HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4712 OF 2015

ORDER:

The order dated 04.09.2015 in I.A.No.139 of 2015 in I.A.No.221 OF 2015 in C.M.A. No. 4 of 2015 passed by the learned Senior Civil Judge, Huzurnagar, Nalgonda District, is challenged before this Court.

The petitioner herein is the 1st defendant, 1st respondent is the plaintiff and the respondents 2 and 3-Government Officials are the defendants 2 and 3 in O.S.No.297 of 2014 on the file of the learned Junior Civil Judge, Huzurnagar, Nalgonda District. The 1st respondent-plaintiff filed a suit seeking permanent injunction. The petitioner-1st respondent is a contractor, who has been entrusted with laying of pipeline by the Government. It is the case of 1st respondent-plaintiff that the land through which pipeline is sought to be laid is a mining land which has been given on lease to it. In view of the subsisting lease in their favour either in law or on facts the interference of the defendants is in violation of their rights accordingly they are entitled for injunction. Initially, *ex parte* injunction order dated 13.11.2014 in I.A.No.697 of 2014 in O.S.No.297 of 2014 was granted by the learned Junior Civil Judge, Huzurnagar, later at the instance of the petitioner-1st defendant the injunction was vacated on 08.05.2015. Challenging the said order, the 1st respondent-plaintiff filed C.M.A.No.4 of 2015 before the learned Senior Civil Judge. Initially the interim stay against the order dated 08.05.2015 in I.A.No.697 of 2014 in O.S.No.297 of 2014 was made till the disposal of the C.M.A. When the matter was directed to be listed on 30.06.2015 seeking dissolving of stay granted on 18.05.2015 in I.A.No.7 of 2015 (subsequently renumbered as I.A. No.221 of 2015) in C.M.A.No. 4 of 2015, petitioner herein filed I.A. No.139 of 2015 in I.A.No.221 of 2015 in C.M.A.No.4 of 2015 on the file of learned Senior Civil Judge, Huzuranagar. One of the grounds on which the petitioner sought vacating of the interim stay granted on 18.05.2015 is that there was a caveat filed by the petitioner before the lower Court and without issuing any notice to the petitioner the interim order has been made.

The learned Senior Civil Judge dismissed the I.A.No.139 of 2015 refusing to dissolve the interim injunction granted in I.A.No.221 of 2015. In the order, learned Senior Civil Judge referred to the judgment of Delhi High Court in the case of **R.P. Khosla and another Vs Hon'ble Compnay Law Board and Ors.,**[1] and another order dated 19.01.2009 of a single Judge of Madras High Court (case name not mentioned) in preference to the judgment of Division Bench of this Court. Learned counsel for the petitioner Sri Vedula Venkata Ramana by placing reliance on the judgment of the Division Bench of this Court in **Pasmala Anjaiah Chary Vs. T. Satyanarayana and others**[2]**,** urged that the *ex parte* order passed by the Court was nullity and ought to be vacated but the learned Senior Civil Judge, Huzuranagar dismissed the I.A. No.139 of 2015 by writing 15 page order.

He would also further submit that the strange logic has been adopted by the Court below in accepting the arguments and more importantly the Court below had ignored the binding judgment of the Division Bench of this Court with reference to the judgments of the Delhi and Madras High Courts. It is well settled law that the jurisdictional judgment is binding on the subordinate courts and in that view of the matter the order passed by the learned Senior Civil Judge cannot stand to be sustained.

Sri B. Srinivas, learned counsel appearing for the 1st respondent-plaintiff would submit that there was no material on record to come to a conclusion that there was a caveat filed and the same was registered. Further, he would also raise objections that an affidavit filed in support of I.A.No.139 of 2015 was signed by an advocate viz., Pasham Ravindra Reddy S/o Raghava Reddy and there was no affidavit of petitioner, which is a total irregularity and the I.A. itself ought not to have been numbered and on that ground alone this Civil Revision Petition is required to be dismissed. Further he would also urge that the 1st respondent-plaintiff has subsisting valuable mining rights and they are legally entitled to enjoy the mining lease rights granted by the Government, such aspects were not taken into consideration while dissolving the *ex parte* injunction which was granted by the learned Junior Civil Judge, Huzuranagar, in O.S.No. 297 of 2014. He would urge that this court ought not to interfere with the order of the Court below.

Having considered the rival submissions, the settled legal position that the jurisdictional High Court judgment is binding on all the Courts and the Tribunals in its jurisdiction, cannot be disputed. As a matter of fact, a Division Bench of this Court in **State of Andhra Pradesh Vs. Commercial Tax Officer and another**[3] had gone to the extent of saying that the subordinate Courts, Tribunals and officers are bound by the law declared by the Division Bench and if contrary stand is taken they would be committing contempt. In the said judgment, the observations of the Bombay High Court in the case of **Subramanian, ITO v. Siemens India Ltd**[4] are quoted and followed.... "So far as the legal position is concerned, the Income-tax Officer would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is (functioning), irrespective of the pendency of any appeal or special leave application against that judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is (functioning), but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. (emphasis is added). Similarly, if the Income-tax Appellate Tribunal has decided a point in favour of the assessee, he cannot ignore that decision and take a contrary view because that would equally prejudice the assessee"

In that view of the matter, once it is not in dispute about the Division Bench holding that making an order without serving the papers on the caveator would be a nullity and void, the same may be ignored. However the order being a judicial order the parties normally would not like to take a risk of disobeying the same. Further, the granting of stay of any order dissolving the injunction is totally unmeaning and how such order came to be passed by a Senior Civil Judge is totally ununderstandable.

Further, the objections raised by the learned counsel for the 1st respondent-plaintiff before this Court are of the matters which ought to have been raised before the Court below and at any rate the objection with regard to filing of affidavit by the advocate having not been raised before the Court below, the same is not required to be considered by this Court in the present Civil Revision Petition. The prayer of the petitioner in I.A.No.139 of 2015 is to set aside the order passed by the Court below on 18.05.2015 in I.A.No.7 of 2015 (later renumbered as I.A. No.221 of 2015) in the C.M.A. so as to give an opportunity to the petitioner to file counter and to contest the matter.

In that view of the matter the order of stay granted and refused to be vacated in I.A.No.139 of 2015 is set aside, with a further direction to the learned Senior Civil Judge, Huzuranagar to consider the said I.A. on merits after giving opportunity to both the parties. The observations made in the present Civil Revision Petition shall not be construed as expressing any opinion with respect to the merits of the matter.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated: 12.02.2016
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[1] Rev.Pet.526/2013&CM Nos.14330, 14331&14332/2013 in WP(C) No.5889/2013

[2] 2014 (3) ALD 107 (DB)

[3] 169 ITR 564

[4] (1985) 156 ITR 11