

(1978) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2269 of 1976

R. Ganga Reddy

APPELLANT

Vs

Raghunatha Reddy

RESPONDENT

Date of Decision : 31-07-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, Order 11 Rule 21, 151

Citation : AIR 1978 AP 457 : (1978) 2 APLJ 208

Hon'ble Judges : Madhusudan Rao, J

Bench : Single Bench

Advocate : S. Venkata Reddy, for the Appellant; B. Subhashan Reddy, for the Respondent

Judgement

1. This revision is directed against an order passed by the learned Subordinate Judge, Nizambad, in I. A. No. 573 of 1976 in O. S. No. 24 of 1974 on the file of his Court. The petitioner is the defendant whose defence in the suit was ordered to be struck off.

2. The respondent instituted the suit against the petitioner for partition of the plaint schedule properties into two equal shares and for separate possession of one share claiming to be the adopted son of the petitioner. Along with the suit, he filed I. A. No. 175 of 1974 for appointment of a receiver to take possession and to manage the lands of the joint family. The petitioner opposed the application. The Court refused to appoint a receiver, but directed the petitioner to deposit a sum of Rs. 18,900/- per annum before the end of March every year commencing from March, 1975. The petitioner filed C. M. A. No. 627 of 1974 in this Court stating that the income of the lands, as estimated by the Court, was highly excessive. The High Court allowed the appeal by reducing the deposit amount of Rs. 18,900/- per annum to Rs. 12,000/- per annum. During the pendency of the appeal, the petitioner deposited Rs. 8,000/- and later on he deposited two sums of Rs. 4,000/- and Rs. 2,000/-. He did not however deposit any amount subsequently, though he had to deposit totally Rs. 48,000/- for the

years 1975 to 1978. He filed I. A. No. 195 of 1976 in the Court of the Subordinate Judge requesting that the order directing deposit of Rs. 12,000/- may be modified so as to reduce the amount; but the Court dismissed the application. As the petitioner was not depositing any amounts, the respondent filed I. A. No. 573 of 1976 for appointment of a receiver, the petitioner opposed the application. The Court finally passed the impugned order dated 20-9-1976 and it reads :

"It is ordered that the defence of the respondent (petitioner herein) be struck out u/s. 151 C. P. C. as from 20-10-1976 if by that date he fails to make the deposit ordered by the High Court in A. A. O. No. 627 of 1974. No receiver can be appointed. No order as to costs. Petition ordered accordingly."

3. The petitioner is the defendant in a suit for partition. He is in possession of the suit lands. When the plaintiff sought the appointment of a receiver, he opposed the application. To safeguard the interests of the plaintiff, the High Court directed him to deposit an amount of Rs. 12,000/- every year. He is not depositing the amount even though several years have passed. The trial Court directed that his defence should be "struck out" if he does not comply with the order of the High Court by a particular date. The question is, whether, under these circumstances, the Court has jurisdiction to strike out the defence in the exercise of its inherent powers u/s 151, C. P. C.

4. The Civil P. C. was enacted to regulate the proceedings of the Courts of Civil Judicature in the country. As can be seen from the preamble, it is a consolidating and amending statute of all the laws relating to the procedure of the Courts. The Courts in India are essentially Courts of equity and justice. Powers to pass orders necessary to secure the ends of justice or to prevent abuse of the process of the Court are inherent in the very constitution of the Courts. Being aware of the possibility of the various provisions in the Code, not being exhaustive enough to cover all the infinite situations that might arise, the Legislature has expressly provided under S. 151 that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The saving provision does not enable the Courts to pass orders in conflict with the express provisions of the Code. It does not also permit the Courts to pass orders which may tantamount to making new law on any subject that is specifically dealt with under the Code. The inherent powers of the Court saved under S. 151, Civil P. C. are complementary to the powers of the Court specifically provided in the Code and they cannot override the express provisions of the law.

