

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4737 OF 2016

ORDER :

The Civil Revision Petition is filed against the impugned order dated 25.07.2016 passed in I.A. No.372 of 2014 in O.S. No.73 of 2012 on the file of Junior Civil Judge at Ramannapet, Nalgonda District.

2) The revision petitioner is the plaintiff in O.S. No.73 of 2012 on the file of Junior Civil Judge at Ramannapet, Nalgonda District, which was filed for the relief of permanent prohibitory injunction against the sole defendant restraining him from threatened interference with the plaintiff's possession and enjoyment of the plaint schedule property in S.No.396/EE of Ac.013 gts of dry land, situated at Chityal Village and Mandal, Nalgonda District which is bounded by East: Land of plaintiff purchased from Sama Savitramma, West: 12" wide donka, North: Hemalatha Reddy and others, South: Cell Tower. During the pendency of suit, the plaintiff filed I.A. No.302 of 2012 for grant of temporary injunction and the temporary injunction was granted, on contest, on 14.03.2014. Impugning the same, the defendant filed C.M.A. No.7 of 2014 and the lower Appellate Court dismissed the appeal for default on 28.09.2015.

3) In the said suit, the respondent herein filed I.A. No.479 of 2012 for appointment of advocate commissioner to note down the physical features of Sri Krishna Rice and Oil Mill premises and the property of Muppa Bharathi as shown in her gift deed, in which the suit land is a part and parcel of the plaint/ injunction petition

schedules as shown by the petitioner/ defendant and report the same to the Court. The said petition was dismissed on 14.03.2014. Against the dismissal order, the respondent herein filed C.R.P. No.1309 of 2014 before this Court, where it was also ended in dismissal, on contest, on 09.06.2014.

4) It is from the factual background, the plaintiff filed I.A. No.372 of 2014 under Section 151 C.P.C to grant police aid directing the Station House Officer, Chityal Police Station to enforce the temporary injunction orders dated 14.03.2014 in I.A. No.302 of 2012 passed by the trial Court in favour of the plaintiff against the defendant by preventing threatened interference despite injunction. The factual background further shows Smt.Muppa Bharathi, no other than wife of Muppa Narasimha Reddy claiming as owner and possessor of the open area of 2174 Sq.yds in S.No.369 and defendant under the guise of trying to trespass into the suit land and it is averred in the affidavit of police aid that the defendant is trying to interfere with the plaintiff's possession despite the injunction order is in force in favour of plaintiff and causing obstruction to the work and trying to dispossess when he was claiming the plaintiff schedule property and on 26.08.2014 he complained the acts of defendant to Police, Chityal, who expressed inability saying unless there are Court orders they cannot help, hence to grant police aid.

5) The contest by the defendant in opposing the police aid petition is that while denying ownership and possession of the plaintiff over the suit property and *locus standi* to file the suit and obtain temporary injunction saying he is the owner and possessor of Sri Krishna Rice and Oil Mill, Chityal presently running as "Muppa Malla Reddy Kalyana Mandapam" in suit S.No.369 and his wife

Muppa Bharathi is owner and possessor of open area to an extent of 2174 Sq.yds, which is on the Western boundary of Sri Krishna Rice and Oil mill premises and plaintiff is trying to trespass into his land by destroying the fencing and pits in the month of May, 2012, as such defendant lodged the report against plaintiff and the same was covered by crime No.98 of 2012, where police filed final report. Muppa Bharathi filed O.S. No.234 of 2014 on the file of Senior Civil Judge, Nalgonda and obtained ad-interim injunction orders in I.A. No.520 of 2014 and the same is in force and the respondent herein filed I.A. No.302 of 2012 for appointment of advocate commissioner and the same was ended in dismissal. Thereby, the respondent filed C.M.A. No.7 of 2014 along with stay petition. It is further submitted that the petitioner under the guise of temporary injunction order, is trying to occupy the land of him and his wife with the help of police aid, hence to dismiss the police aid application.

