

(2000) 09 AP CK 0062
In the Andhra Pradesh High Court
Case No : CRP No. 1602 of 2000

Golikota Reddy

APPELLANT

Vs

Goli Raja Gopala Reddy and others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 115, 151
Constitution of India, 1950 — Article 226

Citation : AIR 2001 AP 110 : (2000) 6 ALD 449 : (2000) 6 ALT 580

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. M.V. Suresh, for the Appellant; Mr. T. Veerabhadrayya, for the Respondent

Judgement

1. This is a revision against an order by which the Executing Court has kept in abeyance an order passed by it earlier. By the earlier order in EA No.98 of 2000 in OS No.220 of 1991, the Court had directed :

"11-2-2000

Petition is allowed. SI of Police of Chintalapudi shall give necessary police aid for implementing the civil Court decree passed in OS No.220 of 1991 dated 30-10-1999 by the Prl. Sub-Court, Eluru."

Thereafter, it appears that the judgment-debtor moved an application on which an order was passed on 14-2-2000 as under:

"14-2-2000

Call on 15-2-2000 for counter.

Till such time police aid is kept in abeyance subject to the condition that the petitioner shall not cut and remove the coconuts and turmeric."

This order is now challenged in this revision petition,

2. Before the controversy is resolved certain facts are needed to be gone into. In a suit for injunction a decree was passed by the trial Court in the following terms:

"In the result, the suit is decreed in part with proportionate costs in favour of the plaintiff and against the defendants declaring that the plaintiff is the absolute owner of the plain A-schedule land notwithstanding the sale deed dated 19-12-1991 detained by the 3rd defendant from the 2nd defendant relating to the same and granting the consequential relief of permanent injunction restraining the defendants, their men, agents and representatives from interfering into his possession and enjoyment over the same. The plaintiff is also granted permanent injunction restraining the defendants, their men, agents and representative from interfering into his right of passage through "EF" and "IJ" passage shown in the plan filed along with the plaint. As far as the suit filed by the plaintiff for granting mandatory injunction is concerned, the same is dismissed without costs."

Thereafter an appeal has been filed which is pending. In between also there was a revision filed being CRP No.1158 of 2000 which was decided by this Court on 28-4-2000. The stay granted by the appellant Court had been vacated by this Court while deciding the revision for reasons mentioned in that order. It appears that, after the stay was vacated by this Court the petitioners moved an execution petition before the executing Court with a prayer that the judgment-debtor should be sent to civil prison unless he obeys the decree of the Court. In this Execution petition notice was issued to the judgment-debtor and he has contested the matter, but when an interim application EA No.98 of 2000 was filed, the order granting police aid was passed ex parte. Thereafter, when the application was moved by the other side, the order was kept in abeyance by the impugned order.

3. The learned Counsel for the petitioner submits that, once an order was passed it could not have been kept in abeyance and an irreparable loss would be caused to the decree-holder. On the other hand, the learned Counsel for the respondent pleads that the revision itself is not maintainable in view of the mandate of Section 115 of the Civil Procedure Code. He submits that, while the consideration of the application of petitioner is yet to be made by Executing Court an order passed in ex parte in his favour was kept in abeyance. The impugned order is not an order which could be termed as "case decided". Secondly, it is contended that the trial Court has no jurisdiction to pass an order which it passed on 11th February, 2000.

4. I have heard the learned Counsel for the parties at length. I agree with the learned Counsel for the respondent that passing of an order in the context in which it had been passed any by which the earlier order has been kept in abeyance does not decide any issue between the parties and hence it would not amount to a "case decided", therefore, the revision was not competent. The Executing Court has merely postponed the consideration of the issue so that it bears both the parties and decides the matter. The second contention raised is

more important and needs some elaborate discussion. The question is, whether police can be used for executing a decree of the Court? In the first instance, let it be pointed out that the petitioner had moved an application for getting the decree executed and he had also stated in his application that since the decree is being violated therefore the respondent should be sent to civil prison. In these circumstances, whether police could have been directed to implement the decree? This Court feels that under no circumstance the police can be asked to implement the decree when an application for execution of the decree is still pending before the Court. No final orders have been passed in the execution petition by the executing Court. However, the learned Counsel for the petitioner submits that since it is a decree for injunction, therefore, it could have not been executed by the Court except by directing the police to execute the decree. This contention is not correct in view of Rule 32 of Order 21 CPC. In case of disobedience of a decree of injunction, the executing Court has the power to remand the person disobeying such a decree to civil prison. The Court can also attach the property. Rule 32 of Order 21 CPC lays down a specific and detailed procedure which has to be adopted in case a decree of injunction is disobeyed. Rule 32 of Order 21 CPC is reproduced.

