HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1665 OF 2018

JUDGMENT: (*Per the Hon'ble Sri Justice S.V.Bhatt*)

Heard the learned counsel for the parties.

Respondent Nos. 4 to 6 in the writ petition are the appellants. The 1st respondent filed W.P.No.31949 of 2018 complaining against the respondents in not providing police protection keeping in view the injunction granted on 09.05.2018 in O.S.No.120 of 2017 on the file of the Principal Junior Civil Judge, Siddipet, as arbitrary and illegal.

The appellants complain primarily against the order under appeal by contending that the learned Single Judge did not either issue notice to them and/or heard them, but disposed of the writ petition at the admission stage. The appellants further submit that had a notice been issued, it would have been brought to the notice of the Court below that the decree and judgment in O.S.No.120 of 2017 is an *ex parte* decree and steps are already taken by the appellants herein for setting aside the said *ex parte* decree. In the meantime, the police, if are allowed to give protection to the 1st respondent then the actual possession etc., will be decided by the police. Hence, the appeal.

Mr.Mohd.Asifuddin, appearing for 1st respondent, does not dispute the basic premise on which the present appeal is filed. He submits that as long as a decree is in force, the police are not entitled to commit disobedience to the said order of injunction and/or

act contrary to the injunction granted by the trial Court. Since there were tacit attempts to interfere with the possession of 1st respondent, the 1st respondent was constrained to file W.P.No.31949 of 2018. He prays for dismissing the appeal.

Though a few contentions on the remedies available both under Orders XXXIX and XXI CPC are canvassed by the appellants, in the case on hand, having regard to the peculiar circumstances viz., that an application is pending for setting aside the *ex parte* order and that W.P.No.31949 of 2018 has been disposed of without notice to the appellants herein, we are satisfied that to meet the ends justice and afford fair opportunity to both parties, the order under appeal could be set aside and is, accordingly, set aside. The writ petition is restored to file for consideration afresh in accordance with law. The appellants herein are given two weeks' time from today to file counter affidavit.

The writ appeal is allowed as indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

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THOTTATHIL B. RADHAKRISHNAN, CJ

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S.V.BHATT, J

14th December, 2018

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