

Muddana Subba Reddy Vs. Muddana Kullayi Reddy

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Court : Andhra Pradesh

Decided On : Oct-07-2005

Reported in : 2006(1)ALT18

Judge : P.S. Narayana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21 Rule 32(1) - Order 41, Rule 5 and 5(1)

Appeal No. : C.R.P. No. 5037 of 2005

Appellant : Muddana Subba Reddy

Respondent : Muddana Kullayi Reddy

Advocate for Def. : V. Dyumani, Adv.

Advocate for Pet/Ap. : P. Veera Reddy, Adv.

Judgement :

ORDER

P.S. Narayana, J.

1. Heard Sri P. Veera Reddy, learned counsel representing the revision petitioner and Smt. Dyumani, learned counsel who has lodged caveat.

2. The matter is coming up for admission. Sri P. Veera Reddy, learned counsel representing the revision petitioner would contend that the learned II Additional District Judge, Kadapa, at Proddutur had erred in granting the stay of operation of the decree and judgment made in O.S. No. 61 of 2002 on the file of the Junior Civil Judge, Jammalamadugu, under Order 41, Rule 5 of C.P.C. The learned counsel would contend that the revision petitioner was successful in getting a decree for perpetual injunction and also mandatory injunction and without proper appreciation of the facts of the case, the learned Judge improperly exercised the discretion and granted stay and hence, the said order to be interfered with.

3. Per contra, Smt. Dyumani, learned counsel who lodged the caveat, opposed the same on the ground that at paras 5 and 6, reasons had been recorded by the learned Judge after framing the point for consideration at para 4 and this being a discretionary order, unless any illegality is pointed out, the same need not be disturbed while exercising the revisional jurisdiction.

4. Heard the learned counsel on record.

5. The respondent herein, namely, M. Kullaya Reddy, the appellant in A.S. No. 14 of 2005 on the file of the II Additional District Judge, Kadapa at Proddatur, filed I.A. No. 527 of 2005 under Order 41, Rule 5 of CPC, praying the Court to grant stay of operation of the decree and judgment made in O.S. No. 61 of 2002 on the file of the Junior Civil Judge, Jammalamadugu, pending disposal of the appeal. The reasons in detail had been narrated in the affidavit filed in support of the said application and the same was resisted by the revision petitioner herein (the respondent in the said application) by filing counter in detail. The learned Judge having framed the point for consideration at para 4, recorded reasons at paras 5 and 6 and ultimately granted stay of operation of the decree till the disposal of the appeal. Hence, the present civil revision petition.

6. As can be seen from the facts of the case, this is a matter where the revision petitioner as plaintiff in O.S. No. 61 of 2002 on the file of the Junior Civil Judge, Jammalamadugu, obtained a decree for perpetual injunction and also mandatory injunction. The reasons in detail had been recorded by the learned Judge while granting stay of operation of the decree. In view of Order 41, Rule 5 read with

Order 21 Rule 32(1) of CPC, the decree for perpetual injunction is an executable decree and hence, the same can be stayed. The said view was expressed in M. Ramachandra Reddy v. Challa Janaki and Ors. 1984(1) ALT 387. It is true that in Pothuru Venkata Rama Raju v. Yandra Venkata Narasayya and Ors. : 1997(5)ALT766 , another learned Judge of this Court came to the conclusion that a decree for perpetual injunction is not executable and hence, the same cannot be stayed under Order 41 Rule 5 of CPC, but, it can be suspended depending upon the circumstances. In the light of the view expressed in Moolchand Yadav v. Raza Buland Sugar Company Limited, Rampur and Ors. : (1982)3SCC484 and the view expressed in M. Ramachandra Reddy v. Challa Janaki and Ors. (supra) and also referring to the view in Pothuru Venkata Rama Raju v. Yandra Venkata Narasayya and Ors. (supra), yet another learned Judge of this Court in Harichandra Prasad v. Aturi Venkatanarayana 2002(1) An.W.R. 397 (A.P.) arrived at a conclusion that where it is an order having serious consequences, the same can be stayed in exercise of discretion and it being a discretionary order, unless, the same is illegal or impermissible, it needs no disturbance at the hands of the revisional Court. In view of the same, there cannot be any controversy whatsoever that in the light of the language of Order 41 Rule 5(1) of CPC, read with Order 21 Rule 32(1) of CPC, depending upon the facts and circumstances, stay of execution of a decree of perpetual injunction also can be granted. It is needless to say that when the learned Judge exercised the discretion in a particular way, the revisional Court should be slow in disturbing the said order, unless any illegality or serious legal infirmities had been pointed out. In the present case, apart from the fact that a decree for perpetual injunction had been granted, yet another relief of mandatory injunction also had been granted, which is an additional factor.

7. Taking the over all facts and circumstances of the case into consideration, the learned Judge after recording reasons at paras 5 and 6, granted stay of execution of the decree during the pendency of the appeal. Hence, such a discretionary order need not be disturbed by this Court and accordingly, the civil revision petition being devoid of merit, the same shall stand dismissed at the stage of admission. However, it is brought to the notice of this Court that by virtue of the stay of execution of mandatory injunction, the revision petitioner is put to serious loss

since he is unable to enjoy the fruits of the decree and is placed into lot of inconvenience, in view of the urgency pleaded, the appellate Court to make an endeavour to decide the appeal finally, preferably, within a period of six months from the date of this order. No costs.

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