

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 7125 of 2017

ORDER:

1) Aggrieved by the docket order, dated 11.12.2017, passed in I.A.No.1695 of 2017 in O.S.No.610 of 2017 on the file of the I Additional Junior Civil Judge, Kakinada, wherein fresh notices were ordered to be issued to respondent Nos.1 and 2, while extending the order of *status quo*, the present revision is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The 1st respondent herein, who is the plaintiff, filed O.S.No.610 of 2017, seeking permanent injunction against defendant Nos.1 and 2, restraining them not to lease out the plaint schedule property to defendant No.3 or his henchmen, agents, in establishing wine shop in the plaint schedule property and to grant permanent injunction restraining defendant No.3 and his henchmen and agents in establishing wine shop in the plaint schedule property. Along with the suit, he also filed I.A.No.1695 of 2017 in O.S.No.610 of 2017, seeking ad-interim temporary injunction. By an order dated 17.11.2017, the trial Court directed both the parties to maintain *status quo* till 30.11.2017 while ordering urgent notices to respondent Nos.1 to 3. Summons came to be served on respondent No.3, who is the petitioner herein, and one Sri A.Muralidhar, Advocate filed vakalath on his behalf

and also filed counter and documents. Notices sent to respondent Nos.1 and 2 remained un-served. As such, on 30.11.2017, the trial Court ordered fresh notices to respondent Nos.1 and 2 therein on payment of Batta. On 11.12.2017, batta was paid by the plaintiff and the trial Court ordered issuance of notices and posted the matter to 29.12.2017, while extending the order of *status quo* till then. Challenging the order dated 11.12.2017, the present Civil Revision Petition came to be filed.

3) Learned counsel for the petitioner mainly submits that when the suit filed for an injunction against defendant Nos.1 and 2, restraining them not to lease out the plaint schedule property to defendant No.3 and his henchmen, itself is not maintainable, the question of granting *status quo* in the said suit would not arise. He further submits that the petitioner/defendant No.3 has established his shop by spending huge amount and that he would be put to irreparable loss in view of the illegal order passed by the trial Court. He also submits that the petitioner filed a counter in the said I.A., but for reasons best known, the trial Court is adjourning the matter on one pretext or the other. It is his case that defendant Nos.1 and 2 are refusing to receive the notices though it was sent to correct address, makes it clear that there is a collusion between plaintiff and defendant Nos.1 and 2.

4) On the other hand, learned counsel appearing for the first respondent/plaintiff would submit that notices on defendant Nos.1 and 2 are served and he came to know that suitable steps

are being taken by them to contest the matter. He would further contend that the issue as to whether the suit is maintainable or not cannot be gone into in this revision as the petitioner has challenged only the order granting *status quo*. In any event, he would submit that if any order is passed in a petition filed for grant of ad-interim temporary injunction, an appeal would lie before the District Court, as such the present revision is premature and without jurisdiction.

5) As seen from the record, the request of the petitioner in the main revision is to *set aside* the order dated 11.12.2017, passed in I.A.No.1695 of 2017 in O.S.No.610 of 2017 on the file of the I Additional Junior Civil Judge, Kakinada, which reads as under:

“Batta paid for R1 and R2. Issue fresh notice to R1 and R2 . Call on 29.12.2017, petition filed *status quo* extended till then.”

6) From the above, it is clear that the petitioner herein has not challenged the very grant of *status quo* but he is only challenging the order extending the *status quo* till 29.12.2017. It is always open to the petitioner to oppose extension of *status quo* order before the trial Court, where the I.A. is pending instead of approaching this Court under Article 227 of the Constitution of India.

7) Further, the argument of the learned counsel for the petitioner that the suit itself is not maintainable cannot be gone into in this revision, at this stage, since no independent objection

was raised by the petitioner before the trial Court, with regard to maintainability of the suit. Since, a counter is already filed by the petitioner herein raising various issues including the maintainability of the suit, the trial Court shall take into consideration the averments made in the counter while deciding the I.A.

8) The last ground urged by the learned counsel for the petitioner is that the order is bereft of any reasons. According to him, even if it is an interim order, the trial Court ought to have given reasons while passing the order in view of the judgment of this Court in *Kagitala Venkata Chalapathi Rao and others v. Smt. Sabarunnisa Begum and others*¹.

9) It is true that in the said judgment, a learned Single Judge of this Court has categorically held that the Court has to record reasons about the necessity to grant interim injunction. Referring to proviso to Rule 3 of Order XXXIX of C.P.C., this Court held as under:

“The order under challenge is laconic for the reason that the order is silent as to why notice under Rule 3 of Order XXXIX of CPC is dispensed with before granting an ad interim injunction. According to Rule 3 of Order XXXIX of CPC, the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an ad interim injunction, direct notice of the application for the same to be given to the opposite party. Provided that, where it is proposed to grant an injunction without giving notice of

¹ 2017 (3) HLT 548

the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with, - i) a copy of the affidavit filed in support of the application; ii) a copy of the plaint; and iii) copies of documents on which the applicant relies, and b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent. Therefore, the Proviso to Rule 3 of Order XXXIX of CPC is clear that the duty is cast upon the court to record reasons for its opinion that the object of granting interim injunction would be defeated by delay, but the order is bereft of any such reason. In such case the order passed by the Tribunal is liable to be set aside. Moreover the court must be cautious in passing such an order, since such an order would result in serious consequences in certain occasions. In the present case, an ex parte interim order is passed against Government or public officer, who is not a party to the suit by then, without recording reasons as required under Rule 3 of Order XXXIX of CPC, without issuing show cause notice as required under Section 80(2) CPC and beyond relief claimed in the suit. Therefore, the order under challenge in I.A.743 of 2012 is clearly vitiated by illegalities and therefore liable to be set aside.”

10) In the instant case, a reading of the order does not anywhere indicate giving reasons while either granting *status quo* or extending the said order. It is also to be noted here that order of *status quo* was extended only upto 29.12.2017; the I.A. filed for ad-interim temporary injunction is still pending and a counter

was also filed by the petitioner herein in the said I.A. In view of the representation made by the learned counsel for the first respondent/plaintiff herein that notices have been served on defendant Nos.1 and 2, it would be just and proper to give a direction to the trial Court to hear the matter and pass a reasoned order in I.A.No.165 of 2017, as early as possible, preferably, within a period of two weeks from today, if the notices on defendant Nos.1 and 2 are served. It is needless to mention that if the trial Court is inclined to extend the *status quo*, it shall follow the ratio laid down by this Court in *Kagitala Venkata Chalapati Rao (supra)*.

11) With the above direction, the Civil Revision Petition is disposed of.

12) There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.12.2017
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