

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.372 of 2018

ORDER

This petition under Article 227 of the Constitution of India is filed challenging the order dated 02.01.2018 passed in I.A.No.126 of 2016 in O.S.No.115 of 2016 by the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam.

2. The petitioner/plaintiff filed suit for various reliefs and along with the suit, he filed a petition under Section 42(C) of A.P.Agency Rules read with Section 151 of C.P.C., for grant of temporary injunction during pendency of the suit. The said petition was dismissed basing on several documents referred in the order. But none of the documents were marked as exhibits before the Sub-Divisional Magistrate.

3. Aggrieved by the aforesaid order, the present revision is filed. One of the main grounds urged before this Court is that when the documents were considered, the Court below has to mark those documents as exhibits, and in the absence of such marking, the Court is not supposed to consider those documents and pass order, besides other contentions.

4. During hearing, learned counsel for petitioner Sri S. Madan Mohan Rao, would draw the attention of this Court to the principle laid down by the Division Bench of this Court in **Amina Ayesha V.**

Model Constructions, rep. by its Managing Partner¹ in support of his contention.

5. Whereas the counsel for respondent supported the order in all respects and submits that failure to mark the documents alone is not a ground to set aside the order and remand the matter to the Court below and prayed to dismiss the revision.

6. Admittedly, the Sub-Divisional Magistrate has vacated the ad interim injunction granted by the Court by order dated 02.01.2018, and immediately after vacation of injunction order, the respondent was allegedly removed the compound wall with the help of proclainer and was trying to take possession of the property. The photos filed along with the revision needs no consideration at this stage. However, the specific ground **raised** before this Court is that the documents are not marked as required under law. No doubt, as per Rule 60 of Civil Rules of Practice, though a fact can be proved by an affidavit, documents can also be marked like a suit and the process for marking of documents is contemplated under Section 115 of C.P.C. But the Civil Rules of Practice has no application to the Sub-Divisional Magistrate Court. However, by practice, the documents have to be marked either in interlocutory order or in the main suit. In an identical issue in **Amina Ayesha's** case, referred supra, while deciding a petition under Section 9 of Arbitration and Conciliation Act, 1996, this Court held that when the documents are not marked as exhibits, the order was liable to be set aside and accordingly set aside and remanded the matter to the Court below and the same

¹ 2014(3) ALT 345 (D.B.)

principle is reiterated in the later judgment of the Division Bench of this Court reported in **Mahaveer Infoway Ltd., Hyderabad and another V. Tech Minfy Info Solutions LLP, Hyderabad**².

7. In view of the law declared by the two Division Benches of this Court and by applying the practice and procedure being followed in the civil suits by the civil Court, the order under challenge is liable to be set aside as it is contrary to the procedure.

8. Therefore, the order under challenge is hereby set aside, while remanding the matter to the Court below with a direction to the Sub-Divisional Magistrate to mark the documents relied upon by both the parties, consider those documents and pass appropriate order in accordance with law, within three months from the date of receipt of a copy of this order.

9. With the above direction, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

25th January, 2018

Note:
Issue CC in one week.

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sj

² 2017(5) ALD 351(D.B)