

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No. 848 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard learned Government Pleader for Registration and Stamps appearing on behalf of the appellants, and Sri Ramesh Katikineni, learned counsel appearing on behalf of the respondent-petitioner and, with their consent, the Writ Appeal is disposed of at the stage of admission. This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in W.P.M.P. No. 5959 of 2017 in W.P. No. 27008 of 2015 dated 7.3.2017.

In the writ petition, the respondent-writ petitioner sought a mandamus to the appellants-respondents to receive and register the sale deed dated 15.7.2015 presented by her without reference to GO Ms. No. 657 dated 8.11.2001. By way of interlocutory relief, the respondent-writ petitioner sought a direction to the appellants-respondents to receive and register the sale deed dated 15.7.2015, presented on 15.7.2015 by the respondent-writ petitioner, without reference to GO Ms. No. 657 dated 8.11.2001.

By the interlocutory order under appeal, the learned Single Judge, following the earlier interim order passed in W.P. Nos.20653 and 16956 of 2012 dated 3.1.2017, directed the Registrar to proceed with registration of the document in accordance with law; and observed that any such registration would be subject to the result of the writ petition.

Learned Government Pleader for Registration and Stamps would submit that the learned Single Judge had erred in relying on

the interlocutory orders passed in WPMP No. 26478 of 2012 in W.P. No. 20653 and W.P.M.P. 21756 of 2012 in W.P. No.16956 of 2012 dated 9.7.2012 and 14.6.2012, respectively; both the writ petitions, ie, W.P. Nos. 20653 and 16956 of 2012 were disposed of earlier on 29.1.2016; the interlocutory orders in these two writ petitions were not in force when the order under appeal was passed; even otherwise, the relief sought for in the WPMP is identical to the relief sought for in the main writ petition; and granting the interim relief, in effect, amounts to the appeal being allowed at the stage of admission. He would rely on a Division Bench judgment of this Court in W.A. No. 291 of 2017 dated 16.3.2017 in this regard.

In more or less similar circumstances, where the relief sought for in the W.P.M.P, and the relief sought for in the main writ petition, were both to register the document presented by the petitioner for registration, a Division Bench of this Court, in its order in W.A. No.291 of 2017 dated 16.3.2017, observed:

“ The question which arises for consideration in the present appeal is whether an interim order, granting the main relief sought for in the Writ Petition, could have been passed without giving the appellants herein (respondents in the writ petition) an opportunity of filing their counter affidavit. Grant of an interim order, which has the effect of allowing the writ petition itself, though permissible in exceptional circumstances, could only have been passed after the respondents were given the opportunity of being heard. It is not as if deferring passing the interim order, which is under challenge, to enable the appellants (respondents in the writ petition) an opportunity to file their counter affidavits, would have caused irretrievable injury to the respondent-writ petitioner. All that would have happened is to postpone registration of the sale deeds even in case the learned Single Judge, after hearing the appellants (respondents in the writ petition) and on examining the contents of the counter affidavits, were still to hold the view that an interim order, directing the appellants to register the documents, should be passed.

We are satisfied that an interim order, which in effect amounts to grant of the main relief sought for in the Writ Petition, could not have been passed, without giving the appellants herein (respondents in the

writ petition) an opportunity of filing their counter-affidavit. The order under appeal is set aside, and the W.P.M.P. is restored to file. The appellants herein shall file their counter affidavits in the writ petitions within two weeks from today. It is open to the respondent-writ petitioner to request the Learned Single Judge to take up the W.P.M.P. any day after two weeks.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.”

In the light of the aforesaid order of the Division Bench, it does appear that the learned Single Judge has erred in passing an interim order, which has the effect of allowing the main writ petition itself, that too without referring to the averments in the counter affidavit filed on behalf of the appellants-respondents. Further, by the time the interim order under appeal was passed, both W.P. Nos. 20653 and 16956 of 2012 had already been disposed of on 29.1.2016; and the interim orders passed therein were not in force when the order under appeal was passed. The learned Single Judge has, therefore, erred in relying on the interlocutory orders passed in these two writ petitions. We consider it appropriate, in such circumstances, to set aside the interim order and restore the WPMP to file.

Sri Katikineni Ramesh, learned counsel for the respondent-writ petitioner, requests that the learned Single Judge be directed to hear the WPMP early. Since the pleadings in the writ petition is complete, we have no reason to doubt that, on a request being made by the respondent-writ petitioner to take up the WPMP early, the learned Single Judge will give it its due consideration.

The order under appeal is set aside. The writ Appeal is allowed. Miscellaneous Petitions pending, if any, shall also stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

21st September, 2017

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Date: 21.9.2017