
(2007) 07 AP CK 0022
In the Andhra Pradesh High Court
Case No : CRP No. 2864 of 2006

Pendala Vivekananda Babu	Vs	APPELLANT
Pendala Venkata Murali Krishna and Another		RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 38 Rule 5(1), 144, 151

Citation : (2007) 5 ALD 363 : (2007) 6 ALT 210

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; M. Venkata Narayana, for the Respondent

Judgement

P.S. Narayana, J.—This Court ordered Notice Before Admission on 7.7.2006. Sri M. Venkata Narayana entered appearance on behalf of 1st respondent. The Counsel for petitioner was permitted to take out personal notice to the Counsel appearing for 2nd respondent in the Court below and also to 2nd respondent and file proof of service. On 14.6.2007 a Memo had been filed stating that immediately notice was taken and the 2nd respondent received the same on 17.7.2006 and acknowledgement also had been enclosed.

2. At the request of the Counsel on record, the civil revision petition itself is being disposed of finally at the stage of admission.

3. Sri M. Ravindranath Reddy, learned Counsel representing the revision petitioner had taken this Court through the facts of the case and also observations recorded by the learned Principal Junior Civil Judge, Kavali at paragraphs 7 and 8 and would contend that having observed that the Court Amin exceeded his powers, instead of rectifying the same dismissing the application cannot sustained. The Counsel also would maintain that even otherwise if Section 144 of the Code of Civil Procedure, hereinafter, for the purpose of convenience, would be referred to as Code, to be held to be not applicable in strict senso, the application is definitely maintainable u/s 151 of the Code. The Counsel also

further would maintain that the Court Amin, as Officer of the Court, is expected to just carry on the directions of the Court and if any mistake had been committed by the said Officer of the Court and the same was brought to the notice of the Court, it is the bounden duty of the Court to rectify such illegality committed by the Court Amin. The Counsel also placed reliance on the decision of this Court in *Cheni chenchiah Vs. Shaik Ali Saheb and others*, .

4. Per contra, Sri G. Venkateswarudu, learned Counsel representing Sri M. Venkata Narayana, would maintain that in the peculiar facts and circumstances, since Section 144 of the Code is not applicable, the learned Principal Junior Civil Judge, Kavali, recorded reasons in detail and dismissed the application, and hence the said order needs no disturbance at the hands of this Court.

5. This civil revision petition is filed by the petitioner-4th defendant aggrieved by an order made in IA No. 1987 of 2003 in OS No. 472 of 2003 on the file of Principal Junior Civil Judge, Kavali, dated 1.3.2006. The petitioner-4th defendant filed the said application u/s 151 of the Code, praying for a direction that the 1st respondent may be directed to put the petitioner in possession of the shop room No. 12 of Navodaya Cloth Market detailed in the schedule of the application praying for attachment before judgment filed by the 2nd respondent-plaintiff and for costs.

6. It appears that the parties had not let in any oral evidence, but Exs.P1 to P9 were marked and Ex. R1 was also marked as these were referred to in the order. However, in the appendix of evidence it is shown as Nil.

7. The brief facts are that the 2nd respondent is the son-in-law of the 1st respondent and the 1st respondent is the brother of the petitioner. The 2nd respondent filed OS No. 472 of 2003 on the file of Principal Junior Civil Judge, Kavali, against the 1st respondent and also the petitioner for recovery of money on the basis of a promissory note said to have been executed by their father. The petitioner filed a written statement in the said suit stating that the shop room No. 12 in Navodaya Cloth Market belongs to his father and he is a tenant of the said property paying a rent of Rs. 500/- per month. Further specific stand had been taken that the 1st respondent set up the 2nd respondent and got the suit filed to have some unlawful advantage. The 2nd respondent as plaintiff also filed IA No. 1408 of 2003 praying for attachment before judgment in relation to the properties described in the Schedule A, shop room No. 12, which was further described in schedule B. The learned Judge ordered attachment on condition that if the respondents failed to furnish third party security to the suit amount, the attachment to be effected. Further specific stand was taken by the petitioner that though the petitioner offered to furnish the security, the Court Amin rejected the said offer, removed all the cloths in the shop and handed over to the 1st respondent unauthorisedly and illegally. Further specific stand was taken that the Court Amin also handed over the shop room to the 1st respondent. Under those circumstances the petitioner filed IA No. 1987 of 2003 u/s 151 of the Code requesting the Court to direct the 1st respondent to put the petitioner back in

possession of the said shop room No. 12 of Navodaya Cloth Market. The said application was dismissed as already specified supra and aggrieved by the same, the present civil revision petition is preferred.

