

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.1069 of 2018

22.11.2018

Between:

Suresh Kumar Jain and another

..Appellants

and

Zilla Parishad,
represented by its Chief Executive Officer,
Visakhapatnam and another

..Respondents

Counsel for the appellants: Mr.Raja Gopallavan Tayi

Counsel for respondent No.1: Mr.K.K.Durga Prasad

Counsel for respondent No.2: --

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal is filed against *ad interim* order, dated 24.10.2018, in I.A.No.982 of 2018, in O.S.No.504 of 2018, on the file of learned VI Additional District Judge, Visakhapatnam, whereby respondent No.2 was directed to deposit in the Court, the rents payable to the appellants in respect of the suit schedule property.

2. We have heard Mr.Raja Gopallavan Tayi, learned counsel for the appellants, and Mr.K.K.Durga Prasad, learned counsel for respondent No.1.

3. Respondent No.1 filed the aforementioned suit, *inter alia*, for recovery of Rs.40,37,02,860/- towards damages for illegal occupation of the suit schedule property and also for a direction to respondent No.2 to deposit in the Court, the rents payable to the appellants, till the said respondent vacates the premises. While ordering notice to the appellants and respondent No.2, the Court below has granted *ad interim* relief by the order under appeal. In our opinion, the Court below has committed a serious illegality in passing an *ex parte ad interim* order, which has the effect of partly decreeing the suit, to the extent of the relief claimed in

paragraph (iv) of the prayer in the suit. Such a positive relief even without hearing the appellants and respondent No.2 should not have been granted by the Court below. We have hence no hesitation to hold that the Court below was highly indiscreet in granting the relief as it did, even without notice to and hearing the appellants and respondent No.2. The learned counsel for respondent No.1 has also could not defend the otherwise indefensible order of the Court below.

4. For the aforementioned reasons, the order under appeal is set aside. The Civil Miscellaneous Appeal is, accordingly, allowed. The Court below shall dispose of I.A.No.982 of 2018 expeditiously after giving notice and the opportunity of hearing to all the parties, including the appellants and respondent No.2.

5. 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.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

22nd November, 2018

GHN