5. In Arjun Singh Vs. Mohindra Kumar and Others, the Supreme Court observed :

"In other words, if there are express provision of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to

a matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code need not be express but may be implied from the very nature of the provisions that it makes for covering the contingencies to which it relates."

6. In *Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others*, , their Lordships of the Supreme Court observed :

"The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions."

7. Again in *Nain Singh Vs. Koonwarjee and Others*, the Supreme Court pointed out that the inherent jurisdiction of the Court must be exercised subject to the rule that, if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked.

8. Under the impugned order, the trial Court directed the striking off the defence of the petitioner in the suit and thus deprived the petitioner of his right of defence in the suit. It is the heaviest penalty which may be imposed on the defendant in a suit. The Code embodies rules of procedure designed to facilitate justice and further its ends. The rules of natural justice are the basic principles of the rules of judicial procedure. One of the most spontaneously accepted rules of natural justice is the principle embodied in the maxim *audi alteram partem*. The two important elements of the doctrine are : (1) proper notice to the affected party of the proposed action; and (2) affording a reasonable opportunity of being heard against the proposed action. The requirements of "reasonable opportunity of being heard" can be satisfied only when the party is afforded the opportunity of stating his case, of producing his evidence, of cross-examining the witnesses produced against him and also of addressing arguments. The various provisions in the Code clearly incorporate the doctrine in all its elements. Not to condemn anyone unheard is an elementary feature of fair dispensation of justice and it can be dispensed with only when the party concerned declines the privilege or incurs a forfeiture by conduct specified by the Legislature.

9. In *Union of India (UOI) Vs. T.R. Varma*, the Supreme Court observed (at p. 885) :

"Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the

opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

10. In *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , their Lordships of the Supreme Court observed :

"Next, there must be ever present to the mind that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

One of the fundamental principles of judicial procedure is that no decree or order finally deciding a question between the parties should be made without giving an opportunity to the party affected by it. However, in the light of the trend of litigation and the tendencies of the litigants, the Legislature, in its wisdom, considered necessary to negative this basic right in certain circumstances and made specific provisions in the Code.

Order 6, Rule 16, Civil P. C. provides for the striking out of the pleadings. That Article reads :

"The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit."

Under this rule, either at the instance of a party or suo motu, the Court may strike out or amend the pleadings in such manner and on such terms as it thinks just. If it is found beyond all reasonable doubt that the averments in a written statement do not constitute a defence at all to the action in question and if the pleading is not struck out, which would unnecessarily delay the trial of the suit, the Court has power to strike out the pleading. A claim or defence, which a party is not prima facie entitled to make or a pleading which is embarrassing with scandalous allegations, may be struck out by the Court.

Order 8, Rule 10, C. P. C. provides that "Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit." This rule provides against any defendant adopting dilatory tactics without a valid defence.

The next provision is O. 11, R. 21 which reads :

"Where any party fails to comply with any order to answer interrogatories, or for

discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution and, if a defendant to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly."

Yet another provision of similar nature is contained in O. 16, R. 20. It is provided under this rule that "where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document, then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit."

11. Admittedly, none of the above referred specific provisions applies to the instant case. Order 11, Rule 21, which empowers the Court to strike out the defence of a defendant, contemplates only three situations; the first is refusal to answer interrogatories under R. 11 of that Order; the second is refusal to make discovery of documents under R. 12, while the third situation is refusal to permit inspection of documents under r. 18. The rule does not contemplate any other kind of disobedience or refusal. Though orders for production of documents are specifically provided in R. 14 of O. 11, non-compliance with an order for production of documents is not included in R. 21. In interpreting R. 21, almost all the High Courts including this Court have held that r. 21 applies only to the three specific refusals or non-compliances and does not take in its ambit any other disobedience and even the disobedience of an order passed under R. 14 contained in the main O. 11 (Vide *The Lyalpur Sugar Mills and Co. and Another Vs. The Ram Chandra Gur Sahai Cotton Mills and Co.*, ; (*Sahu*) *Munna Lal Vs. Tara and Another* ; *Khaliluddin Hyder v. Matluba Khatoon* (1944) 48 C WN 677); *Subbayyar Vs. M.L.M. Ramanathan Chettiar*, ; *Subramania Ayyar v. Bommer Cotty Haji* (AIR 1933 Mad 870); *Manohar Das v. Darbara Singh* (AIR 1933 Lah 248); *Amarsingh v. Chaturbhuj* (AIR 1957 Raj 367); *Koduri Krishnarao Vs. State of Andhra Pradesh, Hyderabad, and Kishan Rao v. Narayan Reddy* (ILR 1970 AP 1203).

