

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

CIVIL MISCELLANEOUS APPEAL No.89 of 2015

JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal, under Order 43 Rule 1 of C.P.C., is filed by the appellant/plaintiff aggrieved by the order and decree dated 30.01.2015 in I.A.No.535 of 2014 in O.S.No.130 of 2013 passed by the VII Additional District and Sessions Judge, Vijayawada, dismissing the application filed by her under Order 39 Rules 2 and 7 and Sections 94 and 151 of C.P.C., seeking to grant temporary injunction restraining the respondent/defendant, his men, agents, followers and legal representatives from making any constructions of raising any structures in the schedule property either personally or through the builder – M/s. DCM Constructions, Vijayawada, in pursuance of the Development Agreement dated 25.06.2014.

2. The appellant/plaintiff filed the aforesaid suit for partition and separate possession of the plaint schedule property. Pending the suit, she has filed I.A.No.535 of 2014 under Order 39 Rules 2 and 7 and Sections 94 and 151 of C.P.C., seeking to grant temporary injunction restraining the respondent/defendant, his men, agents, followers and legal representatives from making any constructions of raising any structures in the schedule property either personally or through the builder M/s. - DCM Constructions, Vijayawada, in pursuance of the Development Agreement dated 25.06.2014. After considering the material on record, the Court below,

through the impugned order dated 30.01.2015, dismissed the said application. Hence, the present appeal.

3. When the matter was called for hearing on the last occasion, it was represented by Sri P.V. Vidyasagar, learned counsel for the respondent/defendant, that the constructions are completed upto 5th Floor, except the internal works in the said floor. It was further represented that the respondent/defendant will not alienate the flats allotted to his share pursuant to the Development Agreement dated 25.06.2014, till disposal of the aforesaid suit. To that effect, the learned counsel also filed an affidavit of the respondent/defendant.

4. In view of the affidavit filed by the respondent/defendant, Sri P.R. Prasad, learned counsel for the appellant/plaintiff requests for disposal of the appeal, placing on record the aforesaid affidavit of the respondent/defendant.

5. In view of the said submission, we deem it appropriate to dispose of the Civil Miscellaneous Appeal, placing on record the statement of the respondent/defendant that except the internal works in the 5th Floor, no further construction will be taken up on and above the 5th Floor, with a further undertaking that the respondent/defendant will not alienate the flats, which fall to his share as per the Development Agreement dated 25.06.2014.

6. Further, in view of the fact that the construction in the suit schedule property is already completed and as the suit is of the year 2013, we deem it appropriate to direct the Court

below to dispose of O.S.No.130 of 2013 as expeditiously as possible, preferably within a period of six months from today.

7. Subject to the above directions, this Civil Miscellaneous Appeal is disposed of. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A. SHANKAR NARAYANA

20.07.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.89 of 2015

20.07.2015

Msr