

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI
Civil Miscellaneous Appeal Nos.1117 & 1118 of 2017

COMMON JUDGMENT:

The genesis for these two civil miscellaneous appeals, one preferred by the respondents 8 & 7 and the other by the respondent no.12 is the *ex parte* order of appointment of Sri Ch. Sundheer Kumar, advocate, as Receiver *vide* orders, dated 16.10.2017, of the learned X Additional Chief Judge, City Civil Court, Hyderabad, made in IA.No.1024 of 2017 in OS.No.901 of 2017.

2. I have heard the submissions of Sri D.Prakash Reddy, learned senior counsel representing Sri Avinash Desai, learned counsel for the appellants in CMA.No.1117 of 2017; Sri D.V.Stharama Murthy, learned senior counsel representing Sri P. Subhash, learned counsel for the appellant in CMA.No.1118 of 2017; and, of Sri R.Raghunanda Rao, learned senior counsel representing Sri T. Bala Mohan Rao, learned counsel for the 1st respondent in both the CMAs.

3. I have perused the material records in both the appeals.

4. The introductory facts, in brief, are as follows:

1st respondent-plaintiff brought the suit against various defendants including the appellants in both the appeals for the following reliefs:

- i) Dissolving the partnership firm in the name and style of "Prime Properties" vide registration No.1608 of 2001 dated 14.09.2001.
- ii) For taking of accounts of the firm from the date of registration i.e., 14.09.2001 to till date.
- iii) For determination and payment of plaintiffs share in the net profits of the firm.
- iv) For a receiver be appointed for the purpose of managing the affairs of the firm.
- v) And for other relief or reliefs as this Hon'ble Court may deem fit to award costs.
- vi) Any other reliefs.

Along with the suit, the afore-stated IA is filed with the following prayer: '...to appoint a receiver to take charge of all the assets of respondent no.12 firm i.e., 'Prime Properties', its accounts books, records, documents and manage its affairs pending disposal of the suit and to pass such other order/s as this Hon'ble Court deems fit and proper in the circumstances of the case.' On

hearing the learned counsel for the plaintiff and perusing the pleadings and documents, the trial Court passed the impugned order appointing receiver *ex parte* for the purpose desired by the plaintiff. Aggrieved thereof, these appeals are preferred.

5. Learned senior counsel appearing for the appellants in these appeals mainly contended that the case on hand is not a fit case for appointment of a receiver much less receiver *ex parte* by dispensing with the urgent notice. They also made submissions on merits of the matter as to how the plaintiff is not entitled to seek appointment of a receiver.

6. In reply, learned senior counsel appearing for the 1st respondent-plaintiff supported the order impugned, on merits. However, while contending *inter alia* that the appeals are not maintainable, he brought to the notice of the Court various chronological events right from acquisition of the property to more or less the present stage of the matter. Be that as it may. While bringing to the notice of this Court the chronological events, he brought to the notice of this Court the proceedings in a former suit, OS No.3306 of 1984, on the file of VIII Assistant Judge's Court, City Civil Court, Hyderabad, wherein initially a receiver was appointed in respect of the subject property; and the further orders, dated 20.03.2009, of this Court in CRP.No.6697 of 2004, whereby the above said orders are recalled/ set aside. He also brought to the notice of the Court the SLPs(C.Nos.11595/ 09 & 18163/ 10), which were filed before the Supreme Court and which were later permitted to be withdrawn. The orders of the Supreme Court in the said proceedings read as under: 'For the reasons stated in the interlocutory applications Nos.19/2016 and 14/2016 seeking withdrawal of these petitions, the special leave petitions are accordingly dismissed as withdrawn. However, rights of any other parties and intervenors if they are affected in any manner, are at liberty to take appropriate steps under the relevant provisions of law before the appropriate forum. The review

petition which is pending before the High Court shall be decided by the High Court without being influenced by any order so passed by this Court.’ It is further submitted before this Court that in view of the orders of the Supreme Court, the review petitions filed in CRP.No.6697 of 2004 are pending before this Court. Nonetheless alleging contempt of the orders of the Supreme Court, contempt petitions in C.No.1583 and 1584 of 2017 are filed in the afore-stated SLPs before the Supreme Court; and, on 18.08.2017, the Supreme Court passed the following order: ‘Issue notice, returnable within four weeks. No third party rights shall be created in the meantime.’

7. In view of the fact that the afore-stated order is passed by the Supreme Court in the contempt petition and that the Hon’ble Supreme Court is having seisin over the matter, it is fairly conceded that the order impugned in these appeals appointing receiver *ex parte* in respect of the same subject matter is unsustainable and shall be recalled, without going into the merits of the matter to avoid any unpleasantness for the parties involved in the *lis*. This Court is of the considered view that recalling of the order impugned is necessary to meet the ends of justice.

8. Before parting, it is to be noted that in CMA.No.1118 of 2017 the appellant made certain personal allegations against the counsel, who appeared for the plaintiff in the present suit before the trial Court, which are of serious nature and which, if retained on record, may adversely affect his character and reputation. No-doubt, an affidavit is filed today stating that some of the averments in that regard are made because of lack of knowledge of certain facts. However, in the affidavit filed today all the averments made against the said learned counsel were not withdrawn. In that view of the matter, learned senior counsel appearing for the 1st plaintiff while strongly condemning such averments made against the said learned advocate sought for expunging all such averments which cast aspersions against the said learned advocate, if

retained on record. Learned counsel appearing for the appellant in CMA.No.1118 of 2017 fairly conceded for expunging from record, the said averments.

9. Accordingly, this Court directs that all the averments made in the pleadings including affidavits in CMA.No.1118 of 2017 casting personal aspersions against the said advocate appearing for the plaintiff in the suit before the trial Court shall stand expunged. The Registry of this Court, while granting the certified copies of the said pleadings, if any, shall take appropriate steps in this regard so that no party shall get copies of such pleadings with the averments now expunged.

10. On the above analysis and for the reasons assigned supra, both the Civil Miscellaneous Appeals are allowed and the impugned order is set aside. There shall be no order as to costs.

In view of the fact that this Court, while disposing of these appeals has not gone into the merits of the matter insofar as appointment of receiver or otherwise and as this Court has set aside an order which is an *ex parte* order and as the trial Court is required to hear and dispose of the said application on its merit, the trial Court is directed to complete the reception of pleadings as per procedure in both the IAs pending in the suit as well as the suit and proceed with the matter, at an appropriate stage, in strict accordance with the procedure established by law, however, without being influenced by any observations in this common judgment and also the pleadings of the parties in these appeals.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

26.10.2017
Vjl

M. SEETHARAMA MURTI, J