12. In none of the above-cited cases, where the Courts set aside the orders striking off the defence passed under O. 11, R. 21, on the ground that the order in question was not an order for answering interrogatories or for discovery or inspection of documents, the Courts considered the question whether the orders could be justified under Sec. 151, C. P. C. except in the Calcutta case *Khaliluddin Hyder v. Matluba Khatoon* ((1944) 48 CWN 677), where the learned Judges observed :

"We are very doubtful as to whether in view of the express provisions contained in O. 11, R. 21 of the Code of Civil Procedure, there could be any scope for the exercise of inherent jurisdiction to make an order of this kind. Be that as it may, as we have said, we are not at all satisfied that the circumstances of the case were such as called for such an order in the exercise of inherent jurisdiction. There is no magic in the words "inherent jurisdiction", and by merely using this

expression, a Court cannot justify an order which could not otherwise be justified."

13. Relying on *Ram Balabh Vs. Gopi Ram, and Shankar Deoba Patil and Another Vs. Ganpatilal Shiodayal Chamedia*, , the respondent's learned Counsel contends that the Court has inherent power to strike out defence for disobedience of orders not specifically mentioned in O. 11, R. 21.

14. In *Ram Balabh's* case (*supra*), some time before the 1st May, 1951, the defendant, Subh Karan, was asked to copy out the Hundi which was the basis of the suit. On 1st May, 1951, he was summoned for making out another copy of the document. The defendant was present with his counsel on 1st May. The case was posted to 3rd May, on which date the defendant was absent and his counsel was not prepared to take the responsibility of producing him on the next date of hearing. The Court thereupon made an order directing the plaintiff to file process fee for summoning the defendant and later issued summons to the defendant to appear as a witness for the plaintiff on 24th May. On that date, the defendant did not appear. The Court thereupon passed an order striking out the defence. The defendant took the matter in revision to the High Court. The learned Judge observed (at p. 158) :

"In the present case, Subh Karan was not ordered to appear in his capacity as a defendant but was summoned as a witness for the plaintiff. If he did not appear the Court could have taken action which could be taken against a witness. The Court was however not authorised to strike out the defence under its inherent powers. Even if the Court thought that it had such powers it was its duty at least to ask Subh Karan to show cause why his defence should not be struck out as was done in *Madras case* (AIR 1932 Mad 263) referred to by the learned counsel for the applicant. In my opinion, even if it may not be said that the Court acted without jurisdiction, the Court at least committed a material irregularity in the exercise of its jurisdiction."

With the above observation, the defendant's application was allowed. It was not expressly held in that case that Section 151, C. P. C. authorises the Court to pass orders striking out defence under situations otherwise than contemplated in O. 11, R. 21. On the other hand, the Court clearly held that "the Court was however not authorised to strike out the defence under its inherent powers."

15. In *Shankar Deoba Patil and Another Vs. Ganpatilal Shiodayal Chamedia*, , the defendant was directed by the Court to furnish security for the suit claim and costs within a certain time and in case of default, it was ordered that his defence should be struck out. On revision, while setting aside the order of the trial Court, the learned Judge observed (at pp. 88, 89) :

"There is, however, a provision under O. 11, R. 21, Civil P. C. when the defence of a defendant could be struck out. Under that rule if any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of

prosecution, and , if a defendant to have his defence if any, struck out and to be placed in the same position as if he had not defended, there is no other similar provision. But it may be that in a given case a Civil Court may think of ordering under S. 151, Civil P. C., in the way the trial Court has ordered; but that should be done only when the Court finds that the defendant's acts or defaults are wilful and as a last resort; but surely this was not a case in which he could have ordered that the defence of the defendant should be struck out. The facts and circumstances do not warrant such and order."

