

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.7176 and 7209 of 2017

COMMON ORDER:

Since these two revisions arise out of one suit, this Court deems it appropriate to dispose of these two cases by way of this common order.

2. Defendant in O.S.No.49 of 2017, on the file of the Court of the Junior Civil Judge, Yemmiganur, Kurnool District, is the petitioner in these two revisions filed under Article 227 of the Constitution of India. CRP.No.7176 of 2017, challenges the order dated 05.10.2017 passed by the said Court in I.A.No.372 of 2017. CRP.No.7209 of 2017 is directed against the order dated 21.09.2017 passed in I.A.No.485 of 2017 filed under Order 26 Rule 9 of the Code of Civil Procedure.

3. Respondent herein instituted the above mentioned suit against the petitioner for permanent injunction to restrain the defendant from interfering with his possession. The suit schedule property is a RCC Building situated at Weavers' Colony, Yemmiganur bearing Door.No.1/2192 Old Door No.1/10 A/76 (New) 1/232 building facing towards South in Plot No.76. Along with the said suit, plaintiff/respondent herein filed I.A.No.46/2017 under Order 39 Rules 1 and 2 of the Code of Civil Procedure for interim injunction. The learned Junior Civil Judge, by way of an order dated 29.06.2017, allowed the said application, granting temporary injunction. On 27.07.2017, plaintiff/respondent herein filed I.A.No.372 of 2017 under Section 151 of Code of Civil Procedure, requesting to grant Police Aid. Resisting the said application, defendant/petitioner herein filed counter. Vide order dated 05.10.2017, which is impugned in CRP.7176 of 2017, the learned Senior Civil Judge allowed I.A.No.372 of 2017, granting police aid.

4. On 21.09.2017, the defendant/petitioner herein filed I.A.No.485 of 2017 under Order 26 Rule 9 of Code of Civil Procedure, seeking appointment of Advocate Commissioner to note down physical features, topography and existence of residential building, bath room and latrine etc., in the second floor of the petition schedule property. The said application was resisted by the plaintiff/respondent herein by way of filing counter. On 15.11.2017, by way of the order impugnd in CRP.No.7209 of 2017, the learned Senior Civil Judge dismissed the said application. Hence, these two revisions.

5. Heard Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioner and Sri Butta Vijaya Bhaskar, learned counsel for the respondent in both the revisions.

6. Submissions/contentions of the learned counsel for the petitioner:

6.1. The orders impugned in these revisions are erroneous and contrary to law and had the contents of the counter in I.A.No.372 of 2017 and the affidavit in I.A.No.485 of 2017 been considered from proper perspective, the orders impugned would not have emanated.

6.2. The Court below passed the order of Police Protection in a routine and mechanical manner without there being any necessity and the Court below grossly erred in granting the said order on the ground that no prejudice would be caused to the other side.

6.3. CMA.No.17 of 2017 filed against the order of injunction is pending on the file of the Court of the Second Additional District Judge, Kurnool and the plaintiff filed the application for police aid only with an intention to evict the petitioner from the second floor of the building with the help of the police.

6.4. The Court below failed to see that the petitioner filed O.S.No.190 of 2016 before the same Court for eviction of the

respondent herein, as such, there is absolutely no truth in the case of the respondent that the petitioner is interfering.

- 6.5. The learned Judge grossly erred in dismissing the application for appointment of Commissioner by observing that there is no dispute in respect of the identity of the petition schedule property.
- 6.6. The learned Judge failed to consider that the plaint schedule property consists of ground and first floor and the petitioner herein sought appointment of Commissioner for observing the physical features of the same building in the second floor and that the learned Judge grossly erred in dismissing the petition only on the ground that the second floor is not the subject matter of the suit property.
- 6.7. The learned Judge ought to have seen that the appointment of Commissioner would be essential in view of the fact that the plaintiff, having filed the suit in respect of ground and first floors of the building bearing Door No.1/2192, is interfering with the possession of the petitioner over the second floor under the guise of police aid.

In support of his contentions, learned counsel for the petitioner places reliance on the judgments of this Court in *POLAVARAPU NAGAMANI AND ORS. V. PARCHURI KOTESHWARA RAO AND ORS*¹ and *BIJIGA PAPA RAO v. JONNALAGADDA SRINIVASA RAO*².

