

(1972) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1077 of 1970

N.A. Siddiqui

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 20-06-1972

Acts Referred:

Citation : AIR 1973 AP 13

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Advocate : M.L. Ramakrishna Rao, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. Being aggrieved by the Order and Decree dated March, 25, 1969, passed as per check slip No. 185 in the suit O. S. 364 of 1966 on the file of the III Asst. Judge, City Civil Court, Hyderabad, the plaintiff preferred the above revision u/s 115 of the Code of Civil Procedure.

2. The petitioner herein instituted the above suit for perpetual injunction, and the circumstances leading to the institution of the above suit, may now briefly be stated. One by name Dr. Mir Ahmed Ali, an employee of Medical Department in the erstwhile State of Hyderabad, was granted a Scholarship in the year 1949 by the then State Scholarship Committee to qualify himself as M. R. C. P. In a period of three years,. The plaintiff along with the deceased, Syed Abdul Majed, executed the surety bond. That was unregistered and as such unenforceable in the law. The plaintiff further contended in the plaint that the scholar could not qualify himself within the prescribed period of three years, and he applied thereafter for the extension of time without any intimation to the plaintiff. The said scholarship Committee without obtaining the plaintiff's consent or that of the other surety, permitted the scholar to prolong his stay in the United Kingdom beyond the stipulated period of three years at his own expenses for obtaining the qualification of M. R. C. P. . The plaintiff did not agree to the extension of the period of deputation.

The scholarship committee granted the extension of time to the deputationist in contravention of the Scholarship Rules. The scholarship committee by arbitrarily extending the deputation of the deputationist, Committed breach of the contract and absolved the plaintiff, thus, of his further obligation to stand by the surety bond. The scholar having failed to qualified himself was dismissed from service and the scholar settled in England. The Government did not take any action against the said scholar either by recalling him back to India or to recover the amount spent on him during his stay in the U. K. On account of the negligent conduct of the Government, by granting unauthorised extension to the deputationist, the plaintiff stood discharged from his liability as a surety. The plaintiff was never informed as to how much amount was spent and when the scholar was actually declared as a defaulter holding (sic) the plaintiff learnt that in August, 1961, the defendant, that is the State of Andhra Pradesh has referred the matter to the Collector, Hyderabad District for realisation of the surety amount from the plaintiff and the Collector Hyderabad has directed the Tahsildar Taluq West, to issue a distress warrant for the attachment of the properties of the plaintiff under the Madras Revenue Recovery Act. The plaintiff filed a Writ petition in the High court against the proposed action of the Government, but the writ was dismissed on the technical ground that the obligation arising out of breach of contract has to be adjudicated upon in a Civil court, and the Writ appeal preferred thereupon as against that decision, was also disposed of by dismissal with the same observation.

3. It is under those circumstances, the plaintiff filed the above suit, praying for the issuance of a perpetual injunction, restraining the defendants from initiating any proceedings against the plaintiff for recovery of the alleged government dues. He valued the relief of injunction u/s 26 (c) of the Andhra Court-Fees and Suits Valuation act, 1956, and paid the court fee of Rs. 500/-.

4. The defendant filed a written statement, resisting the claim of the plaintiff and also raising the question of court-fee stating that the court-fee paid is inadequate. The court-fee examiner also issued a check-slip. On question raised whether the suit valuation is proper and whether the court-fee paid is sufficient, the court below found that the valuation by the plaintiff is not correct and the court-fee paid by him also is not correct, and, according to the lower court, the plaintiff has to value the relief of permanent injunction at the amount of Rs. 18,021.16 P.

5. Aggrieved by that decision, the plaintiff approached this court with the above revision.

6. Sri M. L. Ramakrishna Rao, the learned counsel appearing for the plaintiff, contended that the suit was one for injunction, and it is the provision contained in clause (c) of section 26 of the court-Fees Act that governs the case on hand, and the court-fee, under those circumstances, has to be computed on the amount on which the relief sought for was valued by the plaintiff. The learned counsel further submits that the plaintiff has not asked for any declaration and

that if the suit for a mere permanent injunction without declaration cannot be decreed, it must then be dismissed, but as it stands at present, the plaintiff cannot be compelled to pay court-fee as in a suit for declaration. I find considerable force in the contention of the learned counsel. Reliance by the learned counsel was placed, in that context, upon a decision of the Supreme Court in *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, . In that case, the appellant company filed a suit against the State of Uttar Pradesh and the Union of India, inter alia, praying for a permanent injunction restraining the State of Uttar Pradesh, its servants and agents from realising or from proceeding to realise sugar-cane cess and purchase tax amounting to Rs. 33 lakhs and odd charged under the U. P. Sugar Cane (Regulation of supply and Purchase) Act, 1953 , the Sugar Cane cess act, 1956 read with the U. P. Sugar Cane cess (validation) Act, 1961 and the U. P. Sugar Cane Purchase Tax Act IX of the 1961.

