

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No. 866 OF 2015

-

JUDGMENT:

This Civil Miscellaneous Appeal is filed against an order dated 23.09.2015 passed in I.A.No.932 of 2015 in O.S.No.280 of 2015 by the VII Additional District Judge, Ongole, wherein the Court below granted ad-interim injunction in favour of the plaintiff/first respondent herein and against the appellants and 2nd respondent herein restraining them from interfering with the administration, functioning, possession and enjoyment of the petition schedule Church.

2. When interlocutory application is taken up for hearing, both the counsel requested this Court to hear the appeal itself, as such, appeal itself is taken up for hearing and disposal.

3. Heard Sri S.Ramachandra Rao, learned Senior Counsel appearing for Sri K.R.Prabhakar, learned counsel for the appellants and Sri C.V.Mohan Reddy, learned Senior Counsel appearing for Sri K.V.Bhanu Prasad, learned counsel for the 1st respondent.

4. Sri S.Ramachandra Rao, learned Senior Counsel submits that the suit filed by the plaintiff/1st respondent herein itself is not maintainable as the plaintiff/1st respondent was dissolved in accordance with law on 25.03.2004 by virtue of its resolution dated 23.03.2004 and that the 2nd respondent trust has come into existence in the place of first respondent. He submits that from 25.03.2004 onwards, 2nd respondent society was functioning till date administering more than 1300 sister churches of Hebron, including the prayer hall in question. He further submits that the unanimous Special Resolution dated 23.03.2004 was signed by Mr. B.Timothy as a party to the said resolution at serial No.34 in the signatories list of the said unanimous Special Resolution dated 23.03.2004. He further submits that the

impugned order of the Court below is contrary to the judgment of this Court in W.P.No.16430 of 2008 dated 24.06.2009, wherein this Court declared that the Society was dissolved in accordance with law as per the unanimous Special Resolution dated 23.03.2004 passed by the General Body of the Society and set aside the proceedings dated 19.02.2008 issued by the District Registrar stating that the Society is in vogue. He also submits that the order of the court below is contrary to the interim orders dated 09.11.2010 passed by the Division Bench of this court in W.A.No.1289 of 2009 (which was filed challenging the judgment dated 24.06.2009 in W.P.No.16430 of 2008) wherein the Division Bench granted Status Quo existing as on 09.11.2010. He further submits that several interim orders were granted by this Court in W.P.Nos.8277, 8279 and 8291 of 2014 suspending the proceedings dated 18.07.2013, 07.11.2013, 25.11.2013, 31.01.2014 and 18.02.2014 issued by the District Registrar stating that the 1st respondent society is not dissolved and that B.Timothy, Joseph. P.Kurian and R.Veerachary are parties to the above writ petitions, but they are claiming that the 1st respondent society is in existence, which is erroneous. He further submits that the impugned order of the Court below is contrary to the interim order dated 12.07.2013 in W.P.No.19870 of 2013, wherein this Court permitted the 2nd respondent to manage the affairs of Horebu Prayer House.

5. He further submits that W.P.No.25999 of 2013 which was filed challenging the orders dated 15.08.2013 issued by the 2nd respondent transferring one of the Pastors was dismissed on 05.09.2013. It is also contended that the impugned order is contrary to the orders dated 04.12.2012 passed by the II Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.2276, 2665 of 2010 in OS No.380 of 2010 filed by Mr.K.Jayaraj, seeking to set aside the Resolution dated 23.03.2004, wherein the trial Court found that the Society was dissolved. Though the said judgment was challenged in CMA No.1317 of 2012 before this

Court, no interim order was granted and that the said CMA is pending.

He further submits that the Court below has not considered the admitted fact that Mr.K.Jayaraj, who invited the judgment dated 04.12.2012, wherein there was judicial declaration that the Society was dissolved on 25.03.2004 under the special resolution dated 23.03.2003, now falsely claiming that from 27.08.2013 that the Society is in existence and that he is the Executive Member of the Society and also that he authorized Mr.R.Veerachary to file the present suit i.e., OS No.280 of 2015 and IA No.932 of 2015. He further submits that the impugned order is contrary to the order dated 28.10.2013 in IA No.635 of 2013 in OS No.1665 of 2013 by the X Junior Civil Judge, City Civil Court, Hyderabad, declaring that the Society was dissolved as per the Special Resolution dated 23.03.2004 and the 2nd respondent is entitled to manage the Churches which were managed by the 1st respondent Society prior to its dissolution on 25.03.2004.

