(1952) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : Revision Petition No. 337 of 1952

Narsing Rao Ramkrishnayya APPELLANT

Vs

Veerayya Rajanna and Others RESPONDENT

Date of Decision : 22-09-1952

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6

Citation : (1952) 09 AP CK 0005

Hon'ble Judges : Qumar Hassan, J;Manohar Pershad, J

Bench : Division Bench

Advocate : Rama Murti, for the Appellant; K. Venkatschari, for the Respondent

Judgement

1. This is a petition in revision on behalf of Defendant 1 against the order of the Court below dated 1-2-1952 deciding issue 5 against him. It is argued on behalf of the Defendant-Petitioner that the Court below has erred in deciding issue 5 against him. His contention is that set off claimed by him arises out of the same transaction (and?) as such the Defendant is entitled to both legal and an equitable set off. Reliance is placed on the cases of Pragilal v. Maxwell 7 All 284 (A); Suryanarayan v. Ratanlal AIR 1952 Hyd 34 (B); S.M.N.R.M. Lakshmanan Chettier Vs. S. Rm. Ar. Ramanathan Chettiar, and Another, .

2. On behalf of the other side it is urged that the Defendant is not entitled to either legal or equitable set off. With regard to the legal set off it is contended that as the sum claimed by the Defendant is not an ascertained sum, he cannot be entitled to a claim for a legal set off. With regard to the question of equitable set off, it is contended that as the claim of the Defendant is for damages and the claim of the plaintiff is based on a contract, it cannot be said that it arises out of same transaction. Reliance is placed on the cases of Muslim Bank v. Hasan Shiraza AIR 1951 Hyd 57 (D); Raghunath Das v. Ashraf Hussain 2 All 252 (E); Victoria Mills Co. Ltd. v. Brij Mohanlal AIR 1917 All 176 (1) (F); Mt. Diltor Koer v. Harkhoo Singh AIR 1910 Pat 167 (G); and Harprasad and Another Vs. Firm Ram Sarup Radha Kishen, .

3. In order to appreciate the view points of the parties, a reference to the allegation of the Defendant in the written statement is necessary. In para. 1 of the written statement the Defendant has alleged that in pursuance of the Plaintiff''s request he left his service and moved into the Plaintiff''s workshop where in a rear portion he was allowed to do his sole business Thereafter, when he was away in Akola, Plaintiff got the lathe machines and other tools sold away in order to make him an employee of the Plaintiff.

4. Because of the (un?) authorised sale Defendant claims Rs. 2000/- as damages and this amount he wanted to be set off against the suit claim. Thus, it is clear from this that the Defendant claims the amount by way of damages.

5. We may point out that set off may be of two kinds; legal set off and an equitable set off. In a legal set off, the amount claimed is an ascertained sum of money which is legally recoverable, while in an equitable set off, the Defendant is entitled to get credit for the amount by way of equity and it is not necessary that the amount claimed should be ascertained. In the case of a legal set off, the amount could be claimed by the Defendant as a matter of right subject to the payment of the court fees, while in the case of an equitable set off, it is in the discretion of the Court.

6. If the Defendant claims a legal set off, among the necessary conditions, one condition is that the Defendant''s claim must be for an ascertained sum of money. The contention of the learned advocate on behalf of the Respondent is that (as) the Defendant''s claim is for damages as such, it cannot be said that it is for an ascertained sum of money. We find considerable force in this contention. "Ascertained sum of money means a sum of money of which the amount is fixed and known; it does not necessarily mean a sum admitted by the other side or decreed by the Court.

7. Similar discussions had arisen in the cases of 2 All 252 (E); AIR 1917 All 17G(1) (F) and Harprasad and Another Vs. Firm Ram Sarup Radha Kishen, , wherein it has been laid down that claims for damages are not claims for ascertained sums of money. Thus, in our opinion (are) items (such?) as unliquidated damages and mesne profits the amount of which is not ascertainable until the Court determines it. Order 8 R. 6, Civil P. C, provides that in a suit for the recovery of money, the Defendant can claim to set off against the Plaintiff''s demand any ascertained sum of money legally recoverable by him from the Plaintiff. As discussed above the amount claimed as damages is not an ascertained sum of money, (and?) so according to the Code of Civil Procedure, there cannot be a set off for damages. This is clear from illustration (c) to the rule. Thus this contention fails.

8. After this we have to consider the question whether the Defendant is entitled to an equitable set off. It may be pointed out at the outset that the defence of equitable set off cannot be claimed as a matter of right but the Court has discretion to adjudicate upon it in the same suit or order it to be dealt with in a

separate suit.

9. On behalf of the Respondent it is urged that as the trial Court has exorcised its discretion, this Court should be reluctant to interfere in the same unless it is shown that the Court has not exercised its discretion judicially.

10. In the present, case the trial Court has held that the transactions are entirely different and as such the claim for an equitable set off also is not sustainable. It is essential for a party claiming an equitable set off that the cross-demands should arise out of the same transaction, that is, the Defendant will have to establish that the claim of set off arises out of the same transaction. The learned Advocate for the Petitioner contended before us that his claim not only arises out of the same transaction, but is connected with it. Reliance is placed on the case of 7 All 284 (A). We are afraid, we cannot accept this contention Plaintiff''s claim for the money in the present suit is based on a contract while the defendant''s claim is for damages. It cannot be said that it arises out of the same transaction. It is further contended that the transactions are connected in their nature and circumstances.

We are afraid we cannot accept this either. In our opinion, both the transactions are entirely different.

11. In 7 All 284 (A), relied upon by the Petitioner, It has been held that the right of set off would be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arose out of one and the same transaction, or were so connected in their nature and circumstances as to make it inequitable that the Plaintiff should recover and the Defendant be driven to a cross-suit.

12. Thus, it is clear from this ruling also that in order to entitle the Defendant to an equitable set off, the Defendant will have to establish that his demand arises out of the same transaction or is so connected in its nature and circumstances as to make him entitle to the same.

13. As discussed above, the Plaintiff''s case is based on a contract while the Defendant''s claim is for damages. It cannot be said either that it arises from the same transaction or is connected with the same. In our opinion, this ruling does not help the contention of the Advocate of the Petitioner. Thus, the contention for an equitable set off also fails. Petition in revision is, therefore, dismissed. Costs to abide the result of the suit.