The appellant therein contended that the acts for the reasons stated therein were invalid and void and, therefore, the state was not entitled to levy, collect or recover the said cess or purchase tax and prayed, as aforesaid, that the State should be restrained from proceeding to realise the said cess or tax. In this connection it was observed at page 105 of the Report thus :

" It is true that for purposes of the court-fee act, it is the substance and not the form which has to be considered while deciding, which particular provision of the act applies. It cannot, however, be gainsaid that the natural relief prayed for in the plaint was an injunction restraining the State and its authorities to realise from the appellant company the aforesaid cess and the purchase tax. It is clear from the plaint when read as a whole that though the appellant company alleged that the acts were void and therefore non est for the reasons set out therein, it did not seek any declaration that they were void. The plaint proceeds on the footing that the said acts were void and that therefore the State of U. P. or its authorities had no power to realise the said tax and the said cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction is prayed for. If for the mere reason that the court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under clause (a) of sub-section (iv) of Section 7 and in that view clause (b) of subsection (iv-b) of Section would be superfluous".

7. We shall read this connection the provisions contained in Section 26 of the Andhra Court-Fees and suits Valuation act, 1956, in so far as it is material;

" Section 26; suits for injunction :-

In a suit for injunction : -

(a) x x x x x x x x x x x x x x (b)..... ..

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the court, whichever is higher."

8. On a perusal of the averments contained in the plaint, what is clear is that the relief sought for by the plaintiff is not a declaratory one ; on the other hand, it is one for injunction. If it is one for injunction, the provisions contained in clause (c) of section 26 of the court fee act are directly attracted, in which case, the court fee paid on the valuation of the plaintiff is correct, but the court below seems to have proceed on the assumption that the relief of injunction cannot be granted unless a declaration also is granted to the effect that the surety bond has become void. In that context, the court below proceeded on the footing that the relief of injunction as prayed for shall have to be construed as it is a consequential relief, the main relief being one for declaration. Incidentally, I find the court below relying upon the provisions contained in order 2 of the Code of Civil Procedure, but, I do not find that there is any relevance in referring to that provision of law in determining the question raised in this case. We may, instantly note that Section 24 of the Andhra Court-Fees and Suits Valuation act, 1956 deals with the subject matter of " suits for declaration" whereas section 26 of the act deals with the subject matter of " suits for injunction."

When it is disclosed in the plaint that the relief is not one for declaration but for injunction only, and the plaintiff has been given the liberty to value the relief and when he sought to bring the case within the purview of clause (c) of section 26 of the Court-Fees Act, it is not for the court, at this stage, to go into the question whether the injunction relief could be considered as a consequential relief, the main relief being one for declaration, and as the Supreme Court has observed in the decision referred to heretofore that invariably, in every case where injunction relief is sought for, it may be on the basis that some act or action or activity on the part of the authorities concerned is not warranted by law. But, in so far as any declaration is not sought for in that direction and when the relief was confined exclusively to injunction, as in the case here before me, it is not open for the court to read something into the section which is not there. If, ultimately it is found, as the learned counsel for the petitioners submits, that the relief of permanent injunction without a declaration cannot be decreed it may be dismissed then, but in the case, as it stands at present, the plaintiff cannot be compelled to have his suit treated as one for declaration, treating the relief for injunction as a consequential one.

9. The counsel for the respondent cited before me the following decisions in M. A. Jabbar v. The State of Andhra Pradesh 1969 (1) AnWR 411, Sunkani Neelakantam v. The State of Andhra Pradesh 1960 (1) AnWR 106 and in Pisupati Ramachandraiah v. Pisupati Lakshmiddevamma 1965 (1) AnWR 138. These are the decisions decided on the basis of the language employed in Section 24 of the Court-Fees Act but not u/s 26 which we are not concerned, and as such they are easily distinguishable.

10. Under these circumstances, I am of the view, having regard to the decisions of the Supreme Court, that the suit by the petitioner herein is one for injunction and there is no prayer for declaration and the relief of injunction cannot be considered to be a consequential one and, notwithstanding the fact that the grant of relief of injunction, as sought for, may necessitate an enquiry into the nature of the transaction evidenced by the Surety deed still, according to the Supreme court decision, we shall have to regard the relief as one prayed for by the plaintiff.

11. Under these circumstances, I of the view that the court-fee paid by the plaintiff is proper and correct and the court below erred in requiring the petitioner to assume that the relief sought for by way of injunction is only a consequential one. The revision is, therefore, allowed, but, in the circumstances, without costs.

12. Revision allowed.