6) It is from the contest by the impugned common dismissal order of the lower Court dated 25.07.2016 passed in I.A. No.372 of 2014 observed that against the appointment of commissioner in I.A. No.479 of 2012, CMA is filed pending along with stay petition to stay the temporary injunction order in favour of plaintiff. No doubt, alleges from the temporary injunction order saying *prima facie* finding of possession in his favour but when defendant contested saying plaintiff mentioned inconsistent boundaries in the plaint schedule when compared to gift settlement deed that is to be decided only by full-fledged trial and at this stage on mere allegations against defendant in the police aid petition, this Court cannot grant police aid to enforce the order of injunction though it is the bounden duty of the Court to see that its orders are enforced but in the present

circumstances and in view of the pending appeals, it is haste to grant any police aid, that too, trial of the suit is pending under contest.

7) The learned counsel for the revision petitioner reiterated the contentions in the grounds of revision impugning said dismissal order of the police aid, whereas learned counsel for the respondent supported the order of the lower Court.

8) Heard both sides at length and perused the material on record.

9) The Apex Court in ***Meera Chauhan vs Harsh Bishnoi and another***¹ observed that inherent powers of the Civil Court can be exercised only in exceptional circumstances where there is no specific provision and when the parties violated the injunction order, Court can exercise not only the mandatory injunction invoking Order XXXIX CPC but also to restore the possession back by exercising power under Section 151 C.P.C in claiming possession as to who is in actual possession of the property for such restoration, the plaintiff is in actual possession and dispossessed by defendant pending injunction. It was observed on facts, that the injunction order alleged violation was, in fact, against transferring, alienating or encumbering the suit property and not against interfering with possession of plaintiff and when plaintiff has not even prayed for injunction not to interfere with possession from what the injunction granted, there is no violation of the Court order in seeking restoration of possession pending injunction. The said order is unsustainable of ordering restoration, for no injunction not to interfere with the possession, though otherwise it is the well settled law that when parties violate

¹ 2007 (12) SCC 201

order of injunction or stay order or act in violation of the injunction, the Court can exercise its inherent power, to prevent any violation or even to put back the parties with status quo anti by restoring the same position as they stood by the time of passing injunction order or even to give proper direction to the police authorities to render aid to the aggrieved parties for the due and proper implementation of the orders passed and such an exercise of the inherent power is recognised by the Apex Court in ***Manohar Lal Chopra vs Rai Bahadur Rao Raja Seth Hiralal***² with observation that inherent power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court including to issue temporary order of injunction in relation to the circumstances or facts not covered by Order XXXIX CPC for Section 151 C.P.C is available to exercise. However, the exercise of the inherent power is in exceptional circumstances for which the Court not provided specific provision. At the same time, it is well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or to give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. In the event of utter violation of injunction order, the party forcibly dispossesses the other despite the order, the Court can order restoration of possession to the party wronged in holding therefrom the trial Court is justified in ordering restoration of possession from plaintiff in whose favour injunction is granted was dispossessed violating the injunction by the defendants.

² AIR 1962 SC 527

Thus, the Apex Court fairly lays down that to implement the orders of the Court including to grant police aid, inherent powers inheres in every Court under Section 151 C.P.C can be exercised. In ***Polavarapu Nagamani and others vs Parchuri Koteshwara Rao and others***³ the Division Bench of this Court observed that of late, the Court has noticed that number of suits for injunction in all the Courts is on increase. It is not without truth to say that more often than no frivolous suits of injunction are filed only to bring the defendants around the plaintiff's view and accept some via-media arrangement to avoid long drawn, expensive and time consuming proceedings in the Courts, during which the defendants would not be able to enjoy the property with peace. In all such cases, ordinarily, urgent motion is moved before the civil Court, an order of *ex parte* injunction is obtained and waiting for a period of fortnight or so and immediately moving application under Section 151 C.P.C for police protection. Instances are not rare where defendants are subjected to harassment after obtaining order of injunction. Police have no role in civil adjudication and Courts should be very cautious and vigilant not to introduce police intervention in civil adjudication in indirect manner at the instance of a clever and resourceful plaintiffs. In view of this, all the Civil Courts in the State of Andhra Pradesh are directed to exercise abundant caution in dealing with interlocutory applications filed by the party, obtaining an order of injunction seeking police protection. For the guidance of all the civil Courts, it is laid down as under:

- i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection***

³ 2010 (2) ALD 41 DB

would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of CPC seeking attachment and/or arrest of the violator for contempt of the Court.

