

(2011) 03 AP CK 0060

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6141 of 2010

Sannidhi Satyanarayana Murthy and Others

APPELLANT

Vs

Smt. Bangaru Rajeshwari

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 — Section 6, 9(1), 9(2)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 5, Order 8 Rule 6
Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : (2011) 8 RCR(Civil) 1229

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : N. Vijaya Sree, for the Appellant; E.V.V.S. Ravi Kumar, for the Respondent

Judgement

G. Rohini, J.—This Revision Petition is directed against the order dated 4.11.2009 in I.A. No. 1469 of 2009 in O.S. No. 191 of 2002 on the file of the Court of the Senior Civil Judge, Bhimavaram.

2. The Defendants in the suit are the Revision Petitioners. The facts, in brief, are as under:

The Respondent herein filed O.S. No. 191 of 2002 in the Court of the Senior Civil Judge, Bhimavaram against Sannidi Satyanarayana Murthy for recovery of a sum of Rs. 1,62,233/- on the basis of a promissory note dated 30.04.2000. The sole Defendant - Sannidi Satyanarayana Murthy filed a written statement contending that he never executed the alleged promissory note dated 30.04.2000 nor received the amount as claimed by the Plaintiff. It is further pleaded that about 10 to 12 years back he had borrowed some amount from the Plaintiff and in that context the Plaintiff obtained the signatures of the Defendant on some blank printed forms of promissory notes. Subsequently though the Defendant repaid the entire amount borrowed, the Plaintiff did not return the promissory note signed by him in spite of several demands made and filed the suit on the basis of

one of the duly signed blank promissory notes to have wrongful gain. On the basis of the pleadings, the Court below framed two issues as under:

(1) Whether Suit promissory note is true, valid and supported by consideration.

(2) To what relief.

3. In support of the suit claim, the Plaintiff got herself examined as P.W.1 apart from examining P. Ws.2 and 3. The Defendant got himself examined as D.W.1 and while the matter was coming up for further evidence, the sole Defendant Sannidi Satyanarayana Murthy died. The legal representatives of the sole deceased Defendant were brought on record as Defendants 2 to 8 and with the leave of the Court, they filed an additional written statement pleading inter alia that the Plaintiff and her husband were money lenders by profession and that they were doing money lending business in the name and style of Vaibhav Bankers at Bhimavaram and that without maintaining any records they were grabbing the valuable properties of the public. It was also pleaded that the deceased Defendant issued a reply dated 22.11.2002 to the suit notice alleging that the Plaintiff was illegally doing finance business and that about 10 to 12 years back the Plaintiff's husband obtained signatures of the 1st Defendant on blank printed forms of promissory notes and though the entire debt was discharged the blank signed promissory notes were not returned. The Defendants had also made a counter-claim against the Plaintiff seeking prosecution of the Plaintiff and other witnesses u/s 195 of Code of Criminal Procedure for criminal conspiracy to grab the property of the Defendant No. 1 and for filing a false suit on the basis of a fabricated promissory note. They also made a further claim for recovery of a sum of Rs. 5 Lakhs from the Plaintiff for the business loss suffered by the 1st Defendant and another sum of Rs. 5 Lakhs for causing death of the 1st Defendant and loss caused to his family members due to the illegal action of the Plaintiff.

4. Thereafter, the Defendants 2 to 8 filed I.A. No. 1469 of 2006 under Order 14 Rule 5 of CPC with a prayer to frame the following additional issues:

(1) Whether the Plaintiff is a moneylender within the meaning of the definition of Money Lenders Act and Regulation.

(2) Whether the interest charged is a reasonable or not as per Money Lending Act.

(3) Whether the Plaintiff is maintaining books and registers as require under Money Lenders and Pawn Brokers Act and Regulation.

(4) Whether the money alleged as advanced is from the money lending business or not.

5. The Plaintiff opposed the said petition and it was contended in the counter that since the provisions of A.P. (Telangana Area) Money Lenders Act were not applicable to the suit transaction, there was no need to frame any additional

issues as sought by the Defendants. The allegation in the additional written statement that the Plaintiff was a money lender and that she was carrying on money lending business without any licence had also been categorically denied and it was contended that the issues already framed were sufficient to decide the question involved in the suit.

6. After hearing both the parties, the Court below by order dated 4.11.2009 dismissed I.A. No. 1469 of 2009 holding that since the provisions of the Hyderabad Money Lenders Act 1949 were not applicable to Andhra area, the framing of additional issues as sought by the Defendants was not necessary.

7. However having regard to the specific plea in the written statement initially filed by the sole Defendant that the suit was barred by time and therefore it was liable to be dismissed with compensatory costs, the Court below framed the two following additional issues:

(1) Whether the suit is barred by limitation.

(2) Whether the Defendant is entitled for compensatory costs.

