

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.5045 OF 2016

ORDER:

The revision petitioners are the defendants in O.S.No.900 of 2016 and respondents in I.A.No.160 of 2016 and petitioners in I.A.No.376 of 2016 covered by the impugned order dated 03.05.2016.

2. The suit was maintained by the sole plaintiff against seven defendants including the revision respondent No.2 apart from revision petitioners 1 to 6, for the relief of prohibitory permanent injunction and pending disposal of the suit, for grant of temporary injunction he filed I.A.No.160 of 2016 under Order 39 Rules 1 and 2 CPC. The learned IX Junior Civil Judge, FAC XX Junior Civil Judge, City Civil Court, Hyderabad, for the respondents/ defendants were served with notices and failed to attend the Court in the injunction application supra and was disposed of on merits by allowing the same from the case propounded by the plaintiff/ petitioner alone.

3. It is to set aside that order, the application in I.A.No.376 of 2016 supra was filed under Order 9 Rule 7 CPC. No doubt there is no period of limitation for filing the application. There is also no bar to participate in later proceedings. However, Order 9 Rule 7 CPC applies in a pending matter before passing orders for disposal where respondents were remained ex parte or set ex parte in seeking permission by them to set aside that ex parte order, by allowing to participate on showing of sufficient cause for earlier non-appearance. Thus, but for remedy of appeal against the

injunction order, as provided by Order 43 CPC or filing application under Order 39 Rule 4 CPC, it is not filing application under Order 9 Rule 7 CPC. The application filed in I.A.No.376 of 2016 thereby ultimately was ended in dismissal before the lower Court. Thus, once Order 39 Rule 4 CPC enables the party to approach the trial Court, even it was the order granting temporary injunction pending disposal of the suit by confirming ad-interim exparte injunction, the order can be discharged or modified or varied or set aside or vacated, as the case may be, by virtue of that provision with all elasticity on such power Court to meet the necessity. As nothing prohibits the defendants to make an application under Order 39 Rule 4 CPC with all particulars of their defence that could be propounded, like as counter to the original injunction application in I.A.No.160 of 2016, in their affidavit petition seeking to vacate or modify or set aside or vary or discharge the temporary injunction already granted in I.A.No.160 of 2016 and for that the earlier exparte order passed no way comes in the way.

4. Having regard to the above, instead of reverting the clock back for setting aside the injunction if at all to succeed ultimately on admitting the revision by ordering notice and after notice and hearing and in the meanwhile suspending the order and giving life to the litigation by keeping the revision pending the revision petition can be disposed of before admission from the other enabling provision under Order 39 Rule 4 CPC available to the revision petitioner, with a direction to approach the trial Court with an application supported by affidavit of the defence of them,

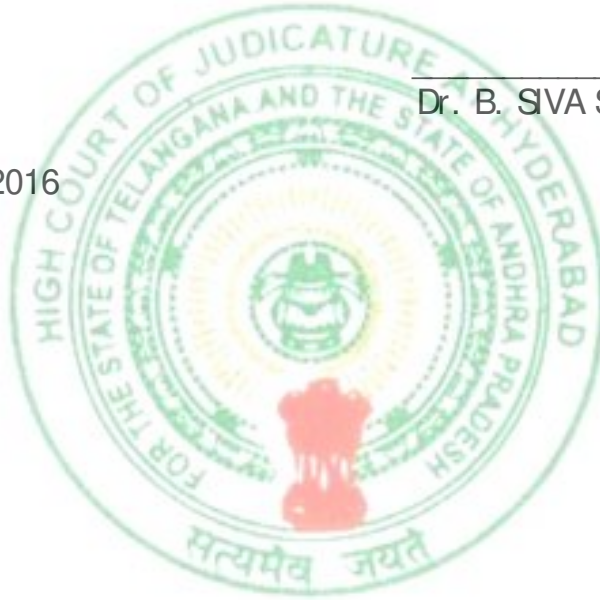
that could have been otherwise propounded in I.A.No.160 of 2016 for temporary injunction pending disposal of the suit, since already granted, to seek for varying or modifying or setting aside the same to decide on merits uninfluenced by the earlier exparte order supra.

5. Accordingly and with the above directions the revision petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 24.10.2016
Kvrm

Dr. B. SIVA SANKARA RAO, J



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO



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DATED: 24.10.2016

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