
(2001) 12 AP CK 0081
In the Andhra Pradesh High Court
Case No : CRP No. 3381 of 2000

Kamal Silk Mills

APPELLANT

Vs

Kuncham Mohana Rao

RESPONDENT

Date of Decision : 26-12-2001

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 — Rule 32

Citation : (2002) 1 ALD 722 : (2002) 1 ALT 504

Hon'ble Judges : Ar. Lakshmanan, C.J; V.V.S. Rao, J

Bench : Division Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ar. Lakshmanan, C.J.—Heard Sri V.S.R. Anjaneyulu, learned Counsel for the petitioner and Sri M.V.S. Suresh Kumar, learned Counsel for the respondent.

2. This civil revision petition is directed against the order dated 24-7-2000, passed by the learned Junior Civil Judge, Sathupally, in EP No. 62 of 1993 in OS No. 1337 of 1988.

3. On 30-10-1992, a decree was passed by the I Additional District Munsif at Vijayawada in OS No. 1337 of 1988. Pursuant thereto, a sale notice was issued to the respondent-Judgment-debtor on 19-6-1997. The respondent filed counter contending that he paid the EP amount on 1-1-1993 and the alleged General Power of Attorney, which was not filed into Court, is not valid, and having regard to provisions of Rule 32 of the Civil Rules of Practice, the EP is liable to be dismissed. The petitioner-decree-holder during the course of enquiry filed certified copies of the Power of Attorney in OS No. 1335 of 1988 and the judgment in OS No. 1337 of 1988 on the file of the I Additional District Munsif, Vijayawada. The respondent opposed receiving of the said documents on the ground that no permission was granted under Rule 32 of the Civil Rules of

Practice by the original Court permitting Sri. T. Mohan Rao to act as General Power of Attorney on behalf of the plaintiff.

4. The Court below after discussing the objections, dismissed the EP holding as not maintainable under law. Aggrieved by the said order, this civil revision petition is filed.

5. The matter, earlier was heard by Sri P.S. Narayana, J., and it was brought to his notice that as against an order dated 24-7-2000, passed in EP No. 69 of 1995 in OS No. 1333 of 1988, by the learned Junior Civil Judge, Sathupally, between the same parties, involving the same question, a learned single Judge of this Court by an order dated 19-9-2001, dismissed CRP No. 3519 of 2000.

6. Rule 32 of the Civil Rules of Practice, which deals with the aspect of party appearing by agent reads:

Party appearing by Agent :--(1) When a party appears by an agent, other than an advocate, the agent shall, before making or doing any appearance, application, or act in or to the Court, file in Court the Power of Attorney or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority is still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorized to make or do such appearance application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court.

7. Order III of the CPC Code, 1908 (for short "the Code") deals with recognized agents and pleaders. There is no specific provision dealing with this aspect under Order XXI of the Code. In the instant case, the decree reads:

M/s. Kamal Silk Mills, rep. by its Power of Attorney holder agent by name T. Mohan Rao Ramanadhan, S/o. Ramanadhan, R/o. Vijayawada.

8. The objection now raised by the respondent is that though the decree specifically indicates that the plaintiff is represented by Power of Attorney holder, yet at the stage of execution the procedure contemplated under Rule 32 of the Civil Rules of Practice has to be followed. The learned Counsel for the petitioner in support of his submission that the decree at best is a curable irregularity and dismissing the EP on that ground is wholly unsustainable, placed reliance upon several decisions K.A. Mangatayaramma v. Indian Bank, Madras 1984 (1) ALT 55 (NRC), Janab Syed Kazim Sahab v. Janab Sayeed Bakaram Sahab 1990 (1) A WR 256, United Bank of India Vs. Naresh Kumar and others, , Kakatiya Finance, Nalgonda Vs. Nalamala Lingaiah, and N. Apalanarasamma and others Vs. N.

Appa Rao and others, . The learned Counsel for the respondent on the other hand contended that the fact remains that no permission was obtained in accordance with Rule 32 of the Civil Rules of Practice. This view was accepted in a similar matter between the same parties by a learned single Judge of this Court in CRP No. 3519 of 2000, and as such, there are no valid reasons to differ from the order already made, and hence, the CRP has to be dismissed.

9. The learned single Judge upon noticing that there is no specific provision under Order XXI of the Code relating to this aspect, observed that the Court below instead of giving opportunity to rectify the defect, if any, since putting a decree into execution is a substantive right and cannot be dismissed on a procedural technicality, unfortunately dismissed the very EP itself.

10. For the foregoing reasons, the learned single Judge was inclined to refer this civil revision petition in toto to be decided by an appropriate Division Bench of the questions discussed in the order. That is how, the matter is before us.

11. We have perused the order dated 24-7-2000, passed by the Junior Civil Judge, Sathupally, in EP No. 62 of 1993 in OS No. 1337 of 1988. The EP was dismissed as not maintainable in law.

