
(1997) 11 AP CK 0095

In the Andhra Pradesh High Court

Case No : Rev. Civil Miscellaneous Petition No. 7775 of 1997

A. Vijaya Kumar and Others

APPELLANT

Vs

Y.M.C.A. of Greater Hyderabad

RESPONDENT

Date of Decision : 04-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (1997) 6 ALT 401 : (1997) 3 APLJ 412

Hon'ble Judges : R.M. Bapat, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy and N.C. Das, for the Appellant; S. Ashok Anand Kumar and P. Raja Ernes, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Bapat, J.—The review petitioners herein were the appellants in CM. A.No. 730 of 1997 on the file of this Court. The review petition is filed by the review petitioners herein for reviewing the Order dated 22-4-1997. By hearing both sides and with the consent of both the parties, the following order was passed. "Heard both the sides. Both the sides are restrained from operating bank account. The respondent herein can carry out the other activities of Y.M.C.A. The learned Counsel for the respondent herein submits that without operating the bank account, the respondent herein will make arrangements to pay the salary of the employees of Y.M.C.A. The learned Chief Judge, City Civil Court, Hyderabad is directed to dispose of O.S.No. 915 of 1996 within a period of two months from the date of receipt of a copy of this order. With this direction, the main appeal is disposed of. No costs." As stated earlier, this order was passed on 22-4-1997 with the consent of both the parties, whereas the review petition is filed on 9-6-1997.

2. Initially the review petitioners herein filed an affidavit stating that it was not a consent order. Finally one of the review petitioners herein filed an affidavit dated 8-9-1997 accepting that their Counsel had given consent for passing the consent

order. But it is further stated that though the consent order was passed, it is not binding on them and the various reasons have been stated by him in the affidavit. While rebutting the aforesaid arguments, the respondent in the review petition stated that the affidavit dated 8-9-1997 is based upon on factual basis and not on legal grounds and the same runs contrary to the directions given by the Hon''ble Court earlier and therefore it deserves to be dismissed and ignored.

3. The learned Senior Counsel Mr. N.V. Suryanarayana Murthy appearing on behalf of the review petitioners herein relied upon a ruling reported in *Moran Mar Bassellos Catholicos and Anr. v. Most Rev. Mar Poulouse Athanasius and Ors.*, AIR 1954 SC 526. At para 38 of the judgment, their Lordships held as follows:

" XX XX XX XX XX XX XX XX If the defendants had not gone out of the Church by asserting that a Catholicate had been established, that the Catholicos can ordain Metropolitans and consecrate Morone then they should have considered whether by denying these assertions the plaintiffs had not gone out of the Church. This they failed to do. They could not properly decline to go into the question of fact on account of the admission of the defendants Advocate that the plaintiffs remained in the Church. Such admission at best was an admission as to the cannon law and the decision that the defendants had voluntarily gone out of the Church even in the absence of an ecclesiastical verdict necessarily implies that the concession made by the defendants" Advocate requiring an ecclesiastical verdict as a condition precedent to voluntary separation also was obviously wrong and an erroneous concession of law made by the defendants" Advocate could not be relied upon for saving the plaintiffs. The facts, therefore, that cross-objection No. 11 filed in the High Court by the defendants does not appear to have been pressed makes no difference. In our opinion, for reasons stated above, this head of objection raised by the learned Advocate for the Appellants before us is well-founded and the judgments of the majority Judges are vitiated by an error of a kind which is sufficient reason within the meaning of the CPC for allowing the review."

The learned Counsel for the review petitioners herein also relied upon a ruling reported in *Gangamma v. V. Venkanna* 1954 ALT 214 : 1955 An.W.R. 71 : AIR 1957 A.P. 481 in which at paras 2 and 3, His Lordship held as follows:

"2. When the suit was taken up for hearing by the District Munsif, an adjournment was applied for by the defendant. The adjournment having been refused, the suit was proceeded with but was dismissed. When the appeal came on for hearing in the first instance, it was argued by Sri Padmanabhan on behalf of Sri Kesava Rao, the Advocate on record. It appears from the affidavits filed by both the advocates that Sri Padmanabhan failed to point out that the suit was heard without taking evidence on behalf of the defendant and that the proper course was to remand the case to the District Munsif.

The review application was based on the main ground that there was a mistake of Counsel who appeared in the appeal. The learned Subordinate Judge accepted

the statements contained in the affidavits filed by both the Advocates appearing for the respondent. As pointed out by Patanjali Sastri J., in *Rekanti Chinna Govinda Chettyar and Others Vs. S. Varadappa Chettyar and Others*, (A) the mistake of Counsel would be a sufficient ground for granting review under 0.47 R.I C.P.C. The head note correctly sets out the point decided by the learned Judge and is in the following terms:

"The misapprehension owing to which respondent's Counsel did not urge all his arguments in support of the finding recorded in favour of his clients by the first Court and the consequent erroneous decision on the part of the Subordinate Judge that the Counsel had no arguments to urge to meet the points raised by the appellant's Counsel are analogous to errors apparent on the face of the record so as to be a sufficient reason for review under Order 47 Rule 1 C.P.C"

3. I respectfully follow that judgment and hold that the Subordinate Judge acted rightly in allowing the review application. Having allowed the review application, the Subordinate Judge acted properly in remanding the case to the District Munsif for giving an opportunity to the defendant to make out his defence. I, therefore, agree with the decision of the lower appellate Court and dismiss the appeals. There will be no order as to costs."