"32. Decree for specific performance, for restitution of conjugal rights, or for an injunction :--(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property, sold, such property may be sold; and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction

has not been obeyed, the Court may in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

Now, an application under Rule 32 of Order 21 is pending before the Court. It has not been decided so far. I wonder, how pending such an application police can be asked to implement the decree. Implementation and execution of a decree is in the exclusive domain of the civil Courts and police cannot be given this power under any circumstances. The learned Counsel for the petitioner was not able to show me any provision in the CPC by which an order directing implementation of the decree by the police could be passed. However, he relies on Section 151 of the CPC and pressed into service four judgments one of the judgments being a judgment by a Division Bench of this Court in Rayapati Audemma Vs. Pothineni Narasimham, . The controversy before the Division Bench was, whether police aid could be granted with respect to implementation of an order passed under Order 39 CPC. The Court disagreed with the view of Allahabad High Court judgment reported in Goswami Gordhanlalji v. Goswami Maksudan Ballabh AIR 1918 All 152. The Allahabad judgment pertain to a decree of injunction whereas the matter before the Division Bench was pertaining to an order passed under Order 39 CPC. The Division Bench also relied on a judgment of Supreme Court in Padam Sen and Another Vs. The State of Uttar Pradesh, which defined the power of the civil Courts u/s 151 CPC, and held:

".....We are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the Court, the civil Courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the Court or the exercise of the rights created under orders of Court....."

5. Similar view was expressed in another judgment being Satyanarayana Tiwari v. Commissioner of Police 1982 (2) ALT 161. The Court was considering as to whether the Police can be asked to implement an order passed by the High Court in exercise of its jurisdiction under article 226 of the Constitution of India. The Court held almost the same views but it must be borne in mind that the Court was interpreting the powers of the High Court under Article 226 of the Constitution. Similar views have been expressed in another judgment being G. Malakondaiah v. Sridhar Reddy 1994 (1) APLJ 30 and also in Rajigiri Gopala Rao and Others Vs. Boddupalli Prakasarao and Others, , but the case on hand is materially different in view of the fact that a decree has been passed in favour of the petitioner and for implementation and execution of the decree an execution petition is pending before the executing Court. Order 21 of CPC lays down an elaborate system of implementation of the decrees. Order 21 not only gives rights to decree-holders alone but rights are available to judgment-debtors and

third parties as well. There are various defences which can be taken while resisting execution of a decree by the judgment-debtor and if by way of a short-cut, without deciding the execution petition, police is asked to implement the decree, the judgment-debtor would certainly lose the rights of resisting the decree on the basis of the defences available to such judgment-debtor under Order 21.

6. The matter has come up before the Supreme Court also though not directly in *Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others*, . In this matter the Supreme Court was considering, whether execution of a decree can be ordered by the High Court in exercise of its writ jurisdiction under Article 226. The Supreme Court held, it is not possible, for the reason that the rights available to a judgment-debtor will get defeated if such a course is adopted. I wonder, if the High Court has no power to implement the decree under Article 226 of the Constitution how can it be said that a police officer can implement the decree of the Court. The Supreme Court gave the following reasons for coming to its conclusions:

"So far the question of executability of a decree is concerned, the CPC contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil Court. The remedy under the CPC is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting (relief), to a judgment-debtor or a claimant-objector can be justified."

7. Without commenting on the judgments referred by the learned Counsel for the petitioner, I am of the view that in an execution petition under Order 21 which is pending before the Executing Court, at no point of time the civil Courts can refer the matter of implementation of the decree, to the police. If this course is adopted it will be the negation of the rights of the judgment-debtor available under Order 21. Unless and until the execution petition is finally heard there cannot be any question of sending it to the police for implementation.

8. For these reasons, I am of the view that the order passed by the trial Court initially was bad. Unless the application before him under Rule 32 of Order 21 was decided, there was no occasion for the executing Court to refer the matter to police for implementation of the decree.

9. The revision petition is accordingly dismissed. In the light of the observations made, the trial Court can decide the application seeking police assistance which is still pending before it.