

HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No. 38 of 2017

JUDGMENT:

This civil miscellaneous appeal filed by the 1st defendant is directed against the interim *ex-parte* injunction order, dated 08.08.2016, of the learned III Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.1017 of 2016 in O.S.No.472 of 2016.

2. I have heard the submissions of *Ms. Shireen Sethna Baria*, learned counsel appearing for the 1st defendant/ appellant and *Sri T.Bala Mohan Reddy*, learned counsel for the caveator/ 1st respondent. I have perused the material record.

3. The operative portion/ material portion of the order impugned reads as under:

“Upon hearing the arguments of the counsel for the petitioner this Court doth order granted that INTERIM INJUNCTION by restraining the respondent/defendant No.1, their agents, servants, or any other persons claiming through or under it from invoking or encashing the schedule bank guarantees issued by respondent/ defendant Nos.2 and 3 and further restrain the respondent/ defendant Nos.2 and 3 banks from honouring/ encashing the schedule bank guarantees in any manner until further orders and notice. Call on 26.08.2016.

IA stands posted to 26.08.2016.”

(Reproduced verbatim)

4. The grievance of the appellant is that the plaintiff/ 1st respondent played fraud on the Court below while obtaining the afore-stated orders of interim ex-parte injunction and that after obtaining the said orders, the plaintiff/ 1st respondent failed to comply with the mandatory provision of Order XXXIX Rule 3 (a) Code of Civil Procedure, 1908, and that the Court below failed to dispose of the application within 30 days as stated in Order XXXIX Rule 3-A of the Code and that the Court below

also did not follow the settled principles of law while granting the interim *ex parte* order, which is impugned in this appeal, whereby the appellant/ 1st defendant is restrained from invoking or encashing the petition schedule bank guarantee issued by the defendants 2 and 3 and that the trial Court also granted the said order until further orders without limiting it for a short period and that therefore the order is unsustainable and is liable to be set aside.

5. During the course of hearing, it is also submitted that after the appeal is filed, for administrative reasons, the suit along with the interlocutory application is transferred to the Commercial Court newly established i.e., the Court of learned XXIV Additional Chief Judge, City Civil Court, Hyderabad and that the transferee Court received the record but the suit and the interlocutory application are not yet assigned new numbers by the transferee Court.

6. I have bestowed my attention to the facts and submissions. The appellant, in the considered view of this Court, ought to have approached the Court, which granted the *ex parte* order and filed a counter and resisted the application for temporary injunction, as the contentions raised require a detailed examination before the order impugned is either sustained or vacated. Further, if notice is ordered in this appeal to other contesting defendants, it would further delay the disposal of the interlocutory application by the trial Court. In the considered view of this Court, in this appeal, which is filed against an *ex parte* order, it is not just and fair to decide the interlocutory application on its merit as the order assailed is only an *ex parte* order. In

fact, at the hearing, the learned counsel for the appellant and the plaintiff fairly submitted that the issue involved in this appeal is squarely covered by the orders of this Court dated 02.12.2016 passed in C.M.A.No.910 of 2016 and that therefore, this appeal may also be disposed of by passing an order akin to the order in the aforesaid appeal. Therefore, this Court is of the considered view that this civil miscellaneous appeal can be disposed of with appropriate directions to the trial Court/ Commercial Court.

7. In the result, the civil miscellaneous appeal is disposed of as indicated infra: While maintaining the order, which is impugned in this appeal for a period of six weeks from this day, the Commercial Court/the Court of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad is directed to number (re-number) the suit as well as the interlocutory application filed for temporary injunction and issue notices to the learned counsel on record for both sides and fix a date within a week from the date of receipt of a copy of this order and dispose of the interlocutory application as expeditiously as possible and preferably within six weeks from today. This order of the Court modifying the interim order from 'until further orders' and restricting the order to a period of six weeks from today shall not preclude the Court below/ Commercial Court from extending the said order by passing a speaking order, by a further period of three weeks, if the facts of the case so warrant, to facilitate the disposal of the interlocutory application on merits as directed in this judgment. No costs.

Miscellaneous petitions, if any, pending in this appeal shall also stand disposed of.

M. SEETHARAMA MURTI, J

05.01.2017
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