4. The learned Counsel for the review petitioners herein further relied upon a ruling reported in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, in which their Lordships held in para 4 as follows;

"When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." (Per Lord Atkinson in *Somasundaran v. Subramnian* AIR 1926 P.C. 136). We are bound to accept the statement of the Judges recorded in their judgment as to what transpired in Court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party. While the matter is still fresh in the minds of the Judges to call the attention of the very Judges who have made the record to the

fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati* AIR 1917 P.C. 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

5. The learned Counsel for the review petitioners herein further relied upon a ruling reported in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, . In para 6 of the Judgment their Lordships were pleased to observe as follows:

"Sri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private discipline, or whatever is left of it, leading to serious impasses in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the *prima facie* legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions."

6. The learned Counsel for the review petitioners herein further relied upon a ruling reported in *Chelikani Nageswara Rao v. Chelikani Raja Mohan Rao and Ors.* 1989 (1) ALT 539. In para 14 of the judgment, their Lordships of this Court were pleased to observe as follows:

"Under Section 61(3)(b) of the Act, every dispute, not only relating to but also in connection with an election dispute can be adjudicated by the District Munsif. We shall assume in the light of the observations of the Division Bench in the earlier writ petition and of the Supreme Court in the S.L.P., that it will be open to the learned District Munsif not only to find out whether the election held on 11-7-1987 is valid but also whether the poll that took place on 28-6-1987 is valid whether it was wrongly adjourned and whether the orders of the election officer dt.3-7-1987 were valid? Even so, we are of the view that it is not proper for the Court pending the main election case, to grant temporary injunction restraining successful party in the election from functioning."

7. While rebutting the aforesaid arguments of the learned Counsel for the review petitioners herein, the learned Counsel for the respondent herein Mr. S. Ashok

Anand Kumar relied upon a ruling reported in Nagar Mahapalika, Kanpur and another Vs. M/s. Sri Ram Mahadeo Prasad, . In para 3 of the judgment, their Lordships were pleased to observe as follows:

"Mr. Goyal, learned Counsel for the appellants has contended before us that the High Court has erred in maintaining the claim of the respondent by computing the period of limitation from the date of the judgment in J.K. Jute Mills case with effect from December 15, 1967 whereas it ought to have computed the period with effect from 1964, the date when this Court decided Amraoti Municipality case. According to him, the legal principles were settled in Amraoti Municipality case and were merely followed in J.K. Jute Mills case without even quashing the notification of January 1960. A close reading of J.K. Jute Mills case, reference of which has been made earlier, shows that the decision not only proceeded on the principles settled by this Court in Amraoti Municipality case but also on a clear concession made by Counsel for the Nagar Mahapalika, and somewhat in the same way, the same stance was adopted by the Counsel for the Nagar Mahapalika in the instant case before the High Court. We fail to see how the Nagar Mahapalika can get out of this concession made by its respective Counsel at appropriate stages in this case. The claim of the respondent being within limitation and u/s 72 of the Indian Contract Act, the terminal tax having been paid under mistake of Law, the inevitable consequence for the Court was to grant relief which was rightly granted. In this view of the matter, we find no force in the appeal and "dismiss the same and logically the SLP as well, identical in nature as it is, but without costs."

8. The learned Counsel further relied upon a ruling reported in Sri Sri Sri Jagannatha Swamy Varu, rep. by Executive Officer, H.R.C.E. Vs. Vana Venugopalanaidu and Others, . In para 8 of the judgment, their Lordships of this Court were pleased to observe as follows:

"But in W.P.No. 8460 of 1994 the petitioners do not seek review of the order in W.P.No. 2778 of 1981 and at any rate it is too late in the day to have the order dated 6-8-1985 in that writ petition to be reviewed now. They do not also question the statement in the said order made by the Court that it was not disputed by the Counsel for the petitioner that there was no statutory provision conferring on them a right of statutory tenants. It has to be noticed that in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , the Supreme Court has observed as follows: "We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the

judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati* - AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

This is followed in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, . More recently in *State of Maharashtra and others Vs. Admane Anita Moti and others*, , the Supreme Court has observed as follows: "it is well established that the factual recitals or observations made in a judgment or order are taken to be correct unless rebutted. The burden to rebut it is on the person who challenges it. One of the methods to rebut such observation is to file the affidavit of the person who was present in the Court and to produce such material which may satisfy the Court that the recital in the judgment crept in inadvertently or it was erroneous." In view of these authoritative pronouncements it is not possible for the petitioners to question the factum of concession made by their Counsel as observed by Upendralal Waghray, J. in his order dated 6-8-1985 in W.P.No. 2778 of 1981."

9. Considering the ratio laid down in all the above cases, this Court is of the considered view that the review petition will not be maintainable in the present set of facts. This Court distinctly remembers that the review petitioners were present in the Court when the arguments were heard in A.A.O.No. 730 of 1997. The main dispute between the review petitioners and the respondent is regarding the validity of election to Y.M.C.A. The tie between the two parties could not have been solved simply by arguments. There was also a dispute regarding operating the Bank account in which huge amounts were involved. Therefore, this Court with consent of both the parties, both were restrained from operating the Bank account. The respondent in the appeal was allowed to carry out the other activities of Y.M.C.A. The Counsel for the respondent in the appeal had submitted that the respondent will make arrangements to pay the salaries of the employees of Y.M.C.A. This submission was made by the learned Counsel for the respondent in the appeal by taking the consent of the respondent in the appeal, who was present in the Court. The matter being of election which requires the evidence for resolving the dispute between the two groups, this Court had directed the learned Chief Judge, City Civil Court, Hyderabad to dispose of O.S. No. 915 of 1996 within a period of two months from the date of receipt of the copy of this order dated 22-4-1997 and it was reported to me by both the Counsels in the review petition that the work of recording the evidence is in progress. Under these circumstances, this Court is of the considered view that the matter can only be resolved by full-fledged trial which will be completed very soon.

10. Under these circumstances, this Court is reluctant to entertain this review petition and it is accordingly dismissed. No costs.