

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.344 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure challenging the docket order dated 16.11.2016 passed in E.A.No.34 of 2016 in E.A.No.13 of 2016 in E.P.No.6 of 2015 in O.S.No.533 of 2013 by the VIII Additional District and Sessions Judge, Medak allowing E.A.No.34 of 2016 while dismissing E.A.No.27 of 2015 filed under Section 151 of CPC to break open the lock and break down the main gate and dismantle the gate of the 2nd respondent company at the time of attachment of immoveable property i.e. land and building.

2. The main ground urged before this Court in the petition is that the order of the trial Court is bereft of any reason and not in consonance with the provisions of the Code of Civil Procedure. In the absence of any reason, the order cannot be sustained and prayed to set aside the same.

3. During hearing, Sri Ch.Pushyam Kiran, learned counsel for the petitioner would contend that in the absence of any reasons for allowing such application affording opportunity to know the respondent on what ground this petition was allowed, such order cannot be sustained under law.

4. Sri E.V.V.S.Ravi Kumar, learned counsel for the respondents supported the docket order and submits that since the order was passed exparte and merely because few

words are missing in the order, the same cannot be a ground to allow this revision.

5. The respondent filed this petition under Section 151 of C.P.C. seeking permission to break open the lock-cum-break down the main gate and dismantle gate of the 2nd respondent company making certain allegations that the property was attached. But it was kept under lock and key and the security officer Girdhar Reddy did not open the main gate of the factory and they did not open the factory main gate to enable the Amin to effect the attachment. In the circumstances, the petitioner sought for such a direction. However, the respondent opposed the application on various grounds, but it was allowed passing the following *ex parte* order:

“Publication filed. JDr called absent. Set ex parte. E.A.27/2005 dismissed. Hence petition allowed.”

6. Before executing Court, the respondent filed a petition seeking permission to break open the lock and dismantle the main gate of the factory making certain allegations, however, passed the impugned order is in one sentence. The word order is defined under Section 2(14) of C.P.C. as the formal expression of any decision of a civil court which is not a decree. But what the order should contain is not specified in the CPC. In the judgment of the Apex Court in **Joint Commissioner of Income tax, Surat v Saheli Leasing and Industries Ltd.**¹ certain guidelines were laid down, which are only illustrative in nature, not exhaustive and elliptic and can

¹ (2010) 6 SCC 384

further be elaborated looking to the need and requirement of a given case:

“a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment / order.

b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should C.As. @ SLP (C) No. 5241 of 2007 etc.... (contd.) not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

7. Aforesaid are some of the guidelines which are required to be kept in mind while writing judgments or orders. The present order under challenge is against the purport of the judgment of the Apex Court. Further it is the contention of the

learned counsel for the petitioner that since the order is an *exparte* mere failure to record reasons for allowing such application would not vitiate.

8. The Apex Court in **Board of Trustees of Martyr Memorial Trust and another v Union of India and others**² in similar situation, held as follows:

“It is the duty of the Court to state its decision on each issue by due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in the matter, may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the Court, must be examined with the seriousness it deserves.”

9. In view of the law declared by the Apex Court in the above judgment, it is for the Court to take into consideration the seriousness of the matter and the Court shall not leave any stone un-turned while pronouncing an order. But here, the order under challenge was passed *exparte* order. Even then, the duty of the Court to assign reasons for passing such an order i.e. for ordering break open of lock and dismantling of gate of the factory since the Court is not expected to pass an order on mere asking such relief unless the prayer is supported by any ground, the Court cannot pass cryptic order and thereby in view of the law declared in **Board of Trustees of Martyr Memorial Trust and another’s** case the order under challenge does not satisfy requirement under Section 2(14) of CPC. Therefore, the impugned order is set aside directing the executing Court to decide the petition afresh in

² 2012(10) SCC 734

accordance with law assigning reasons within 15 days from the date of receipt of a copy of this order.

10. With the above observations, the civil revision petition is allowed. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

03.04.2017
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