6. He further submits that the impugned order is contrary to the orders dated 25.02.2014 in IA No.912 of 2013 in OS No.248 of 2013 passed by the Additional Junior Civil Judge, Malkajgiri declaring that the society was dissolved on 25.03.2004 and that the Trust came into existence as the successor of the dissolved society. He further submits that the Court below failed to consider the fact that B.Timothy, G.Nehemiah, Joseph P.Kurian and T.Yesupadam worked for the 2nd respondent Trust as evident from the resolutions of the Trust dated 16.05.2005, 07.09.2006, 22.09.2006, 25.06.2007, 29.06.2007, 21.06.2005, 05.06.2005 and 28.05.2008 as they worked as the Regional Body members of the Trust in pursuance of the dissolution of the 1st respondent society under the unanimous special resolution dated 23.03.2004 and signed various resolutions passed by the Trust, which replaced the Society with effect from 25.03.2004, as such, they cannot falsely claim that from 27.08.2013 the society is in existence.

He further submits that when the 1st respondent society itself was dissolved at the instance of B.Timothy as is evident from the unanimous special resolution dated 23.03.2004 signed by B.Timothy and his sworn affidavit dated 25.09.2008 stating that he dissolved the society and he worked for the trust from 25.03.2004 till July, 2013, the question of Timothy's authorizing R.Veerachary to file the present suit does not arise. He further submits that the VII Additional District Judge passed order dated 15.09.2015 in IA No.895 of 2015 in CMA No.25 of 2015, without verifying the records, staying the order dated 29.04.2015 in IA No.1554 of 2015 in OS No.685 of 2015 till the appearance of the respondents in the main CMA. As a matter of fact, counsel for the respondents already filed vakalath on 27.08.2015 itself.

He further submits that Mr.R.Veerachary filed OS No.280 of 2015 before VII Addl. District Judge by enhancing the value of the suit for permanent injunction from Rs.20,000/- to Rs.15,10,116/- so as to get the said suit listed before the said Court, who stayed the operation of the order dated 29.04.2015. He further submits that Mr.Veerachary suppressed the fact of filing SROP No.3 of 2014 on 14.11.2014 in the name of the dissolved Society before the VII Addl. District Judge for the same relief sought for in the present suit. Though an application was filed for grant of injunction in the said SROP, VII Additional District Judge did not grant any orders therein and that in the said case, 1st appellant filed IA No.396 of 2015 for rejection of the SROP and same was reserved for orders after hearing the arguments. Having declined to grant interim orders in the similar SROP, though requested on 14.11.2014, VII Additional District Judge passed impugned order on 23.09.2015 by concealing the well reasoned judgment dated 29.04.2015. He would further contend that granting of injunction would amount to nullifying the resolution dated 23.03.2004. He submits that the letter dated 30.07.2008 of the District Registrar had no relevance in view of judgment dated 24.06.2009 in W.P.No.16430 of 2008 and that

the said letter had not been served on the 2nd respondent Trust. He further submits that similar letters were issued by the District Registrar prior to and subsequent to the letter dated 30.07.2008 were either set aside or suspended by this Court and same were withdrawn by the District Registrar himself by his letter dated 02.07.2014, as such, the letter dated 30.07.2008 had no legal sanctity. He further submits that the impugned order is not supported by reasons, which is contrary to the law laid down by the Hon'ble Apex Court in **M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors**^[1]. In support of his contentions, he relied on the judgments reported in **Murarilal Mahabir Prasad v. B.R.Vad and others**^[2], **Additional District Magistrate, Jabalpur vs Shivakant Shukla Etc.**^[3], **Khan Abdul Gaffar Khan Memorial Educational Society, rep. by its General Secretary-cum-Correspondent v. District Registrar of Societies, Nellore and others**^[4], **A.Venkatasubbaiah Naidu v. S.Chellappan and others**^[5] and **NCL Industries Ltd., Hyderabad v. M.S.Raju**^[6].

7. On the other hand, Sri C.V.Mohan Reddy, learned Senior Counsel submits that the first appellant is a Pastor appointed by the 1st respondent society but now he claims to be appointed by the 2nd respondent Trust. He further submits that this Court passed an interim direction on 10.07.2014 in W.P.No.19191 of 2014 not to take further proceedings in pursuance of the impugned order dated 02.07.2014 passed by the District Registrar. He would further contend that the appeal itself is not maintainable as the appellants can avail alternate remedy under Order 39 Rule 4 CPC as held by Division Bench of this Court in **Innovative Pharma Surgicals v. Pigeon Medical Devices (P) Ltd., Hyderabad and others**^[7]. He further submits that the appellants filed counter in I.A.No.932 of 2015 on 23.09.2015 and also filed an application for rejection of plaint. He further submits that the first

