

THE HONOURABLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.522 OF 2016

JUDGMENT:

This appeal is filed questioning the order dated 30.05.2016 in I.A.No.170 of 2016 in O.S.No.80 of 2016 on the file of Vacation Civil Judge, City Civil Court, Hyderabad.

2. The appellants herein are plaintiffs, who filed the above referred suit for the relief of permanent injunction, and they filed I.A.No.170 of 2016 seeking temporary injunction and Vacation Civil Court by impugned order dated 30.05.2016 dismissed the application.

3. Heard advocate for appellants, party-in-person/respondent No.2 and advocate for respondent No.1.

4. Advocate for appellants mainly contended that Vacation Civil Court, without considering the request of appellants for grant of adjournment, had taken up the case and decided it on merits and while deciding it only taken into consideration the documents of respondents, though appellants also filed as many as 29 documents along with the plaint, and without discussing or considering the documents filed by appellants, only by referring to documents filed by respondents, recorded a finding that the balance of convenience and *prima facie* case are in favour of respondents. He submitted that appellants having come to Court should place *prima facie* material in support of their claim and then the Court should decide as to whether they have got *prima facie* case and balance of convenience, but contrary to it, the Court decided the *prima facie* case and balance of convenience of respondents and appellants were not given opportunity even to submit their arguments and the material. He further submitted that the matter may be remitted back to the Court below for deciding the same on merits.

5. For this, respondent No.2 vehemently opposed and submitted that the order is on merits, but not one-sided and requested that he may be given an opportunity to demonstrate before this Court that impugned order is perfectly valid.

6. Advocate for respondent No.1 submitted that sufficient opportunity was given to appellants and as the Vacation was coming to an end Court decided the matter on merits and that there is nothing wrong in the procedure adopted by Court below.

7. Considering the submissions of both sides, without going into any of the points raised by both sides, since on a bare looking at the order of the Court below, I am of the view that it cannot be treated as an order on merits and Court below only decided the matter by looking into the documents and contentions of one party. Therefore, I feel that it is a fit case where the impugned order has to be set aside and the matter has to be sent back to the Court below for fresh consideration by fixing some time schedule.

8. For these reasons, the impugned order dated 30.05.2016 is set aside and the matter is remitted back to Court below directing it to dispose of the same within four weeks from the date of receipt of a copy of this order, taking into consideration the documents of both parties and without being prejudiced by any of the observations made in its earlier order.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand dismissed.

S. RAVI KUMAR, J

Date:25.07.2016

Note:- Furnish C.C. tomorrow.

(B/o)

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