

HON'BLE MS JUSTICE J.UMA DEVI
CIVIL REVISION PETITION No.2279 of 2018

ORDER:

Having been aggrieved by the order dated 29.01.2018 passed in I.A. No. 416 of 2013 in O.S.No.55 of 2013 on the file of the Senior Civil Judge, Siddipet, the petitioner therein filed the present Civil Revision Petition seeking to set aside the order dated 29.01.2018.

2. The revision petitioner's suit for perpetual injunction is pending for adjudication on the file of the Senior Civil Judge, Siddipet. An ad-interim injunction was ordered in his favour by the Senior Civil Judge, Siddipet, vide his order dated 08.03.2013 in I.A.No. 201 of 2013 and the same was extended until further orders pursuant to the order dated 27.06.2013 as no counter was filed by the respondents. As the respondents resorted to interfere with his peaceful possession of the suit scheduled property, he approached the Senior Civil Judge Court, Siddipet with a request to order for police aid to safeguard his right of possession over the suit schedule property. But, the request so made was not considered and the application in I.A. No. 416 of 2013 filed in this regard was dismissed. Hence, the present revision.

3. Learned counsel for the petitioner submits that the respondents though appeared through a counsel, did not choose to file counter in I.A.No.201 of 2013. Though they had the knowledge about the injunction order passed in favour of the petitioner, they tried to encroach his land through illegal means. When they tried to lay fencing, though fencing was already in existence around the suit schedule property the petitioner's son resisted them and was threatened by them with dire consequences. The petitioner who is

aged more than 65 years, is unable to resist the illegal and unauthorised acts of the defendants.

4. In the above circumstances, having no other go, he filed an application vide I.A.No.416 of 2013 before the Court below, seeking a direction to the Station House Officer, I Town Police Station, Siddipet to come to his aid to protect his right of possession over the suit schedule property. Thus the Court below which ordered interim injunction in his favour to protect his peaceful possession over the petition schedule property dismissed his application filed for police aid by wrongly applying order XXI Rule 32 of C.P.C., which would apply for execution of decree. He submits that Civil Courts are conferred with ample powers to order for granting of police aid by exercising inherent powers vested in them under Section 151 CPC. The Senior Civil Judge, Siddipet ought to have granted Police aid without whose assistance it may not be possible to implement the order, of ad-interim injunction, which has been extended until further orders.

5. Despite the service of notice on respondents 1,3,4,5,6 & 7, they have failed to enter their appearance either personally or through a counsel. Notice of Respondent No.2 returned with an endorsement of "refused".

6. Respondents 1 to 6 in this Civil Revision Petition are defendants in O.S. No. 55/2013. The petitioner herein is the plaintiff in the said Suit. He has filed the suit for perpetual injunction against the respondent No.1 to 6 to restrain them from interfering with the peaceful possession and enjoyment of the suit schedule property by him. Along with the suit he has filed I.A.NO.201 of 2013, for ad-interim injunction, and that the learned Senior Civil Judge has passed injunction order in his favour and the said order is extended until

further orders as no counter is filed by respondents 1 to 6. These are all the facts born by record and on these facts there is no controversy.

7. The contention of the petitioner is that as respondents 1 to 6 are trying to encroach the suit schedule property through unlawful means, he has filed I.A.No.416 of 2013 in I.A.No.201 of 2013 in O.S. No.55 of 2013, seeking a direction to the police to come to his aid to protect his right of his possession over the petitioner's suit schedule property. The learned Senior Civil Judge, without appreciating the facts and provisions of law under which it is vested with inherent powers to grant police aid for implementation of the order granted by it in his favour, has rejected his application filed for police aid without whose assistance it is not possible for him to enforce the order passed in his favour.

8. The learned counsel appearing for the petitioner seeks to place reliance on a decision of this Court in Gampala Ananthaiah and others Vs. Kasarla Venkat Reddy and others in C.R.P.No.4687 of 2013 dated 18.12.2013 (Equivalent citation to 2014 (2) ALD 281); Rayapati Audemma Vs. Pothineni Narasimham in Civil Revision Petition NO.1819 of 1968 dated 11.07.1969 (Equivalent Citation AIR 1971 AP 53), wherein the Division Bench of this Court observed as follows:

“If the police authorities are under a legal duty to enforce the law and the Public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties by the Police Authorities we feel that the civil courts can also give appropriate directions under Section 151 Civil P.C. to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of the inherent power under Section 151, Civil P.C. is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power and the court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the court's order in a lawful manner.”

9. It is not in dispute that an Ad-Interim Injunction order is granted in favour of petitioner and later the said order has been extended until further order as no counter is filed by the respondents 1 to 6 herein. One of the reasons cited by the Court below to dismiss the application filed by the petitioner for grant of police aid is, that the Station House Officer, Siddipet Police Station is not a party to the main suit. The other reason assigned by the Court below is that no executable order is passed in favour of the petitioner herein and that a remedy is available to him under Section 39, Rule 2(a) of CPC in the event of breach of the injunction order granted in his favour.

