

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.844 of 2017

ORDER:

This appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, by the appellant/defendant is directed against the interim order, (docket order) dated 18.07.2017, passed by the learned II Additional District Judge, Vijayawada, Krishna District, in I.A.No.940 of 2017 in O.S.No.206 of 2017.

2. I have heard the submissions of Sri Rambabu Koppineedi, learned counsel for the appellant/defendant. I have perused the material record.

3. Having regard to the facts and submissions and also the further fact that the order impugned is an interim order passed in an interlocutory application, which is still pending for final disposal before the trial court, this Court is of the considered view that this miscellaneous appeal can be disposed of at the stage of admission.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

In a suit for specific performance filed by the plaintiff against the defendant, the plaintiff filed the aforestated interlocutory application for temporary injunction to restrain the defendant from alienating the suit schedule property pending disposal of the suit. On 18.07.2017 after hearing both parties, the trial court passed the following cryptic order:

“Heard. Perused the case record. Considering the facts stated in the interest of justice, the respondent restraining not to alienate the schedule property until further orders.

Issue urgent notice to the respondent.

Call on 18.08.2017.”

(reproduced verbatim)

Aggrieved thereof, the defendant is before this court.

5. The learned counsel for the petitioner/defendant would submit that the defendant has already alienated the property by executing an agreement of sale and, therefore, the interim order not to alienate the property ought not to have been passed by the trial court. He would also submit that an order in the nature of interim injunction ought to be granted after referring to the case facts, documents and by recording necessary reasons and that the order impugned on the face of it makes it obvious that the said order is unsustainable and hence, it is liable to be set aside.

6. I have given earnest consideration to the facts and submissions. The defendant has not yet filed counter in the afore-stated interlocutory application. Since the order impugned is an interim order passed in an interlocutory application, which is still pending before the Court below for final adjudication and as adjudication of the said application on merits by the Court below is appropriate, as such, final disposal of the said application on its merit meets the ends of justice, it is trite to direct the trial court to dispose of the interlocutory application on its merit after giving an opportunity to the defendant/respondent to file counter.

7. However, to protect the interest of both parties, it is just and fair to maintain the interim order, which is impugned in this revision, until the trial Court disposes of the interlocutory application on its merit.

8. Accordingly, the Civil Miscellaneous Appeal is disposed of at the stage of admission by directing the trial Court to give an opportunity to the defendant/respondent to file counter in the interlocutory application in I.A.No.940 of 2017 and hear and dispose of the same on merits and in strict accordance with the procedure established by law, however, as expeditiously as possible preferably within two months from the date of receipt of a copy of this order. Nonetheless, it is made clear that the

impugned order shall be in force till the trial Court disposes of the above said application as directed in this order.

Pending miscellaneous petitions, if any, shall stand closed.
There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

August 17, 2017
Lmv

