

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.1033 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, [for short, 'the Code'], by the respondent-defendant is directed against the *ex parte ad interim* injunction order, dated 04.08.2017, granted by the learned Principal District Judge, Medak at Sanga Reddy, in IA.No.878 of 2017 in OS.No.102 of 2017.

2. I have heard the submissions of Sri A. Venkatesh, learned counsel for the appellant, and of Sri L. Venkateswara Rao, learned counsel for the respondent. I have perused the material record.

3. The introductory facts, in brief, are as follows: -

The respondent-plaintiff [hereinafter, 'plaintiff'] brought the suit against the appellant-defendant [hereinafter, 'defendant'] for a perpetual injunction restraining the defendant or anybody acting through or under him from interfering with the day to day administration and management of the plaintiff college by its governing body. In the said suit, the plaintiff filed the afore-stated Interlocutory Application under Order XXIX Rules 1 & 2 of the Code requesting to grant a temporary injunction restraining the defendant and any other person on his behalf from interfering with the day to day affairs of the educational institution which is being looked after by the plaintiff as Secretary-cum-Correspondent, pending disposal of the suit. The *ex parte ad interim* injunction order which is impugned in this appeal reads as under:

'The respondent/ defendant is hereby restrained by way of an ad-interim injunction from interfering with the day to day affairs of the petitioner/ plaintiff institution until further orders. Issue urgent notice to the respondent/ defendant.

This case stands posted to 18.08.2017.'

4. Learned counsel for the defendant would submit as follows:

A perusal of the order impugned would show that it is a non speaking & unreasoned order and it was passed contrary to established procedure of law and also the ratio in the decision in Shiv Kumar Chadha and others v. Municipal Corporation of Delhi and others [(1999) 3 SCC 161]. Rule 3 of Order XXXIX of the Code is imperative in nature. Whenever a Court, in the facts and circumstances of a particular case, considers it necessary to pass an order of injunction without notice to the other side, it must record reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an *ex parte* order is not passed. Recording reasons is mandatory and an order granting *ex parte ad interim* injunction without recording reasons is void. The Court below did not record reasons much less valid reasons for dispensing with the requirement of notice under Rule 3 of Order XXXIX of the Code. The plaintiff is not a juristic person and is not competent to institute the suit. The civil suit is not maintainable. Hence, the appeal may be allowed and the impugned order may be set aside with a direction to the trial Court to hear and dispose of the Interlocutory Application on its merit after giving an opportunity to the defendant to file counter.

5. Be it noted that apart from the above contentions, various other contentions on merits of the matter are also advanced by the learned counsel; and, in support of some of the contentions certain documents are produced before this Court.

6. Learned counsel for the plaintiff while supporting the orders of the trial Court and while producing certain documents in support of the case of the plaintiff, raised various contentions and made submissions with regard to the facts and circumstances, which led to the filing of the suit and the interlocutory application and the granting of the *ex parte ad interim* injunction

order in favour of the plaintiff. He prayed for sustaining the order impugned till the disposal of the Interlocutory Application by the trial court and further requested to direct the trial Court to dispose of the interlocutory application, on merits, within a time frame that may be fixed by this Court.

7. Having regard to the facts and submissions, this appeal need not detain this Court for long. Since the order impugned is an *ex parte* interim order this Court need not go into the merits of the matter at this stage as the trial Court will be required to decide the interlocutory application on its merit and in accordance with the procedure established by law. In view of the facts and submissions made, the only course, which meets the ends of justice, is to dispose of this CMA with a direction to the trial Court to decide the Interlocutory Application, on its merit, as being desired by both the parties.

8. However, the only question is as to whether the order impugned shall be maintained or set aside while directing the trial Court to decide the Interlocutory Application on its merit, as the learned counsel for the defendant on the one hand seeks to set aside the impugned order while the learned counsel for the plaintiff on the other seeks an order directing the parties to maintain *status quo* till the disposal of the Interlocutory Application by the trial Court on its merit.

9. On this aspect, limited submissions were made and I have given earnest consideration to the said submissions. Any direction in this regard shall be made cautiously and by adopting a balanced approach to see that the direction that may be given shall not prejudicially affect the interests of either of the parties. On detailed and thoughtful consideration, this Court finds that while disposing of the CMA and giving appropriate directions to the trial Court, the order impugned can be modified tentatively and the defendant may be directed tentatively to not to interfere with the functions of the governing body of the educational institution till the trial Court decides the Interlocutory

Application on its merit. In the considered view of this Court, such a course would meet the ends of justice and protects the interests of both the parties.

10. On the above analysis and for the reasons assigned, the Civil Miscellaneous Appeal is disposed of accordingly and the impugned *ex parte ad interim* order is modified tentatively and is substituted tentatively with a direction that the defendant shall not interfere with the functions of the governing body of the plaintiff-educational institution till 25.10.2017; and, the trial Court is directed to decide I.A.No.878 of 2017 in OS.No.102 of 2017 on or before 25.10.2017, however, on its merit and in strict accordance with the procedure established by law without seeking extension of time from this Court. However, it is made clear that the defendant shall file into Court his counter in the Interlocutory Application before 13.10.2017, without fail, after serving a copy of the same in advance on the counsel for the plaintiff. The trial court while deciding the Interlocutory Application on merits shall not in any way be influenced by the tentative order of this court.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

06.10.2017
Vjl

M. SEETHARAMA MURTI, J