

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.58 OF 2017

JUDGMENT:

This appeal is filed under Order XLIII Rule 1(r) of C.P.C. challenging the order dated 30.12.2016 passed in I.A.No.417 of 2016 in O.S.No.73 of 2016 on the file of the Court of the I Additional District Judge, Krishna at Machilipatnam.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the respondent herein filed O.S.No.73 of 2016 on the file of the Court of the I Additional District Judge, Krishna at Machilipatnam for specific performance of the agreement of sale dated 18.09.2014. The respondent herein filed I.A.No.417 of 2016 in O.S.No.73 of 2016 under Order XXXIX Rules 1 and 2 read with Section 151 of C.P.C. seeking interim injunction directing the appellant not to make any constructions. The trial Court granted interim injunction in favour of the respondent.

4. The appellant filed an affidavit dated 16.01.2017 before this Court. It is not out of place to extract hereunder the relevant portion of the affidavit:

“The photographs filed by me clearly goes to show that the entire material purchased by me is lying in the plaint schedule site and if the injunction is continued I will be put to irreparable loss and injury. I respectfully submit that I will not claim any equities in the event of plaintiff succeeding in the suit.”

A perusal of the same reveals that the appellant herein, who is the defendant in the main suit, filed the affidavit stating that he

will not claim any equities in the event of the respondent/plaintiff succeeding in the suit.

5. In view of the undertaking given by the appellant in the affidavit dated 16.01.2017, the Civil Miscellaneous Appeal is allowed setting aside the order dated 30.12.2016 passed in I.A.No.417 of 2016 in O.S.No.73 of 2016 on the file of the Court of the I Additional District Judge, Krishna at Machilipatnam. During pendency of the suit, if the appellant makes any constructions, he is not entitled to claim any equities including cost of the building. The appellant is ready and willing to forego his claim in the event of the respondent/plaintiff succeeding in the suit. The trial Court is hereby directed to consider the affidavit filed by the appellant before this Court at the time of passing of the final orders in the suit. There shall be no order as to costs.

6. Consequently, Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.02.2017

Note: Issue CC in two days

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