

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.3016 of 2018

ORDER:

This Civil Revision Petition is filed questioning the docket order dated 23.04.2018 that is passed in Appeal Suit No.82 of 2017 by the Principal District Judge, Vizianagaram.

AS No.82 of 2017 is an appeal filed against the judgment and decree in Original Suit No.383 of 2006. The said suit is filed for a decree of specific performance in respect of the plaint schedule property, which is a premises bearing house No.MIG/91 in a site measuring 274.25 square yards. Along with the appeal suit, I.A. No.332 of 2018 is filed for an injunction by the appellants/plaintiffs.

In the course of hearing of the said I.A., it appears from the lower court record that there was an acrimonious argument in the lower Court. It transpires from the record that the house in the plaint schedule property was demolished and both the appellants and the respondents were hurling accusations against each other about who demolished the property. Along with the present revision, copies of memos filed in the lower Court were also filed. One memo was filed by the appellants

and the other memo was filed by the respondents. Both wanted that a lie detector test should be administered to determine the truth about the demolition. Later, the matter was taken up for hearing and on 23.04.2018 the impugned order was passed. In the said order, the Principal District Judge, Vizianagaram noted the submissions about summoning of the call data record, the allegations against the II Town Police, Vizianagaram for non-registration of the FIR etc. Ultimately, following the law laid down by the Hon'ble Supreme Court of India in ***Lalita Kumari v. Government of Uttar Pradesh***¹, the Station House Officer, II Town Police Station, Vizianagaram was directed to respond to the allegations leveled against him by both the parties. The Principal District Judge also noted that a receipt for a complaint was issued on 19.11.2017 by the police and therefore, he directed that the Station House Officer must take the matter to its logical conclusion. Questioning this docket order, the present revision is filed under Article 227 of the Constitution of India.

Notice was ordered to the respondents herein, who are the plaintiffs in the suit, but none appeared. The matter was initially heard and Sri Taddi Sowmya Naidu,

¹ (2014) 2 SCC 1

learned counsel appearing for the revision petitioners/ plaintiffs argues that it is purely a civil matter and that the Principal District Judge had no duty to direct the police to register a case. The learned counsel also submits that initiation of parallel proceedings cannot be commenced in civil proceedings. He relies upon the judgment of the Hon'ble Supreme Court in **Ram Sumer Puri Mahant v. State of U.P.**² and argues that the Principal District Judge exceeded the jurisdiction conferred upon him. He argues that pursuant to the said direction given by the Principal District Judge, vide docket order dated 23.04.2018, the police are harassing his clients/ defendants. Therefore, it is his contention that under Article 227 of the Constitution of India, this Court has power and authority to check the exercise of the jurisdiction by the Principal District Judge, Vizianagaram. Therefore, he prays that the revision should be allowed and the impugned docket order should be set aside.

This Court after hearing the learned counsel notices that the impugned order was passed after a series of acrimonious hearings. The two memos which are filed along with the material papers to show that both the

² (1985) 1SCC 427

parties wanted a lie detector test to ascertain the truth of the matter. After a couple of adjournments, on 23.04.2018 the impugned order was passed. In the impugned judgment, the lower Court noted the submission made about the examination of the 'call data' record and also the allegation made against II Town Police for non-registration of the FIR. In these circumstances, the impugned order dated 23.04.2018 came to be passed.

A reading of the file and the material papers filed show that there is a serious dispute about who actually demolished the building and how the demolition took place. It is also a fact that as per the record, complaints and counter complaints were made. When this Court asked the learned counsel appearing for the revision petitioners/ defendants to state what is exact harm caused by the impugned order, he filed additional material papers with USR No.74701 of 2018, dated 24.09.2018 along with police notices issued by the Sub-Inspector of Police, II Town Police Station, Vizianagaram on 25.04.2018 and 28.04.2018, copies of FIR Nos.70 and 71 of 2018. He submitted that his clients were being harassed by the police.

The said FIRs show that the cases were registered based on the complaint of the plaintiff/second respondent herein (FIR No.70 of 2018) and of the accused in FIR No.71 of 2008. Notices were then issued asking the parties to appear. No coercive steps appear to have been taken.

Therefore, after hearing the learned counsel, this Court is of the opinion that a reading of the entire sequence of events reveals that there were a series of acrimonious hearings. The decision of the Hon'ble Supreme Court of India in **Lalita Kumari's** case (1 supra) is a decision rendered by the Constitution Bench and it is binding on all the authorities in this country. The Hon'ble Supreme Court gave directions as to how and in what circumstances FIR is to be registered and as to how preliminary enquiry is to be conducted. This judgment was followed by the Principal District Judge, Vizianagaram in the impugned order.

This Court after considering all the material papers and after hearing the submissions of the learned counsel, is of the opinion that there is no patent illegality in the impugned order. Although the impugned order could have been drafted giving greater details of the incidents that took place in the open court and the allegations/

counter allegations, still there is no erroneous assumption of jurisdiction by the lower Court warranting interference by this Court.

Needless to say that if the police take any action, basing on their enquiries/FIR etc., the parties are free to approach the appropriate criminal Court for protection and/or redressal as the case may be. The rights guaranteed by law of the land need not be specifically spelt out once again by this Court. In these circumstances, this Court is of the opinion that no case is made out for interference, more so under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is dismissed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 30.10.2018

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