

(2008) 09 AP CK 0121
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5222 of 2007

Challa Rami Reddy

APPELLANT

Vs

Arva Yella Reddy

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 151
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 45

Citation : (2008) 6 ALD 488 : (2008) 6 ALT 225

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T.V.S. Kumar, for the Appellant; P. Veera Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—A small issue, as regards sending of a disputed document for comparison by Handwriting Expert, was made complicated by none other than the trial court itself.

2. The respondent filed O.S. No. 489 of 2006, in the court of IV Additional Junior Civil Judge, Kadapa, against the petitioner, for recovery of certain amount, on the basis of a promissory note. The petitioner disputed his thumb impression on the promissory note. He filed I.A. No. 680 of 2007, u/s 45 of the Evidence Act, with a prayer to send the promissory note, to Government Examiner, for comparison of the thumb impression. The I. A. was allowed by the trial court on 25.6.2007, directing that the document be sent to an expert at New Delhi. The petitioner was required to deposit a sum of Rs. 10,000/- within a period of 10 days, towards tentative expenditure for that purpose.

3. Petitioner filed I.A. No. 754 of 2007, with a prayer to extend the time for depositing the amount, by 10 days. The trial court dismissed the I.A. on 5.7.2007, by observing that the court has become functus officio. The said order is challenged in this CRP.

4. Sri T.V.S. Kumar, learned Counsel for the petitioner, submits that the view taken by the trial court that it has become functus officio is totally untenable in law. He contends that when the suit is pending for adjudication before it, the question of the court becoming functus officio does not arise. He further submits that a simple application filed u/s 148 C.P.C. was rejected, without any basis.

5. Sri P. Veera Reddy, learned Counsel for the respondent, submits that the petitioner failed to avail the benefit extended to him under the order passed in I.A. No. 680 of 2007, and that no exception can be taken to the order under revision.

6. The suit is based upon a promissory note, said to have been executed by the petitioner. In his written statement, the petitioner flatly denied the genuinity of the promissory note and stated that he did not put his thumb impression upon the document. Since what is in dispute is thumb impression, the court itself could have undertaken comparison of the same, with a little endeavour, or at the most, would have sent it to the nearest Forensic Science Laboratory of the Government, or Director of Finger Prints. In fact, the prayer of the petitioner was that the document be sent to Government Expert, for comparison. The trial court, however, directed that the document be sent to Mr. P.T. Ashok Kasyap, New Delhi. The petitioner was directed to deposit a sum of Rs. 10,000/- within 10 days. It is not evident from the order in I.A. No. 680 of 2007, as to what prompted the trial court to direct the document for comparison, to an agency other than the one, named by the petitioner. That, however, is a different aspect.

7. The petitioner filed I.A. No. 754 of 2007, with a prayer to extend the time for depositing of the amount, by 10 days. The order passed by the trial court on this application, reads as under:

Heard. This Court passed a conditional order. As per it, if the amount is not deposited on or before 5.7.2008, the order in I.A. No. 680 of 2007 shall stand vacated. It shows that this Court has become functus officio. Therefore, this petition is dismissed.

The trial court does not appear to be having an idea, as to when it would become functus officio. It is only when a case, arising under a special enactment, is handled by a court and the case has been finally decided, that it becomes functus officio. Such an eventuality does not occur, when a civil court deals with suits. Further, it is rather unthinkable that a court, before which the suit is still pending, would become functus officio, simply because the applicant in an I.A. failed to comply with the conditions imposed in the order passed therein.

8. The prayer made by the petitioner was for extension of time for depositing the amount. The very purpose of enacting Section 148 CPC was to enable the parties to seek, and the court, to grant extension of time, depending on the facts. Even otherwise, the court had discretionary power u/s 151 CPC, in this regard. The trial court ought to have exhibited little patience and care, instead of dismissing an otherwise innocuous application, through a cryptic order, that too, on wrong

notion of fact and law.

9. The CRP is, accordingly, allowed. The order under revision is set aside. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court revises the order in I.A. No. 680 of 2007 also, and directs that the document in question shall be sent to the Director of Finger Prints, Government of Andhra Pradesh, leaving it open to the petitioner, to pay the prescribed fee

10. The time, within which such an exercise shall be completed, shall be stipulated by the trial court, while forwarding the document; through an order, to be passed, within two weeks from the date of receipt of a copy of this order. There shall be no order as to costs.