- ii) When a petition is filed seeking police protection, whether or not to exercise of power under Section 94 (e) or Section 151 of CPC, the facts alleged or pleaded, an order for police protection cannot be passed in a routine manner.*
- iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty, and rights of the opposite party.*
- iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on possibilities. Be it noted, as held by Supreme Court in (2001) 7 SCC 530 and (2002) 4 SCC 21, in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self serving statements of the party seeking the intervention of the Court.*

From the said guidelines (i) to (iv), the granting of police aid is observed as not in routine, if an application is filed by the person obtaining ad-interim injunction alleging that there is a threat of breach, disobedience or violation of ad interim injunction orders, Court got power to provide police protection by imposing necessary conditions including not to interfere with life, liberty and rights of the opposite party to proceed and the proof is not very mere vague allegations but something more and otherwise, there is a possibility to seek for violation of temporary or interim injunction under Order

XXXIX Rule 2-A CPC and in case of permanent injunction under Order XXI Rule 32 CPC.

10) The Division Bench of this Court did not refer the expression of the Apex Court in *Meera Chauhan* (supra) though it referred *Manohar Lal Chopra* (supra) and quoting therefrom Court has power to direct the police to prevent violation of disobedience of prohibitory injunction orders by providing necessary protection to enforce the order of injunction, by invoking Section 151 C.P.C and Section 94 (e) C.P.C though there is no express provision in passing the orders.

11) In ***Yarlagunta Bhaskar Rao and others vs Bommaji Danam and others***⁴ the Single Judge of this Court by referring to the expression of the Apex Court in *Meera Chauhan* (supra) and also the Division Bench expression of this Court in *Polavarapu Nagamani* (supra) apart from another Division Bench expression earlier of this Court and ***Satyanarayana Tiwari vs SHO, PS, Santoshnagar***⁵ holding no authority in the State, Revenue or Police, can ignore the finding of the civil Court or refuse to take steps to see that the order of the civil Court is implemented and the party, in whose favour there is an order of the civil Court should get all help to maintain the law and order and the other party cannot be allowed to contravene the injunction order and create law and order problem. It was observed so, in a writ petition filed under Article 226 of the Constitution of India for direction to police to enforce the orders of the Civil Court to provide police protection to implement the orders of injunction and concluded therefrom, that was held by the Apex Court even in cases

⁴ 2014 (1) ALD 309

⁵ AIR 1982 AP 394 DB

where there is violation of an injunction order in a suit or threat of violation exists, orders of police protection may be granted. No doubt, it is necessary that the rights of the parties should be determined either finally in the suit or at least at an interlocutory stage in an unambiguous manner. Therefore, the Division Bench expression in **Polavarapu Nagamani** (supra) insofar as it held that an application for police protection is not maintainable, if there is a violation of an injunction order passed in a suit has to be held to be *per incuriam*.

12) The Learned Single Judge in **Yarlagadda Bhaskar Rao** (supra) also referred, to the conclusion, the expression of the Madras High Court in **N.Karpagam and others vs P.Deivanaiammal and others**⁶ where it is referring to earlier Division Bench of Madras High Court in 1992 TLNJ 120 referring to the case law on the scope of inherent powers under Section 151 C.P.C, in appropriate cases, civil Court has the power and is indeed under a duty, to issue suitable directions to police officials, as servants of law, to extend their aid and assistance in the execution of decrees and orders of civil Courts or implementing an order of injunction passed by it. It also referred the expression of the Bombay High Court in **Smt.Nirabai J. Patil vs Narayan D.Patil**⁷, where it is observed that, it is the duty of every police officer to enforce the law of the land as reflected in Sections 64 and 66 of the Bombay Police Act, 1951 and the inherent power under Section 151 CPC enables the Court to pass the order directing the police to provide their aid to implement the orders. No doubt, grant of police aid is an extreme step and therefore order for grant of police help or police assistance cannot be made unless the Court is fully convicted about the existence of grave emergency such as

⁶ AIR 2003 Madras 219

⁷ AIR 2004 Bombay 225

apprehension of violence by the persons against whom the order has been passed. It is very difficult to give exhaustive list of circumstances but to decide from the facts of each case. It also referred another expression of the Apex Court in **P.R.Muralidharan and others vs Swamy Dharmananda Theertha Padar and others**⁸ deciding the scope of powers of the High Court under Article 226 of the Constitution of India in ordering police protection from the threat perception to his life and liberty or for protection of rights declared by any decree or order of civil Court. No doubt, it is held that disputed questions of fact cannot be gone into in a writ proceeding and that the jurisdiction of civil Court being wide and plenary, a Writ for “police protection” so-called, has only a limited scope, as, when the Court is approached for protection of rights declared by a decree or an order passed by civil Court and cannot be extended to cases where rights have not been determined either finally by the civil Court or, atleast at an interlocutory stage in an unambiguous manner to grant police aid for furtherance of its implementation or enforcement.

