

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.484 & 485 of 2018

COMMON JUDGMENT:

The former Civil Miscellaneous Appeal is preferred by respondent Nos.1 and 2 – defendant Nos.1 and 2 in I.A.No.138 of 2018 in O.S.No.51 of 2018, whereas the latter appeal is preferred by respondent No.3 – defendant No.3 in the said interlocutory application. Thus, both the Civil Miscellaneous Appeals have been filed under Order XLIII Rule 1 of CPC, questioning the order, dated 23.05.2018, passed in the said interlocutory application by the learned Vacation Civil Judge, City Civil Court at Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Suit also.

3. I.A.No.138 of 2013 was filed under Order XXXIX Rules 1 and 2 CPC by the plaintiffs in the said suit to restrain respondent Nos.1 and 2 - defendant Nos.1 and 2, its men and agents from putting up students in the institutions of respondent No.3 - defendant No.3 and from attempting to enroll/admit their students on the rolls of respondent No.3 run institutions. The learned Vacation Judge, referring to the petition affidavit averments and the contentions raised by the learned counsel for the petitioners before it, referred to a photograph filed during the course of arguments, which, according to the Court, reflects violent things going on at respondent No.3 institution, wherein alleged anti-social elements were found, and the

Court noticed that in I.A.No.555 of 2018 in O.S.No.342 of 2018, the petitioners obtained an order of injunction against defendant Nos.1 and 2 on merits restraining them from making any wrongful assertions/advertisements/representations in any manner, in respect of the students trained by the petitioners' run institutions including 199 suit schedule students sponsored by the petitioners' trusts as the students of the respondents, and then referred to two Memorandum of Understandings (MOUs) of the year 2012 and 2014, which were said to be terminated on the basis of mutual agreement while agreeing to continue the batch of II year students of the academic year 2018 – 2019.

4. The learned Vacation Judge then observed that when there was no mutual agreement of sending students by respondent No.1 and respondent No.2 to respondent No.3, the students whoever joined or taken admission may be put to hardship and loss; when the existence of respondent No.3 is only for the current academic year 2018 – 2019 for II year students, the situation at the institution of respondent No.3 and that as per the photograph filed, the atmosphere was not pleasant even to the continuing students of II year batch; if the petitioners succeed in the suit, the batch of new students forced by respondent Nos.1 and 2 into respondent No.3 may rule (perhaps for the word 'ruin') their academic year in view of the existing disputes between the petitioners and respondent Nos.1 and 2; therefore, it is just and necessary to see the new batch students may not be admitted

in respondent No.3 as forced by respondent Nos.1 and 2 till the said application is heard on merits; *prima facie* case and balance of convenience hold in favour of the petitioners and also in favour of incoming new batch students and if notice is ordered at that stage, there may be likely consequences of spoiling the atmosphere between the petitioners and the respondents and the delay in service of notice indicates (perhaps for the word 'defeats') the suit purpose; if students are admitted in respondent No.3 and in case the petitioners succeed in their suit, there may be hardship to the petitioners and also to the new students who are preparing to take admission in respondent No.3 with the force of respondent Nos.1 and 2; further to avoid multiplicity of proceedings and as it is vacation to the Civil Courts and regular Courts are not functioning, it was just and necessary to dispense with notice to the respondents and, thus, dispensed with prior notice to the respondents and thereby granted ad-interim injunction restraining respondent Nos.1 and 2 from putting up and enrolling their students on the rolls of respondent No.3 till 05.06.2018 subject to compliance of Order XXXIX Rule 3 (a) CPC, and ordered notice to the respondents through Court and registered post and directed the matter to be listed on 05.06.2018. This order has been under challenge in both the Civil Miscellaneous Appeals.

5. Heard Sri Vedula Srinivas, learned counsel for the appellants in CMA.No.484 of 2018, Sri Vedula Venkata Ramana, learned Senior Counsel for Sri Prabhala Raja Sekhar, learned counsel

for the appellant in CMA.No.485 of 2019, Sri S. Niranjan Reddy, learned Senior Counsel for Sri Naresh Reddy Chinnolla, learned counsel for respondent Nos.1 and 2 in CMA.No.484 of 2018, and Sri P. Sree Raghuram, learned Senior Counsel for Sri Naresh Reddy Chinnolla, learned counsel for respondent Nos.1 and 2 in CMA.No.485 of 2018.

6. Elaborate arguments have been advanced referring to various aspects in attacking the order under challenge, by the learned senior counsel for the appellants in both these appeals.

