THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A.NO.893 OF 2015

JUDGMENT:

This appeal is filed by the appellant/first respondent against the order, dt.23.11.2015 passed by the II Additional District Judge, Ranga Reddy District in I.A.No.654 of 2015 in O.S.No.103 of 2013 wherein the court below directed the Advocate Commissioner to visit the appellant company every month from December 2015 till the disposal of the suit and to make inventory of 'C' schedule property and file a report to that effect.

The facts of the case in brief are that the first respondent herein filed O.S.No.103 of 2013 for the relief of rescission of Memorandum of Understanding dated 05.09.2012 and all other arrangements or contracts between the parties leading to the execution of the Memorandum of Understanding and subsequent to the Memorandum of Understanding including the share purchase agreement, dt.07.09.2012, transferring 72% of plaintiff's shares to defendant Nos.2 to 5 and Memorandum of Understanding, dt.04.12.2011 as void and restore back the same to its original position as they were prior to the Memorandum of Understanding, dt.05.09.2012 and also to declare that the notice purportedly issued to convene Extra General Meeting dt.12.01.2013 accompanied with the special notice dt.10.01.2013 to be held on 05.02.2013 at 11.00 a.m., on Tuesday at A-301, Hetal Arch, S.V.Road, Malad (West), Mumbai as null and void. The first respondent herein also filed I.A.No.654 of 2015 in the said suit under order XL, Rule 1 of C.P.C., for appointing of a Receiver conferring powers on him for the management, protection, collection of profits and improvement of the first respondent company. The trial court allowed the said application and appointed an Advocate Commissioner for investigation of the suit schedule property and also directed him to visit the appellant company every month commencing from December-2015, till the disposal of the suit. Aggrieved by the same, the present appeal is filed.

The learned counsel for the appellant submits that an Advocate Commissioner cannot be appointed for gathering evidence. He also submits that in view of the order of the Apex Court in SLP.Nos.25520 & 25521 of 2015, dt.29.10.2015 directing the appellant company not to alienate the movable assets of the company, there is no necessity for appointment of an Advocate Commissioner to make inventory of ‘C’ schedule properties. He also submits that the first respondent herein has already filed applications in I.A.Nos.1452 of 2013 and 1453 of 2013 in O.S.No.103 of 2013, wherein the court below by its order dt.31.12.2014 restrained the respondents/defendants from alienating, selling or creating third party rights over the movable and immovable assets of the appellant company during the pendency of the suit. As such, the appointment of an Advocate-Commissioner would not serve the purpose. In support of his contention, the learned counsel relied on a decision of the Madras High Court in **D.S.REDDY VS. G.V.REDDY**[1] and of this Court in **DIVANCHEE BAR & RESTAURANT, HYDERABAD VS. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER**[2], **BATCHU NARAYAN RAO S/O SRINIVASARAO VS. BATCHU VENKATA NARASIMHA RAO S/O LATE SEETHAIAH**[3] and **THALIA SULOCHANA W/O. GALAIAH VS. THALIA ISSAAC**[4].

On the other hand, the learned counsel for the first respond submits that in I.A.No.654 of 2015 in O.S.No.103 of 2013 the cc below passed orders by exercising its discretion, holding that i necessary to direct the Advocate-Commissioner to visit the appell company and verify the 'C' schedule property and file his report, preserving the 'C' schedule property and to decide the issue in the s

It has to be seen that initially, the first respondent herein filed said application in I.A.No.654 of 2015 in O.S.No.103 of 2013 appointing a Receiver, conferring powers on him for the purpose management, protection, collection of profits and improvement of first respondent company. The court below holding that unless a until the movable property shown in 'C' schedule property is verif and reported to the court, there is every possibility of misusing same by the respondents and therefore, appointment of a Recei cannot be made and it can be done by appointing a Commissioner physical inspection of 'C' schedule property and thereby appointed Advocate-Commissioner for physical inspection of the said property has also to be seen that against the common order dt.31.12.20 passed in I.A.No.1452 of 2013 and 1453 of 2013 in O.S.No.103 2013 by the II Additional District Judge, Ranga Reddy District L.B.Nagar, the appellants filed C.M.A.Nos.64 and 65 of 20 respectively, before this Court and this Court by order, dt.13.03.20 passed common orders and disposed of the said appeals. Aggriev by the orders of this Court, the appellants preferred S.L.P.Nos.2552 25521 of 2015 and the Apex Court by order, dt.29.10.2015 modif the order of this court and directed the court below to dispose O.S.No.103 of 2013 by the end of June 2016. It is no doubt true t the Apex Court granted injunction restraining the appellant fr alienating the 'C' schedule property. It is the case of the responde herein that 'C' schedule property is more valuable property and eve it is removed, it cannot be noticed easily, unless and until some rec is placed before the court below.

In **Batchu Narayan Rao's** case (Supra-3) relied on by learned counsel for the appellant, the question whether appointment of an Advocate-Commissioner is necessary to identify suit schedule property and to fix the boundaries thereof and to fil report as to the possession of a person over the said property v considered. As such, the same has no application to the pres case. In view of the fact that there is an injunction granted by the Ap Court with regard to the movable and immovable property and bas on the said order of the Apex Court, the court below held that details 'C' schedule property are to be recorded, the question of gather evidence in the present case does not arise. **Divanchee Bar Restaurant's** case (Supra-2) also has no application to the pres case, since it pertains to the appointment of an Advoca Commissioner as an Observer in very limited situations. Therefore, provisions of Order 26 C.P.C., were never intended to permit appointment of an Advocate-Commissioner for acting as a continu check against the public officials in discharging their duties unde statute or a common law, nor can, in such cases, the party permitted to invoke the provisions of Section 151 C.P.C. In **Tha Sulochana's case** (Supra-4) this court held that Advoc Commissioner cannot be appointed for the purpose of gather evidence in support of one of the parties. As such, this case has application to the present case. **D.S.Reddy's** case (Supra-1) is a ca where injunction was in force against the operation of locker contain disputed articles. Therefore, this case also has no application to present facts of the case. This court feels that inventory of schedule property is necessary to safeguard the properties and decide the issue in the suit.

In view of above facts and circumstances, the direction of court below to the effect that the Advocate Commissioner to visit appellant company every month is set aside. However, it is made cl that the Advocate-Commissioner can visit the appellant company making inventory of 'C' schedule property and file a report before court below. The trial Court instead of insisting the first respond herein to furnish the name of the Advocate Commissioner, can app an Advocate as Advocate Commissioner by exercising its discret and dispose of O.S.No.103 of 2013 before June 2016, keeping in v the directions given by the Apex Court in S.L.P.Nos.25520 & 2552 2015, dt.20.10.2015.

Hence, the present appeal is disposed of modifying the orde the court below to the above effect. Miscellaneous petitions pendin any, shall stand closed. No order as to costs.

A.RAJASHEKER REDD

Dt.06.01.2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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C.M.A.NO.893 OF 2015

Dt.06.01.2016

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[1]) 1999 (1) CTC 172

[2]) AIR 1986 AP 149

[3]) 2010 (5) ALD 83

[4]) 2012 (3) ALT 260