13) In **Mettu Malyadri vs Meetu Sivaiah**⁹ the single Judge of this Court observed that Courts while granting police aid have to see the facts and circumstances of each case and Court is always justified in granting police aid to protect the possession of a person, who is the lawful owner of the property, if a person having no right and title wrongfully interferes with his possession. For that conclusion, it referred the expression of the Apex Court in **Kanwar Singh Saini vs High Court of Delhi**¹⁰ apart from the Division

⁸ ((2006) 4 SCC 501)

⁹ 2014 (3) ALT 17

¹⁰ 2012 (4) SCC 307

Bench expression in Polavarapu Nagamani (supra) and single Judge expression in **B.Chandra Shekar Reddy vs K.Naga Raju Yadav**¹¹ referring to the Division Bench expression supra.

14) Another single Judge expression of this Court in **Gampala Anthaiah and others vs Kasarla Venkat Reddy and others**¹² referring to all the expressions covered by Yarlagadda Bhaskara Rao (supra) same learned Judge who dealt with the case observed that, even in cases where there is a violation of an injunction order in a suit as opposed to a situation where only a threat of violation exists, orders of police protection may be granted, if the rights of parties are determined either finally in the suit or atleast at an interlocutory stage in an unambiguous manner and there other decision referred additionally is **Neetha Chintawar and another vs Bodugam Gopi**¹³ that the very grant of an order for temporary injunction passed by the Court on contest from satisfaction of existence of prima facie possession of the plaintiff over the suit property with balance of convenience in favour of plaintiff, who suffer irreparable loss, according protection for such finding of possession, pending disposal of the suit, police aid can be granted and if at all the defendant is aggrieved, his remedy is to file an appeal against the order granting injunction and without modification of which he cannot be permitted to plead that plaintiff is not in possession.

15) The learned Single Judge of this Court in **E.Venkatarama Naidu and another vs E.Ramachandra Naidu**

¹¹ (3) 2013 (1) ALT 532

¹² 2014 (2) ALT 661 = (2) ALD 681

¹³ 2006 (5) ALD 95

and another¹⁴ by referring to the entire case law reiterated the proposition saying police aid can be granted even in the event of violation of order of temporary injunction, by reiterating the observation that the Division Bench expression in Polavarapu Nagamani (supra) to that extent is *per incuriam*. Another Single Judge expression of this Court in **Hindustan Petroleum Corporation Limited vs Government of A.P., rep. By its Principal Secretary, Home Department and others**¹⁵ observed that the Government and police are duty bound to enforce the orders or interim orders of Court and give protection and assistance to the persons, who obtained such order and when sought for such protection by making a complaint, and for that conclusion, referred the expressions approving the Division Bench expression of this Court in Satyanarayana Tiwari (supra) the Apex Court in P.R.Muralidharan by deferring to Division Bench expression in Polavarapu Nagamani's case (supra) to some extent and by approving the Single Judge expression of this Court in Gampala Anthaiah's case (supra) by quoting with approval from Satyanarayana Tiwari's case (supra) of the expression of Lord Denning in **R. V. Metropolitan Police Commissioner**¹⁶ that the police authorities owe a legal duty to the public to enforce the law and citizens are entitled to seek directions under Article 226 of Constitution of India and under the Writ, Court can give direction to the police authorities for discharge of such duties equally by civil Court invoking Section 151 C.P.C for proper implementation of the orders of the Court.