Aggrieved by the said order, dated 4.11.2009, the present Civil Revision Petition is filed by the Defendants.

8. I have heard the learned Counsel for both the parties. Smt. N. Vijaya Sree, the learned Counsel for the Revision Petitioners/Defendants vehemently contended that in view of the specific plea in the additional written statement that the Plaintiff was carrying on money lending business in the name and style of Vaibhav Bankers, the Court below ought to have appreciated that it is not a simple suit for money based on a promissory note and it is essential to frame additional issues as sought by the Defendants to arrive at a right decision in the suit. It is also contended by the learned Counsel for the Petitioners that the Court below committed a grave error in concluding that since the provisions of the Hyderabad Money Lenders Act are not applicable to the suit transaction, it is not mandatory to frame an issue whether the Plaintiff is a money lender and whether she has complied with the provisions of the Money Lenders Act. In support of her submissions, the learned Counsel for the Petitioners relied upon the decisions in Shamamma and Another Vs. Ramachander Rao and Others, Thota Venkata Rao v. Sunkara Raja Kumar 2006 (4) ALD 92 , Venkatesh Shinde Vs. P. Rameshchand Bhandari and Others, and a judgment of this Court in CCCA No. 26 of 1969, dated 3.7.1972 in A. Agaiah v. Deepchand Singh.

9. On the other hand, the learned Counsel for the Respondent while seeking to justify the order under Revision contended that the interference by this Court is not warranted on any ground whatsoever.

10. Order 14 Rule 1 of CPC which provide for framing of issues reads as under:

Order 14 Rule 1 Framing of issues

(1) Issues arise when a material proposition of fact or law is affirmed by the one

party and denied by the other.

(2) Material propositions are those propositions of law or fact which a Plaintiff must allege in order to show a right to sue or a Defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the Defendant at the first hearing of the suit makes no defence.

11. A reading of the above provision shows that each material proposition of fact or law affirmed by one party and denied by the other shall form the subject of a distinct issue and the Court shall frame the issues on which the right decision of the case appears to depend after ascertaining upon what material propositions of fact or of law the parties are at variance. Rule 5 of Order 14 further empowers the Court to frame additional issues at any time before passing a decree for determining the matters in controversy between the parties.

12. As noticed above, the suit claim is based on a promissory note allegedly executed by the sole Defendant - Sannidi Satyanarayana Murthy. In the written statement filed by the sole Defendant, the only defence taken was that the suit promissory note was created on the printed blank promissory note containing his signature and that he never received any amount from the Plaintiff under the suit promissory note.

13. In the additional written statement filed by the Defendants 2 to 8 after they were brought on record as legal representatives of the deceased sole Defendant, an additional defence was taken that the Plaintiff filed a false suit with the sole intention of grabbing the valuable property of the Defendants. It was also alleged that the Plaintiff and her husband were doing money lending business in the name and style of Vaibhav Bankers without any licence and without maintaining the books and cheating the public by fabricating false promissory notes.

14. Having regard to the additional defence taken, it is contended by the Defendants that it is necessary to frame additional issues noticed above. The said request was not accepted by the Court below on the ground that A.P. (Telangana Area) Money Lenders Act, 1349 F has no application to Andhra area.

15. It is to be noticed that A.P. (Telangana Area) Money Lenders Act, 1349 Fasli was enacted to regulate the transactions of money lending and to make better provision for its control. The expressions "loan" and "moneylender" have been

defined under the said Act and as per the provisions of the said Act, every moneylender has to obtain a licence from the licensing authority under the Act.

16. No moneylender can carry on the business of money-lending without obtaining such licence and any person who contravenes the same is liable to be punished with rigorous imprisonment for a term which may extend to six months or with fine or with both. Such offence is also cognizable and bailable. Under the said Act, it is also mandatory for a moneylender to maintain accounts and to furnish statements thereof to debtors. Section 9(1) of the said Act further provides that in every suit relating to a loan, the Court shall frame and decide the issues whether the moneylender is a moneylender as defined in the said Act and whether he has complied with the provisions of the said Act. As per Section 9(2) if it is proved that the Plaintiff is a money lender as defined in the said Act, but does not hold a licence granted under the Act, the Court shall dismiss his suit. Similarly for non-compliance with the provisions of the Act with regard to maintaining the accounts and passing receipts for the payment made by the debtors, the Act provides that the Court may disallow whole or any portion of the interest due or the costs and etc.

