

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1697 of 2017

Order:

This revision arises out of an order passed by the first appellate Court allowing an application under Order IX, Rule 13 CPC, which was first rejected by the reference Court.

2. Heard Mr. Kowturu Vinaya Kumar, learned Senior Counsel appearing for the petitioners.

3. A reference under Section 31 of the Land Acquisition Act, 1894 was made to the Principal Senior Civil Judge's Court, Gudivada in L.A.O.P.No.7 of 2010. The 1st respondent herein, who was the rival claimant, was set *ex parte* and the reference Court passed an award.

4. Thereafter, the 1st respondent herein filed an application in I.A.No.1723 of 2012 under Order IX, Rule 13 CPC for setting aside the *ex parte* order. It was dismissed by the trial Court, but the appellate Court allowed C.M.A.No.7 of 2016. The result is that the award passed *ex parte* as against the 1st respondent was set aside. Therefore, the petitioners herein who have diligently participated in the proceedings have come with the above revision.

5. I had an occasion to deal with two civil revision petitions arising out of the connected proceedings as between the same parties. Paragraphs-15 to 17 of the said order read as follows:

“15. Now there are two alternatives available to this Court. First is to grant a stay and allow the 1st Appellate Court to decide the regular appeal arising out of dismissal of the application under Order IX, Rule 13 CPC and the second is to cut short the proceedings and allow the petitioner to go back to the reference Court, file a claim petition and have the dispute adjudicated on merits.

16. The learned counsel for the respondents has an objection to the second course of action. In fact his objection all along has been that the revision petitioner has been protracting the proceedings. Therefore, by adopting the second course of action it will be his turn to protract the proceedings.

17. Since the second course of action is not acceptable, I have no alternative except to adopt the first course of action. Hence C.R.P.No.3429 of 2016 is allowed. An interim stay is granted in favour of the revision petitioner. The lower Appellate Court is directed to dispose of C.M.A.No.7 of 2016 in accordance with law, within a period of three months from the date of receipt of a copy of this order.”

6. Now the first appellate Court has allowed the C.M.A filed by the 1st respondent. Therefore, I do not think that the same calls for any interference.

7. In filing an application under Order IX, Rule 13 CPC, there was no delay on the part of the 1st respondent. The first appellate Court found that the 1st respondent should have an opportunity to contest the case on merits, despite finding him guilty of negligence. I do not think that the order is vitiated by any infirmity or procedural irregularity. Therefore, the revision is dismissed. However, since the reference before the reference Court is pending for the past 7 years, the reference Court is directed to dispose of the reference within

a period of 2 (two) months from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

30th June, 2017.

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30th June, 2017.
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