

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.5767 of 2017

ORDER:

This revision by the plaintiff in O.S.No.310 of 2014 on the file of the learned Senior Civil Judge, Kakinada, is directed against the docket order dated 15.09.2017 passed by the learned IV Additional District Judge, Kakinada, in I.A.No.1318 of 2017 in A.S.No.125 of 2017, the first appeal arising out of the judgment and decree dated 18.01.2017 in O.S.No.310 of 2014.

The grievance of the petitioner is that the Court below granted an *ex parte* interim order of stay which was to continue till disposal of the appeal.

As this Court does not propose to pass an order on the merits of the matter, it would not be necessary to put the respondents herein on notice.

As the petitioner was not even given an opportunity of hearing, it was not open to the Court below to pass a stay order which was to continue till the disposal of the appeal. The petitioner, being the respondent in the appeal, is entitled to seek vacating or modification of the *ex parte* order granted against him. Further, the appellate Court seems to have been completely unmindful of the requirements of Order 41 Rule 5(3) CPC.

The order under revision is accordingly read down to that extent and the petitioner is given liberty to move an appropriate application before the Court below for modification or vacating of the docket order dated 15.09.2017.

The civil revision petition is accordingly allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

3rd November, 2017
PGS