16. In so far as the Legislature has provided in O. 11, R. 21, the circumstances under which a defence may be struck out, it will not be possible for the Court to exercise inherent powers so as to extend the rule to cover circumstances not specified in the rule. Striking out a defence is an extreme step. It is penal and so it is specifically provided in the rule that the step can be taken only for the disobedience of certain orders. By imposing this penalty in other cases not covered by the rule under the guise of the inherent powers, the Court would be investing in itself with a penal power not conferred on it by the statute. The inherent power of a Court can be exercised in procedural matters when there is no express provision of law applicable to the particular topic or subject. I am, therefore, unable to share the view expressed in the Bombay case (*supra*) cited by the learned counsel for the Respondent.

17. In *R.T. Ramayya Servai Vs. R. Sama Ayyar and Others*, , a Division Bench of the Madras High Court held that, in a suit for possession of land, if the defendant, who is in possession of the land, is allowed to cultivate the land during the pendency of the suit and is directed to pay certain sums to the receiver appointed during the course of the suit, but does not pay the amounts in spite of repeated orders, the defendant may render himself liable to be proceeded against for contempt of Court and for being dispossessed of the land, but that the failure of the defendant to comply with the failure of the defendant to comply with the direction of the Court to pay money to the receiver does not enable the Court to strike out his defence. The Division Bench observed in that case as follows :

"It is very doubtful whether Section 151 of the Code on which reliance is placed by the learned Advocate for the respondents would apply in a case where there is a specific provision enacted by the Legislature. It is not as if the Legislature has omitted to provide for the case of striking out a defence. The Legislature has provided that, under circumstances set out in R. 21 of O. 11, the Court may strike out a defence."

18. In *Nagendra Firm v. Ram Subhas Hari & Co.* (1958) ALT 966) when the Court directed the defendant to produce certain ledgers under O. 11, r. 14 and the defendant did not produce those ledgers, the Court passed an order striking out his defence under O. 11, R. 21 and s. 151, Civil P. C. In the revision filed by the defendant, the plaintiff's learned Counsel conceded that the order could not be supported under O. 11, R. 21, but that it was, however, valid under S. 151, C. P.

C. Dealing with the contention, Basi Reddy, J., observed :

"The argument that because R. 21 does not provide for the striking out of a defence for non-compliance with an order for the production of documents, recourse can be had to the inherent jurisdiction of the Court, appears to me to be fallacious."

No doubt, as contended by the learned Counsel for the respondents, the conduct of the defendant in the instant case may be contumacious and may deserve condemnation; but that cannot be a ground to impose on him a penalty not permissible under the law. The law permits the striking out of defence only when the defendant disobeys any order passed under O. 11, R. 11; or 12, or 18. Moreover, from the beginning, the defendant has been pleading that the income from the lands in his possession is meagre and that the amount directed to be deposited by him is highly excessive. His non-compliance with the order of the Court for depositing at the rate of Rs. 12,000/- per year may be either due to his real inability or may be due to his recalcitrance. Even according to the plaintiff, the defendant has a half share in the suit property. The failure of the defendant to deposit the amounts directed by the Court cannot result in any irreparable loss to the plaintiff. Expressing his inability to deposit the amount directed by the Court, the defendant has even filed an application before this Court for the appointment of a receiver. Under the circumstances, the Court could have taken any other suitable step by way of appointing a receiver for the lands and also putting into execution the order of the High Court directing the deposit of money. The order passed by the learned Subordinate Judge is neither legal nor proper and it is, therefore, set aside.

19. In the result, the revision petition is allowed, but in the circumstances, without costs. The lower Court is directed to appoint a receiver for the lands comprised in the suit property.

20. Revision petition allowed.