

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.R.P.No.2164 OF 2019

ORDER:

This Civil Revision Petition is filed challenging the orders dated 08.08.2019 in I.A.No.706 of 2019 in O.S.No.23 of 2019 passed by the V Additional District Judge, Kothagudem, Khammam District.

The petitioner contends that the respondent has filed COS.No.119 of 2018 under Section 16 of the Commercial Court Act in the Commercial Court against him and that he has raised an objection regarding maintainability of above said suit and the said suit was returned by the Commercial Court vide order dated 08.07.2019. He further contends that when COS.No.119 of 2018 was pending before the Commercial Court prior to its return, there was an attachment order and in view of the orders passed by the Commercial Court on 08.07.2019, the said attachment order was closed as it was not maintainable and all the proceedings between the parties were terminated. Later, the respondent has filed O.S.No.23 of 2019 before the V Additional District Judge, Kothagudem and also moved I.A.No.706 of 2019 in the above said suit and the V Additional District Judge without adjudicating the said I.A had extended the interim orders granted by the Commercial Court until further orders, vide order dated 08.08.2019. Challenging the same, the present Civil Revision Petition is filed.

Learned counsel for the petitioner had contended that when the case before the Commercial Court has been rejected vide order dated 08.07.2019, the question of continuing the very same

attachment orders does not arise. Therefore, he contends that the orders dated 08.08.2019 passed in I.A.No.706 of 2019 in O.S.No.23 of 2019 is liable to be set aside and if at all, the V Additional District Judge has to consider the I.A. filed by the respondent, he has to follow the procedure prescribed under Order 38 Rule 5 of CPC, by giving an opportunity to the petitioner.

Learned counsel appearing for the respondent had fairly conceded that the V Additional District Judge was erroneous in continuing the interim order passed by the Commercial Court in I.A.No.1174 of 2018 in COS.No.119 of 2018.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties, is of the considered view that the orders passed by the V Additional District Judge in I.A.No.706 of 2019 in O.S.No.23 of 2019 dated 08.08.2019 are liable to be set aside and accordingly, they are set aside. However, liberty is given to the parties to pursue their remedies in accordance with law, if necessary by way of adjudication in I.A.No.706 of 2019 in O.S.No.23 of 2019.

With the above observations, the Civil Revision Petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 10-02-2020

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