

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.4494 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the defendants in O.S.No.598 of 2015 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by the order dated 07.08.2015 passed in I.A.No.749 of 2015 in the suit.

2. The 1st respondent herein is the plaintiff in the suit, which is filed with the prayers which read as under:

- (a) To declare 2nd defendant Trust is extinguished;
- (b) To declare the 1st defendant is no more trustee of the 2nd defendant Trust;
- (c) To declare the plaintiff is the beneficiary of 2nd defendant Trust property;
- (d) To direct the 1st defendant to deliver the original share certificates comprising 1,685 in number and gold ornaments, diamond jewellery and silver wear etc., held by the 2nd defendant Trust as described in suit schedule 'A' and 'B' properties;
- (e) To direct the 3rd defendant to transfer the shares, which are in the name of 2nd defendant Trust, into plaintiffs name and record the same and deliver the share certificates to the plaintiff;
- (f) To direct the 1st defendant to render true and proper accounts of the 2nd defendant Trust and pay the value of the same;
- (g) To award costs of the suit;
- (h) To pass such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case and in the interest of justice."

3. Pending disposal of suit, I.A.No.749 of 2015 is filed restraining the respondents therein from acting as trustees to the 2nd respondent trust. On such application, while issuing notice to the petitioners-defendants, ad interim injunction is granted in exercise of power under Order 39 Rules 1 and 2 CPC. Aggrieved thereby, this Civil Revision is filed.

4. Heard Sri C. Ramachandra Raju, learned counsel for the revision petitioners, Ms. Rubaina Khatoon, learned counsel for the 1st respondent.

5. It is mainly contended by the learned counsel for the revision petitioners that the impugned order is passed in contravention of the provision under Order 39 Rule 3 CPC and in the absence of recording any reasons; as such, the impugned order is ex facie illegal. With regard to maintainability of revision petition, learned counsel relied upon the judgment of the Supreme Court in **Surya Dev Rai V. Ram Chander Rai and others**^[1].

6. On the other hand, it is contended by the learned counsel for the respondents that in view of the reasons assigned in the impugned order itself, it cannot be said that no reasons have been assigned. It is further contended that as the impugned order is passed in exercise of power under Order 39 Rules 1 and 2 CPC, the same is appealable, as such, no revision can be maintained under Article 227 of the Constitution of India.

In support thereof, reliance is placed on the judgment of the Supreme Court in **A. Venkatasubbiah Naidu V. S. Chellappan and others**^[2] and **Sadhana Lodh Vs. National Insurance Company Ltd. and Anr.**^[3]

From a reading of the impugned order, it cannot be said that no reasons have been assigned for grant of ad interim injunction orders pending disposal of the I.A. In the impugned order, it is clearly stated that if the 1st respondent therein is allowed to continue as trustee of the 2nd respondent therein, it would cause irreparable loss and injury to the petitioners who are the beneficiaries; as such they are entitled for grant of ad interim injunction orders. In view of such reasons assigned, the contention of the learned counsel for the revision petitioners that no reasons have been recorded at all in the impugned order cannot be accepted. I have perused the judgment of the Supreme Court in *Surya Dev Rai*

(1 supra) relied on by the learned counsel for the revision petitioners and I am of the view that the same would not in any way render assistance in support of the case of the revision petitioners. There are two remedies available to the revision petitioners against the impugned order. As the impugned order is passed in exercise of power under Order 39 Rules 1 and 2 CPC, the same is appealable under Order 43 Rule 1(r) CPC. Petitioners can as well move a petition to vacate the ad interim injunction

granted. Further, the judgments of the Supreme Court (2 and 3 supra) relied on by the learned counsel for the respondents support the case of the respondents.

7. In *A. Venkatasubbiah Naidu* (2 supra), the Supreme Court has held as under:

“Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.”

8. Similarly, in *Sadana Lodh* (3 supra), the Hon'ble Supreme Court held as under:

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is

also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision.

For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Article 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.”

9. For the aforesaid reasons, I see no reason to interfere with the impugned order at this stage in exercise of jurisdiction under Article 227 of the Constitution of India.

10. Civil Revision Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the C.R.P., shall stand closed.

R. SUBHASH REDDY, J

January, 2016
MRR

[\[1\]](#) (2003) 6 SCC 675

[\[2\]](#) AIR 2000 SC 3032

[\[3\]](#) 2003 (3) SCC 524