

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.3839 and 3840 of 2017

COMMON ORDER:

CRP Nos.3839 and 3840 of 2017 are filed by the plaintiff aggrieved by the order dated 09.06.2017 in CMA Nos.3 and 4 of 2017 respectively passed by the learned I Additional District Judge, Kadapa, whereunder the learned Judge allowed CMA No.3/2017 filed by 1st defendant and set aside the interim injunction granted in favour of plaintiff in I.A.No.1497/2016 in O.S.No.672/2016 by the III Additional Junior Civil Judge, Kadapa. He also allowed CMA No.4/2017 filed by 1st defendant and set aside the dismissal order passed in I.A.No.1593/2016 in O.S.No.672/2016 filed by 1st defendant claiming interim injunction in his favour. The lower Appellate Court directed both parties to maintain *status quo* pending disposal of the suit.

Hence, the instant CRPs at the instance of plaintiff.

2) Heard Sri M.Jaya Rami Reddy, learned counsel for petitioner in both the CRPs and Sri S.A.K.Mynoddin, learned counsel for 1st respondent in both the CRPs. R.2 is not necessary party in both the CRPs vide cause title.

3) The point for determination is:

“Whether orders of the lower Appellate Court are factually and legally sustainable?”

4) **POINT:** I have given anxious consideration to the respective cases of the parties, the evidence placed by them and the orders of the Courts below. As stated supra, both plaintiff as well as 1st defendant made rival claim for interim injunction. While the trial Court granted interim injunction in favour of plaintiff holding that she was in possession of the disputed Fly Ash Brick Industry located in the plaint schedule site and she had *prima facie* case and balance of convenience in her favour and at the same time, the 1st defendant could not prove his case, the lower Appellate Court reversed the findings of the Trial Court in both the I.As and held that plaintiff could not prove her case and she did not deserve interim injunction, whereas 1st defendant could establish his case but ultimately directed both parties to maintain *status quo* pending disposal of the suit.

5) In the above backdrop, when the respective pleadings and evidence are carefully scrutinised, the findings of lower Appellate Court, except the one of directing both parties to maintain *status quo*, are, factually and legally sustainable for the following reasons:

a) Firstly, the plaintiff filed the suit for perpetual injunction on the plea that she is the proprietrix of M/s. Elahi Brick Industries, Kadapa running in the plaint schedule site having taken on lease from the landlord and defendants who were partners were running the said Brick Industry prior to her and due to disputes, they quit the business and thereafter, the plaintiff obtained the Brick Industry on lease from the original landlord. The defendants hatched a plan to again have business in the plaint schedule site and hence they were meddling with her Brick business.

Since the plaintiff seeks the interim injunction, it is trite law that she has to establish *prima facie* case, balance of convenience in her favour and irreparable loss, she would sustain in case injunction is refused. In the process, she cannot shore upon the weakness of the defendants case. However, in the instant case, the plaintiff failed to prove these prime requisites as we can observe infra.

b) Secondly, the basic infirmity in the case of plaintiff is that though she pleaded that she has been running the M/s. Elahi Brick Industries in the plaint schedule premises by taking the same on lease from the landlord, she did not name who the said landlord is. She has not produced the lease deed obtained from the said unnamed landlord either. Therefore, her entry into the suit premises is a mystic one. The details of the landlord are relevant in view of the rival claim made by the 1st defendant. While denying plaintiff's case, his claim is that he is the proprietor of M/s. Elahi Brick Industry, having purchased the machinery for Rs.6,50,000/- on 07.02.2013 from M/s.Balaji Fly Ash Brick Industries owned by one G.Hari Narayana, who was running the said industry in the suit premises. Later, on 05.04.2014, 1st defendant obtained lease of the plaint schedule site from its owners S.Naga Subba Reddy and S.Jairam Reddy for a period of 3 years from 01.03.2014 to 01.03.2017 on a monthly rental of Rs.3,000/- to be enhanced by 10% every year. He also paid Rs.25,000/- as advance to the owners and obtained delivery of the site. He changed the name of Brick Industry to M/s. Elahi Bricks Industry and also got transferred the Electricity connection in the name of the new Industry. His further case is that while he was running the Brick Industry, the 2nd

defendant approached him on 06.03.2015 with a request to admit him as partner in the Brick Industry agreeing to pay Rs.3,75,000/- for the value of the factory and Rs.1,50,000/- for the value of raw material and the 1st defendant in good faith, admitted him as partner. However, D.2 did not pay the amount towards his half share and was postponing the payment inspite of several requests and demands by D.1. Disgusted with his acts, D.1 gave complaint to Superintendent of Police, Kadapa against D.2 and the S.P summoned D.2 and instructed him not to disturb the possession of D.1 over the Brick Industry. Later, D.2 stealthily sold away Bricks and raw materials worth Rs.3,00,000/- and did not pay amount to D.1. When asked, D.2 colluded with the plaintiff and got issued suit notice through her to D.1. This is briefly the case of 1st defendant. Coming to D.2, he supported the case of plaintiff in the sense, he pleaded that both the defendants took the plaint schedule site on lease from the original landlord and did business in brick industry under the name and style Elahi Brick Industries, Kadapa for some period and later, they could not run the business and have given the Brick industry on lease to plaintiff by receiving huge amount and she has been in possession of the same since 1½ years by paying electricity charges and rent to the original owner.

