

(1983) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ appeal No. 967 and 1093 of 1982

Chittoor Co-operative Town Bank Ltd.

APPELLANT

Vs

T. Krishnaiah Chetty and Another

RESPONDENT

Date of Decision : 20-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Constitution of India, 1950 — Article 226

Writ Proceedings Rules, 1977 — Rule 17, 18, 19, 24

Citation : AIR 1983 AP 259 : (1983) 1 ALT 208 : (1983) 1 APLJ 193

Hon'ble Judges : K. Madhava Reddy, Acting C.J.; Lakshmana Rao, J

Bench : Division Bench

Advocate : R.V. Subba Rao and A. Panduranga Rao, for the Appellant; A. panduranga Rao, R.V. Subbarao and Government Pleader, for the Respondent

Judgement

Madhava Reddy, Actg.C.J.

1. W.A. No. 967/82 is filed on 8-11-1982 by the chittoor co-operative Town Bank Ltd. Against the Judgment of our learned brother Raghuvir, J. Dated 9-9-1982 in W.P. No. 6164/82 directing the deputy Registrar. Who is appointed as Arbitrator to adjudicate the liability of the Ist respondent therein and to pass an award to proceed with the enquiry, prepare an award but not pronounce it till the disposal of the civil suit O.s. No. 1011/81 on the file of the First Additional District Munsif, Chittoor.

2. The writ petition was disposed of at the admission stage after hearing the learned Government pleader but not the bank. The writ petitioner, at whose instance the above direction was issued, has also filed "cross writ appeal on 30-11-1982 which was numbered as W.A. No. 1093/82.

3. The few facts necessary to appreciate the contentions raised in these matters may be briefly noticed. It would be convenient to refer to the parties as they are arrayed in the writ petition. The writ petitioner entered the service of the chittoor co-operative Town Bank Ltd. Ist respondent in the writ petition in the year 1942

and has been working as Jewel appraiser from 1974 on 3-3-1980 at 0-9-45 Hrs. When he was valuing jewels, in the discharge of his duties as appraiser within the Bank premises in the presence of one of the customers, who had offered his jewels for pledge, a miscreant entered the premises and snatched away five bags containing jewels from the iron safe. When an alarm was raised by the petitioner and others the gates of the bank were closed but the miscreants managed to escape Immediately without losing any time. A written report was given to the secretary of the Ist respondent Bank and on the same day the assistant secretary who was in charge as secretary sent a complaint to the I Town police station, Chittoor giving the details of the theft. On the same day the Ist respondent bank issued a memo to the writ petitioner calling upon him to submit a detailed explanation as to circumstances in which the theft had occurred. The writ petitioner gave a detailed explanation on 19-3-1980 setting forth all the circumstances. No further action was taken against the writ petitioner for almost one year and nine months. On 22-12-1981 a memo placing the petitioner under suspension pending enquiry into the matter was issued to the petitioner. Thereupon the writ petitioner filed a suit O. S. 1011/79 in the Court of the first Additional District Munsif chittoor for a declaration that the proceeding of the Ist respondent dated 22-12-1981 suspending him from service were illegal and null and void. He also sought an interim mandatory injunction sought an interim mandatory injunction directing the Ist respondent to reinstate him in service in I.A. No. 2074/81. The learned First additional District Munsif granted an interim mandatory injunction prayed for on 28-12-1981 and the writ petitioner was reinstated in service. That order was made absolute on 21-1-1982 after hearing the Ist respondent Bank Aggrieved by that order. The Bank filed two civil Miscellaneous appeals. C.M.A. Nos. 23 and 24 of 1982 in the Court of the District Judge chittoor, which are pending disposal. While so on 8-3-1982 the Bank issued a notice to show cause why disciplinary action should not be taken against him for the theft which had occurred on account of his negligence and why the loss occasioned to it should not be recovered from him. The writ petitioner submitted his explanation on 12-3-1982 denying the proceeding that the theft was not the result of any negligence on his part. However the bank filed a claim petition 21/81-82 and the same was referred to the deputy Registrar of co-operative societies, 2nd respondent herein who was appointed as an Arbitrator. In that petition the Bank laid a claim for the recovery of a sum of Rs 26, 834/- from the writ petitioner simultaneously it also filed E.P. 1/82 under Sec. 73 of the A.P. Co-operative societies Act for attachment of the petitioner's properties. By an order dated 20-5-1982 the Deputy Registrar of co-operative societies directed attachment of the petitioner's properties till security was furnished. The writ petitioner filed a written statement before the Deputy Registrar denying the liability and seeking release of the attachment. At that stage he moved the High Court under Art. 226 of the Constitution of India for a writ of prohibits against the Deputy Registrar-cum-Arbitrator not to proceed with the enquiry pending the disposal of O. S. 1011/79 our learned brother disposed of the said petition with the direction mentioned above.

