(1998) 08 AP CK 0103

In the Andhra Pradesh High Court

Case No : CRP No. 2367 of 1998

ABC India Limited — APPELLANT

Vs

Govt. of A.P. and another — RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 24, 26

Citation : (1998) 5 ALD 399

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

Advocate : Mr. A. Kishore Rai, for the Appellant; Government Pleader for Arbitration, for the Respondent

Judgement

1. The amount of Court fee payable is in issue in this C.R.P. A suit for injunction was sought to be filed in the Court of the First Senior Civil Judge, City Civil Court. The Government of Andhra Pradesh and the Canara Bank, Guwahati Branch are the defendants in the suit. Permanent injunction against encashing and/or payment of any money under and in pursuance of bank guarantee Nos.9/94, 10/94 and 11/94 furnished by the second defendant-Bank at the instance of the petitioner, is the relief sought for in the plaint. It is not in dispute that the total amount for which the bank guarantees were furnished in connection with the execution of contract is Rs.32,82,350/-. The plaint was returned with an objection that the pecuniary value of the suit being Rs.32,82,350/-, the Court fee should be paid on that amount and the plaint must be presented in the Court having jurisdiction. It may be mentioned that the Court of Senior Civil Judge has pecuniary jurisdiction only upto Rs. Five lakhs. Challenging the correctness of the view taken by the Senior Civil Judge, the present C.R.P. is filed. During die pendency of this Revision Petition, as an interim measure, the suit was directed to be registered on payment of Court fee on the value of Rs.4.90 lakhs. In order to enable the petitioner to take steps for re-presentation and payment of Court fee, stains quo with regard to the invocation of Bank guarantee, was granted for a limited period while giving liberty to the Senior Civil Judge to pass appropriate

orders in the I.A. for temporary injunction. Now, the CRP is taken up for hearing and being disposed of.

2. A Division Bench of this Court in its decision in The Andhra Pradesh State Electricity Board, Hyderabad Vs. K. Ramachandra Reddy, , after reviewing the entire case law on the subject observed ".....that the test to be applied by the Court in valuing the relief either u/s 24(d) or Section 26(c) is to find out the advantage which is sought to be gained by the plaintiff or the loss sought to be avoided". At the same time, it was made clear that the advantage which the plaintiff seeks to gain or loss which he seeks to avoid must be decided with reference to the allegations in the plaint. In that case, one suit was filed for a mandatory injunction directing the A.P. State Electricity Board to restore connection which was earlier disconnected for non-payment of the electricity consumption charges. In another suit, the plaintiff sought injunction restraining the Board from disconnecting the supply on the ground that the plaintiff failed to pay the half the estimated charges as per the notice issued by the Board. It was observed that by asking for a declaration that the disconnection was illegal and for an injunction directing the defendants to resume the electrical connection, the plaintiff was actually avoiding the payment which was made a condition for restoring the connection to him and it was on that amount, the Court fee has to be paid either u/s 24(d) or u/s 26(c) of the A.P. Court Fees and Suits Valuation Act.

3. In the case on hand, the plaintiff''s contention is that the Government of Andhra Pradcsh should not invoke or encash the bank guarantees which were furnished by the second defendant bank at the instance of the plaintiff. The inevitable result of encashment of bank guarantees is to fasten the liability against the plaintiff to the extent of Rs. 32,82,350/- inasmuch as the said amount lias got to be paid by the plaintiff to the Bank. Thus by seeking injunction, the petitioner wants to avoid loss on account of payment of the aforementioned amount by the Bank to the Government in the first instance. Thus, the principle laid down in the case of APSEB (supra) squarely applies to the present case. The learned Counsel for the petitioner tried to distinguish that decision on the ground that mere was a demand by the Electricity Board for payment of definite amount. The position here is no different. No doubt, the occasion for invoking the bank guarantee by the State Government is the alleged breach of contract. Whether or not the Government is entitled to invoke the bank guarantee is not an issue which has to be decided here. But, what is to be noted is -- the suit is sought to be filed to avoid the direct consequence of encashment of bank guarantee, exposing die petitioner to the liability to the tune of Rs.32,82,3507-. The loss sought to be avoided is a definite, sum and is not incapable of being valued. When once the act of the first defendant in invoking the bank guarantee is interdicted, the amount for which bank guarantee was furnished is determinative of the value for the purpose of Court fee.

4. The learned Counsel for the petitioner places strong reliance on the decision of

the Neeladri Rao, J in C.R.P. No. 3250 of 1989 in Tini Pharma Pvt. Ltd. v. State of A.P., 1990 (2) ALT 7 (NRC). That was also a case of injunction suit in which relief was sought not to invoke the bank guarantees. The suit was valued nationally at Rs. 1,000/-, The learned Judge on the facts and circumstances of the case, felt diat it is not proper to insist on the valuation of die suit at a figure equivalent to the amount for which the bank guarantee was furnished and to require payment of Courts fee at a specified percentage of that value. Ultimately, a direction was given to the Court below to value the suit "keeping in view the valuation of suits for injunction in regard to die immovable property in that Court". The decision in APSEB case (supra) was distinguished on die ground that the test laid down therein cannot be applied. The reasoning given is this:

"..In this case there is no need to determine whether the claim of Rs.5,34,3007- is legal or not. It is not a case where the plaintiff seeks to avoid the payment of amount of Rs. 5,34,300/- by filing this suit. The plaintiff pleads that even if the said claim is true, D.1 cannot realise the same by invoking the bank guarantees 8785 and 9785. So it is neither a case the plaintiff gains an advantage nor it is a case of avoiding loss to the time of Rs.5,34,300/-."

The argument of the plaintiff in that case was that the bank guarantees related to another contract. It is in this context, die distinction was sought to be made. I have my own doubts whether the distinction pointed out by the learned Judge is correct. But, I need not express any view on this aspect. Suffice it to note that the learned Judge felt that the test laid down in APSEB case (supra) cannot be applied having regard to the facts situation obtaining in that case. The learned Judge was of the view that the plaintiff was not exactly avoiding the liability. No proposition was laid down that in any suit for injunction concerning the encashment of bank guarantee, the full value of the bank guarantee need not be taken into account for the puposes of Section 26(c). As far as present case is concerned, as I already observed, there is no difficulty in applying the test laid down in the case of A.P.S.E.B. (supra).

5. The other decision in K. Ramamurthy v. Executive Officer, 1996 (2) ALD 75 cited by the learned Counsel for the petitioner, has no application here. The nature of the relief sought for in the injunction suit was to restrain the defendants from laying the road.

6. I therefore, come to the conclusion that the lower Court is justified in returning the plaint on the ground of under-valuation. The C.R.P. is, therefore, dismissed. No costs.