7. The submissions of the learned Senior Counsel appearing for respondent No.3 - defendant No.3 have been that respondent No.3 - defendant No.3 is not a party to MOUs and it is an independent educational society and no relief is claimed in the plaint against it and, therefore, the order under challenge is liable to be set aside. His further submission is that the pass outs of Class X will not be compelled by respondent Nos.1 and 2 - defendant Nos.1 and 2 to enroll or admit in the institutions of respondent No.3 - defendant No.3 as ones the pass outs of Class X from the institutions of either the plaintiffs or defendant No.1 or defendant No.2, they cannot be prevented to join the institution of defendant No.3 or any other institution and, therefore, the very relief of injunction claimed in the plaint is incorrect. His further submission is that this Court is required to examine whether there is recording of valid reasons to grant ad-interim injunction and this Court is also required to examine whether

the order *ex facie* is perverse and without jurisdiction, as the plaintiffs have no personal interest and there is no privity of contract between the plaintiffs and defendant No.3. Learned Senior Counsel has also referred to clause (J) of Section 41 of the Specific Relief Act as to when an injunction cannot be granted. While giving reply to the arguments advanced by the learned Senior Counsel for respondent Nos.1 and 2 - plaintiff Nos.1 and 2, the learned Senior Counsel for respondent No.3 - defendant No.3 would submit that, in fact, respondent No.3 - defendant No.3 came into vogue by virtue of registration of Society on 16.05.2012, which precedes the dates of MOUs, dated 21.06.2012 and 15.12.2014, and, therefore, the submissions made by learned Senior Counsel for respondent Nos.1 and 2 - defendant Nos.1 and 2 that respondent No.3 - defendant No.3 Society came into existence pursuant to MOUs is palpably wrong.

8. Meeting the arguments advanced by the learned Senior Counsel for respondent Nos.1 and 2 – plaintiff Nos.1 and 2, the learned Senior Counsel for respondent No.3 - defendant No.3 would submit that the Secretary of respondent No.3 - defendant No.3 is competent to prefer the Civil Miscellaneous Appeal without there being any resolution, as the articles/byelaws of the Memorandum of Association would clearly mandate competence of the Secretary of defendant No.3's Society to sue or be sued so far as the institution of respondent No.3 - defendant No.3 is concerned and, therefore, the argument advanced by the learned Senior Counsel for respondent

Nos.1 and 2 - plaintiff Nos.1 and 2 that in the absence of a resolution being passed authorizing the Secretary of respondent No.3 - defendant No.3 to represent the Civil Miscellaneous Appeal, the Civil Miscellaneous Appeal is not maintainable, is unsustainable.

9. Learned Senior Counsel for respondent No.3 - defendant No.3 would further contend in the context of the term 'common batch' that neither in the relief portion of the plaint nor anywhere in the plaint, the petitioners - plaintiffs have referred to the 'common batch' and, therefore, the argument tendered basing on 'common batch' concept is not tenable. This reply was given by the learned Senior Counsel in the context of the arguments advanced by the learned Senior Counsel for respondent Nos.1 and 2 – plaintiff Nos.1 and 2 that MOUs would indicate that the first 100 students in the merit list pooled from both the institutions i.e., institutions run by the plaintiffs and the institutions run by defendant Nos.1 and 2 are to be treated as 'common batch' and they would be enrolled in respondent No.3 - defendant No.3's institution and, in fact, respondent No.3 - defendant No.3's institution or Society was constituted with four members from the plaintiffs' institutions and the other four members drawn from the institutions of defendant Nos.1 and 2 and the founder trustee of the plaintiffs' institutions and the founder trustee of the institutions of defendant Nos.1 and 2 are figuring as members of respondent No.3 - defendant No.3's Society, besides two more members from the plaintiffs' institution constituting as members in respondent No.3 -

defendant No.3-Society and, thereby, contended that the plaintiffs have got direct interest in defendant No.3-Society.

10. Certain examples were also projected by the learned Senior Counsel for respondent Nos.1 and 2 - plaintiff Nos.1 and 2 as to how the institutions of the plaintiffs and the institutions of defendant Nos.1 and 2 would take credit when the students of these institutions gain top ranks when the results of Class X are announced. Of course, it is unnecessary to adjudicate upon these aspects at this stage. In the course of reply, the last submission made by the learned Senior Counsel for respondent No.3 -defendant No.3 is that the validity of the order under challenge has to be tested on the basis of reasoning in the order and his submission has been that none of the traditional ingredients for granting ad-interim injunction are conspicuously present and, therefore, the order is liable to be set aside. Learned Senior Counsel for respondent No.3 - defendant No.3 also relied on the rulings in **A. Venkatasubbiah Naidu vs. S. Chellappan**¹ and **Premji Ratansey Shah v. Union Of India**². The ruling in **A. Venkatasubbiah Naidu** (1 supra) rendered by the Honourable Apex Court was referred to in the context of the submissions advanced by the learned Senior Counsel for respondent Nos.1 and 2 - plaintiff Nos.1 and 2 referring to the ruling in **Innovative Pharma Surgicals v. Pigeon Medical Devices (P) Ltd.**

¹ (2000) 7 SCC 695

² (1994) 5 SCC 547

and others³ rendered by a Division Bench of this Court in CMA.No.1100 of 2004, basing on which the learned Senior Counsel for respondent Nos.1 and 2 - plaintiff Nos.1 and 2, initially contended that without filing an application for vacating the injunction or counter before the Court, which granted ad-interim injunction preferring an appeal is impermissible, and also the latter decision of this Court in **Jagdamba Phosphate v. Coromandel International Ltd.**⁴ on the very same proposition.

