

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION NO.5082 OF 2018

ORDER:

This revision is arising out of docket order, dated 02.08.2018 passed in I.A.No.288 of 2018 in O.S.No.143 of 2018 by the learned Principal Junior Civil Judge at Kothagudem.

2. The revision petitioners are the defendants 1 to 4. The respondents 1 to 3 are the plaintiffs, who have filed a suit to declare the notice, dated 04.06.2018 issued by the 3rd respondent-3rd defendant in connivance with 4th respondent-4th defendant as null and void and contrary to the order of the High Court of Madras and declare all actions and decisions taken in the alleged Synod Executive Committee on 16th to 20th April, 2018 as null and void and consequently sought for injunction against the defendants from taking any steps to give effect to any alleged decision at the said Synod Executive and for grant of permanent injunction for restraining the defendants 3 and 4 from functioning as General Secretary and Moderator of Church of South India respectively.

3. In the said suit, the plaintiffs have filed I.A.No.288 of 2018 for grant of interim injunction against the defendants. The trial Court on consideration of the material on record, has granted ad interim ex parte injunction in favour of the plaintiffs restraining the respondents 3 and 4 from functioning as General Secretary and Moderator of Church of South India Synod till the investigation by the Serious Fraud Investigation Office is completed in pursuance of the direction of the Central Government till 14.08.2018 subject to compliance of Rule 3 of Order 39 of CPC.

4. Heard the arguments of Sri V.Prakash, learned counsel representing the petitioners and Sri VRMV Prasad Sonaka, learned counsel for the respondents 1 and 3, and Sri M.Radhakrishna Murthy, learned counsel representing Sri G.Satyanarayana Reddy, learned counsel on record for the 2nd respondent.

5. Learned counsel for the petitioners-defendants mainly submits that the docket order passed by the trial Court is suffering from illegality due to the following reasons. The trial Court without giving notice to the petitioners-defendants has passed the docket order which is in violation of provision under Order 39 CPC. As far as this contention is concerned, the trial Court has passed the orders under Order 39 Rule 3 CPC and has given reasons for dispensing with the notice to the petitioners-defendants in granting ad interim ex parte injunction.

6. Learned counsel further submits that the trial Court observed in para 5 of its order as follows:

“On perusal of the order in W.P.No.38841of 2016, it is observed that the order dated 10.06.2016 issued by the Central Government in exercise of power under Section 212 of the Companies Act, 2013 is set side and the matter is remitted for re-consideration afresh in accordance with Section 212 of the Act.”

7. It is further submitted that in spite of observation made by the trial Court in para 5 of its order, ad-interim ex parte injunction was granted as such, the order passed by the trial Court is liable to be set aside. Para 8 of the order of the trial Court reveals as under:

“Therefore, Ad-interim exparte injunction is granted in favour of petitioners-plaintiffs restraining respondent Nos. 3 and 4, their men, agents, administrators, executors, representatives etc., or any one acting on their behalf from functioning as the General Secretary and Moderator of the Church of South India Synod till the investigation by the Serious Fraud Investigation Office is completed in

pursuance of the direction of the Central Government till 14.08.2018, subject to compliance of Rule 3 of Order 39 of CPC.”

8. On the other hand, learned counsel for the 2nd respondent-2nd plaintiff submits that the petitioners were given opportunity twice to file their counter before the trial Court, but they have not come forward to file their counter and contest the matter. It is further submitted that since the matter is at interlocutory stage, the petitioners can file counter and contest the matter, but they have not contested the matter before the trial Court, by filing their counter, and straight away approached this Court without exhausting the remedy available to them before the trial Court.

9. Learned counsel for the respondents placed reliance on the decision of this Court in CMA No.580 of 2016 in case of **JAGADAMBA PHOSPHATE, KOTA, RAJASTHAN, REP. BY ITS DIRECTOR RAGHUNATH PRASADJI GOEL V COROMANDEL INTERNATIONAL LTD., SECUNDERABAD, REP. BYH ITS VICE PRESIDENT LEGAL P.VARDHARAJAN**, wherein it was held thus (paras 10,11 and 14):

“Since the impugned order contains reasons, it satisfies the requirements of the proviso to Rule 3 of Order XXXIX CPC. Therefore, applying the tests indicated in Innovative Pharma Surgicals (supra), we are of the opinion that it is not a fit case for entertaining the appeal against the ad interim injunction order.

Learned counsel for the appellant expressed an apprehension that if his client is relegated to the lower Court, there is a likelihood of long delay in disposal of I.A.No.782 of 2016, which results in irreparable injury to his client's interests.

The appellant is permitted to file an application for vacating the ad interim injunction order. On such application being filed, the lower Court shall dispose of the same as expeditiously as possible, and, not later than three months from the date of filing such application.”

10. By relying on the above decision, learned counsel for the respondents submits that the requirement of Rule 3 of Order XXXIX CPC is satisfied by the respondents. The petitioners-defendants since got an opportunity to file their

counter and contest the matter before the trial Court itself, they may be directed to approach the trial Court.

11. Learned counsel for the petitioners-defendants further submits that the Church of South India is a necessary party to the suit and as such, the rights of the respondents could be affected, due to non-joinder of necessary parties.

12. Learned counsel for the petitioners-defendants placed reliance on the judgment reported in **SURYA DEV RAI V RAM CHANDER RAI AND OTHERS** ¹, wherein it was held thus (para 39):

“Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straight-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where ‘a stitch in time would save nine’. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

13. By relying on the above decision, it is submitted that the High Court has got supervisory jurisdiction over subordinate Courts and whenever any illegality or irregularity is brought to the notice of the High Court, by exercise of its jurisdiction that the High Court has to interfere to correct the error of jurisdiction.

14. In fact in the light of arguments submitted by the learned counsel for the petitioners and the learned counsel for

¹ (2003) 6 SCC 675

the respondents 1 to 3, it is obvious that the trial Court has passed the docket order granting ad-interim injunction dispensing with the notice by following the provision under Order 39 Rule 3 CPC.

15. The I.A. is pending. The petitioners instead of appearing before the trial Court by filing their counter have filed the present Civil Revision Petition. The petitioners did not choose to file any counter though sufficient opportunity was given to them. Therefore, the petitioners have to agitate their rights before the trial Court as it is an ex parte ad interim injunction granted by the trial Court. Time and again the apex Court in catena of decisions have reiterated that it is not appropriate to interfere with an application under Article 226 or 227 of the Constitution of India unless the situation warrants. In this case, the docket order passed by the trial Court is only an interlocutory in nature, the interference of this Court under Article 226 or 227 of the Constitution of India is not required in the light of the facts and circumstances of the case.

16. In the result, the Civil Revision Petition is dismissed. However, the petitioners-defendants may approach the trial Court by filing their counter and agitate their rights in the Interlocutory application and the trial Court is directed to dispose of the matter within a period of one month from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 14-09-2018

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