7. Submissions/contentions of the learned counsel for the respondent:

- 7.1. There is no error nor there exists any infirmity in the impugned orders and in the absence of the same, the questioned orders are not amenable for any judicial review under Article 227 of the Constitution of India.

¹ 2010 (2) ALD 41

² 2015 (2) ALD 171

7.2. In view of the reasons assigned in the impugned orders no interference of this Court is warranted.

7.3. Since the order of injunction became final, there is no illegality in granting police aid in favour of the respondent herein.

7.4. Since the lease deed covers the entire building, the orders impugned in the present revisions cannot be faulted.

7.5. The interference of the defendant compelled the plaintiff to move the application for police aid.

In support of his case, learned counsel for the respondent takes the support of the judgments of this Court in *P.SHANKER RAO v. B.SUSHEELA*³, *N.K.LEASING CONSTRUCTIONS LTD., HYDERABAD v. SUGAN CHAND SANKLA AND ANOTHER*⁴ and *VANGETI BAL REDDY AND OTHERS v. KARAGANI BALAIAH AND OTHERS*⁵.

8. In the above back ground, now the issue that emerges for consideration of this Court is_ Whether the orders impugned in the present writ petition are sustainable and whether they warrant any interference of this Court under Article 227 of the Constitution of India?

9. There is absolutely no dispute with regard to the reality that the respondent herein while pleading that the defendant/petitioner herein has no right, title and possession in the suit schedule property, instituted the present suit. In the plaint, he also averred that the defendant has *mala fide* intention to grab the property under the guise of false documents and that the defendant has no right to enter into the premises so long as the plaintiff is in possession of the same. According to the pleadings in the plaint, plaintiff

³ 2000 (2) ALD 147

⁴ 2010 (6) ALD 62

⁵ 2013 (6) ALD 104

came in contact with the defendant and the defendant advanced a sum of Rs.10,00,000/- as loan to the plaintiff on the security of the schedule property under Registered Mortgage Deed dated 06.06.2013 and that the defendant wanted the plaintiff to execute a nominal registered sale deed as a security for a sum of Rs.52,72,000/- saying that the same would cover as a security for the discharge of various loans availed by the plaintiff from the financial institutions with an understating that within two years the plaintiff would repay the amount and the defendant would re-convey the property in favour of the plaintiff and the said re-conveyance agreement was reduced into writing on 13.01.2013 along the registered sale deed. The plaintiff further avers that the plaintiff was forced to put his signature on the lease agreement dated 26.01.2016 and that the contents of the sale deed and the alleged lease agreement are false and there is no truth therein.

10. The respondent herein instituted the present suit i.e., O.S.No.49/2017 on 20.02.2017. Along with the said suit, he also filed I.A.No.46 of 2017 for temporary injunction. The learned Junior Civil Judge on 29.06.2017 granted interim injunction in favour of the plaintiff/respondent herein on the ground that once the possession is admitted, plaintiff cannot be evicted without due process of law and no prejudice would be caused to the defendant in the event of granting injunction. There is absolutely no dispute with regard to the fact that on 27.07.2017 the plaintiff/respondent herein filed I.A.No.372 of 2017 under section 151 of the Code of Civil Procedure, seeking police aid for enforcement of orders of interim injunction. In the affidavit filed in support of the said application, the plaintiff/respondent herein stated that despite the advice of the elders with regard to the injunction granted, the defendant is causing interference and disturbance to him and his family and running the school and trespassing into the school premises and causing nuisance.

11. In fact, resisting the said application, the defendant/petitioner herein filed a counter, *inter alia* contending that the plaintiff filed the said application by suppressing the truth and material facts with an ulterior motive to harass him and his family members residing in the second floor residential building shed, bathroom and latrine over the petition schedule property. The defendant also stated in the said counter that he never disobeyed the orders of the Court and the application filed for Police Aid is an attempt to evict the defendant and his family members from the second floor of the petition schedule property. The defendant also brought to the notice of the Court about the petition filed by him for appointment of Advocate Commissioner to note down the physical features, topography and existence of residential room, shed, bathroom and latrine in the second floor of the petition schedule property and also stated that he would undertake to comply strictly the orders of the Court in respect of the petition schedule property for the purpose of running the school by the plaintiff. He also stated that the plaintiff never resided along with his family in the petition schedule property.

