

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.155 of 2015 and
C.M.A. No.72 of 2015

COMMON ORDER : (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

The defendant No.1 in O.S. No.1199 of 2013 filed the Civil Revision Petition aggrieved by the order dated 15.10.2014 passed in I.A.No.646 of 2013 in O.S.No.1199 of 2013 on the file of the V Additional District Judge (Fast Track Court), R.R. District, whereby the I.A. filed by the defendant No.1 under Order 34 read with Section 151 C.P.C. to direct the plaintiffs to receive Rs.9,75,000/- by way of D.Ds. has been dismissed.

2. The defendant Nos.2 to 4 in the said O.S. filed Civil Miscellaneous Appeal aggrieved by the order dated 15.10.2014 passed in I.A.No.381 of 2013 in O.S. No.1199 of 2013, whereby the I.A. filed by plaintiffs under Order 39, Rules 1 & 2 read with Section 151 C.P.C. was allowed directing defendant Nos.1 to 4 not to alienate or transfer the schedule property in favour of third parties.

3. Counsel for petitioner and appellants – defendant Nos.1 and 2 to 4 submits that there are disputed facts and issues before the Court below. The petitioner and appellants – defendant Nos.1 and 2 to 4 being developers, on developing the property, if not able to alienate

some portion of the property, then purpose will be defeated. He thus submits that without prejudice to right and contention of both parties in the main suit, petitioner and appellants – defendant Nos.1 and 2 to 4 are ready to deposit an amount of Rs.45,00,000/- before the trial Court. He further submits that petitioner and appellants – defendant Nos.1 and 2 to 4 had already deposited an amount of Rs.9,93,400/- by way of D.D. which has not been encashed and after passing of time, D.D. was lapsed. He further submits that petitioner and appellants – defendant Nos.1 and 2 to 4 will issue a fresh D.D. of Rs.45,00,000/- and that will remain deposited in the trial Court in the form of F.D.R. He further submits that the said amount may be ordered to be disbursed subject to the outcome of the suit.

4. Counsel appearing on behalf of respondents-plaintiffs agreed to the proposal made by the counsel and submits that if plaintiffs succeed in the suit, the amount may be ordered to be disbursed in favour of plaintiffs with interest and if any balance is due, that shall be paid by petitioner and appellants – defendant Nos.1 and 2 to 4.

5. In view of the above arrangement, we hereby dispose of both Civil Revision Petition and Civil Miscellaneous Appeal by directing petitioner and appellants – defendant Nos.1 and 2 to 4 to deposit an amount of Rs.45,00,000/- within eight weeks from today before the lower Court. Consequently, the lower Court is directed to invest the said amount in the F.D.R. in the suit name. The amount shall be disbursed subject to the outcome of the suit. Consequently, the orders

passed in I.As. mentioned above are hereby set aside subject to deposit of amount of Rs.45,00,000/- within eight weeks by the petitioner and appellants – defendant Nos.1 and 2 to 4. The trial Court is directed to return the earlier D.D. of Rs.9,93,400/- in favour of petitioner and appellants – defendant Nos.1 and 2 to 4 as and when they take steps for the said purpose. Till then, third party interest shall not be created in the suit property. No order as to costs.

6. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

17th February, 2017

skmr