
(2009) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 827 of 2009

Pratap Reddy

APPELLANT

Vs

Smt. Vandana Reddy

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 35, 35A, 35A(2), 35B

Citation : (2010) 3 ALT 64

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : J.C. Francis, for the Appellant; Josyula Bhaskara Rao, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This C.R.P. is directed against the order dated 02.02.2009, passed by the I Additional Senior Civil Judge, Ranga Reddy District, insofar as it imposed costs of Rs. 10,000/-.

2. The petitioner is the defendant while the respondent is the plaintiff. The respondent-plaintiff filed the suit for declaration and recovery of possession of suit the property. The petitioner-defendant filed written statement. After framing of issues, the respondent-plaintiff adduced evidence and his evidence was closed. Thereafter, the suit was posted for the evidence of the petitioner-defendant. As the petitioner-defendant was not appearing continuously, and as there was no representation on his behalf and as he failed to take any steps to get the document impounded, the Court below, closed his evidence and posted the matter for arguments to 15.12.2008. While the matters stood thus, the petitioner-defendant filed two applications - the first application praying to re-open the suit for cross-examination of D.W.1, and the second application to recall D.W.1 for cross-examination, stating that he had filed a petition before the District Revenue Officer for impounding the document, and that the same having been sent to the Inspector of Stamps and Duty, for collecting the duty and

penalty, is pending. That his absence is neither willful nor wanton and therefore, it is just and necessary to re-open the suit and Eecall D.W. 1 for cross-examination.

3. The respondent-plaintiff contested the applications filing counters inter alia stating that the petitioner-defendant filed affidavit in lieu of chief of his evidence, and at the time of marking the documents, the court below by order dated 01.08.2008, refused to mark a document as the same required registration. Questioning the said order, the petitioner-defendant carried the matter in revision, but the same was dismissed. Thereafter, the Court below granted about four months to the petitioner-defendant to adduce evidence, but he did not do so. Thereafter, the petitioner-filed transfer petition, but the same was also dismissed. The Court below after granting sufficient time, closed the evidence of the petitioner-defendant and posted the suit for arguments. At that point of time, the petitioner filed an application praying to send the document to the District Registrar for impounding and for collection of deficit stamp duty and penalty. The said application was allowed on 09.06.2008 with a direction to get the same impounded within a period of one month. Since the petitioner-defendant in spite of granting time, failed to proceed with the matter, by adducing evidence, he prayed that the applications be dismissed.

4. The Court below considering the rival contentions, and the in the light of the court record, even though found that the petitioner-defendant was intentionally dragging on the matter on one pretext or the other, but considering the fact that different cases are pending in other Courts, felt it appropriate to give an opportunity to the petitioner-defendant to adduce his evidence, and accordingly, permitted the petitioner-defendant to adduce evidence by getting the document impounded by 27.02.2009 subjected to payment of costs of Rs. 10,000/-, and posted the matter for compliance on 27.02.2009. Questioning the part of the order that imposed costs, the petitioner-defendant filed the present C.R.P.

5. The learned Counsel for the petitioner-defendant submitted that the Court below has no power to impose costs exceeding Rs. 200/-, and as such, the order of the Court below to the extent it imposed costs of Rs. 10,000/- has to be set aside. He submitted that though the Court is empowered to impose costs in exercise of its jurisdiction, but such discretion cannot be exercised arbitrarily or capriciously, and in support of this argument, he placed reliance on the judgment of this Court in *R. Devaiah v. R. Parmedari* 1976 (1) APLJ 357. He thus prayed that the order under revision to the extent it imposed costs of Rs. 10,000/- be set aside and the C.R.P. be allowed. The learned Counsel for the respondent-plaintiff submitted that even though the Court below found that the petitioner-defendant was intentionally dragging on the matter, but to give an opportunity to the petitioner-defendant, allowed his request to adduce evidence by getting the document impounded, subject to payment of costs of Rs. 10,000/-, by reason of the order under revision, and having regard to the dilating tactics adopted by the respondent-defendant, imposition of costs of Rs. 10,000/-, as a measure to

compensate the respondent-plaintiff for the delay caused on account of the conduct of the petitioner-defendant, cannot be said to be on higher side, warranting interference therewith. Hence, he prayed that the C.R.P. be dismissed.

6. In the light of the arguments advanced, as noted above, the sole question that arises for consideration is - In case where the parties fail to proceed with the case on the date fixed for hearing of the suit or any other proceedings or for taking steps, what amount of money can be awarded by way of compensatory costs to the other party, irrespective of the outcome of the main suit?

7. Before proceeding to consider the various aspects of the matter, it would be appropriate, if a reference is made to the provisions of Section 35-B of the Code of Civil Procedure, 1908, which was inserted by way of Amendment Act 104 of 1976, and which came into force w.e.f. 01.02.1977. The said provision, which deals with costs for causing delay, reads as follows:

Costs for causing delay- (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit-

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation- Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under Sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicting the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

8. From a reading of the above provision, it would become clear that in case a party on the date fixed for hearing of the suit or for taking any steps, fails to

attend the case or proceed with the matter, the Court is required to compensate the other party who is ready to proceed with the matter, for the expenses which he may have incurred for attending the Court.