appellant filed OS No.685 of 2014 along with I.A.No.1552 of 2014 before the Principal Senior Civil Judge, for grant of temporary injunction, which was allowed on 29.04.2015. When the 1st respondent Society filed CMA No.25 of 2015 before the District Judge, against the orders of the Principal Senior Civil Judge dated 29.04.2015, the same was allowed on 05.11.2015 and injunction was vacated stating that whether the 1st respondent society was dissolved or not is still an issue to be decided by the Hon'ble High Court in W.P.No.19191 of 2014. However, the appellants have not filed the orders passed by the District Judge in CMA No.25 of 2015 dated 05.11.2015 in respect of the same subject matter. He further submits that the appellants have not filed proceedings dated 30.07.2008, which was considered by the court below for granting *ex parte* injunction and sought for dismissal of the appeal.

8. The impugned order of the Court below in I.A.No.932 of 2015 in O.S.No.280 of 2015 reads as follows:

“Heard the petitioner counsel. Perused the record and documents. The present suit is instituted for permanent injunction by the petitioner. The petitioner contended that the respondents are trying to interfere with the administration and functioning of the petition schedule property by virtue of resolution dated 23.03.2004 and that the first respondent trust has come into existence in the place alleged dissolved petitioner society. It is brought to the notice of the court that on 30.07.2008 the Registrar of Societies passed an order not accepting the resolution dated 23.03.2004 on the ground the procedure u/s 24 and 25 of societies Registration Act is not followed and that the resolution is contrary to the Act. The 1st respondent trust did not prefer any writ petition or any appeal of any kind before the Honourable High Court of A.P challenging the order dated 30.07.2008. But on 02.07.2014 another Registrar took the resolution into record while withdrawing of his earlier letters passed an order against the petitioner's society accepting resolution. The letter dated 30.07.2008 is not withdrawn by the registrar in his order dated 02.07.2014. As against the said order the petitioner society filed a writ petition bearing No.19191/14 before the Hon'ble High Court. The Hon'ble High Court passed an order on 10.07.2014 not to take any further proceedings in pursuance of the order of the Registrar. Still the same is in force. Therefore, as per the records and the documents the petitioner, the orders accepting society dissolution was stayed by the Hon'ble High Court. Therefore, whether the order of Registrar accepting dissolution of the basing on the resolution is valid or not the subject matter before the Hon'ble High Court. So as of now there is a prima facie case and balance

of convenience in favour of the petitioner and if the injunction is not granted there will be irreparable loss to the petitioner society. Hence Ad interim injunction is granted in favour of the petitioner as prayed for. The petitioner is directed to comply order 39 Rule 3 CPC. Call on 05.10.2015.”

9. If the Court which granted ad-interim injunction fails to finally decide an interlocutory application within 30 days as stipulated under Order 39 Rule 3-A of CPC, the aggrieved party would be entitled to appeal despite the pendency of the application for grant or vacation of the temporary injunction. In **A.Venkatasubbaiah Naidu v. S.Chellappan and others (supra)**, the Hon’ble Supreme Court held as follows:

21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1,2,2A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction.

In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

23. In the light of the direction issued by the High Court that the trial court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that till such orders are passed by the trial court, status-quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties.”

2) In **NCL Industries Ltd., Hyderabad v. M.S.Raju (supra)**, a Division Bench of this Court held as follows:

“If the High Court is of the view that if the order passed by the lower Court causes grave injustice or irreparable injury to the other party, the High Court is entitled to set aside the same. Therefore, availability of an alternative remedy is not a ground for this Court to reject an appeal filed under Order 43 Rule 1 of CPC or a revision filed under Section 115 of CPC.”

In view of law laid down in above decisions, that if the trial Court failed to pass final orders on the interlocutory application on merits, within the stipulated period in accordance with law, appeal is maintainable against said *ex parte* interim orders. In the instant case, admittedly, the impugned order has been passed on 23.09.2015 and the respondents therein filed counter on 26.09.2015. The present Civil Miscellaneous Appeal is filed on 20.11.2015. Therefore, the court below has not disposed of the appeal within a period of 30 days as stipulated under Order 39 Rule 3-A of CPC. Therefore, the present appeal filed against the impugned order is maintainable.

10. Moreover, a perusal of the impugned order shows that this Court in W.P.No.19191 of 2014 passed an order on 10.07.2014 not to take any further proceedings in pursuance of the order of the Registrar dated 02.07.2014. In the affidavit filed in support of the petition, it is clearly stated that there are several writ petitions and original suits are pending with regard to similar issue in this appeal and they are pending adjudication.

