

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.243 of 2020

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, aggrieved by the Docket Order dated 31.01.2020 passed by the learned Senior Civil Judge, Manthani, Karimnagar District, in SR No.CMA/7/2020 COR No.TSKA 0A0000072020, returning the petition on the ground of maintainability.

Heard learned counsel for the petitioner/defendant. In the facts of the present case, this Court does not consider it necessary to issue notice to the respondent/plaintiff. For the sake of convenience, the parties would be referred as plaintiff and defendant.

The grievance of the defendant is that in I.A.No.175/2019 in O.S.No115/2019 on the file of Additional Junior Civil Judge, Manthani, filed by the plaintiff, ad interim injunction was granted on 08.11.2019. Immediately, the defendant filed written statement, along with a counter-claim, on 21.11.2019; and at the request of learned counsel for the defendant, the matter was taken up on 21.11.2019 itself and the defendant's arguments were heard. However, at the request of the learned counsel for the plaintiff, the matter was adjourned to 26.11.2019 making it clear that till such time there shall be no extension of the ad interim injunction granted in plaintiff's favour .

Thereafter, matter came up on 08.01.2020 and the defendant's counsel was heard. However, matter was adjourned to 22.01.2020 at the request of junior counsel for the plaintiff who reported that his senior went to Karimnagar Court.

Learned counsel for the defendant submits that as the interlocutory application was not being disposed of, the defendant approached the learned Senior Civil Judge, at Manthani, by filing an appeal under Section 104 read with Order 43 Rule 1(r) of Code of Civil Procedure. The learned Senior Civil Judge, by the impugned docket order dated 31.01.2020 returned the appeal stating that the appeal is not maintainable as there is no order passed by the Court below. It was further observed in the Docket Order that the Court of Senior Civil Judge is empowered to dispose an appeal, under appellate jurisdiction, and has no jurisdiction to pass specific order on a docket order.

Learned counsel for the defendant, by placing reliance on the judgment of the Supreme Court in **A. Venkatasubbiah Naidu v. S. Chellappan**¹, would submit that it is obligatory for the Court granting ad interim injunction to dispose of the interlocutory application within thirty days in terms of Order 39 Rule 3-A of CPC and in case of violation, the appellate Court is entitled to entertain an appeal against such interlocutory application in which an ad interim order was passed by the Court below.

Having considered the submissions of learned counsel for the defendant, this Court is of the view that the judgment in **A. Venkatasubbiah Naidu (1 supra)** has no application to the facts of the present case, for the simple reason that in **A. Venkatasubbiah Naidu (1 supra)**, what has been taken into consideration is that when an injunction petition or a vacate petition is filed and the same is not disposed of within thirty days, the appellate Court shall entertain the appeal and pass orders in the appeal by treating non-passing of orders in the injunction or vacate petition by the Court below as a refusal to pass orders.

¹ (2000) 7 Supreme Court Cases 695

In the present case, the impugned docket order dated 21.11.2019 makes it explicitly clear that the matter is being adjourned to 26.11.2019 at the request of the plaintiff, however, there shall be no extension of ad interim injunction granted in favour of plaintiff. Therefore, the trial Court did not extend the ad interim injunction which was originally granted on 08.11.2019. In other words, there is no order in I.A.No.175/2019 as on date. If that be the position, orders are required to be made in I.A.No.175/2019 after hearing both the parties.

In those circumstances, the impugned order dated 21.11.2019 does not call for interference. However, the prayer of learned counsel for the defendant for a direction to the learned Additional Junior Civil Judge for expeditious disposal of I.A.No.175/2019 in O.S.No.115/2019, in which written statement and a counter-claim has been filed is reasonable.

Accordingly, the civil revision petition is disposed of with a direction to the learned Additional Junior Civil Judge to pass orders, in accordance with law, expeditiously, after hearing both the parties and considering the I.A.No.175/2019 on merits. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

06th February, 2020
KSM

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