

(1993) 06 AP CK 0031

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 977 of 1989

Aitha Ravindra

APPELLANT

Vs

Peddireddy Janardhana Reddy and Others

RESPONDENT

Date of Decision : 16-06-1993

Acts Referred:

Citation : (1993) 3 ALT 85

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : P. Sreedhar Reddy, for the Appellant; Govt. Pleader for Revenue for Respondents 1 and 2 and C.V. Nagarjuna Reddy for APSEB for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

S. Parvatha Rao, J.—The petitioner in this revision petition presented a plaint on 20-2-1989 before the learned Subordinate Judge at Kovur, showing the respondents herein as defendants, for the following reliefs:-

(a) declaring that plaintiff is not liable to pay Rs. 24,052-94 paise being the arrears of consumption charges;

(b) declaring that the plaintiff is not liable to pay Rs. 9,412-85 Paise being the penal charges of malpractice levied by Assistant Divisional Engineer, Operation, Kovur by LR. No. ADE/O/KVR/ASO/D. No. 3066/87 dated 6-10-1987;

(c) directing the respondents 3 and 4 to restore the service connection by way of mandatory injunction;

(d) granting costs of the suit; and

(e) granting such other and further reliefs as are deemed just and proper.

The plaintiff paid ad valorem court-fee in respect of reliefs (a) and (b). Objection was taken for non-payment of Court-fee for the third relief i.e., the relief of

mandatory injunction and the plaint was returned on the same day i.e, on 20-2-1989. It was represented on 21-2-1989 contending that no additional court-fee for mandatory injunction need be paid as that was only a consequential relief and reliance was placed on a decision of the Division Bench of this Court in The Andhra Pradesh State Electricity Board, Hyderabad Vs. K. Ramachandra Reddy, . The learned counsel for the petitioner was heard on 23-2-1989 and the learned Subordinate Judge directed the petition "to pay Court-fee on Rs. 24,000/- for mandatory injunction. Time one week" in C.F. No. 419 of 1989. The petitioner questions the same in the present Civil Revision Petition.

2. Suits for declaration are dealt with by Section 24 of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956. It deals with suits for declaration with or without consequential reliefs not falling u/s 25 of the said Act. We are not concerned with Section 25 because this is not a suit falling under that Section. Clause (a) of Section 24 of the said Act deals with "suits where the prayer is for a declaration and for possession of the property to which the declaration relates"; Clause (b) deals with "suits where the prayer is for declaration and for a consequential injunction and the relief sought is with reference to any immovable property" Clause (c) deals with "suits where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right"; and Clause (d) deals with all other cases "where the subject-matter of the suit is capable of valuation or note"; and it provides that fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher. None of the Clauses contemplate payment of separate court-fee for a consequential relief. The present suit falls under Clause (d) of Section 24, and the petitioner has paid the court-fee on the entire amount in respect of which a declaration has been sought.

3. The learned counsel for the petitioner relies on the decision of the Division Bench of this Court in K. Ramachandra Reddy's case (1 supra). The question that came up for consideration in the four revision petitions before the Division Bench was - what was the court-fee payable on the plaint. In one of the Civil Revision Petition (C.R.P. No. 68 of 1976), the suit was for declaring that inspection proceedings of the defendant-electricity board and disconnection of power supply was illegal and that the service connection should be restored. In another Civil Revision Petition (C.R.P. No. 49 of 1976).. the suit was for declaring that notice of disconnection was illegal and for a mandatory injunction directing the restoration of supply to the plaintiff's establishment. The Division Bench held that in each of these cases, even on the allegations in the plaint the relief had to be valued on the basis of entire amount in the case of electricity consumption charges, and half the provisional estimate in the case of pilferage. No separate court-fee was required to be paid on the consequential relief of restoration of supply whether by way of mandatory injunction or otherwise.

4. In the present case, the petitioner-plaintiff has paid ad valorem court-fee on

the entire amounts in respect of which declaration is sought. In the circumstances, he cannot be required to pay separate court-fee on the consequential relief sought by him. The question whether separate court-fee has to be paid on the consequential relief did not directly arise before the Division Bench in K. Ramachandra Reddy's case (1 supra), but the fact remains that in that case separate court-fees were not required to be paid on the consequential relief of mandatory injunction directing restoration of the supply. In this connection, it has to be noted that the Division Bench observed that the matter has to be decided with reference to the allegations in the plaint. In para 7 of the plaint it is stated as follows:-

" The plaintiff submits that the first defendant did not pay the arrears of consumption charges and the service was again disconnected on 3-8-1988. The plaintiff approached the fourth defendant for reconnection of service. The fourth defendant is demanding to pay arrears of consumption charges including surcharges amounting to Rs. 24,082-94 as on 15-2-89..... "

" The plaintiff submits that in view of the reasons mentioned above, he is not liable to pay the huge amount of Rs. 24,052-94 as on 15-2-89 and files this suit for a declaration to that effect."

In paragraph 5 of the plaint, it is stated as follows:-

"For the reasons above mentioned the Electricity Board represented by the third defendant is not entitled to levy Rs. 9,312-85 on the plaintiff. Hence the plaintiff is constrained to file this suit for a declaration that he is not liable to pay Rs. 9,312-85.....".

As per the plaint allegations the disconnection of the supply was occasioned by the non-payment of the amounts demanded and the payment of the disputed amounts was made a pre-condition for restoration of the supply. Therefore, in the present case there can be no doubt that the relief of mandatory injunction for restoration of service connection is a consequential relief.

5. In the circumstances, I am of the view that the learned Subordinate Judge was in error in directing the petitioner to pay court-fee on Rs. 24,000/- for the consequential relief of mandatory injunction and the Civil Revision Petition is, therefore, allowed, and the direction of the learned Subordinate Judge is set aside.

6. The petitioner shall be permitted to represent the plaint in the Court of the Subordinate Judge at Kovur within four weeks from today. Office is directed to return the original papers filed by the petitioner to the learned counsel for the petitioner and also to communicate this order to the lower Court within one week.