
(2013) 02 AP CK 0070
In the Andhra Pradesh High Court
Case No : Tr.CMP No. 403 of 2012

N. Venkata Rama Prasad

APPELLANT

Vs

K. Koteswara Rao and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 39 Rule 1

Citation : (2013) 3 ALD 167 : (2014) 1 ALT 61

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : G. Jhansi, for the Appellant; P. Prabhakar Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Chandra Kumar, J.—The petitioner, who is the first defendant in OS No. 14 of 2012 on the file of VII Additional District Judge, Vijayawada, filed this application seeking to withdraw the said suit and to transfer the same to any other Court having jurisdiction. The first respondent herein is the plaintiff in the said suit. He filed the suit for recovery of an amount of Rs. 4,85,64,801/- and claimed interest. The petitioner herein filed a written statement denying the averments made by the first respondent-plaintiff. The first respondent filed IA No. 24 of 2012 seeking ad-interim order of temporary injunction restraining the defendants in the suit from alienating the suit schedule property. The petitioner herein filed counter. Arguments were heard in the last week of April, 2012. When the case was posted for arguments of the petitioner on 12.6.2012, at his instance adjourned to 18.6.2012. On that day, Counsel for the petitioner advanced his arguments and I.A. was posted for reply to 28.6.2012. The matter was adjourned thereafter at the request of the first respondent to 6.7.2012, again to 25.7.2012. On 16.7.2012, the first respondent filed a petition for advancement alleging that the petitioner herein and respondents 2 to 9 were selling the property to third parties. Notice was issued to the petitioner on 16.7.2012. The petitioner filed counter on 18.7.2012, contending that his Counsel has already

advanced arguments and on the request made by the first respondent-plaintiff, the matter was posted to 20.7.2012. As the first respondent has not turned up on that day, the matter was posted to 25.7.2012. The petitioner in the affidavit filed in support of the transfer petition stated as follows:

I submit that on 25.7.2012, the learned Judge observed that the present petition is not tenable and advised to the first respondent (Counsel appearing for the first respondent) to file a petition under Order 38, Rule 5 CPC. The learned Judge further observed that, if such an application is filed normally the petitioner will be called upon to furnish the security and in case if the petitioner herein (first defendant) failed to comply with the order, the properties will be attached automatically. By observing the I.A. was adjourned to 30.7.2012. This observation from the bench, promoted me to file the present transfer petition. In fact the advocate who appeared in the Lower Court is also giving his affidavit as to the observations made by the learned Presiding Officer and the same is here with filed for the kind perusal of this Hon''ble Court.

2. The petitioner further contended that he is not expecting a fair trial before the lower Court.

3. Sri K.V.K. Vikram Kumar, Advocate for the petitioner appearing in the lower Court filed an affidavit, which is as follows.

I submit that on 25.7.2012 the learned Judge observed that the present petition is not tenable and advised to the 1st respondent (Counsel appearing for the 1st respondent) to file a petition under Order 38 Rule 5 CPC. If such an application is filed normally the petitioner will be called upon to furnish the security and in case if the petitioner herein failed to comply with the order, the properties will be attached automatically. By observing the IA was adjourned to 30.7.2012.

4. The first respondent filed a detailed counter.

5. The remarks of the Officer were also called for. The Presiding Officer observed as follows:

On 25.7.2012 while the petitioner was submitting reply arguments, the Court sought for clarification about the maintainability of the petition since the suit OS No. 14/2012 is filed for recovery of money with interest and no breach of obligation by the respondents 1 to 9 existing in his favour is averred in the petition and since the same point was argued by the respondents 1 to 9 besides taking several pleas about the maintainability of the petition and in that context there is an interlocution that normally in a suit for recovery of money no injunction petition is maintainable without alleging breach of obligation existing in favour of petitioner by the other side and it is usual practice of filing petition under Order 38 Rule 5 seeking attachment of properties and even in that case also no ex parte order shall be made without issuing notice to other side to show-cause why attachment should be ordered and the clarification was sought from the petitioner with honest intention to knowing maintainability of petition filed

under Order 39 Rule 1 of CPC seeking temporary injunction against the respondents 1 to 9 and this Court never tried to give advice the petitioner in IA No. 24/2012 to file a petition for attachment.

6. As seen from the letter of VII Additional District and Sessions Judge (FTC), Vijayawada, he has simply observed that no injunction petition is maintainable and further he seems to have observed that it is a usual practice of filing petition under Order 38 Rule 5 seeking attachment of properties. Mere observation that it is a usual practice of filing the petition under Order 38 Rule 5 cannot be attributed as an advise to a party. Admittedly, the entire proceedings and conversation took place in the open Court in the presence of both the Counsel. It has to be seen that neither in the affidavit of the petitioner nor in the affidavit of the learned Counsel appearing for the petitioner before the lower Court, no specific allegations have been made against the Presiding Officer and no motives have been attributed to him. The petitioner only contends that the observations created a doubt in his mind. The advocate appearing for the petitioner in the lower Court ought to have guided the petitioner that it is a normal and usual practice in the Court. The advocate must know the Court craft and also the usual practices adopted while conducting the Court proceedings.

7. A Judge, who is presiding the Court, cannot be expected to be a mere silent spectator. In fact, Judges have to play an active role. They should not and need not allow the parties or advocates to argue for hours together on the same points or on an issue when it is clear that in an application or a suit or a proceeding is not maintainable. There is nothing wrong if a Judge openly says that a particular petition is not maintainable. It cannot be treated as an advise to a party. Sometimes, Judges may be seeking further information, clarification or assistance from the advocates while arguing the matters. Knowing or unknowingly, sometimes, they may even go to the extent of expressing their view about the maintainability or otherwise of a petition or a suit. If the request of the petitioner is accepted, it amounts to giving a direction to all the Presiding Officers to shut their mouth while conducting the Court proceedings and this cannot be allowed. Though the learned Counsel for the respondent submitted that he has no objection to allow the application and though the Presiding Officer of the Court has also expressed his view that the matter may be transferred from his Court to some other, but in the interest of justice and in the interest of judicial administration and to give a free hand to the Presiding Officers and to function effectively while conducting the Court, I am of the considered view that the applications of this kind should not be encouraged and it will give a wrong impression to the society.

8. Therefore, in the interest of justice, the Tr.C.M.P is dismissed. No costs. Miscellaneous petitions pending, if any, shall also stand dismissed.