

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No. 6372 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/plaintiff assailing the docket order, dated 27.09.2016, of the learned Principal Junior Civil Judge, Kalwakurthy, passed in I.A.No.228 of 2016 in O.S.No.45 of 2015 filed by the plaintiff under Section 151 of the Code of Civil Procedure, 1908, requesting to extend the interim order of injunction from 02.09.2015 to 08.09.2016 and until further orders.

2. I have heard the submissions of *Sri K.Sreenivas*, learned counsel appearing for the petitioner/plaintiff, and of *Sri R.Dheeraj Singh*, learned counsel for the 1st respondent/1st defendant. None appeared for the respondents 2 and 3, who are stated to be not necessary parties. I have perused the material record.

3. The trial Court dismissed the aforestated application of the plaintiff as infructuous.

4. Aggrieved thereof, the plaintiff filed this revision *inter alia* contending as follows:

The trial Court failed to see that the subject application has not become infructuous as in the said application a prayer was made for extension of the interim order of injunction not only for the period

from 02.09.2015 to 08.09.2016 but also until further orders. The trial Court ought to have seen that the interim injunction order was granted on 15.05.2015; and, that later it was extended from time to time till 02.09.2015. The trial Court also should have seen that the application filed by the plaintiff seeking temporary injunction could not be taken up for hearing between 20.10.2015 to 13.10.2016 and hence, the interim orders earlier granted are deemed to be in force till the said application is taken up for hearing. On 08.09.2016, the subject application seeking extension of the interim orders was filed and the matter was taken up by the trial Court for hearing on 27.09.2016. Therefore, the trial Court ought to have extended the interim orders, as prayed for. The trial Court ought to have seen that there was a threat of dispossession of the plaintiff from the subject land and that therefore, the extension of the interim order of injunction was sought. The impugned order passed by the trial Court is a non-speaking order. Further, if the trial Court was of the opinion that the interim order is not extendable until further orders, it ought to have extended the interim order of injunction for a limited period; or in the alternative, if the trial Court was of the view that the interim orders are not extendable even for a limited period, it ought to have passed a speaking order instead of dismissing the application as infructuous. Hence, the impugned order is unsustainable.

5. The learned counsel for the 1st respondent/1st defendant would submit as follows:

The interim injunction order was granted on 15.05.2015; and, later it was extended till 02.09.2015. The plaintiff did not seek extension of the interim order till 08.09.2016 i.e., till about a year and had slept over the matter. In the affidavit filed before the Court below, no explanation was given for not seeking the extension of the interim order earlier to the said date; and, it was only stated that due to inadvertence, the extension of interim order was not granted and that the extension of interim order was being sought as there is a serious threat of interference by the respondents with the Maize crop raised in the land. On the contrary in the revision before this Court, a contention was raised that the orders of interim injunction are deemed to be in force till the matter is listed for hearing on 27.09.2016 and, as such, the learned Judge of the trial Court ought to have extended the interim order. Thus, the plaintiff has taken inconsistent stands before the trial Court and this Court.

5.1 The learned counsel has also brought to the notice of this Court the subsequent orders of the trial Court on the proceeding sheet/docket sheet whereby the absence of the plaintiff before the trial Court was noted. He, therefore, prayed that the revision, which is devoid of merit, may be dismissed.

6. I have bestowed my attention to the facts and given earnest consideration to the submissions.

7. The facts of the case, which are in a narrow compass, are as follows:

The plaintiff brought the suit against the defendants for a perpetual injunction in respect of the landed property, more fully described in the schedule annexed to the plaint. Along with the suit, the plaintiff also filed an application seeking temporary injunction. In the said application, on 15.05.2015, the trial Court initially granted an order of *ex parte* interim injunction; later the said interim order was extended from time to time and till 02.09.2015. It is a matter of record that afterwards the said order was not extended for one reason or the other. The plaintiff *inter alia* contended in her application seeking extension that by inadvertence the extension of the interim orders was not granted and that there was a maize crop in the suit schedule land and that there is a serious threat of interference with her possession over the lands by the defendants and sought extension of the interim orders from 02.09.2015 to 08.09.2016 and until further orders. The matter was not taken up on 08.09.2016 as the Presiding Officer who was deputed for training was not available; thereafter also, the Presiding Officer was on training for a week or so. Eventually, the petition was listed before the trial Court on 27.09.2016, for hearing. However, neither the plaintiff was given an opportunity of hearing nor was the 1st defendant given an opportunity to file his counter and resist the application. Nonetheless, the petition was dismissed by a cryptic order – ‘The petition is dismissed as infructuous’, though in fact, the

petition has not become infructuous in view of the further prayer seeking extension of the interim order of injunction until further orders.

8. The law is too well settled that an order, which is not a speaking order, is liable to be set aside. The procedure and the principles of natural justice require the Court below to pass a speaking order. The impugned order passed in a cryptic manner without indicating any reasons is liable to be set aside is not in dispute. It is also not in dispute that the trial Court has yet to hear and dispose of the application filed by the plaintiff for granting temporary injunction and that in the said application the 1st defendant has already filed his counter. Hence, the trial Court is required to dispose of the said application filed by the plaintiff for granting temporary injunction.

9. Be that as it may, the short incidental question that now falls for consideration is as to whether any interim order has to be passed in favour of the plaintiff, while giving directions to the trial Court to dispose of the plaintiff's application for temporary injunction within a time frame.

10. For quite some time there is an interim injunction order in favour of the plaintiff. Be it also noted that, on 23.12.2016 this Court while admitting the revision granted an interim order of injunction from that date till 05.01.2017. Subsequently, as Sankranti vacation intervened, no further extension of interim injunction orders was

granted. In the facts and circumstances of the case, if the interim order of injunction is now extended for a period of three weeks from today in favour of the plaintiff and the trial Court is directed to dispose of the plaintiff's application for temporary injunction within a time frame, the ends of justice would be met, in the well considered view of this Court.

11. On the above analysis, the Civil Revision Petition is allowed without costs and the impugned order of the trial Court passed in I.A.No.228 of 2016 in O.S.No.45 of 2015 is set aside; and as a sequel to the said finding, the said IA is allowed in part and the interim order of injunction which was granted and which was in force till 05.01.2017 is extended from today for a period of three weeks and the trial Court is accordingly directed to dispose of, in strict accordance with the procedure established by law, the interlocutory application in I.A.No.54 of 2016 filed by the plaintiff for granting temporary injunction as expeditiously as possible and preferably within a period of three weeks from today.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

January 20, 2017

Note:- Issue CC by 25-01-2017
(B/o)
LMV