12. A perusal of the order passed by the Court below, granting Police Aid, shows that the learned Judge granted the said relief principally on the ground that no prejudice would be caused to the defendant/petitioner herein.

13. Coming to CRP.7209 of 2017_ in the affidavit filed in support of the I.A.No.485 of 2017, petitioner herein stated about the constructions made in the second floor and eventually sought for appointment of Advocate Commissioner to note down the physical features in the second floor of the petition schedule property. Principally on the ground that the second floor, if any, does not form part of the subject matter of the suit schedule property, the learned Judge dismissed the said application.

14. In this context, it may be appropriate to refer to the Judgments cited by the learned counsel for the petitioner and the respondent. In the case of *POLAVARAPU NAGAMANI AND ORS. (supra 1)*, while dealing with the provisions of Order 39 Rules 1 and 2, 2A and Order 21 Rule 32 and Sections 94 (e) and Section 151 of the Code of Civil Procedure, a Division bench of this Court, at paragraphs 23, 24, 28 and 30, held as follows:

“23. In a second situation, as envisioned above, where a complaint is made that the order of injunction granted by the Court restraining or prohibiting the opposite party from interfering with possession, from changing the nature of land, from demolishing or constructing any structure on disputed land or interfering with the enjoyment of the land like cultivation and/or preventing the commission of positive act in breach of injunction order, the civil Court cannot pass police protection order in exercise of powers under Section 94(e) or 151 of CPC. The power of this Court to pass police protection order to prevent the disobedience of injunction order is different from the power of the Court to deal with actual disobedience. In such cases, the remedy of the aggrieved party is to file execution petition under Order XXI Rule 32 read with Order XXXIX Rule 2A of Code of Civil Procedure because as per Section 141 of the Code, all provisions of CPC, the procedure in regard to suit is applicable to all interlocutory proceedings and even an order of temporary injunction is executable. The aggrieved party can also file an application under Order XXXIX Rule 2A alleging contempt of injunction order of Court and seek imprisonment of the violator or attachment of his property. Which course is to be followed by civil Court depends on the nature of allegations made by the aggrieved in the application made to the Court seeking intervention of the Court. If the procedure is not followed and in every case an application is moved for grant of police protection and the same is granted by the Court, it would render Order XXXIX Rule 2A as well as Order XXI Rule 32 of Code of Civil Procedure otious. The civil Court cannot pass any order ignoring the specific provisions of CPC.

24. Of late, this Court has noticed that the number of suits for injunctions (classified as title suits) in all the Courts is on increase.

It is not without truth to say that more often than not frivolous suits -of injunction are filed only to bring the Defendants around the Plaintiff's view and accept the some via-media arrangement to avoid long drawn, expensive and time consuming proceedings in the Courts, during which the Defendants would not be able to enjoy the property with peace. In all such cases, ordinarily, urgent motion is moved before the civil Court, an order of ex parte injunction is obtained and waiting for a period of fortnight or so, immediately application is moved under Section 151 of Code of Civil Procedure seeking police protection. Instances are not rare where Defendants are subjected to harassment after obtaining order of injunction. The Courts in India have repeatedly held that the police have no role in civil adjudication, and therefore, the Courts should be very very cautious and vigilant not to introduce police intervention in civil adjudication in indirect manner at the instance of a clever and resourceful Plaintiffs. In view of this, we direct all the civil Courts in the State of Andhra Pradesh to exercise abundant caution in dealing with interlocutory applications filed by the party obtaining an order of injunction seeking police protection. For the guidance of all the civil Courts, we hold and lay down as under. (i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of Code of Civil Procedure seeking attachment and/or arrest of the violator for contempt of the Court. (ii) When a petition is filed seeking police protection, whether or not to exercise of power under Section 94(e) or Section 151 of CPC, the facts alleged or pleaded. An order for police protection cannot be passed in a routine manner. (iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty rights of the opposite party. (iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. Be it noted, as held by

Supreme Court in Chottu Ram v. Urvashi Gulati MANU/SC/0492/2001 : (2001) 7 SCC 530 : 2001 (6) ALT 21.2 and Anil Ratan Sarkar v. Hirak Ghosh MANU/SC/0175/2002 : (2002) 4 SCC 21 : 2002 (4) ALT 5.2 , in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self-serving statements of the party seeking the intervention of the Court.