9. The main object with which the above provision was inserted by the Legislature in the Code of Civil Procedure, 1908 is to put a check to the dilatory tactics being adopted by the litigants, by imposing compensatory costs upon the party who is responsible for the delay at any stage of the litigation. The provision is penal and mandatory in nature, inasmuch as it requires to be complied with its strict sense. The intention of the Legislature, is to give discretion to the Court, to impose compensatory costs to the parties who adopt dilatory tactics at any stage of the litigation.

10. The discretionary power to impose compensatory costs having been vested in the Court, the important question that arises for consideration is what amount of money should be directed by the Court to be paid by a party to the other party, as a measure of compensatory costs, because of his/her absence on the date fixed for hearing of the suit or for taking steps, which resulted in causing delay and putting the other party sufferance.

11. It is well known that matters in the civil Courts are dragged on for considerable lengths of time, which is mainly because of non-cooperation of one or the other party for the reasons best known to them, and this non-cooperation on the part of the parties, will ultimately lead to pendency of litigation in the Courts for years together.

12. If the parties adopt dilatory tactics, then the Courts are required to follow the provisions of Section 35-B of the Code of Civil Procedure, 1908 in strict sense to avoid waste of valuable time of the Courts. The costs to be awarded under this provision in favour of a party, is to imdenify the expenses, which he may be put to because of non-cooperation of the other party by reason of his failure to attend the court or proceed with the matter. It is not intended to punish a party or make gain the other party out of the litigation, but is to intended to deter a party adopting non cooperative attitude by not attending the Court on the date fixed for hearing of the suit or for taking any other steps. If the Courts do not invoke this provisions of Section 35-B of the Code of Civil Procedure, 1908 for imposing costs, then the very insertion of the provision by Act 104 of 1976, would become redundant.

13. In cases where costs are imposed on the party, and in the event he fails to pay the same on or within the date so fixed for payment of such costs, then if he is able to satisfy the Court, the Court shall extend the time for payment, by exercising its discretionary power u/s 148 of the Code of Civil Procedure, 1908.

14. The award of compensatory costs is dependant upon the facts and circumstances of each case. Before awarding compensatory costs, the Court must look into various factors, such as, number of adjournments granted to the party, failure of the party to proceed with the case despite granting

adjournments, what prevented the party from proceeding further in the matter etc. The Courts while awarding appropriate costs, must also keep in mind what are the reasonable expenses incurred by the other party to come to the Court. However, if the Court, on facts, comes to the conclusion that it is required to award costs more than what is contemplated u/s 35-A(2) of the Code of Civil Procedure, 1908, then the Court by recording the reasons, is always at liberty to order costs to indemnify the other party, though not completely for legal expenses, to which he has been subjected to and the expenses incurred by him to come to the Court on the date so fixed for hearing of the suit or for taking steps. In case, where the party is negligent in producing his evidence, the Court while exercising its judicial discretion, can pass an order either closing the evidence of the party or impose costs to be paid by-such party to the other party.

15. The apex Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , had an occasion to deal with the provisions of Section 35-A and 35-B of the Code of Civil Procedure, 1908. The apex Court noticed a list of its several judgments governing the award of costs (the list is indicated in the said judgment). The apex Court having dealt with the provisions of Section 35-A and 35-B of the CPC Code, 1908 in the light of its earlier judgments, held that Sections 35, 35-A and 95 of the Code of Civil Procedure, 1908 deal with different aspects of the award of costs and compensation. u/s 95 costs can be awarded upto Rs. 50,000/- and u/s 35-A, the costs awardable are upto Rs. 3,000/-. The award of costs of the suit is the discretion of the Court and that in Sections 35 and 35-B, there is no upper limit of the amount of costs awardable. The apex Court further observed that judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Such a practice also encourages the filing of frivolous suits. It also leads to taking up frivolous defences. Further, whenever costs are awarded, ordinarily the same are not realistic and are nominal. The costs have to be actual reasonable costs, including the cost of the time spent by the successful party, the transportation and lodging, if any or any other incidental costs, besides the payment of Court fee, lawyer's fee, typing and other costs in relation to the litigation. That it is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice directions so as to provide appropriate guidelines for the subordinate Courts to follow.

16. Hence, having regard to the facts and circumstances of the case and having regard to the judgment of the apex Court, referred to supra, I am of the considered view that the Courts while imposing costs, are required to take into consideration, the conduct of the parties while dealing with the matter, whether the parties are serious in pursuing the matter and whether interlocutory applications are filed being filed by them to protract the litigation or whether there exist any substantial issues for consideration in such applications. In any case, if the Court comes to the conclusion that the interlocutory applications are filed only to protract the litigation, it can always impose costs following the

judgment of the apex Court, referred to supra.

17. Inasmuch as in the instant case, the petitioner-defendant in spite of granting sufficient time, did not get the document impounded and adduce the evidence, the Court below instead of refusing to re-open and recall D.W.1 for cross-examination, thought it fit to give an opportunity to the petitioner-defendant to impound the document and adduce his evidence by imposing compensatory costs of Rs. 10.000/-, and I see no reason to interfere with the order passed by the Court below in imposing such costs of Rs. 10,000/-.

18. Hence, the C.R.P. is devoid of merit, and the same is accordingly dismissed.