M.S.R. PRASAD

*v.*

BOMMISETTI SUBBA RAO AND ORS.

JULY 30, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Constitution of India, 1950 :*

*Article 226—Writ petition filed to nullify the injunction granted by civil court—Maintainability of—Petitioner obtained injunction from civil court against respondent restraining him from proceeding with construction—Respondent filed writ petition against the Municipal Corporation impleading the petitioner and contending that his construction was in accordance with the permission accorded by the Corporation and he may be permitted to proceed with the construction—On an application, Single Judge directed appointment of a Commissioner—Order of Single Judge challenged by respondent in writ appeal Division Bench held that writ petition was not maintainable and it would be open to respondent to seek amendment of plaint in the civil suit and seek appropriate remedy—Held, remedy available to the petitioner in the civil suit having already been availed of, High Court rightly declined to interfere and dismissed the writ petition—Parties have been directed to approach the civil court and seek amendment of the plaint accordingly—It would not be open to petitioner to seek relief on the basis of report of the Commissioner.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 13671 of 1996.

From the Judgment and Order dated 19.6.96 of the Andhra Pradesh High Court in N.A. No. 58 of 1996.

Rajiv Dhawan, S. Udaya Kumar Sagar and Ashok, Kr. Anand for the petitioner.

The following Order of the Court was delivered :

The petitioner in the first instance invoked the jurisdiction of the civil

A Court and obtained an injunction against the respondent from proceeding with the construction said to be in violation of his easement right of air and light. The respondent filed a writ petition against the Municipal Corporation impleading the petitioner, contending that his construction was in accordance with the permission accorded by them and, therefore, he may
B be permitted to proceed with the construction. Thereafter, an application came to be filed for appointment of a Commissioner. The learned Single Judge passed an order directing the Principal District Munsiff, Vijayawada to appoint a Commissioner and after notice to the parties, the Commissioner would inspect and submit a report to the High Court whether the
C construction was in accordance with the permission granted by the Municipal Corporation or in violation thereof.

It is not in dispute that an Advocate Commissioner came to be appointed and he submitted the report. It appears that before submitting the report, the respondent seems to have filed the Civil Revision Petition
D under section 115 and obtained stay of Commissioner's submitting the report. The Commissioner, in the meantime, completed inspection and returned the warrant to the Civil Judge. The respondent filed an appeal against the order of the single Judge appointing the Commissioner before the Division Bench. The Division Bench in the impugned order pointed
E out that the writ petition was not maintainable and it would be open to the appellant to amend the plaint in the civil suit and seek appropriate remedy. Accordingly the impugned order dated June 19, 1996 came to be passed in Writ Appeal No. 58/86.

F Shri Rajeev Dhavan, learned Senior counsel for the petitioner, sought to contend that the writ appeal does not lie against the interlocutory order. We find no force in the contention. It is well settled position of law in that High Court, i.e. the High Court of Andhra Pradesh, that writ appeal would lie against the interlocutory order. It is then contended that the respondent had abused the process of law and obtained the order when the petition
G sought to avail of the report submitted by the Commissioner, the Division Bench without going into the report has directed him to avail the remedy in the civil suit. We do not find any force in the contention. In view of the fact that the remedy available to the petitioner in the civil suit has already been availed of, the High Court has rightly declined to interfere and
H dismissed the writ petition of the respondent. While disposing of the writ

appeal, High Court directed the parties to approach the civil Court and of avail the remedy by amending the plaint accordingly. Therefore, it would not be open to the petitioner to have plaint amended suitably and seek appropriate relief on the basis of the report of the Commissioner. A

The petition is dismissed accordingly. The lower court is directed to dispose of the suit as expeditiously as possible within four months from the dated of receipt of this order. B

R.P. Petition dismissed.