

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

FRIDAY THE TWENTYFIRST DAY OF APRIL
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

CMA.No. 330 OF 2017

Between:

M/s. P.V. Subba Naidu & Co., Visakhapatnam,
Rep. by Managing Partner,
P. Ravindra Babu ,... Appellant

V/s.

M/s. KPR Constructions, Hyderabad
Rep. by its Proprietor K. Premnath ... Respondent

Counsel for the Appellant : Sri J. Ugranarasimha

Counsel for the Respondent : Sri N. Pavan Kumar

The court made the following : [judgment follows]

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

CMA.No. 330 OF 2017

JUDGMENT : [O R A L] :

[Per the Hon'ble Sri Justice Suresh Kumar Kait]

This Civil Miscellaneous Appeal is filed by the appellant/respondent/plaintiff against the order dated 28/2/2017 passed in I.A.No. 1639 of 2015 in OS.No. 84 of 2016 by the IV-Additional District Judge, Visakhapatnam, allowing the petition filed under Order-39, Rule 1 and 2 of CPC seeking to grant interim prohibitory orders prohibiting the Garnishee i.e., Chief Administrative Officer [Constructions], East Coast Railway Rail Vihar, Chandra Shakarpur, Bhubaneswar, Odisha State from releasing the bill amounts payable to the respondent/plaintiff in respect of contract bill amounts in any manner, pending disposal of the claim-petition and the suit.

2. Notice issued. Learned counsel accepts notice on behalf of the respondent and submits that there is no need of filing counter-affidavit and the matter can be disposed of.

3. We note I.A.No. 1639 of 2016 in OS.No. 84 of 2016 was filed under Order-XXXVIII Rule 5 of CPC seeking to grant ad-interim prohibitory orders prohibiting the Garinshee i.e., Chief Administrative Officer, [Constructions], East Coast Railway Rail Vihar, Chandra Shakarpur, Bhubaneswar, Odisha State. However, the IV-Additional District Judge, Visakhapatnam decided the said application as if it was filed under Order XXXIX Rule 1 and 2 of CPC as is evident from the order impugned in this appeal.

4. In addition to above, the issue before the court below was “whether the appellant/respondent/plaintiff is entitled for interim prohibitory order as prayed for ?” It is recorded that the main dispute is whether the respondent/petitioner has to

pay Rs.1,75,96,649=00 for the work done by the appellant/plaintiff. Though trial Court recorded that no documents were filed by the respondent/defendant with regard to the claim of Rs.1,75,96,649=00, but however, it further observed as if there is a prima facie case regarding entering into the sub-contract by the respondent and the appellant and also depositing of Rs.7,06,920=00 and Rs.44,10,010=00 as performance guarantee by the appellant/plaintiff.

5. We find the order not sustainable for the reason though the respondent filed I.A.No. 1639 of 2016 under Order XXXVIII, Rule 5 of CPC., however, in the order it is recorded that the petition was filed under Order XXXIX Rule 1 and 2 of CPC. The method of dealing with the petition under Order-38, Rule 5 CPC and Order 39, Rule 1 CPC is quite different. We hereby set aside the order and direct the trial court to pass appropriate order on merits and in accordance with law,

within three months from the date of receipt of copy of this order. On request, liberty is granted to the respondent to file documents with regard to claim of Rs.1,75,96,649/- within ten days from today and thereafter within one month trial court will pass afresh order.

6. In view of the above, this Civil Miscellaneous Appeal is disposed of. Till the order passed by the trial court, the interim prohibitory order issued against garnishee shall hold good. No costs.

7. As a sequel, miscellaneous petitions if any, pending in these Civil Miscellaneous Appeals shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

21/04/2017
I s L

MOST URGENT:

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO.



CMA.No. 330 OF 2017

[DISPOSED]
JUDGMENT

[Per the Hon'ble Sri Justice Suresh Kumar Kait]

Date: 21/04/2017
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