellaneous appeal filed by the 1<sup>st</sup> defendant is directed against the interim ex-parte injunction order, dated 09.08.2016, of the learned III Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.1087 of 2016 in O.S.No.479 of 2016.

I have heard the submissions of Sri Avinash Desai, learned counsel appearing for the 1<sup>st</sup> defendant/appellant. I have perused the material record. The operative portion/material portion of the order reads as under:

“Upon hearing the arguments of the counsel for the petitioner this Court doth order granted that interim injunction by restraining the respondent/defendant No.1 their agents, servants, or any other persons claiming through or under it from invoking or encashing the schedule bank guarantees issued by respondent/defendant Nos.2 and 3 and further restrain the respondent/defendant Nos.2 and 3 banks from honouring/encashing the schedule bank guarantees in any manner until further orders and notice. Call on 29.08.2016.

IA stands posted to 29.08.2016.”

(Reproduced verbatim)

The grievance of the appellant is that the plaintiff/1<sup>st</sup> respondent played fraud on the Court below while obtaining the aforestated orders of interim ex-parte injunction and that after obtaining the said orders, the plaintiff/1<sup>st</sup> respondent failed to comply with the mandatory provision of Order XXXIX Rule 3a and that the Court below failed to dispose of the application within 30 days as stated in Order XXXIX Rule 3A of the Code of Civil Procedure, 1908, and that the Court below also did not follow the settled principles of law while granting the interim order, which is impugned in this appeal, whereby the appellant /1<sup>st</sup> defendant is restrained from invoking or encashing the petition schedule bank guarantee issued by the defendants 2 and 3 and that the trial Court also granted the said order until

further orders without limiting it for a short period and that therefore the order is unsustainable and is liable to be set aside.

During the course of hearing, it is also submitted that after the appeal is filed, for administrative reasons, the suit along with the interlocutory application is transferred to the Commercial Court newly established i.e., the Court of learned XXIV Additional Chief Judge, City Civil Court, Hyderabad and that the transferee Court received the record but the suit and the interlocutory application are not yet assigned new numbers by the transferee Court.

I have bestowed my attention to the facts and submissions. The appellant, in the considered view of this Court, ought to have approached the Court which granted the order and filed a counter and resisted the application for temporary injunction, as the contentions raised require detailed examination before the order is either sustained or vacated. Further, if notice is ordered in this appeal to the plaintiff and other contesting defendants, it would further delay the disposal of the interlocutory application by the trial Court. In the considered view of this Court, in this appeal, which is filed against an ex-parte order, it is not just and fair to decide the interlocutory application on its merit as the order assailed is an ex-parte order. Therefore, this Court is of the considered view that this civil miscellaneous appeal can be disposed of with appropriate directions to the trial Court/Commercial Court.

In the result, the civil miscellaneous appeal is disposed of as indicated infra: While maintaining the order, which is impugned in this revision for a period of three weeks from this day, the Commercial Court/the Court of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad is directed to number the suit as well as the interlocutory application filed for temporary injunction and issue notices to the learned counsel on record for both sides and fix a date within a

week from the date of receipt of a copy of this order and dispose of the interlocutory application (old I.A.No.1087 of 2016 in O.S.No.479 of 2016 on the file of the learned III Additional Chief Judge, City Civil Court, Hyderabad) as expeditiously as possible and preferably within three weeks from today. This order of the Court modifying the interim order from 'until further orders' and restricting the order to a period of three weeks from today shall not preclude the Commercial Court from extending the said order by passing a speaking order, by further period of two weeks, if the facts of the case so warrant, to facilitate the disposal of the interlocutory application on merits as directed in these orders. No costs.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 28.11.2016  
ES

Note: Furnish C.C. tomorrow.

**M. SEETHARAMA MURTI, J**