28. From the allegations made in the application given to police officials and in the affidavit accompanying the I.A. No. 412 of 2009, it becomes very clear that the alleged incident happened on 28.07.2009, a day prior to the modified order in I.A. No. 207 of 2009, dated 29.07.2009. Paragraphs 2 and 4 extracted hereinabove do not specifically mention the date of alleged trespass by fifteen persons from Masaipet. Therefore, the allegation that Plaintiffs damaged the seed beds or trespassed into Defendants' lands is false. It is also highly improbable because admittedly all the Plaintiffs are ladies. Further first Plaintiff is a woman of seventy years and second Plaintiff aged forty years, who are residents of Hakimpet and Plaintiffs 3 and 4 are residing in Bangalore and Krishna District respectively. In the complaint given to police as well as the counter affidavit, the Defendants alleged that C.V. Balakrishna Rao, husband of third Plaintiff was behind the alleged high handed action. If such allegation is true, mere mention of the name of the husband of third Plaintiff would not be sufficient without giving details as to when he came to village from Bangalore and when after the injunction order, he violated the same.

30. From the above, it becomes clear that the trial Court did not assign any reasons for exercising drastic power to order police protection. The trial Court surmised and assumed that after the order in I.A. No. 207 of 2009 dated 29.07.2009, the Plaintiffs disobeyed the order of injunction. On the showing of Defendants, the husband of third Plaintiff and others trespassed into Defendants' land on 28.07.2009, and there was no specific allegation that they threatened the Defendants after the injunction order was passed. There was also no allegation that there was a threat of breach or disobedience of the order passed by the Court on 29.07.2009. Further more, when the application filed by Plaintiffs being I.A. No. 206 of 2009 seeking ad interim injunction

restraining the Defendants from interfering/dispossessing the Defendants (sic. Plaintiffs) from the suit schedule property is pending, the trial Court ought not to have passed the impugned order granting police protection especially when no such case is made out by Defendants. As noticed supra, even if some credence is given to the allegation of the Defendants that the husband of third Plaintiff and others violated order of injunction, it is certainly not a case for ordering police protection but it is a case wherein the Defendants can move an execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of CPC. For these reasons, we hold that the order passed by the Court below in I.A. No. 412 of 2009, dated 11.09.2009 is unsustainable as it is vitiated by error of law.”

15. Coming to the Judgments cited by the learned counsel for the respondent in *P.SHANKER RAO (supra 3)*, this Court at paragraph 3 held as under:

“3. The observations, in my considered view should be confined to the facts of that particular case. In that case, the defendant sought police protection on the ground that the plaintiff was interfering with his possession despite the fact that the temporary injunction granted earlier in favour of the plaintiff was vacated. Thus, it is not a case where the order to extend police aid was granted in order to ensure compliance with an order of injunction in force pending the suit. The mere fact that the action could be taken against either party for flouting the injunction under Order XXXIX Rule 2-A or under the Contempt of Courts Act does not come in the way of the Court taking all necessary steps for ensuring obedience of the injunction order. The Court need not wait till the injunction is breached. In a fit case, the Court can undoubtedly direct police aid as a preventive measure. This power though not expressly conferred, is a power incidental or ancillary to the exercise of the power to grant injunction pending the suit. With great respect, I am not in a position to record my concurrence with the broad observations made by the learned Judge that the civil Court cannot direct police aid for execution of its order - interlocutory or final and that the party should only have recourse to the procedure laid down under Order XXI, Rule 32 or the Contempt of Courts Act. The observations are in the nature of obiter and therefore not binding

on me. It is therefore unnecessary to refer the matter to the Division Bench, more so in view of the decision of this Court relied upon by the trial Court. I would however like to point out that the police aid should not be granted for mere asking. The Court has to be satisfied, prima facie, that there is an imminent threat of violation of interim order, if police does not intervene and that there is no other way of ensuring effective compliance. If however an alternative could be found such as, deploying an Officer of the Court to oversee the implementation of the order, the Court can avoid granting order for police aid.”

