

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.276, 277 and 1116 of 2018

COMMON ORDER:

The petitioners in these three revisions, filed under Article 227 of the Constitution, are defendants 1 and 2 in O.S.No.1171 of 2017 on the file of the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. In C.R.P.No.276 of 2018, their grievance is with regard to the failure of the trial Court in taking up I.A.No.965 of 2017 filed by them in I.A.No.959 of 2017 in O.S.No.1171 of 2017. On the same lines, their grievance in C.R.P.No.277 of 2018 is as to the failure of the trial Court in taking up I.A.No.964 of 2017 filed by them in I.A.No.958 of 2017 in O.S.No.1171 of 2017.

Be it noted that by separate orders passed in I.A.Nos.958 and 959 of 2017 filed by the plaintiffs in the suit, the trial Court granted interim injunctions in their favour subject to compliance with the *proviso* to Order 39 Rule 3 CPC. The claim of the petitioners, defendants 1 and 2 in the suit, canvassed by way of their I.A.Nos.964 and 965 of 2017, was that the plaintiffs failed to comply with the mandate of the *proviso* to Order 39 Rule 3 CPC and therefore, the interim injunction orders were liable to be vacated. Their complaint is that without giving priority to these applications, the trial Court is proceeding with other I.As.

C.R.P.No.1116 of 2018 was filed by the petitioners-defendants 1 and 2 assailing the order dated 18.01.2018 passed by the trial Court in I.A.No.960 of 2017 in O.S.No.1171 of 2017. The said I.A. was filed by the plaintiffs under Order 26 Rule 9 CPC seeking appointment of an Advocate-Commissioner to note down the details and the stage of

construction undertaken by the respondents therein over the suit schedule property. By the order dated 18.01.2018, the trial Court observed that in spite of the interim order granted in I.A.No.959 of 2017, the respondents therein were proceeding with the construction in respect of the suit schedule land by violating the said order. The trial Court further observed that for adjudicating I.A.No.1121 of 2017, filed by the plaintiffs under Order 39 Rule 2-A CPC alleging violation of the interim order granted earlier, it would be necessary to know the stage of construction and whether the respondents had violated the interim order passed by the Court. The trial Court accordingly appointed an Advocate-Commissioner.

The Supreme Court's edict in A.VENKATASUBBAIAH NAIDU V/ s. S.CHELLAPPAN¹ and the decisions of this Court in SUNWAY OPUS INTERNATIONAL (P) LIMITED V/ s. SRI RAGHAVA CONSTRUCTIONS LIMITED REP. BY ITS MANAGING DIRECTOR² and NIKESH V/ s. SMT.MALATHI BAI³ make it amply clear that failure to properly comply with the *proviso* to Order 39 Rule 3 CPC, when directed, would have serious consequences. Without examining this aspect, it is not open to the trial Court to brush aside the allegation that there is improper compliance with the said provision and proceed with the hearing of other I.As. filed in the suit and more importantly, the I.A. alleging violation of the interim order which was passed subject to compliance with the *proviso* to Order 39 Rule 3 CPC. The trial Court should therefore give priority of hearing to the applications filed by the petitioners herein, defendants 1 and 2 in the suit, viz., I.A.No.964 of 2017 in I.A.No.958 of 2017 in O.S.No.1171 of 2017 and I.A.No.965 of 2017 in I.A.No.959 of 2017 in O.S.No.1171 of 2017, before hearing the other

¹ (2000) 7 SCC 695

² 2017 (1) ALT 695 (D.B.)

³ 1996 (4) ALT 483

applications and particularly, I.A.No.1121 of 2017 filed by the plaintiffs in the suit under Order 39 Rule 2-A CPC.

C.R.P.Nos.276 and 277 of 2018 are accordingly disposed of directing the trial Court to give priority of hearing to I.A.No.965 of 2017 in I.A.No.959 of 2017 in O.S.No.1171 of 2017 and I.A.No.964 of 2017 in I.A.No.958 of 2017 in O.S.No.1171 of 2017 and only thereafter take up the other I.As. for hearing, if they survive for consideration.

As the order dated 18.01.2018 in I.A.No.960 of 2017 in O.S.No.1171 of 2017 was based on the injunction order granted earlier and the status of the said injunction order would now depend upon the result of the vacate application filed by the petitioners herein, C.R.P.No.1116 of 2018 is allowed setting aside the order dated 18.01.2018 passed by the trial Court in I.A.No.960 of 2017 in O.S.No.1171 of 2017. The said I.A. is remitted to the file of the trial Court for consideration afresh on its own merits and in accordance with law after disposal of I.A.Nos.965 and 964 of 2017.

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

SANJAY KUMAR,J

Date:12.10.2018

Note:

Registry is directed to return the original record of the suit immediately.
(B/o) GJ