**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**<u>CIVIL MISCELLANEOUS APPEAL No.436 of 2018</u>**

**<u>06.09.2018</u>**

Between:

M/s.Carin Commercials Private Limited,
Mumbai and others

..Appellants

and

Muthavarapu Murali Krishna and another

..Respondents

Counsel for the appellants: Mr.P.Venugopal, senior counsel
for Mr.P.Hemachandra

Counsel for the respondents: Mr.R.Raghunandan, senior counsel
for Mr.T.V.P.Sai Vihari

The Court made the following:

**<u>JUDGMENT</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

At the interlocutory stage, the appeal itself is heard and being disposed of with the consent of the learned counsel for both the parties.

2. This Civil Miscellaneous Appeal is filed against order and decree, dated 22.03.2018, in I.A.No.322 of 2017 in O.S.No.11 of 2017 on the file of learned XVI Additional District and Sessions Judge, Nandigama, whereby he has restrained the appellants herein from interfering with the possession and enjoyment of plaint A and B schedule properties of the respondents.

3. We have heard Mr.P.Venugopal, learned senior counsel representing Mr.P.Hemachandra, learned counsel for the appellants, and Mr.R.Raghunandan, learned senior counsel representing Mr.T.V.P.Sai Vihari, learned counsel for the respondents.

4. The admitted facts of the case are that the plaint schedule properties were originally owned by one Bogineni Venkata Rao representing Bhanu Constructions Company Limited. The said company obtained loans from some nationalized banks. As the borrower failed to repay the loan amounts, the Banks filed O.S.No.191 of 1993 for recovery of about Rs.19 crores. On the

constitution of the Debt Recovery Tribunals, the suit was initially transferred to the Debt Recovery Tribunal, Bangalore and subsequently, the same was again transferred to the Debt Recovery Tribunal, Hyderabad and the suit was renumbered as O.A.No.460 of 1999. On 31.10.2000, the Debt Recovery Tribunal, Hyderabad passed a decree in favour of the Banks. For recovery of the debt under the decree, the Banks brought the plaint schedule properties along with some other properties belonging to B.Venkata Rao, to sale. In the sale proceedings, the appellants emerged as the successful bidders in respect of the plaint schedule properties. Assailing the auction proceedings, B.Venkata Rao through Bhanu Constructions Company Limited filed W.P.No.27695 of 2007. The successful bidder in respect of the other properties filed W.P.No.9158 of 2008 for issue of sale certificate and handing over of possession. In W.P.No.27695 of 2007, on the direction of this Court, the appellants were impleaded. A Division Bench of this Court passed common order, dated 22.04.2009, whereby it rejected W.P.No.27695 of 2007 and allowed W.P.No.9158 of 2008. The following observations in the said common order are apt to be reproduced herein below.

> "41. Upon considering the afore-stated facts of the case and the law on the subject, we are of the view that

the petitioner-borrower is making all possible efforts to thwart the recovery proceedings by all possible means. In our opinion, all these efforts must fail for the reason that the petitioner is a defaulter, who has not paid money legitimately due and payable by it to the creditor banks. Any effort to render any assistance to such a defaulter would frustrate the object with which the RDB Act has been enacted. In our opinion, this Court, under its writ jurisdiction, would never render any help to a defaulter who does not want to pay its dues to the creditor banks which are dealing with public money. In view of the fact that no prejudice has been caused to the petitioner and as no principle of natural justice has been violated, in our opinion, it cannot be said that the petitioner has made out a case in its favour.

42. For the reasons stated hereinabove, in our opinion, no case has been made out by the petitioner in Writ Petition No.27695 of 2007 for any interference and, therefore, the said petition is rejected with no order as to costs. As the auction sale in respect of the properties in question has already been confirmed, possession of the properties in question, if not handed over to the auction purchasers so far, shall be delivered to them."