16. In *N.K.LEASING CONSTRUCTIONS LTD., HYDERABAD* (*supra 4*), this Court at paragraphs 21 and 22 held as under:

“21. For the purpose of the present case, it is sufficient to rely upon guideline Nos. 2 and 3, which enable a party to seek police aid, even in support of an order of ad interim injunction. According to them, the Civil Court can pass an order, granting police aid, if the circumstances warrant. The occasion to require the respondents to discharge the burden of proof in this regard is obviated, on account of the fact that though the petitioner was very much aware of the order of ad interim injunction, which in turn, was made absolute, it has not chosen to enter appearance or to seek vacation thereof.

22. The requirement to discharge the burden must be read in the context of the resistance offered by a respondent in an application filed for police protection. It is axiomatic that if the respondent in an application under Order XXXIX Rules 1 and 2 C.P.C. has not chosen to enter appearance and contest it, the doors of the Court cannot be shut to the petitioner to seek enforcement of the order of injunction; and permit the respondent therein to violate the same. The occasion to record evidence may arise after the respondent in such application enters appearance, and it would depend upon the nature of plea, he may take. The petitioner herein can enter appearance in the trial Court and pursue the remedies.”

17. In *VANGETI BAL REDDY AND OTHERS* (*supra 5*), this Court at paragraph 9 held as under:

“9. The guidelines given by the Division Bench of this Court did not give any room for doubt that application seeking police aid for threat of breach, disobedience or violation of order of injunction is maintainable. Once the order is breached or disobeyed, then the party has to take recourse to Order 39, Rule 2-A or under Order 21, Rule 32 CPC. As on this day the complaint of the petitioners/plaintiffs is a threat of violation of the ad interim injunction. Admittedly, the respondents/defendants are not in possession of the property. This factual aspect can be inferred in view of the dismissal of their application filed before the Mandal Revenue Officer seeking restoration of the land vide order, dated 21.01.2006, passed in Case No. F2/7696/2003, on the file of the Joint Collector-II, Ranga Reddy District, Hyderabad, and the order, dated 13.03.2006, passed in C.R.P. No. 1015 of 2006.”

18. A reading of the above judgments and the principles laid down therein would clearly demonstrate that the Courts are empowered to grant police aid in deserving cases and the said power is required to be exercised with utmost care, caution and circumspection and the said power cannot be exercised in a routine and mechanical manner. The guidelines prescribed/laid down in the judgment in *POLAVARAPU NAGAMANI AND ORS. (supra 1)*, clearly demonstrates that the police protection cannot be granted in a routine manner.

19. Even in the case cited by the learned counsel for the respondent in *N.K.LEASING CONSTRUCTIONS LTD., HYDERABAD (supra 4)*, this Court held that the Civil Court can pass an order granting police aid if the circumstances warrant. As mentioned *supra*, the defendant/petitioner herein categorically mentioned in the counter affidavit filed in I.A.No.372 of 2017 that the said application was filed only with an intention to get the defendant evicted from the second floor by taking the assistance of the police. In fact, the said aspect was not considered by the Court below while dealing with the application for police aid. In the considered opinion of this Court, both the

applications i.e., I.A.Nos.372 of 2017 and 485/2017 should have been taken up simultaneously by the Court below, which would enable the Court, to come to a just conclusion in the matter. On one hand, the plaintiff is contending that the defendant obtained agreement dated 27.01.2016 forcibly and on the other hand he contends that the entire building is leased out in favour of the plaintiff. In the definite opinion of this Court, the orders passed by the Court below which are impugned in the present revisions, in the absence of proper consideration of the material on record, cannot be sustained in the eye of law. It is also a settled and well established proposition of law that unless and until the rights of the parties to a property are crystallised and it is clear to the mind of the Court that a party without any semblance of right is violating the injunction order, police aid should not be granted as held by this Court in *METTU MALYADRI v. METTU SIVAI AH⁶*.

20. For the aforesaid reasons, the revisions are allowed, setting aside the order dated 05.10.2017 passed in I.A.No.372 of 2017 in O.S.No.49 of 2017 and the order dated 15.11.2017 passed in I.A.No.485 of 2017 in O.S.No.49 of 2017, on the file of the Junior Civil Judge, Yemmiganur, Kurnool District and I.A.No.372 of 2017 and I.A.No.485 of 2017 stand restored to file for consideration of the same together afresh, in accordance with law, after giving opportunity to all the stake holders. As a sequel, the miscellaneous petitions, if any, stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:06.04.2018

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⁶ 2014 (1) ALD 704

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.Nos.7176 and 7209 of 2017

Dated: 06-04-2018

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