

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.362 of 2016

Order:

This revision arises out of an order passed by the first appellate Court, dismissing an application under Order XLI, Rule 5 CPC.

2. Heard the learned counsel on both sides.

3. The 1st respondent herein filed a suit in O.S.No.155 of 2010 on the file of Senior Civil Judge, Nuzvid praying for cancellation of a sale deed and for an injunction. The petitioner herein was 10th defendant in the suit.

4. The suit was decreed, forcing the petitioner herein to file an appeal in A.S.No.50 of 2015. Pending appeal, the petitioner sought interim suspension of the judgment of the trial Court, by filing an application in I.A.No.997 of 2015. This application has been dismissed by the first appellate Court forcing the petitioner to come up with the above revision.

5. In an application for stay under Order XLI, Rule 5 CPC, the first appellate Court is obliged to see whether any order passed in the application would have the result of making the appeal itself infructuous. In this case, the suit was for cancellation of the sale deed executed in favour of the petitioner herein and for a permanent injunction. If such a decree is not stayed during the pendency of the first appeal, the appeal filed by the petitioner would become infructuous. This aspect has not been taken note of by the Court below.

6. Therefore, the revision is allowed, the order of the Court below is set aside and the application for stay shall stand allowed.

7. The lower appellate Court shall dispose of A.S.No.50 of 2015 within a period of three months.

8. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

01st July, 2016.

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