12. According to the petitioner-decree-holder, as contemplated by Rule 32 of the Civil Rules of Practice, the General Power of Attorney is still in force. The petitioner filed the EP without filing any affidavit showing that the Power of Attorney, said to have been executed by the original decree-holder, is still in force. Since the affidavit, as also the original Power of Attorney was not filed along with the EP, the Court dismissed the same on the ground that the provisions of Rule 32 of the Civil Rules of Practice have not been complied with. It can be seen from the order passed by the Court below that a specific contention was raised by the respondent-judgment-debtor that the entire decree amount was discharged and he need not pay any amount towards the decree in the suit, and to that effect the petitioner-decree-holder has also issued a receipt. This statement was denied by the petitioner. Though such a contention was raised by the judgment-debtor, he failed to place before the Court below the receipt, said to have been issued by the petitioner. Further, the Court below dismissed the EP observing that no permission was granted by the original Court under Rule 32 of the Civil Rules of Practice permitting the petitioner to act as General Power of Attorney on behalf of the original plaintiff, and as such, the EP is not maintainable in law. In paragraph 8 of its judgment, the Court below referred to the contention of the judgment debtor that no permission was obtained from the original Court under Rule 32 of the Civil Rules of Practice authorizing the General Power of Attorney holder to represent on behalf of the original decree-holder as long as the General Power of Attorney is in force. The Court below, unfortunately, failed to notice that no such contention was ever raised in the suit. This plea having not been raised at an earlier point of time, we are of the opinion, that the judgment-debtor, cannot be permitted to raise such a plea at the stage of execution of the decree. Therefore, in our opinion, dismissing

the EP on the ground that it is not maintainable in law, is wholly illegal and not tenable in law.

13. The plea of discharge has also not been established by the respondent by any acceptable evidence. If the plea of discharge is true, the Court below ought to have recorded the payment made towards the discharge of the decree. No material was placed either before the Court below or before us to substantiate the said plea of discharge.

14. When this reference came up before us on 28-11-2001, we passed the following order:

We heard this matter for some time. Before the lower Court an affidavit was filed by the Power of Attorney himself stating that he is the Power of Attorney of the plaintiff as on the date of filing the application.

Rule 32 of A.P. Civil Rules of Practice and Circular Orders 1990 (for short "the Rules") specifically provides that "when a party appears by any agent, other than an advocate, the agent shall, before making or doing, any appearance, application, or act, in or to the Court, file in Court the Power of Attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting".

It is the specific contention of the learned Counsel for the judgment-debtor that Rule 32 of the Rules has not been complied with and that the affidavit has been filed only by the Power of Attorney holder and not the principal.

In order to satisfy ourselves that the person who filed the affidavit is real Power of Attorney and Power of Attorney is still in force, we direct Mrs. Kamaladevi w/o Damodarprasad Bhattad, Surat, to file an affidavit duly notarized by Notary, before this Court. The affidavit shall be filed within three weeks from today.

Call this matter on 19-12-2001 as part-heard.

15. Pursuant to the above directions, Mrs. Kamaladevi w/o Damodarprasad Bhattad, has filed an affidavit stating in paragraph 2 as under:

I respectfully submit that for the purpose of representing the petitioner firm on our behalf, we have given Power of Attorney in favour of Sri. T. Mohan Rao. He has filed the suit OS No. 1337 of 1998 on the file of the Junior Civil Judge, Sathupally, Khammam District to act on our behalf. The Power of Attorney executed in his favour is in force. The Power of Attorney given to him has not been withdrawn till date and it is still in force. He has filed EP before the executing Court with our consent only. The contention of the respondent that he has paid the decretal amount to us is not correct and the said contention is nothing but a concocted one to harass us on one ground or the other.

16. From the above, it is obvious that Mrs. Kamaladevi w/o Damodarprasad Bhattad for the purpose of representing the petitioner firm M/s. Kamala Silk Mills on their behalf, have appointed Sri T. Mohan Rao, as their Power of Attorney, who

has filed the suit OS No. 1337 of 1998 on the file of the Junior Civil Judge, Sathupally, Khammam District, and that the Power of Attorney executed in his favour is still in force and has not been withdrawn till date, and that the EP was filed with their consent only. M/s. Kamala Silk Mills has executed a Power of Attorney in favour of Sri. T. Mohan Rao, who filed the suit and obtained a decree, and thereafter, filed EP in his capacity as the Power of Attorney of the said firm. The General Power of Attorney is still in force, and under its strength the EP was filed before the Court below. This is quite evident from the sworn affidavit filed by Mrs. Kamaladevi w/o Damodarprasad Bhattad pursuant to the directions of this Court. We, therefore, are of the opinion that the dismissal of the EP by the Court below as not maintainable in law, is incorrect and liable to be set aside.

17. In this context, we may usefully refer to the judgment of the Apex Court in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, . The Apex Court upon considering the objection raised as regards the validity of the decree for putting it to execution, held:

A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an . objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record, where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised. The execution Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

18. Having regard to the facts and circumstances of the case, and having regard to the judgment of the Apex Court in V.D. Modi, we are of the opinion that the Court below has miserably failed in entertaining the objection taken by the judgment debtor that the decree was incorrect in law, and the General Power of Attorney was not in force when the suit was laid. The Court below in our opinion cannot go beyond the decree between the parties or their representatives, and it must take the decree according to its tenor and proceed further.

19. For the foregoing reasons, we set aside the impugned order and restore the EP to file with its original number being EP No. 62 of 1993 in OS No. 1337 of 1998 and direct the Court below to dispose of the same in accordance with law.

The judgment debtor is at liberty to raise the plea of discharge and such other pleas as are available to him in law and also file proof of discharge, in opposition to the EP, if any.

20. The plea of discharge has also not been established by any acceptable evidence. If the plea of discharge is true, the Court ought to have recorded the payment made towards the discharge of the decree. No material was placed before us to substantiate the said plea of discharge.