4. Although the writ petition was not allowed in its entirety the direction issued and he did not choose to prefer any appeal. The direction issued by this Court operated against the interests of the Bank and since the bank was not heard before the direction was issued it felt aggrieved and filed a cross writ appeal apprehending that the order made by the learned single judge may be held to have become final so far as he is concerned.

5. Mr. R. V. Subbarao, learned counsel for the 1st respondent raised a preliminary objection as to the maintainability of the writ appeal No. 1093/82. He contends that there is no provision under the rules framed by the High Court under art. 226 of the Constitution read with Article 226 for filing a cross Writ appeal". Since W.A. No. 1093/82 is filed on 30-11-1982 against the order dated 9-9-1982, it is barred by time. It could be only treated as an independent appeal and since no petition for condoning the delay in preferring the appeal has been filed the writ appeal should be dismissed in limine as barred by time.

6. We are however unable to agree with this contention. May be if it is treated as an independent writ appeal directed against the order of the learned single Judge dated 9-9-1982, it is barred by time for the period for preferring an appeal is only 30 days from the date of the order. However the writ petitioner has not chosen to file a writ appeal. He has filed a "Cross-objections" as contemplated by O. 41 R. 22 C.P.C. Even so Mr. R. V. Subba Rao learned counsel for the 1st Respondent Bank argues that in the absence of a specific provision in the rules. These cross-objections cannot be entertained.

7. The writ appeal is filed under Clause 15 of the letters patent and Rules 17, 18 and 19 of the writ proceedings rules provide for the form in which the writ appeal may be filed. That a writ appeal against an order lies and in fact the 1st respondent Bank has itself preferred on appeal and this writ appeal is governed by cl. 15. Of the letters patent is not in dispute the only question is whether cross-objections are also entertainable. Merely because in the rules governing the writ proceedings there is no specific clause providing for the filing of cross-objections. It cannot be concluded that the other provisions of the civil procedure code, which are made applicable not only to writ petitions but also to writ appeals under R. 24 of the said rules. Should be ignored. R. 24 reads as follows:-

All other rules relating to causes and matters coming before the original side and appellate side of the High Court and the provisions of the CPC 1908 will apply to the writ petitions and the writ appeals in so far as they are not inconsistent with these rules.

It would be pertinent to note that the CPC is made applicable not only to matters coming on the original side but also on the appellate side and not only to matters coming on the original side but also on the appellate side and not only to writ petitions but also to writ appeals. The only limitation placed on the scope of the application of the CPC is that the provisions of the CPC should not be inconsistent with the specific provisions made under the writ proceedings Rules 1977.