10. The contention of the Revision Petitioner is that for implementation of injunction order police necessarily have to render their assistance. The petitioner having felt that without the assistance of the police, he cannot preserve his right of possession, sought the indulgence of the Court by moving an application for grant of police aid.

11. In Gampla Anthaiah and others, also a temporary injunction was granted in favour of the respondents therein. Prior to passing of temporary injunction order in their favour, ad-Interim Injunction order was passed in their favour. During the subsistence of temporary injunction order in their favour, an application for grant of police aid was filed and that the concerned Court ordered for police aid. When the said order passed was questioned by therein opponents the learned Single Judge observed that,

“19. a party, who obtained temporary injunction orders, and is complaining of violation of such orders, may file not only an execution petition under Order XXI Rule 32 CPC or an application under order XXXIX Rule 2A of CPC seeking attachment and / or arrest of the violator for Contempt of Court, but also an application seeking police protection under Section 151 CPC from the Civil Court. With great respect to the Division Bench, I do not agree with it's view that if a party were to be allowed to seek police protection under section 151 CPC to implement an interim injunction order granted in his

favour, it would render Order XXXIX Rule 2A and order XXI Rule 32 otiose. “

12. It also has been observed by the learned single judge in the same case at para No.24 that :

“24. An order of temporary injunction has to be obeyed by the parties to it and when the plaintiff complains that the defendant is committing breach of the said order and seeks police protection, the Court is under an obligation to accord such protection. Unless this is done, the rule of law will not prevail and judicial orders would not be effectively implemented. Granting of such orders would uphold the dignity and effectiveness of the judiciary.”

13. In the instant case, the complaint of the Revision Petitioner is that, the respondents though are aware about granting of Ad-Injunction order in his favour and about the extension of such order until further orders, are trying to encroach in the property, despite the protest, he made to protect his right of possession over the suit schedule property, they are coming to his property again and again and are trying to encroach on it through unlawful means and that no action is taken by the police on the report given to them. In this respect under the said circumstances, an application for grant of police aid is moved by him, but the Court below instead of coming to his rescue, has held that he has the remedy under Section 39 Rule 2(a) of CPC in case the injunction order is breached, etc. Such a view, taken by the Court below is not correct in my considered opinion.

14. Under Section 151 CPC, inherent powers are vested with the Courts to direct the police to render their aid for implementation of the orders of the Civil Court.

Section 151 CPC reads as follows:

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or prevent abuse of the process of the Court”

15. This section confers power on the Courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

16. A Division Bench of this Court in *Rayapati Audemma v Pothineni Narasimham*¹ further observed as under :

“It has to be noticed O.39., R.2(3) Civil P.C. provides only for punishment by attachment of the property or by detention in civil prison of the person who committed breach. But it does not further provide for implementation of the order of injunction itself. Order 39, Rule 2(3) cannot be said to be an express provision with respect to implementation of the order of injunction, but is only a provision which provides penalty for disobedience of the order. In such a case there being no other express provision in the Code for enforcement of the order, it is not only proper but also necessary that the Courts should render all aid to the aggrieved party to derive full benefits of the order. Though the order of injunction under Order 39, Civil P.C. is only interim in nature, still it clothes the person who obtained the order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order or to the exercise of the right which he derives under the order of Court, but we do not see why when the same person brings to the notice of the court that enforcement of the order is sought to be prevented or obstructed, the court should not exercise its inherent power under Section 151, Civil P.C. and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order.”

17. From the above decision of this Court, it is clear that a party who obtained temporary injunction order in his favour made a complaint as to violation of such order, he could file an application under order XXI Rule 32 CPC or an application under Order XXXIX Rule (2) (8) CPC and also an application seeking police protection under Section 151 CPC as per the law enunciated in the case law cited above.

¹ AIR 1971 AP 53

18. In the instant case, though it is asserted by the revision petitioner that there is threat of disobedience of the injunction order granted in his favour, the Court below without taking note of such assertion, seems to have rejected the application filed for grant of police aid in his favour though it is obligatory on its part to take all possible steps for proper implementation of the order passed by it. The age of the revision petitioner and his inability to resist the respondents, who are trying to enter into the land by way of unlawful means, have not been appreciated by the Court below. In my view, the Court below is not correct in rejecting the application filed by the revision petitioner seeking police aid to preserve his right of possession over the petition schedule property having ordered ad-interim injunction in his favour, and extended it until further orders.

19. In the light of my aforementioned discussion, the order in I.A.No.416 of 2013 in O.S.No. 55 of 2013 dated 29.01.2018 in the present revision is liable to be set aside and is hereby set aside and direction is given to the Court below to consider the request made by the revision petitioner for grant of police aid for implementation of the injunction order granted in his favour by disposing of the application filed by him in this regard within a period of two weeks from the date of receipt of a copy of this order.

19. Accordingly, the Civil Revision Petition is disposed of as indicated above. No order as to costs.

Miscellaneous petitions, pending, if any, in this Civil Revision Petition shall stand closed.

J. UMA DEVI , J

Dated: 09.08.2018
JR

HON'BLE MS JUSTICE J.UMA DEVI



CIVIL REVISION PETITION No.2279 of 2018

Dated: 09.08.2018