The above pleadings would no doubt show, the 2nd defendant admits as if the defendants leased out the industry and also the site to the plaintiff with the permission of the original landlord. However, in view of the categorical plea of the 1st defendant that the 2nd defendant colluded with the plaintiff, it is the bounden duty of the plaintiff to specifically

mention her landlord and produce the lease deed if any obtained by her from the said landlord. The plaintiff failed in this regard.

c) Thirdly, the plaintiff failed to prove her lawful possession over the plaint schedule site and her running the Brick industry. She produced Exs.P.1 to P.11. However, in the absence of the particulars of the landlord and lease deed, these documents are of no avail to her. Ex.P.1 is the acknowledgment issued by Government of A.P, Department of Industries, on receiving the memorandum submitted by the plaintiff expressing her intent to establish M/s. Elahi Bricks Industries. In column No.12, against the particular LAND, she mentioned as “leased” without giving the particulars of the landlord. So, Ex.P.1 will not manifest plaintiff’s possession of the suit site muchless running of the Brick Industry. It was at best, a proposal. Exs.P.2 to P.5 are the Income Tax Returns for the years 2014-15 to 2016-17. As rightly observed by the lower Appellate Court, the I.T Returns were filed in the name of plaintiff and her status is shown as “INDIVIDUAL”. She only showed her address as Proprietor of Elahi Brick Industries. However, the Returns were not filed on behalf of the Brick Industry. Hence, these documents are of no significance. Exs.P.7 and P.8 are Audit Reports. In these reports also, her status is shown as individual. Ex.P.10 consists of three electricity bills issued in the name of M/s. Elahi Brick Industries. However, there is no dispute that Elahi Brick Industries is being run in the suit premises. The bone of contention is who was running the same.

Thus plaintiff at this stage failed to establish her *prima facie* case to seek for injunction. Balance of convenience is concerned, it is more in favour of the 1st defendant because admittedly, defendants 1 and 2 were running the Elahi Brick Industry. When the plaintiff failed to establish that she obtained the industry and the site either from a different landlord or from the defendants, it has to be presumed that 1st defendant is still in possession of the same and running the industry. Ex.R.1 is a TOT Registration Certificate issued by A.P Commercial tax Department for M/s. Elahi Bricks Industry. The 1st defendant is shown as owner of the said industry. It was issued on 07.02.2016 i.e, much prior to the filing of instant suit. It manifests that 1st defendant is the owner of the said Brick Industry. Further, Ex.R.5—representation made by D.1 to the S.P, Kadapa would reveal that D.1 borrowed Rs.1,50,000/- from D.2 and D.2 pressurised him for repayment and took away Rs.50,000/- stating that he would secure bank loan for him. For payment of the remaining amount, on the demand of D.2, he entrusted the factory to D.2 who paid him at the rate of Rs.10,000/- p.m for 3 months and later did not pay any amount and when questioned D.2 threatened him. Thus Ex.R.5 manifests the disputes between D.1 and D.2. It would appear, R.2 wanted to somehow entrust the Brick Industry to the plaintiff. From these facts, it is clear that the balance of convenience is in favour of D.1 as he was running the Brick Industry by obtaining the TOT Registration Certificate before suit. If injunction is granted in favour of plaintiff, he would suffer. Therefore, in the facts of the case, the 1st defendant deserves the interim injunction. The lower Appellate Court was thus right in setting aside the interim

injunction granted in favour of plaintiff. However, in the considered view of this Court, it was not right in directing both parties to maintain *status quo*, for, the 1st defendant deserves injunction in his favour.

6) In the result, CRP No.3839 of 2017 is dismissed by confirming the order in CMA No.3/2017. Whereas, CRP No.3840 of 2017 is dismissed by modifying the order in CMA No.4/2017 and consequently, I.A.No.1593/2016 in O.S.No.672 of 2016 on the file of III Additional Junior Civil Judge, Kadapa is allowed. No costs in both the CRPs.

It is made clear that the Trial Court shall dispose of the suit on merits without being influenced by the observations made in this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 10.10.2017
scs

U. DURGA PRASAD RAO, J

