

(1992) 06 AP CK 0011

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 395 of 1991

P. Rama Rao

APPELLANT

Vs

Srikakulam Municipality

RESPONDENT

Date of Decision : 23-06-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1993 AP 255 : (1992) 3 ALT 646

Hon'ble Judges : Iyyapu Panduranga Rao, J

Bench : Single Bench

**Advocate : M/s. M.S.K. Sastry, I. Nages and C.S. Venkatesh, for the Appellant;
M/s. I. Venkatanarayana and K. Jayakumar, for the Respondent**

Judgement

1. Heard the counsel appearing for both sides. The facts which are not at all in dispute are that the revision petitioner (hereinafter referred to as "the plaintiff") filed the suit for the following reliefs :

(a) for a declaration that the proceedings of the defendant in RC.No. 3775/82/E2 dt. 3-5-89 is arbitrary, illegal and capricious and liable to be set aside;

(b) for a mandatory injunction directing the defendant to get the remaining portion of the work of the tender to be done by the plaintiff only;

2. Admittedly, the plaintiff was the contractor for the construction of shopping complex being the lowest tenderer and alleging that the plaintiff failed to complete the work in time, under the impugned proceedings, the respondent-Municipality cancelled the contract, which was in favour of the plaintiff. Aggrieved by the same, the plaintiff filed the suit for two reliefs : (a) for a declaration that the proceedings cancelling the contract are arbitrary, illegal and capricious; and (b) for a mandatory injunction directing the respondent-Municipality to get the remaining portion of the work done by the plaintiff. While so, the plaintiff valued the relief of declaration under S. 24(d) of the A.P. Court-Fees and Suits Valuation Act, 1956 (in brief "the Act1) at Rs.500/- and valued the relief of mandatory

injunction at Rs. 200/ -. Since the defendant took an objection regarding court-fee, the matter was heard and the learned District Munsif as per his judgment dated 14-9-1990 returned the plaint for presentation in a proper court holding that the work involved in the contract in question is worth lakhs of rupees, exceeding the original jurisdiction of the said court. Of course, while returning the plaint, the learned District Munsif did not say anything regarding the adequacy or otherwise of the court-fee paid for the 2nd relief, namely on the mandatory injunction. Aggrieved by the said orders, the plaintiff approached the District Court in C.M.A. No. 44 of 1990, which was dismissed as per judgment dt. 30-11-90 confirming in toto the order of the trial judge. Aggrieved of the said order, the plaintiff filed this revision.

3. The learned counsel appearing for the revision petitioner submits that the orders of the courts below are erroneous, and the first relief prayed for is incapable of valuation as laid down u/s 24(d) of the Act, as the valuation given in the plaint is correct. On the contrary, Sri Venkatanarayana, the learned counsel for the respondent submits that the total value of the contract is Rs. 7,84,958.60 Ps, out of which by the date of cancellation of the contract, Rs. 2,00,000/-worth was already performed leaving the balance of the work to be executed and consequently, court-fee has to be paid on Rs. 5,84,958.60 Ps., and the trial court namely the Principal District Munsif Court, has no pecuniary jurisdiction to entertain the suit of the said magnitude. To substantiate his contention, Sri Venkatanarayana very strongly relied upon the decision in The Andhra Pradesh State Electricity Board, Hyderabad Vs. K. Ramachandra Reddy, .

4. It is to be seen that the suit is for a declaration that the proceedings of the respondent/defendant Municipality cancelling the contract are arbitrary, Illegal and capricious and to set aside the same. The contract, as rightly submitted by learned counsel for the respondent, is for Rs. 7,84,958.60 Ps. But in the event of cancellation of the said contract, the liability of the revision petitioner/ plaintiff should be to recover the loss, if any, to which the respondent/defendant is subjected to by virtue of the cancellation of the contract. What I mean to say is that in the event of the defendant Municipality incurring any loss by virtue of the cancellation of the said contract, the said loss will be recovered from the revision petitioner/plaintiff, because according to the defendant-Municipality, the said loss was said to have occasioned in view of the laches on the part of the revision petitioner. When the suit was filed, it is impossible to ascertain what loss, if any, the respondent/ defendant-Municipality is going to incur by virtue of cancellation of the contract. To put it otherwise, as rightly submitted by the learned counsel for the revision petitioner and as embodied in Section 24(d) of the Act, the subject-matter of the suit is incapable of being valued and consequently, a notional value of Rs. 500/- was given thereon by the plaintiff. The observations made by the learned District Munsif, which were affirmed by the learned Additional District Judge in his judgment in C.M.A. No. 44 of 1990 that the relief prayed for by the plaintiff in the suit is to avoid payment of Rs. 7,84,958.60 ps. -- Rupees 2,00,000.00 representing "the work already done, is not at all correct.

This is a case where the plaintiff has prayed for a relief of declaration that the impugned proceedings of the defendant-Municipality are arbitrary, illegal and capricious and the said relief is incapable of being valued and when the said relief was valued at Rs. 500/- by the plaintiff in the plaint, it is perfectly open to the Court to refuse it suitably, if it so chooses to do. But the Court cannot ask the plaintiff to pay a Court-fee of Rs. 7,84,958.60 ps.

5. A.P.S.E.B. v. K. R. Reddy (1 supra) is a case where four plaintiffs sued the A. P. Electricity Board praying in one suit for avoidance of consumption charges and in other three suits for a declaration that the demand notices issued to them were illegal and for injunction restraining the Electricity Board from discontinuing the electric supply, paying notional Court-fee in all the suits. Having heard the matter, speaking for the Bench, Justice Alladi Kuppaswamy (as he then was) was pleased to hold that in the first suit, Court-fee should be paid on the amount that he is seeking to avoid as consumption charges and on the remaining suits Court-fee payable on the respective half amounts mentioned in the demand notices which they were asked to pay to the Electricity Board as the amount of pilfering energy so that thereby they could avoid disconnection. This case has no application to the facts of the present case. According to the plaintiff, the impugned proceedings were issued illegally cancelling the contract in his favour. As to what profit, he is going to get or as to what loss he is going to avoid can never be said muchless with any precision at the time when the suit was filed. It is an admitted fact that with regard to Court-fee, the allegations made in the plaint have to be taken into consideration. In view of these circumstances, the decision referred to above has no application.

6. Venugopal Loya v. Vijya Laxmi Bung 1990 (2) ALT 117 is a case where a suit was filed against a Bank for a declaration to allow the plaintiffs to operate the Bank's lockers which stood in the name of their deceased mother on the ground that the properties kept in the said lockers belong to the joint family. The Court-fee was paid u/s 24(d) of the Act having valued the relief on a notional value and it was held that the said valuation is correct. Thus, it is not a case where the plaintiff is going to avoid payment of Rs. 7,84,958.60 ps. But the suit is one for a declaration that the impugned proceedings are illegal and void and for ancillary relief of mandatory injunction. Since the said reliefs were valued at Rs. 500/- and Rs. 200/- respectively and since the Court has not drawn its attention to that aspect, it is perfectly open to the Court to consider the same and proceed further with the trial of the suit. Accordingly, the Revision petition is allowed. No costs.

7. Petition allowed.