11. Now, advertent to the submissions made by the learned Senior Counsel for respondent Nos.1 and 2 – plaintiff Nos.1 and 2, Sri S. Niranjan Reddy, learned Senior Counsel for respondent Nos.1 and 2 in CMA.No.484 of 2018, who are the petitioners – plaintiffs in the I.A., would submit that it cannot be said that the plaintiffs do not have any direct interest in defendant No.3's Society. Of course, it was initially submitted by the learned Senior Counsel that defendant No.3 was not in existence when MOUs of 2012 and 2014 were entered into. But, however, it is clear that defendant No.3's Society, by virtue of registration of Society on 16.05.2012, came into vogue even earlier to the MOU of the year 2012. Learned Senior Counsel would submit that it cannot be said that the traditional requirements for granting interim injunction are completely absent but can be culled out from the order under challenge. According to the learned Senior Counsel, *prima facie* case emanates from the MOUs, which were not filed at all in the

³ 2004 (3) ALD 228

⁴ 2016 SCC Online Hyd 289

present Civil Miscellaneous Appeals, despite the fact that defendant Nos.1 and 2 earlier contested the injunction order granted against them in a suit filed by the plaintiffs wherein MOUs were referred to and, so far as the balance of convenience is concerned, the very termination of MOUs by oral agreement mutually by the plaintiffs and defendant Nos.1 and 2 is sufficient to satisfy, for the reason that the pass outs from the plaintiffs' institutions cannot be compelled by the defendants 1 and 2 to join defendant No.3's Society and, thus, accounts for illegal admission.

12. In both the appeals, the common submissions made by the learned Senior Counsel for respondent Nos.1 and 2 - plaintiff Nos.1 and 2 have been that the present Civil Miscellaneous Appeals require adjudication in the light of the MOUs entered into by the plaintiffs and defendant Nos.1 and 2 and the rights that flow there from and the termination of the MOUs with a rider that the present academic year shall continue so far as II year Intermediate students are concerned and, therefore, the defendant Nos.1 to 3, without submitting the MOUs of the years 2012 and 2014, cannot ask this Court to set aside the ad-interim injunction granted by the Court below and, in fact, the injunction was only for a limited period i.e., till 05.06.2018 and further, though, the plaintiffs, who are respondent Nos.1 and 2 herein, filed caveats and copies of the grounds of appeal have been supplied just recently and it is a case where detailed counters ought to be filed by defendant Nos.1 to 3 before the trial

Court, and even to decide the controversy in the present appeals, MOUs are required to be considered and, therefore, on this ground also, the learned Senior Counsel for the plaintiffs would request to dismiss the present appeals.

13. The order passed by the Court below, including the reasons assigned therein, are referred to in the above. Certain aspects, certainly, require a thorough probe by way of examination of MOUs of the years 2012 and 2014, besides other material in regard to the termination of the MOUs and continuation of present batch of II year Intermediate students of defendant No.3, more particularly, to appreciate the submissions made by the learned Senior Counsel for the plaintiffs, defendant Nos.1 and 2 and defendant No.3, in assessing whether the order under challenge is patently perverse or legally infirm. One thing is certain. The order passed by the Court below is an *ex parte* order, but not an order passed on merits having heard both sides, and the order will be in force for a limited period i.e., till 05.06.2018, on which day the regular Court would take up the matter and dispose of the case having invited the counters and perusing the counters, if filed by that date. So, any observation if made by this Court or any finding that would be recorded in the absence of MOUs of the years 2012 and 2014 may, certainly, lead to miscarriage of justice and, instead, the trial Court can be directed to dispose of I.A.No.138 of 2018 in O.S.No.51 of 2018 within a week from 05.06.2018.

14. It is not as though, the admissions are closed now or would be closed by 05.06.2018 and it is not in dispute between the parties that the admissions are to be closed by thirtieth June, 2018. In such an event, this Court is of the opinion that it is desirable to direct defendant Nos.1 to 3, who are the appellants in these two appeals, to file their counters before the Court below preferably by 05.06.2018 to enable the trial Court to dispose of the interlocutory application within a week from 05.06.2018.

15. Hence, it is unnecessary to deal with the submissions made by the learned Senior Counsel for the appellants and the respondents in both these appeals and the rulings they relied on in regard to the maintainability of the present appeals.

16. Accordingly, both the Civil Miscellaneous Appeals are disposed of directing the appellants in both these appeals to file their counters before the Court below preferably by 05.06.2018, and both parties shall tender arguments and the trial Court shall dispose of I.A.No.138 of 2018 in O.S.No.51 of 2018 on its file, within a week from 05.06.2018. There shall be no order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

31.05.2018

Note: Issue CC by tomorrow
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