

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5424 OF 2016

ORDER:

Pending disposal of the suit O.S. No.820 of 1995, there are two applications i.e., I.A. No.600 of 2015 and I.A. No.860 of 2015 filed by plaintiff for the respective two reliefs of temporary injunction. It is impugning the allowing of the application in I.A. No.600 of 2015 seeking for temporary injunction, the respondents 8 and 9 to I.A. No.600 of 2016 maintained C.M.A. No.61 of 2016 and pending disposal of appeal, filed I.A. No.977 of 2016 seeking suspension of the temporary injunction order granted in I.A. No.600 of 2015. There was an interim order passed in I.A. No.977 of 2016 in C.M.A. No.61 of 2016. Leave about this, on the 1st plaintiff/ 1st respondent, as can be seen from the record, notice served through process server and he received the copy of the interim suspension application in I.A. No.977 of 2016 on 07.09.2016. The trial Court, while suspending the interim order dated 06.06.2016 till 08.09.2016, posted the matter for hearing and service of notice meantime. It appears, the said proof of notice effected on previous day, not put up nor even cause verified by the bench clerk of trial Court and not even taken note of by the Presiding Officer of that Court and proceeded on the supposition that no proof of service placed. The Court, therefrom in passing the impugned order dated 08.09.2016 stated that the memo for extension of interim application sought for, is rejected as notice not served.

2) It is impugning the non-extension of the interim order and rejecting the memo, the revision is maintained.

3) The main submission of the learned counsel for revision petitioner is that notice on respondent even served through Court (process server) on 07.09.2016, the lower Court went wrong in rejecting the memo instead of extending the interim order. Whereas, it is the submission of the learned counsel for the 1st respondent/ plaintiff to the revision vis-à-vis the order in I.A. No.977 of 2016 that even memo filed, it was not mentioned and not brought to the notice of the Court and in that scenario, there is nothing to interfere with the impugned order, for not an order on merits but obtained stay behind back deliberately and without disclosing true facts.

4) Heard and perused the material on record.

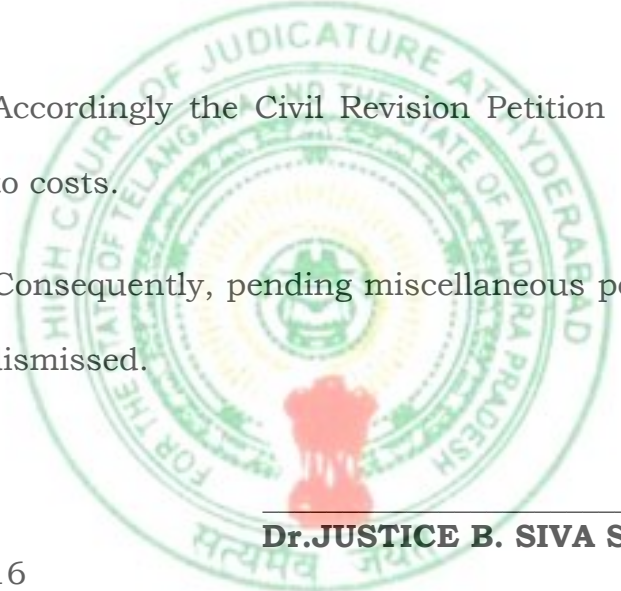
5) In fact, it is the duty of the Court based on the maxim *actus curiae neminum gravabit* that 'an act of the Court not sanctioned by law shall prejudice no man', once notice is ordered by the Court, when it is not a personal notice, but through court process server, it must be for the Court to verify service of notice or not before proceeding as if notice not taken for not a case of after order within three days no process filed as required. Once process is filed for service of notice through the Court process server, there is fault on the part of the Court that can be attributed to the officers of the Court like the process server or amin or bench clerk or the nazarath wing of the Court, as the case may be, for their not putting up and not bringing to the notice of the Court and also for the Court to verify. Thereby the rejection of memo on that count is *per se* unsustainable.

6) However, the fact remains from the subsequent developments that the arguments of petitioners of the C.M.A. have been heard and it is coming for the continuation of the respondents' arguments and from the submission of both sides, the C.M.A. itself is posted to today for arguments.

7) Having regard to the above, instead of vacating the injunction order on the sole technicality, when the C.M.A is at fag end, the lower Court is directed to hear and dispose of the C.M.A on merits within one week from the date of receipt of a copy of this order.

8) Accordingly the Civil Revision Petition is disposed of. No order as to costs.

9) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.



Dr.JUSTICE B. SIVA SANKARA RAO

Dt.21.11.2016
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