

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No. 1502 of 2017

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

Heard Sri Vedula Srinivas, learned counsel for the appellants, learned Government Pleader for Home and Sri K.V. Simhadri, learned counsel for the 3rd respondent-writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred by respondent Nos. 3 and 4 in the writ petition, against the order passed by the learned Single Judge in Review W.P.M.P. No. 34683 of 2017 in W.P. No. 19570 of 2017 dated 21.9.2017.

The facts, to the limited extent necessary, are that the 3rd respondent-writ petitioner filed O.S. No.183 of 2015 before the Principal Junior Civil Judge, Sattenapalli, Guntur District seeking permanent injunction. He filed I.A. No. 851 of 2015, under Order 39 Rule 1 C.P.C, seeking interim injunction restraining the defendants from interfering with the suit schedule property. An order of temporary injunction was passed on 8.7.2015, which was made absolute more than two years thereafter on 18.7.2017. The appellants herein were heard before the interim order dated 08.07.2015 was made absolute on 18.07.2017.

While passing final orders in W.P.No.19570 of 2017 on 20.7.2017, the learned Single Judge was not made aware that the order of temporary injunction was made absolute by the Court below two days prior thereto on 18.07.2017. Consequently, by his order in W.P.No.19570 of 2017 dated 20.7.2017, the learned Single Judge directed the 2nd respondent to consider the representation

made by the 3rd respondent-writ petitioner seeking police protection, and to deal with the same in accordance with law after hearing both the parties. He further held that, if any report is given by the petitioner disclosing commission of a cognizable offence, the respondent-police officer should take steps in accordance with law, having regard to the order passed by the Civil Court in I.A. No. 851 of 2015.

On the ground that the interim order, which was made absolute on 18.7.2017, was not brought to the notice of the learned Single Judge, the 3rd respondent-writ petitioner filed Review W.P.M.P. No.34683 of 2017. While the maintainability of the review petition was also put in issue, the learned Single Judge observed that the Court below had heard the defendants, and had passed the order on 18.7.2017 making the earlier order of temporary injunction absolute. The review petition was allowed and the review petitioner was granted police protection till the order of the Civil Court dated 18.7.2017 was either stayed or reviewed or set aside by a superior Court.

It is not in dispute that the order, making the earlier order of interim injunction absolute, was passed after hearing the appellants herein. It is also not in dispute that the said order of interim injunction continues to remain in force as on date. The submission of Sri Vedula Srinivas, learned counsel appearing on behalf of the appellants, is that the learned Single Judge ought not to have reviewed the earlier order directing the police officials to consider the representation of the 3rd respondent-writ petitioner for grant of police aid, and should not have directed the police officials to provide police protection, as the burden is on the 3rd

respondent-writ petitioner to establish that the order of temporary injunction was violated; and the degree of proof required to establish such violation is of a very high order.

Learned counsel would rely on **Polavarapu Nagamani vs. Parchuri Koteshwara Rao and Others**¹ wherein a Division Bench of this Court observed that, where a petition is filed seeking police protection, an order cannot be passed in a routine manner; if there is an allegation of threat of breach, disobedience or violation of the order of injunction, the Court has the power to order police protection subject to proof, by imposing necessary conditions not to interfere with the life, liberty and rights of the opposite party; the standard of proof required in the case of threat of disobedience of injunction, or alleged breach or violation of an order of injunction, is very high; and it should be in between the standard of proof beyond reasonable doubt and the standard of proof on balance of probabilities.

According to Sri Vedula Srinivas, Learned Counsel appearing on behalf of the appellant, these factors were not taken into consideration by the learned Single Judge while directing the police authorities to grant protection to the respondent-writ petitioner.

In **P.R. Muralidharan and Others vs. Swami Dharmananda Theertha Padar and Others**², the Supreme Court held:-

“.....A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued, when the court is satisfied

¹ 2010 6) ALT 92 (DB)

² (2006) 4 Supreme Court Cases 501

that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved.....

..... **A writ for “police protection” so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court.** It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.....” (emphasis supplied).

In the present case, the order of temporary injunction was made absolute on 18.7.2017 after the appellants were heard. As the order dated 18.7.2017 continues to remain in force as on date, the appellants cannot be heard to contend that they are in possession of the subject property, since an order of interim injunction is granted only if the applicant is held to be in possession of the subject property necessitating the respondent-defendant to be enjoined from interfering with the possession of the applicant (3rd respondent-writ petitioner). The appellants cannot also be heard to contend, that too in proceedings under Clause 15 of the Letters Patent, that the police officials should not be directed to provide aid in implementing the order of temporary injunction passed by the Court below or to ensure that the order is not violated, as that would mean that the appellants should be permitted to violate the order of temporary injunction, granted by the Court below, with impunity.

As the jurisdiction which this Court exercises, under Article 226 of the Constitution of India, is discretionary, the learned Single Judge has, in our view rightly, exercised his discretion to direct the police officials to provide police protection to the 3rd respondent-writ petitioner in the light of the order of temporary injunction being made absolute by the Court below on 18.7.2017, after giving the appellants herein an opportunity of being heard. The appellants' interests have been adequately safeguarded by the learned Single Judge making it clear that the order of police protection would be available to the respondent-writ petitioner only till the order passed by the Civil Court, in I.A. No. 851 of 2015 dated 18.7.2017, was stayed, reviewed or set aside by a Superior Court. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

12th October, 2017

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