5. Bhanu Constructions Company Limited filed Special Leave Petition Nos.12071 and 12072 of 2009 before the Apex Court assailing the aforementioned common order of this Court. The senior counsel, who appeared for Bhanu Constructions Company Limited before the Apex Court, offered to deposit Rs.22 crores against the offer of Rs.17.88 crores made by the

auction purchasers in respect of item Nos.2 to 6 and in the light of the said offer, the order of stay was granted for a period of three weeks with the condition that Bhanu Constructions Company Limited shall deposit the agreed amount within the said period subject to the rider that in default, the interim order shall stand vacated and the Special Leave Petitions shall stand dismissed. As the Bhanu Constructions Company Limited failed to comply with the said conditional order, even within the extended time, the Supreme Court has dismissed the application filed by the said Company seeking further extension of time, on 17.07.2009. Thus, the challenge to the sale proceedings initiated by Bhanu Constructions Company Limited through B.Venkata Rao - the vendor of the respondents/plaintiffs failed. It is the pleaded case of the appellants that in pursuance of the sale certificate issued in their favour immediately after dismissal of the S.L.Ps., possession was taken on 18.05.2009. This plea, however, is seriously disputed by the respondents.

6. Be that as it may, it is the pleaded case of the respondents that initially the plaint schedule properties were sold by B.Venkata Rao in favour of respondent No.1/plaintiff No.1 in the year 2003 and that subsequently, respondent No.1 sold plaint B schedule properties to respondent No.2/plaintiff No.2 in the year 2006.

They filed the aforementioned suit i.e., O.S.No.11 of 2017 for declaration that respondent No.1 is the full and absolute owner and possessor of plaint A schedule properties and for a consequential relief of permanent injunction and that respondent No.2 is the full and absolute owner and possessor of plaint B schedule properties and for a consequential relief of permanent injunction. They also filed I.A.No.322 of 2007 for temporary injunction. They pleaded that they continued to be in physical possession of the plaint schedule properties and that therefore, the appellants cannot either interfere with their possession or forcibly dispossess them. The Court below, on appreciation of the documentary evidence, has rendered a finding that the respondents are in physical possession of the plaint schedule properties and that therefore, the appellants cannot interfere with their possession.

7. From the narration of the facts hereinbefore, the undisputed position that emerges is that the appellants/defendants purchased the plaint schedule properties in the auction held by the Debt Recovery Tribunal in the course of execution of decree passed by it as far back as 31.10.2000. In pursuance of the said sale, not only that the appellants paid the entire sale consideration but they were also given sale certificate. Challenge to the sale proceedings also

failed with the dismissal of W.P.No.27695 of 2007 filed by the respondents'/plaintiffs' vendor. Thus, *prima facie*, the appellants have become the true owners of the plaint schedule properties. The law is well settled that no injunction can be granted against the true owners irrespective of whether they are in physical possession of the properties or not. Unfortunately, the Court below has completely failed to examine the injunction application from the above perspective and it allowed itself swayed away by the fact that the respondents/plaintiffs produced the evidence to show their physical possession and accordingly, held that they are entitled to an order of injunction.

8. An injunction, being discretionary relief, the Court cannot be compelled to grant such relief in favour of such a person, who, though in physical possession, but fails to make out *prima facie* title. Indeed, when the auction was held following a statutory procedure by a competent *forum* and such auction proceedings have attained finality, it is incomprehensible that the successful auction purchasers could be restrained by way of an injunction by the Court below. Such an order will mock at the efficacy of sales held by the competent *fora* in execution proceedings. Even as on today, the respondents/plaintiffs have not challenged the auction

proceedings while their predecessor in title failed in such challenge.

9. In the light of the above discussion, the order under appeal *viz.*, order and decree, dated 22.03.2018, in I.A.No.322 of 2017 in O.S.No.11 of 2017 on the file of learned XVI Additional District and Sessions Judge, Nandigama, cannot be sustained and the same is, accordingly, set aside. However, as O.S.No.11 of 2017 is pending, the appellants shall not sell the plaint schedule properties pending the suit, without the permission of the Court below. It is needless to observe that any of the observations made by the Court below or by this Court shall not influence the lower Court while disposing of the suit.

10. In the result, the Civil Miscellaneous Appeal is allowed.

11. As a sequel to allowing the C.M.A., I.A.No.1 of 2018 filed by the appellants for interim relief stands disposed of and I.A.No.2 of 2018 filed by the respondents for vacation of interim order, dated 01.05.2018, stands dismissed as infructuous.

**C.V.NAGARJUNA REDDY, J**

**GUDISEVA SHYAM PRASAD, J**

**06th September, 2018**
GHN