8. Order 38 Rule 5 of the Code reads as hereunder:

Where defendant may be called upon to furnish security for production of property :?(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intention to obstruct or delay the execution of any decree that may be passed against him,--

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, any such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to specify the decree, or to appear and show-cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of Sub-rule (1) of this Rule, such attachment shall be void.

9. It is pertinent to note that when an order of conditional attachment was made by the Court and when the petitioner-4th defendant offered security, it is not known under what circumstances the Court Amin was not inclined to accept the security. It is also not known what are the actual contents of the report of the Amin. Be that as it may, this Court is not inclined to express any further opinion relating to this aspect.

10. It appears that the Court Amin virtually had seized the cloths lying in shop room No. 12 of Navodaya Cloth Market, Kavali, and not only delivered the said material to the 1st respondent, further it appears that he had delivered possession of the shop room also. It may be that there may be some controversy between the brothers. It is not clear whether virtually it is a family dispute between the father and the sons and father and the brothers or otherwise. It is stated that the father is no more in this world. This Court is not inclined to express any further opinion on these factual controversies.

11. The learned Principal Junior Civil Judge, Kavali, observed at Paragraph 7 as hereunder:

Even assuming that this Court Amin exceeds his power and delivered possession

to 1st respondent, this application u/s 151 of the CPC in this suit is not maintainable as the main suit is filed for recovery of money and that the issue in this petition is not ancillary to decide the issue in the main suit. Hence, I feel that on that ground also this petition is not maintainable. Even assuming that this petition is maintainable, we have to see whether this petitioner is established his right, title or possession over the schedule shop room as on the date of the warrant. For that he filed Exs. P1 to P3 and P5 to P9. A perusal of all the said documents, all those documents are pertaining to the year prior to 2000. But whereas the Amin was executed the warrant on 19.4.2003.

Exs. P1 to P3 and P5 to P9, these documents may relate to the years prior to 2000. However, no documents relating to the subsequent period had been placed before the Court to arrive at a different conclusion.

12. The principal question is whether the Court Amin exceeded his powers in executing the warrant on 19.4.2003. Having observed that the Court Amin exceeded his powers in executing the warrant, instead of rectifying such illegality, dismissing the application, in the considered opinion of this Court, is unsustainable. It may be true that in the peculiar facts of the case, Section 144 of the Code as such may not be applicable, but definitely it is a case where Section 151 of the Code can be invoked. Reliance was placed in Cheni Chenchiah "s case (supra), wherein the learned Judge of this Court observed that where possession was obtained forcibly, unauthorisedly and not pursuant to the orders of the Court, restitution cannot be ordered by invoking Section 144 of the Code, but to meet the ends of justice the Court can restore possession u/s 151 of the Code.

13. In the case on hand it was also observed that the Court Amin permitted 1st respondent to lock the shop room on seeing the settlement deed marked as Ex. R1 and therefore the Court Amin virtually had exceeded his limits while executing the warrant in relation to attachment before judgment. Court Amin, being the Officer of the Court, is expected to carry on the directions of the Court and nothing beyond thereto. Even otherwise whenever a Court Amin entertains a doubt, he is expected to obtain further directions from the Court for further carrying on such judicial orders. For the reasons best known, it appears that the Court Amin had taken up an independent role totally exceeding the purview of the warrant entrusted to him by the Court to be executed by him in accordance with law as per the warrant. When this grave illegality is brought to the notice of the Court, the Court is not expected to dismiss such application having made certain observations as specified supra at paragraph 7 of the order. However, inasmuch as there are certain factual controversies and certain documents had been marked by the parties for the purpose of further clarification, this Court is of the considered opinion that it would be just and proper to give opportunity to both parties to let in evidence relating to their respective stands. It is made clear that on the material available on record, this Court is thoroughly satisfied that the Court Amin exceeded his power though the entrustment of the warrant was

for the limited purpose of carrying on an order of attachment before judgment. It is needless to say that the Court is at liberty to examine the Court Amin also as a Court witness if the learned Principal Junior Civil Judge, Kavali, deems it fit and proper in the circumstances of the case.

14. Accordingly the impugned order is hereby set aside and the matter is remitted to the learned Judge to give opportunity to both parties to let in evidence and also to make appropriate orders in accordance with law in this regard in the light of the observations made by this Court.

15. The civil revision petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.