11. In the affidavit filed in support of the CMAMP No.1863 of 2015 for suspending the impugned order dated 23.09.2015 passed by the VII Additional District Judge, Ongole in I.A.No.932 of 2015 in OS No.280 of 2015, the appellants have specifically pleaded that SROP No.3 of 2015 was filed on the file of the District Judge, Ongole by the 1st respondent Society based on the authorization given by Sri Timothy dated 30.09.2014 and same was made over to VII Addl. District Judge, who did not grant interim orders though sought for by filing I.A.No.1006 of 2014. When the impugned orders were granted by the VII Addl.

District Judge, the said SROP No.3 of 2015 was withdrawn by the said Veerachary on 26.10.2015. This Court, by judgment dated 24.06.2009 in W.P.No.16430 of 2008 held as follows:

“A resolution for dissolution is a right integral to the right to associate. Only an intimation of a resolution as to dissolution is required to be given to the Registrar of Societies because the formal existence of the Society is owed to the process of registration under the Act. The legislative philosophy underlying the prescription as to an intimation to be given to the Registrar is to ensure that the book keeping activity of recording the dissolution is ensured. Nothing more and nothing else is enjoined. The assumption by the 1st respondent that the Registrar has a say in the decision of dissolution is a fallacy that has no legislative foundation. Since the fact is admitted by the 1st respondent in paragraph No.14 of the counter that the Society of Trustees of Indigenous Churches in India, had conducted a General Body Meeting and thereat had passed a Resolution dated 23-03-2004 and intimated the fact to the 1st respondent on 24-03-2004, the formalities enjoined under Section 24 of the 2001 Act are complied with and the dissolution of the Society of Trustees of Indigenous Churches in India has been formalized in accordance with law.”

On the aforesaid analysis, the impugned letter dated 19-02-2008 addressed by the 1st respondent to the 2nd respondent stating that the Society of Trustees of Indigenous Churches in India, Registered No. 114 of 1971 is in vogue, is based on a fallacious interpretation of law and a misconstruction of the role of the 1st respondent in the matter of dissolution of a Society registered under the 2001 Act.”

12. There is no dispute about the fact that this Court, by orders dated 24.06.2009 in W.P.No.16430 of 2008 declared that the 1st respondent Society was dissolved in accordance with law as per the unanimous Special Resolution dated 23.03.2004 passed by the General Body of the 1st respondent society and set aside the proceedings of the District Registrar dated 19.02.2008. Aggrieved by the same, W.A.No.1289 of 2009 was filed wherein a Division Bench of this Court granted Status quo existing as on 09.11.2010 and said Appeal is pending. This Court, by orders dated 12.07.2013 in W.P.No.19870 of 2013, permitted the 2nd respondent to manage the affairs of the trust and the said orders are still in force. It is pertinent to note that this Court, by order dated 14.06.2013 dismissed W.P.No.16764 of 2013 which was filed to quash the resolution dated 23.03.2004. Admittedly, when there are several

proceedings pending before this Court as well as the Court below, a notice ought to have been ordered by the trial Court to the petitioner herein before granting an *ex parte* ad-interim injunction and that the said impugned order is not supported by any reasons. The trial Court also has not given any reason for dispensing with notice to the petitioner herein before granting *ex parte* ad-interim injunction. Moreover, pending of litigation is also not disputed by the learned counsel for the respondents. The alleged dissolution of the society has taken place in accordance with the law or not is to be considered after notice to both sides.

In view of above facts and circumstances, without expressing anything on the merits of the case, the impugned order of the court below is set aside. It is needless to state that the Court below shall dispose of the interlocutory application, after considering the counter filed by the respondents therein, without being influenced by any of the observations made hereunder, preferably within a period of three (3) months from the date of receipt of a copy of this order. Till then, *status quo* obtaining as on today shall be maintained by both parties.

Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

02.03.2016
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.866 OF 2015

Date: 02.03.2016

kvs

-
- [\[1\]](#) 2010 (9) SCC 496
 - [\[2\]](#) 1975 (2) SCC 736
 - [\[3\]](#) 1976 (2) SCC 521
 - [\[4\]](#) 2007 (6) ALT 16
 - [\[5\]](#) (2000) 7 Supreme Court Cases 695
 - [\[6\]](#) LAWS(APH)-1999-8-89
 - [\[7\]](#) 2004 (3) ALD 228 (DB)