16) From the above, coming to the facts, undisputedly against the temporary injunction order passed in I.A. No.302 of 2012

¹⁴ 2015 (5) ALT 238

¹⁵ (2015) 2 ALT 59

¹⁶ (1968) 1 All ER 763

granted in favour of the plaintiff against the defendant in relation to the plaint schedule property, C.M.A. No.7 of 2014 is maintained by the defendant before the lower appellate Court, which was ended in dismissal on 28.09.2015. A dismissal is a dismissal even for a default to say the injunction order granted in I.A. No.302 of 2012 on 14.03.2014, after contest and on merits in force as on date of the police aid application and also even date and that factum is not in dispute even. Against the application of the defendant in I.A. No.479 of 2012 for appointment of Advocate-commissioner, that was ended in dismissal, C.R.P. No.1309 of 2014 maintained by the defendant before this Court was also ended in dismissal on contest undisputedly on 09.06.2014.

17) The lower Court, no doubt, went wrong in saying as if against the dismissal of the application for appointment of Advocate-Commissioner, C.M.A. No.7 of 2014 filed and is pending and against the temporary injunction order C.M.A. No.1309 of 2014 is also pending, which are factually not correct, from what is referred supra. No doubt, that misunderstanding or misdescription does not require interference with the dismissal order of the lower Court if otherwise on merits. So far as merits concerned in addition to what are the facts discussed supra to say further, as can be seen from the record that wife of the defendant maintained O.S. No.234 of 2014 and obtained ad-interim injunction orders on 09.04.2014 in I.A. No.520 of 2014. The said order is undisputedly subsequent to the temporary injunction order granted in I.A. No.302 of 2012 in O.S. No.73 of 2012 dated 14.03.2014, though the wife of the defendant is not party to O.S. No.73 of 2012. Once wife maintained another suit instead of at best seeking impleadment as a party to the present suit with any

counter claim, she is supposed to mention the granting of temporary injunction in I.A. No.302 of 2012 in O.S. No.73 of 2012 by order dated 14.03.2014, that was not mentioned in obtaining ad-interim injunction order dated 09.04.2014 in I.A. No.520 of 2014 in O.S. No.234 of 2014.

18) Even counter to the police aid application shows the defendant's wife land is towards west of the suit land. Once such is the case and once as per order dated 14.03.2014 passed in I.A. No.302 of 2012, on contest temporary injunction granted in favour of the plaintiff against the defendant and appeal in C.M.A. No.7 of 2014 maintained against the injunction order by the defendant is also ended in dismissal by attaining finality on 28.09.2015. Thus, from the temporary injunction order once in force and there are specific allegations by the plaintiff against the defendant that despite the injunction order the defendant is illegally trying to interfere and threatening to dispossess and thereby police aid is to be granted, there is basis to consider the same to grant police aid.

19) As such, the factum of wife of defendant filed another suit and obtained *ex parte* ad interim injunction order no way coming in the way to grant police aid for the police to assist to enforce the Court orders passed in I.A. No.302 of 2012 in O.S. No.73 of 2012 in relation to the said suit property, if necessary, on cause identify the property of the plaintiff with that of the defendant's wife because of their independent claim of the respective properties and for their claim of not one and the same.

20) It is necessary to say in the factual background supra that there is need to transfer the suit in O.S. No.73 of 2012 on the file of the Junior Civil Judge, Ramannapet, Nalgonda District to the

Court of Senior Civil Judge, Nalgonda to try along with the suit filed by his wife O.S. No.234 of 2012 pending on the file of Senior Civil Judge, Nalgonda District, where the plaintiff in O.S. No.73 of 2012 was one of the defendant besides son of the plaintiff No.2. However, any such step to seek for transfer from any application afresh to file, the earlier application for transfer ended in dismissal on 18.04.2016 would no way come in the way by virtue of this present observation even the description of the schedule of property in the two suits are not for one and the same property.

21) Having regard to the above, dismissal of the police aid application by the lower Court is unsustainable, and the same is accordingly set-aside by granting police aid as sought for.

22) Accordingly and in the result, the revision is allowed by setting aside the impugned dismissal order of the lower Court in I.A. No.372 of 2014 dated 25.07.2016 and by allowing the said application by granting police aid as sought for to implement and enforce the temporary injunction order in I.A. No.302 of 2012 in O.S. No.73 of 2012 in relation to the suit property, if necessary on cause identify the property of plaintiff with that of the property of wife of the defendant. No order as to costs.

23) As a sequel, miscellaneous petitions if any pending in these Civil Revision Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.30.12.2016
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