

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5879 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful defendants 1 & 2 is directed against the order, dated 24.07.2017, of the learned V Additional District Judge at Bhongir of Nalgonda District, passed in IA.No.175 of 2017 in IA.No.76 of 2016 in OS.No.61 of 2016 filed under Section 151 of the Code of Civil Procedure, 1908, for grant of police aid through the Station House Officer, Bhongir I Town Police Station.

2. I have heard the submissions of Sri N. Bhujanga Rao, learned counsel appearing for the revision petitioners, and of Sri T. Surya Satish, learned counsel appearing for the respondent. I have perused the material record.

3. The parties in this revision shall hereinafter be referred to as defendants 1 & 2/revision petitioners and respondent/plaintiff for convenience and clarity.

4. Learned counsel for defendants 1 & 2 would submit as follows: -
“The plaintiff brought the suit for perpetual injunction and filed IA.No.76 of 2016 along with the suit seeking temporary injunction. The trial Court granted *ex parte* injunction on 23.05.2016. The defendants 1 & 2/respondents therein filed their counter. The plaintiff filed IA.No.175 of 2017 for granting police aid. Both the IAs are posted for hearing to 21.07.2017. Without hearing both the IAs, simultaneously, the IA filed for

grant of police aid was heard and posted for orders to 04.08.2017. The application for temporary injunction was adjourned for hearing by keeping the same pending. The application for grant of police aid was allowed on 24.07.2017 itself though the said IA was posted for orders to 04.08.2017. When the trial Court granted *ex parte* injunction, it is obligated under facts and in law to hear and dispose of the application for temporary injunction within thirty (30) days. The trial Court failed to do so. Without disposing of the application for temporary injunction on merits, the trial Court granted police aid even without looking into the facts of the matter. The *ex parte* temporary injunction was granted on 23.05.2016. But, in the affidavit filed in support of the petition seeking police aid, it is alleged that the 1st defendant accompanied by some other unknown persons illegally entered the schedule property at 10:00 AM on 10.03.2016. Thus, the alleged attempt is much prior to the granting of the *ex parte* injunction order. Police aid would be granted to implement the orders of the Court but not to protect the alleged possession of a party as was done in the present case. Hence, the order impugned may be set aside and the application may be remitted to the trial court with a direction to the trial court to hear and dispose of the application for temporary injunction as well as the application for grant of police aid simultaneously.’

5. Learned counsel for the plaintiff would submit that the order granting police aid is a reasoned order and that the Court is empowered to grant police aid and hence, while maintaining the said order by dismissing the present revision, the trial Court may be directed to dispose of the

application for temporary injunction and that the plaintiff would co-operate for disposal of the said application by the trial court.

6. I have given earnest consideration to the facts and submissions. I have gone through the material record including the order impugned.

7. To begin with, it is to be noted that after extracting the pleadings of the parties, the trial Court noted the contentions and the decisions cited before it and only considered the aspect with regard to its power to grant police aid but did not advert to the aspect of plaintiff's entitlement for grant of police aid on the factual matrix of the case. Further, the trial Court having adjourned both the application for temporary injunction and the application for grant of police aid to one date for hearing, ought to have heard and disposed of both the applications simultaneously instead of adjourning the application for temporary injunction for hearing and disposing of the application for police aid ahead of the afore-stated application. It is always advisable to grant police aid after hearing and disposing of the application for temporary injunction on merits unless there are circumstances clearly indicating that the defendant is protracting the matters and not co-operating for disposal of the application for temporary injunction. As per settled legal position, an application for temporary injunction shall be disposed of within the time frame allowed under law and the trial Court is not supposed to extend the *ex parte* interim injunction order without taking up the application for temporary injunction for hearing and disposal on its merit. It is to be further noted that the *ex parte* injunction was obtained by the plaintiff on 23.05.2016 and the application for grant of police aid was filed before the trial Court on

24.03.2017 and till that date the trial Court has not disposed of the application for temporary injunction. It is to be further noted that in the application for grant of police aid it is not even stated with required details that there is a violation of the *ex parte* injunction order; but, it is *inter alia* stated in the affidavit of the plaintiff that on 10.03.2016 at 10:00 AM the 1st defendant accompanied by some other unknown persons entered the suit property and created terror and threatened the plaintiff and its associates with dire consequences. This incident is clearly an incident prior to the date of *ex parte* injunction order, that is, 23.05.2016.

8. On the above analysis, this Court finds that the trial Court was not justified in disposing of the application for grant of police aid ahead of the application for temporary injunction on its merit.

9. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, IA.No.175 of 2017 is remitted to the trial Court with a direction to dispose of the same along with IA.No.76 of 2016 simultaneously and in strict accordance with the procedure established by law, however, within two (02) weeks from the date of receipt of a copy of this order. No costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

25th January, 2018

Note: Issue CC by 29.01.2018.

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