

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CIVIL REVISION PETITION No.3081 of 2022

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.2, challenging the order, dated 17.02.2021, passed in I.A.No.208 of 2021 in O.S.No.197 of 2021 by the Special Assistant Agent and Sub-Divisional Magistrate (Mobile Court) at Bhadrachalam (for short, 'Agency Court').

2. Heard Sri Mummineni Srinivasa Rao, learned counsel for the petitioner/defendant No.2, Sri Kowturu Pavan Kumar, learned counsel for the respondent No.1/plaintiff and perused the record.

3. For the sake of convenience, the parties are hereinafter referred to, as per their array in the subject O.S.No.197 of 2021.

4. The plaintiff filed the subject O.S.No.197 of 2021 against the defendants seeking perpetual injunction under Section 38 of the Specific Relief Act, along with the subject I.A.No.208 of 2021 seeking temporary injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the

petition schedule land, viz., Ac.0.06 guntas in Survey No.64/1472 situated at Ram Nagar area of Samithi Singaram Revenue Village, Manuguru Mandal, Bhadradi Kothagudem District. The Agency Court granted an *ex parte* temporary injunction restraining the defendants and their men from interfering with the possession and enjoyment of the plaintiff over the petition schedule land until further orders and also marked a copy of the said order to the police concerned for necessary protection for the petition schedule land. Aggrieved by the same, the defendant No.1 filed this Civil Revision Petition.

5. Learned counsel for the petitioner/defendant No.1 would submit that the order under challenge is a non-speaking order, cryptic, bereft of reasoning and cannot withstand the test of judicial scrutiny. It is against the scope and intent of Order XXXIX Rule 3 of CPC. Without verifying the actual possession of the petition schedule land as on the date of filing of the suit, the Agency Court granted *ex parte* temporary injunction. Further, a copy of the impugned order was also marked to the police concerned for providing necessary protection to the petition schedule land, without there being any prayer for such protection. The impugned order is against the spirit of the judgment of the Hon'ble Supreme Court in **Shiv Kumar Chadha**

Vs. Municipal Corporation of Delhi¹ and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

6. *Per contra*, learned counsel for the respondent No.1/plaintiff supported the impugned order and submits that a well-reasoned order was passed by the Agency Court. Only in order to protect the possession of the plaintiff over the petition schedule land, a direction was given to the police. There is nothing wrong in giving such direction and it is usual practice to give such direction. The order under challenge warrants no interference by this Court and ultimately prayed to dismiss the Civil Revision Petition.

7. A perusal of the affidavit filed in support of the subject I.A.No.208 of 2021 makes it clear that no request was made by the plaintiff to direct the police to protect his possession over the petition schedule land, except mentioning in paragraph 3 of the affidavit that when the defendants threatened the plaintiff, he resisted their illegal acts and reported the matter to the police concerned, but the police advised him to approach the competent Court, since it is a civil dispute. Further, the

¹ (1993) 3 SCC 161

impugned order passed by the Agency Court is cryptic and bereft of reasoning. It is incumbent upon the Agency Court to advert to the pleadings, contentions, points involved and the legal position, if any, applicable, and then to record findings supported by reasons on the points involved in the application. It is trite to observe that the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity. Giving reasons, apart from being an essential feature of the principles of natural justice, ensures transparency and fairness in the decision making process. Reasons are indicative of application of mind and giving reasons is also essential when the order is amenable to further avenues of challenge. The Agency Court granted *ex parte* temporary injunction in a mechanical fashion by merely mentioning that there is a *prima facie* case and balance of convenience in favour of the plaintiff. In **Shiv Kumar Chadha**'s case *supra*, the Hon'ble Apex Court held that even for passing an *ex parte* injunction order, the Court must assign reasons. Further, the Agency Court marked a copy of the impugned order to the Station House Officer, Manuguru Police Station, for necessary protection for the petition schedule land, without there being any such request by the plaintiff. Viewed thus, the Agency

Court has committed jurisdictional error in passing the impugned order, which is against the spirit of law laid down by the Hon'ble Supreme Court in the decision cited *supra*. Under these circumstances, the defendant No.1 had no other remedy except to approach this Court under Article 227 of the Constitution of India by filing the present Civil Revision Petition, as the order impugned is passed on an application filed under Rule 42(c) of T.S.Agency Rules and against such orders, this Civil Revision Petition, under Article 227 of the Constitution of India, is maintainable before this Court. Under these circumstances, this Court is of the considered opinion that if the impugned order is set aside and the matter is remitted to the Agency Court for disposal of the subject IA afresh after affording opportunity of hearing to both the parties, the same would meet the ends of justice.

8. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order, dated 17.02.2021, passed in I.A.No.208 of 2021 in O.S.No.197 of 2021 by the Special Assistant Agent and Sub-Divisional Magistrate (Mobile Court) at Bhadrachalam. The matter is remitted to the Agency Court with a direction to dispose of the subject I.A.No.208 of 2021 afresh,

considering the principles laid down by the Hon'ble Apex Court in **Shiv Kumar Chadha's** case *supra* and after affording opportunity to both the parties to advance their submissions. Till such time, both the parties are directed to maintain *status quo* with regard to the possession of the petition schedule land, which course would sub-serve the ends of justice.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

JUVVADI SRIDEVI, J

10th February, 2023
KSK