

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.885 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal under Order LXIII Rule 1 of the Code of Civil Procedure, 1908, is filed by the respondents/defendants, who are aggrieved of the orders, dated 19.10.2016, made in I.A.No.2243 of 2016 in O.S.No.496 of 2016 on the file of the Court of the learned Principal District Judge, Visakhapatnam.

I have heard the submissions of Sri Vedula Srinivas, learned Senior Counsel appearing for the appellants/defendants (“defendants” for brevity) and of Sri V. Ravinder Rao learned Senior Counsel appearing for the respondents/plaintiffs (“plaintiffs” for brevity).

I have perused the material record.

Before proceeding further, it is to be noted that though in the memorandum of grounds of appeal it is stated that the appeal is presented having been aggrieved of the order, dated 19.10.2016, in I.A.No.2243 of 2016 in O.S.No.496 of 2016 of the Court below, the copy or a certified copy of the said order is not filed along with the appeal. Only a warrant of injunction, which is served upon the appellants/defendants, was filed along with the memorandum of grounds of appeal. Thus, literally, challenge in this appeal is to the warrant of injunction, but not to the order which was passed by the Court below pursuant to which the warrant came to be issued. If really this is an appeal against the order as stated in the memorandum of grounds of appeal and not against the warrant that was filed along with the appeal, the appellants ought to have filed an application for dispensing with the filing of the certified copy of the order. That course was not resorted to by the appellants/defendants. Therefore, obviously this appeal is preferred against the

warrant, but not the order that was passed by the Court below. During the course of hearing, the plaintiffs produced a copy of the order, dated 19.10.2016, which the Court below passed, which is genesis for the warrant of injunction, which was served upon the appellants/defendants.

In this background, the first contention raised by the learned Senior Counsel appearing for the plaintiffs is that the appeal of the defendants assailing a warrant and not the order, which was passed by the Court below, is itself not maintainable. As already noted, on facts of the case, it appears that the challenge in this appeal is only to the warrant, but not to the order. However, the learned Senior Counsel appearing for the defendants, drawing the attention of this Court to Order LXIII Rule 1 (r), which postulates that ‘an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX is appealable and that against such order an appeal shall lie’, contends that the said provision of law does not make a distinction between the order passed by the Court and the warrant issued, and, therefore, the instant appeal is maintainable. In the well considered view of this Court, such an interpretation as sought to be placed on the said provision, cannot be accepted. The provision of law clearly postulates that an order passed under the Rules mentioned therein is appealable and appeal shall lie; therefore, this Court is not impressed with the submission that an appeal lies against a warrant of injunction issued pursuant to an order that was passed by the Court below. Viewed thus, this Court finds that this appeal is misconcieved and not maintainable.

Be that as it may. Without disturbing the above finding that the appeal is not maintainable and assuming for a moment that this appeal is maintainable, now it is necessary to examine the copy of the order which is placed on record by the plaintiffs. I have carefully gone through the affidavit filed in support of the interlocutory application as well as the aforesaid copy of the order. The said

order, on a plain perusal, appears to be a well-reasoned order and that the trial Court, while granting the *ex parte* order, perused the material documents filed along with the pleadings of the plaintiffs and made a passing reference, as may be necessary to the same, for arriving at a conclusion as to whether an *ex parte* order should be granted or not and then granted the order stating briefly the relevant reasons for granting an *ex parte* order and further limited the said order to a particular time and also directed the plaintiffs to comply with Order XXXIX Rule 3(a) of the Code by sending the copies of the documents relied upon by them and the pleadings to the defendants by registered post with acknowledgement due as contemplated under law and further while granting the *ex parte* order of injunction simultaneously directed urgent notices to be issued to the defendants/appellants herein and further directed the matter to be listed on 18.11.2016. After the said *ex parte* order is thus tested on the provisions of Order XXXIX of the Code, this Court is satisfied that there are no exceptional circumstances for entertaining Civil Miscellaneous Appeal against the said order.

Before parting with the matter, it is to be noted that the learned Senior Counsel appearing for the defendants also contended that the order of the trial Court is a perverse order and, therefore, in view of the decision of the Division Bench of this Court in **Innovative Pharma Surgicals v. Pigeon Medical Devices Pvt. Ltd.** (AIR 2004 AP 310), the appeal is maintainable. As rightly pointed out by the learned Senior Counsel appearing for the respondents/plaintiffs, no such ground is urged in the grounds of appeal. Moreover, to come to a safe conclusion as to whether the said order is perverse or not, a detailed examination of the contentions of the parties may be necessary and as this appeal is directed against an injunction warrant, it is not just and proper for this Court to go into the merits of the interlocutory application and decide the same, as the defendants/appellants have not even filed their counter in the interlocutory application before the trial

Court. It is also to be noted that after filing this Civil Miscellaneous Appeal, the defendants entered appearance in the proceedings before the trial Court through an Advocate and sought time for filing counter; and, on 18.11.2016, to which date the interlocutory application stood posted, the trial Court, having noted that vakalat is filed and time is sought for filing Counter, extended the interim order till 22.12.2016. Therefore, this Court is of the considered view that on the ground that the order impugned is a perverse order, no interference is called for more particularly when such a contention is not raised in the grounds of appeal and when in the well considered view of this Court, such a contention requires detailed examination by the trial Court while deciding the interlocutory application on merits.

On the above analysis, this Court finds that this Civil Miscellaneous Appeal is devoid of merit and is liable to be dismissed and it is accordingly dismissed.

No costs.

Pending miscellaneous applications, if any, shall stand closed.

2nd December 2016

ajr

M. SEETHARAMA MURTI, J