

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE A.SANTHOSH REDDY**

CIVIL MISCELLANEOUS APPEAL No.771 OF 2019

JUDGMENT: *(Per Hon'ble Dr.SA,J)*

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of Civil Procedure Code, 1908, is filed by the appellants/defendants, challenging the order, dated 28.11.2018, passed in I.A.No.122 of 2018 in O.S.No.51 of 2018 by the II Additional District Judge (FTC), Mahabubnagar, whereby, the subject I.A.No.122 of 2018 filed by the respondents/plaintiffs under Order XXXIX Rule 1 (a) read with 151 CPC, seeking temporary injunction restraining the appellants/defendants from alienating the suit schedule properties or any part thereof, pending disposal of the suit, was allowed.

2. We have heard the submissions of learned counsel for both sides and perused the record.

3. For convenience of discussion, the parties are hereinafter referred to, as per their array in the subject O.S.No.51 of 2018.

4. Initially the subject O.S.No.51 of 2018 was filed by the plaintiffs for specific performance of contract dated 22.01.2018 and alternatively for damages and compensation of Rs.80,00,000/- which include refund

of earnest money with future interest @ 18% per annum. In the said suit, the plaintiffs filed subject I.A.No.122 of 2018 seeking temporary injunction restraining the defendants from alienating the suit schedule properties or any part thereof, pending disposal of the suit. The said IA was allowed by the Court below *vide* impugned order dated 28.11.2018, which lead to the filing of this appeal by the defendants.

5. Learned counsel for the appellants/defendants would contend that as per the agreement of sale dated 22.01.2018, time is essence of the contract. The balance sale consideration of Rs.80,50,000/- ought to have been paid within 60 days from the date of agreement of sale, which was not paid. Furthermore, the plaintiffs did not establish their readiness and willingness to pay the balance sale consideration. No document to show the availability of the money either with the plaintiffs or with the Bank was made out. Without adverting to the same, the Court below was pleased to grant temporary injunction *vide* impugned order dated 28.11.2018, restraining the defendants from alienating the suit schedule property and ultimately prayed to set aside the impugned order and dismiss the subject suit in I.A.No.122 of 2018 in O.S.No.51 of 2018. Learned counsel alternatively requested this Court to direct the Court below to dispose of the subject suit in O.S.No.51 of 2018, expeditiously.

6. On the other hand, learned counsel for the respondents/plaintiffs would contend that time is not an essence of contract. There is payment of a huge amount of Rs.26,00,000/- under agreement of sale dated 22.01.2018. The plaintiffs were always ready and willing to perform their part of contract, but it is the defendants who were not ready and willing to perform their part of contract. The defendants failed to receive the balance sale consideration and execute proper conveyance deed in favour of the plaintiffs. The Court below adverting to the submissions made by both sides in the subject application rightly held that the plaintiffs have made out all the basic ingredients for grant of temporary injunction. There is no illegality in the impugned order to vary the same and ultimately, prayed to dismiss the appeal.

7. In view of the above submissions, the point that needs to be answered in this appeal is as follows:

Whether the impugned order and decree, dated 23.11.2018, passed in I.A.No.122 of 2018 in O.S.No.51 of 2018 by the II-Additional District Judge, Mahabubnagar, is liable to be set aside?

POINT:-

8. The Court below while advertng to the *prima-facie* case and balance of convenience, has placed reliance over the agreement of sale dated 22.01.2018, wherein, an amount of Rs.26,00,000/- was paid towards earnest money out of the agreed sale consideration by the respondents/plaintiffs. The question that raised before this Court is whether time is essence of contract or not. Whether time is essence of contract or not is a question which is required to be determined by the Court below, when the subject suit is finally determined after conclusion of the trial and it is not appropriate to express any opinion in relation to said question.

9. The suit is of the year 2018 and it is ripened for disposal. The Court below while advertng to the material documents on record i.e., Ex.P1-original Agreement of sale, dated 22.01.2018. Ex.P2-office copy of legal notice, dated 02.06.2018, Ex.P3-original postal receipts, Ex.P4-is served copy of notice, Ex.P5-postal cover addressed to plaintiff no.1, Ex.P6-office copy of legal notice, dated 08.06.2018. Ex.P7 is postal receipts. Ex.P8 is postal acknowledgments and Ex.P9 is served copy of reply notice got issued by defendants and arrived at conclusion that there is *prima-facie* case and balance of convenience in favour of

plaintiffs and was pleased to grant relief of temporary injunction restraining the appellants/defendants from alienating the suit schedule properties or any part thereof, pending disposal of the suit. It is pertinent to note that where there is admitted agreement of sale dated 22.01.2018 in relation to the subject property, the subject property needs to be protected till the disposal of the suit, otherwise, it may lead to multiplicity of the litigations. The Court below has also assigned sufficient reasons for granting the relief as sought for by the plaintiffs in the subject I.A.No.122 of 2018. In view of these circumstances and material documents on record, it is not appropriate to vary the impugned order.

10. However, since the subject suit is of the year 2018, the learned II Additional District Judge (FTC), Mahabubnagar, is directed to dispose of the subject Suit in O.S.No.51 of 2018, pending on its file, within a period of six (6) months from the date of receipt of a copy of this judgment, in accordance with law. It is made clear that the Court below shall not get influenced by any of the observations made hereinabove and shall dispose of the subject Suit, independently, basing on the evidence available on record.

11. With the above direction/observation, this appeal is disposed of.

No costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

A.SANTHOSH REDDY, J

Date: 26.12.2022
PNS / SSP