

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL NO.1038 of 2016

JUDGMENT: (per SK,J)

This appeal under Order 43 Rule 1 CPC arises out of the order dated 01.08.2016 passed by the learned VII Additional District Judge, Warangal, in I.A.No.340 of 2016 in O.S.No.72 of 2016. The appellants are the defendants in the said suit which was filed by the respondent herein for recovery of monies. By the order dated 01.08.2016, the trial Court directed the defendants in the suit, the appellants in this appeal, to furnish security for a sum of Rs.35,00,000/- within 48 hours from the time of receipt of the notice and in the event of their failure to furnish such security, the petition schedule property was directed to be attached.

Though this appeal was preferred against the aforestated order dated 01.08.2016, it appears that the trial Court passed a separate docket order on 01.09.2016 in I.A.No.340 of 2016 in O.S.No.72 of 2016, whereby it took note of the fact that notices had been served and that attachment before judgment was executed. The matter was adjourned to 08.09.2016 for filing of counters. Significantly, though this appeal was filed in December, 2016, the earlier order dated 01.08.2016 alone was subjected to challenge and not the later order dated 01.09.2016.

Sri A.Prabhakar Rao, learned counsel for the appellants, would however inform this Court that 'Undertaking' dated 29.08.2016 was filed by the first appellant before the trial Court stating to the effect that he was the owner and possessor of the petition schedule property and that he would not alienate the same till disposal of the I.A. Learned counsel

would further state that counters have also been filed by his clients in the subject I.A.

Notice was ordered to the respondent in the present appeal on 27.12.2016 and personal service was also permitted.

Sri A.Prabhakar Rao, learned counsel, filed a Memo in proof of service along with the returned envelope bearing the endorsement of the postal authorities that it was returned due to insufficient address.

Be it noted that the address to which the notice was sent is the same address furnished by the respondent, the plaintiff in the suit, in his plaint. Having failed to furnish a door number in his description in the plaint, the respondent cannot complain of non-service of the present notice.

In the light of the aforestated circumstances, we are of the opinion that it is for the trial Court to consider the counters filed by the respondents in the I.A., the appellants in this appeal, and the undertaking offered by the first appellant as long back as on 29.08.2016 and pass appropriate orders in the I.A. This exercise shall be completed expeditiously.

The Civil Miscellaneous Appeal is disposed of with the aforestated direction.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:09.04.2019

GJ

