

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.504 OF 2016

JUDGMENT:

This civil miscellaneous appeal is filed under Order XLIII Rule 1 of CPC challenging the order dated 08.12.2015 in I.A. No.747 of 2015 in O.S. No.67 of 2015 on the file of the Court of XIII Additional District Judge, Narasaraopet, Guntur District.

2. Heard the learned counsel for the appellant-defendant No.1 and the learned counsel for the first respondent-plaintiff.

3. A perusal of the record reveals that the first respondent filed O.S. No.67 of 2015 against the appellant and respondent Nos.2 and 3 (defendant Nos.1 to 3 consecutively) for perpetual injunction. Along with the suit, the first respondent filed I.A. No.747 of 2015 under Order XXXIX Rules 1 and 2 of CPC seeking temporary injunction. The trial Court granted *ad interim* injunction in favour of the first respondent. By the impugned order dated 08.12.2015, the trial Court extended the *ad interim* injunction till disposal of the suit. Hence, the present appeal.

4. At the time of the arguments, learned counsel for the appellant submitted that the appellant and respondent Nos.2 and 3 have filed counter in I.A. No.747 of 2015 subsequent to the impugned order dated 08.12.2015. He further submitted that the trial Court may be directed to dispose of the I.A. No.747 of 2015 on merits. As observed earlier, the trial Court initially granted *ad interim* injunction and extended the same till disposal of the suit, due to non-filing of the counter by the appellant and respondent

Nos.2 and 3. In such circumstances, it is not possible for this court to decide the matter on merits.

5. Having regard to the facts and circumstances of the case, the trial Court is hereby directed to dispose of I.A. No.747 of 2015 in O.S. No.67 of 2015, on merits, after affording reasonable opportunity to both parties.

6. With the above direction, the civil miscellaneous appeal is disposed of. Miscellaneous petitions, if any pending in this miscellaneous appeal, shall stand closed.

Date: 14.2.2017

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T.SUNIL CHOWDARY, J.