8. Under O. 41 R. 22 of the CPC there is a specific provision for the filing of cross-objections. These provisions admittedly apply to all appeals filed under Cl. 15 of the Letters patent. So much so against the Judgment rendered by the learned single judge upon a first appeal when a letters patent appeal is filed in that Letters patent appeal, cross-objections could be filed by the respondent therein. We fail to see how and when the writ appeal also is filed under clause 15 of the letters patent. The provisions of order 41, Rule 22 C.P.C. could be excluded there is no rule are silent as to whether cross-objections could be filed or not we may add that the writ proceedings rules by themselves do not provide any remedy. They regulate the proceedings which may be instituted by virtue of some other provisions of substantive law. The writ petitions are filed under art. 226 of the Constitution and the writ appeals are filed under clause 15 of the letters patent. It is to govern these proceedings that the writ proceedings rules have been framed. This was necessitated for the reason that in the Appellate side Rules, there is no specific provision governing the writ petitions. Moreover special procedure had to be devised for regulating the petitions filed before this Court of the original side invoking the extraordinary jurisdiction of the High Court . the rules are procedural rules and do not confer or take away the substantive right of appeal or the right of filing cross-objections. On the other hand, there is an express provision in R. 24 that in relation to causes and matters coming up before the High Court on the original side or the appellate side. The provisions of the CPC will govern. We, therefore, feel no hesitation in holding that the writ appeal being a proceeding on the appellate side of the High Court and being a civil proceeding, the provisions of the CPC would apply and O. 41 R. 22 C.P.C which makes a provisions for the filing of cross-objections would therefore equally apply to a writ appeal. Consequently, the cross-objections, which in this case is termed as "Cross writ appeal". Are maintainable. The mere fact that it has been numbered as an independent writ appeal does not affect the character of the petition filed by the writ petitioner. The "Cross writ appeal" is accordingly treated as "Cross objections" under O. 41 R. 22 C.P.C. and the same having been filed before expiry of thirty days of the filing of the main writ appeal 967/82 no question of limitation arises, in this view of the matter the preliminary objection as to maintainability of writ appeal 1093 of 82 is overruled.

9. Coming to the merits of the writ petition and the order under appeal except for a slight modification we do not think that any exception can be taken to the direction issued by the learned single Judge, Both in the civil suit in which the order of suspension pending enquiry into the charges and in the claim petition No. 21/81-82 where a sum of Rs. 26.834/- is claimed is the common issue for determination whether the writ petitioner was negligent in discharge of his duties the civil Court is also in seisin of the matter and the civil Court is the better Judge of such an issue. The matter was raised before the civil Court long before the claim petition before the Deputy Registrar was filed and taken up for enquiry. Parallel enquiry into the same issue by two different authorities, one judicial authority. Apart from being inappropriate is likely to cause prejudice to the

person concerned in both these matters viz., the writ petitioner. There is also likelihood of inconsistent finding being arrived at in regard to the same incident which constitutes the cause of action for the claim petition. As well as the order of suspension pending enquiry which formed the subject-matter of the civil suit It is therefore in the fitness of things that the civil suit which was instituted before the Additional district Munsif should be allowed to be proceeded with Further to obviate delay. While the deputy Registrar, Co-operative societies cum-Arbitrator may proceed with the award enquiry he shall have to be directed not to award or pronounce the same till the disposal of the civil suit, after the civil Court finally disposes of the matter. The Deputy Registrar-cum-Arbitrator may proceed with the claim petition pending enquiry before him in the light of all the material placed before him including the judgment and findings of the civil Court. We therefore confirm the direction issued by the learned single Judge that the award enquiry be proceeded with but set aside the further direction that the arbitrator may prepare the award and instead, direct that the Deputy registrar-cum-Arbitrator shall not prepare the award and pronounce it until the final disposal of the civil suit and shall proceed to make the award after the final disposal of the suit and after taking into consideration the findings and decision given by the civil Court and after making such further enquiry as he deems fit.

10. In the result, W. A. No. 967/82 is dismissed. W.a. No. 1093/82 which is treated as "Cross Writ appeal" or cross-objections is allowed to the extent indicated above and the modified direction shall issue. There will be no order as to costs. Advocate's fee Rs. 150 in each.

11. The first additional District Munsiff, chittoor is directed to dispose of the civil suit O.s. No. 1011/81 expeditiously. And in any case within six months of the receipt of this order and report to this Court.

12. Order accordingly.