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(2006) 03 AP CK 0102

In the Andhra Pradesh High Court

Case No : W.P.M.P. No''s. 3065 of 2006 in Writ Petition No. 27960 of 2005

Premier Chemical Industries and Another — APPELLANT

Vs

Member Convener and Joint Director (M and HC) and Others — RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:
Civil Practice Rules — Rule 30, 32, 33
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2, Order 3 Rule 4, Order 6 Rule 15, Order 9 Rule 9
Constitution of India, 1950 — Article 227

Citation : AIR 2006 AP 242 : (2006) 1 APLJ 396 : (2006) 3 KLT 923

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Pawan Kumar Agarwal, for the Appellant; G.P. for Industries and Commerce, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioners filed the writ petition assailing the proceedings of second respondent dated 20-12-2003 whereby and whereunder permanent registration granted to first petitioner small scale industry was cancelled and first petitioner was de-registered on an allegation that the petitioners cheated the Government institution by furnishing fake copy of the rate contract agreement. The Writ petition was listed in Motion List for admission on 2-1-2006. On that day, this Court passed the following order. The matter was listed as item No. 1 in the "Motion List" on 30-12-2005. On that day, learned Counsel for the petitioners was absent and there was no representation, therefore, the matter was directed to be listed under the caption "For Dismissal". Today also, though the matter is appearing in the list under the caption "For Dismissal", learned Counsel for the petitioners is absent and there is no representation.

The writ petition is, therefore, dismissed for default/non-prosecution. No costs.

2. The present application is filed under Order IX, Rule 9 of Code of Civil

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Procedure, 1908 (CPC) to set aside the order dated 2-1-2006 dismissing the writ petition for default. The affidavit in support of the miscellaneous application is filed by the learned Counsel for the petitioners, Sri Pawan Kumar Agarwal. No affidavit is filed on behalf of the petitioners showing sufficient cause as to why the petitioners or their Counsel was absent on that day when the case was called. Therefore, this application cannot be entertained. Every petition and every miscellaneous application filed in support of writ petition or miscellaneous application has to be accompanied by an affidavit filed by petitioner or on behalf of petitioner. An Advocate appearing for a party, in the considered opinion of this Court, is not entitled to file affidavit on behalf of the party. The application is therefore liable to be dismissed. The reasons for the same are as follows:

3. The CPC especially Order VI in First Schedule lays down the rules to be followed in the matter of pleadings. As per Rule 15 of Order VI, every pleading shall have to be verified by the "party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case" and the verification shall have to be signed by the person making it. Order III deals with Recognised Agents and Pleaders. Order III, Rule 1 enables a recognized agent to make appearance, application or act in or to any Court. Rule 2 explains recognized agents as "agents of parties by whom applications and acts may be made or done". These are those persons holding power of attorney authorizing them to make application and act on behalf of such parties. Section 2(15) of CPC defines Pleader as to mean any person entitled to appear and plead for another in Court and such Pleader includes Advocates, Vakil and Attorney of High Court, Rule 4 of Order III lays down that unless he has been appointed for the Pleader no Pleader shall act for any person in any Court. Advocate can only act in accordance with the power of attorney or vakalatnama.

4. In this connection, it may be mentioned that the High Court of Andhra Pradesh in exercise of their powers under Article 227 of the Constitution and 126 of CPC made the Rules and Circular Orders compediously called "Civil Rules of Practice and Circular Orders." Chapter III deals with Advocates and recognized agents. Rule 30 says that every vakalat shall be in Form No. 12 and shall be executed or its execution attested by a judicial functionary, Gazetted Officer, an M.L.A. an M.P., an Advocate etc. Rule 32 enables a party to a suit or proceedings to appear by any agent other than Advocate and as per Rule 33 such agent can sign or verify petitions and applications and has to produce written authority in that behalf. Rule 33 of Civil Rules of Practice, is relevant and reads as under:

33. Signing or verification by Agent:- If any proceeding, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in Court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceeding, and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a

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recognized agent of the party as defined by Order III, Rule 2 of the Code and is duly authorized and competent so to do.

5. It is also necessary to extract vakalatnama in Form No. 12, which is as follows:

Vakalat (Cause-title)

I do hereby appoint and retain-to-appear for me in above Original.... Miscellaneous Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I empower any vakil to appear in all miscellaneous proceedings. In the above suit or matter till the decrees or orders are fully satisfied or adjusted and to obtain the return of documents and draw any moneys that might be payable to me in the suit or matter and I do further empower my vakil to accept on my behalf, service of notice of all, any appeals or petitions filed in any Court of Appeal. Reference or Revision with regard to the said suit or matter before the disposal of the same in this Honourable Court.

(Emphasis supplied)

6. A reading of Rule 33 read with Form 12 (Vakalatnama) shows that a Pleader, an Advocate, who is given vakalatnama can only appear in the Court as contemplated by Rule 4 of Order III and he has no such power or authority to file or sign affidavits before the Court except by way of third party affidavit in proof of affidavit allegations made by a party. For example, in applications for condonation of delay or applications to set aside ex parte orders, generally the parties attribute some cause and delay to Advocate''s office or Advocates themselves. In such an event, an Advocate can always give a third party affidavit in support of the allegations made by the Counsel for the party/petitioner in the affidavit accompanying the application. Except to the limited extent, an Advocate acting under vakalatnama is not permitted and cannot file application on behalf of the parties.

7. Therefore, the practice of Advocates filing affidavits on behalf of the parties seeking redressal is not proper, and on the affidavit filed by the Advocates appearing for the parties, no relief can be granted to the petitioners.

8. The W.P. M. P. is therefore dismissed.

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