

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.244 OF 2016

ORDER:

This petition is filed against the order dated 17.11.2015, passed in an unnumbered IA filed in IA.No.1121 of 2015 in OS.No.277 of 2015, by the Principal Junior Civil Judge, Kurnool.

The case of the petitioners is that they have filed suit for permanent injunction and in the same they have filed IA for grant of temporary injunction pending suit. Since caveat was filed by the respondent/defendant, notice was issued to respondent/defendant and in the meanwhile the respondent dispossessed the petitioners. As such, they have filed an application under Section 151 CPC for restoration of petitioners' possession over suit schedule property and the office has returned the same as not maintainable. Petitioners resubmitted the same by citing Judgments in ***Nallapati Pandu Ranga Rao v. Vempati Venkateshwar Rao and another*** [\[1\]](#) and ***Jamaluddin v. Mirza Quader Baig (Tenant) and another*** [\[2\]](#). Even without considering the effect of such Judgments, without numbering the IA and without issuing any notice to the respondent, the Court below straightaway dismissed the application.

Sri P.Veera Reddy, Learned Senior Counsel for the petitioners submits that when the petitioners were dispossessed pending suit, present application was filed for restoration of possession and as per the Judgment in ***Nallapati Pandu Ranga Rao' case*** the application is maintainable under Section 151 CPC.

On the other hand learned counsel appearing for the

respondent submits that the said application is not maintainable and that already respondent filed suit and obtained injunction against the petitioners and in view of the same, dismissal of application by the Court below cannot be interfered. In support of his contention he relied on the Judgments in ***Dorab Cawasji Warden v. Coomi Sorab Warden and others***^[3] and ***Metro Marins and another v. Bonus Watch Company Private Limited and others***^[4].

It is to be seen that the petitioners represented the application by citing Judgments. But, there is no discussion about the same in the order dated 17.11.2015. Further, as per the decision relied on by the petitioners in ***Nallapati Pandu Ranga Rao'*** case, at paragraphs 16 and 17 it was held as follows;

“16. The principles laid down in the above referred judgments are patently to the effect that restoration can be ordered by the Courts in exercise of inherent powers conferred under Section 151 of the Code of Civil Procedure also. In the instant case, the learned Judge erroneously held that the application is not maintainable either under Section 144 or under Section 151 CPC. The learned Junior Civil Judge, on the other hand directed the petitioner herein to avail the remedy of civil suit for the purpose of obtaining possession. This rejection in exercising the jurisdiction, in the opinion of this Court and in the teeth of the principles laid down in the above referred judgments is neither justified nor can be approved. The further reason assigned by the Court below that only remedy available to the petitioner is a civil suit for recovery of possession is not tenable and is highly unreasonable. It is also the contention of the learned counsel for the 1st respondent that the order passed by the Court below under Section 144 of CPC is a decree falling under the definition of decree under Section 2 of CPC, as such, it

is appealable but not revisable. The said contention is also highly unreasonable, because it is also the case of the 1st respondent that the application under section 144 of CPC is not maintainable. In fact, the petitioner in the instant case as observed supra, filed the present application under Section 151 of CPC also and the order passed under the said provision of law is only revisable, but not appealable. Therefore, the Court below should have proceeded under the provisions of Section 151 of CPC.

17. Legislations are made obviously for betterment and welfare of the society and the efforts of the Courts should be in the direction of the creating and strengthening the faith and confidence of the citizens in the value based system, otherwise there is every possibility of the people losing faith in the system and the same is undoubtedly not in the interest of the nation at large. Therefore, the endeavour of the Courts should also be in the direction of upholding the majesty and the holiness of the Judgments and orders of the Courts. In the instant case, the learned Judge instead of adjudicating the issue basing on the material available before the Court under Section 151 of CPC, directed the petitioner herein to approach the Court once again by way of civil suit for redressal of his grievance. There is absolutely no justification on the part of the Court below in dismissing the application filed by the petitioner and this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned order is unsustainable and untenable.”

The decisions relied on by the learned counsel for the respondent goes to show that when the matter was considered on merits, the apex Court found that no mandatory injunction can be granted at the interlocutory stage. But, in the present case, the Court below has not gone into the merits of the case and not even numbered the IA and without even looking into the Judgments

cited by the learned counsel for the petitioners passed the impugned order which is erroneous. In view of the same and in view of the principles laid down in ***Nallapati Pandu Ranga Rao'*** ***case*** the impugned order is set aside and the unnumbered IA is remanded back to the Court below. The Court below is directed to number and dispose of the same on merits in accordance with law after giving opportunity of hearing to both the parties

Accordingly, the CRP is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

A.RAJASHEKER REDDY, J

20.04.2016

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[\[1\]](#) 2015(2) ALT 177

[\[2\]](#) 1995 (1) ALT 115

[\[3\]](#) AIR 1990 SC 867

[\[4\]](#) AIR 2005 SC 1444