17. However, the provisions A.P. (Telangana Area) Money Lenders Act, 1349 Fasli (hereinafter referred to as "the Act of Telangana Area") are applicable only to the Telangana Area of the State of Andhra Pradesh. So far as the Andhra Area of the State of Andhra Pradesh is concerned, The A.P. (Andhra Area) Debtors' Protection Act, 1934 has been enacted for the protection of certain classes of debtors and for that purpose to regulate the keeping of accounts by certain classes of creditors. The A.P. (Andhra Area) Debtors' Protection Act, 1934 (hereinafter referred to as "the Act of Andhra Area") also contained provisions making it mandatory for the creditors to maintain accounts and to give receipts. Section 6 of the Act of Andhra Area provides that in any suit relating to a loan if the Court finds that a creditor has not maintained an account as required under the said Act, he shall not be allowed his costs. Similarly if the creditor fails to give a receipt for the sum paid by the debtor, the creditor shall not be entitled to any interest for the period of the default.

18. However the Act of Andhra Area does not contain any specific provision making it mandatory to frame and decide an issue with regard to the compliance with the provisions of the said Act by the creditor.

19. Since the provisions of the Act of Telangana Area are not applicable to the case on hand and there is no specific provision under the Act of Andhra Area requiring the Court to frame an issue with regard to compliance of the provisions of the said Act by the creditor, the Court below held that there was no need to frame any additional issues as sought by the Defendants.

20. It is true that the Act of Andhra Area does not contain a specific provision similar to Section 9 of the Act of Telangana Area. However a specific allegation was made in the additional written statement that the Plaintiff was carrying on

money lending business. It is also relevant to note that the Defendants 2 to 8, after they came on record as legal representatives of the deceased sole Defendant, were granted leave to file the additional written statement which also contained a counter-claim. Subsequently the Plaintiff filed I.A. No. 1715 of 2006 under Order 8 Rule 6 (c) for excluding the counter-claim and the same was allowed by the Court below by order dated 12.12.2006. Against the said order, the Defendants filed C.R.P. No. 90 of 2007 and the same was allowed by this Court and the order in I.A. No. 1715 of 2006 to the extent of excluding the two reliefs in the additional written statement for total compensation of Rs. 10 Lakhs was set aside.

21. In the circumstances, the Court is bound to frame appropriate issues with regard to the defence taken and counter-claim made by the Defendants in the additional written statement. The fact that there is no mandatory provision under the Act of Andhra Area for framing an issue with regard to the compliance with the provisions of the said Act is irrelevant for the said purpose. The Court is bound to frame the issues upon the material propositions of fact or law upon which the parties are at variance if it is found that the right decision of the case depends on such issue.

22. Apparently the Court below declined to exercise such discretion on the ground that there is no provision under the Act of Andhra Area mandating framing an issue with regard to the compliance with the provisions of the said Act. It is also surprising to note that in spite of the fact that the entitlement of the Defendants to make counter-claim was upheld by this Court in C.R.P. No. 90 of 2007, no issue was framed with regard to the said counter-claim.

23. The law is well-settled that it is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence. Hence I am of the opinion that the order under Revision suffered from a material irregularity in exercise of jurisdiction conferred under Order 14 Rule 5 of Code of CPC In view of the specific allegation in the additional written statement that the Plaintiff was carrying on the business of money lending without maintaining accounts as required under law, it is necessary to frame a specific issue on that aspect.

24. Though the provisions of A.P. (Telangana Area) Moneylenders Act, 1349 Fasli are not applicable to the case on hand, undoubtedly the provisions of A.P. (Andhra Area) Debtors Protection Act, 1934 are applicable. Even under the said Act, it is mandatory for the creditors to maintain accounts and give receipts and in the event of failure, the creditor cannot be allowed costs or interest as the case may be.

25. Hence it is essential to frame an issue with regard to the compliance of the A.P. (Andhra Area) Debtors Protection Act, 1934 so as to determine the matters in controversy between the parties. The mere fact that the Defendants in the additional written statement referred to the Act of Telangana Area, the provisions of which are not applicable to the instant case cannot be a valid ground to

decline to frame the necessary issue with regard to compliance of the provisions of the Act of Andhra Area. As expressed above, it is also necessary to frame an additional issue with regard to the counter-claim made by the Defendants.

26. Accordingly, I deem it appropriate to frame the additional issues as under:

(i) Whether the Plaintiff is a creditor within the meaning of the A.P. (Andhra Area) Debtors Protection Act, 1934 and whether the provisions of the said Act are complied with by the Plaintiff.

(ii) Whether the money allegedly advanced to the deceased Defendant was in the regular course of business as a creditor by the Plaintiff.

(iii) Whether the Defendants are entitled to the counter-claim against the Plaintiff for recovery of a sum of Rs. 5 Lakhs for the business loss suffered by the 1st Defendant and a further sum of Rs. 5 Lakhs for causing death of the 1st Defendant.

(iv) Whether the suit is barred by limitation.

(v) Whether the Defendant is entitled for compensatory costs.

27. Accordingly, the order under Revision is hereby set aside and I.A. No. 1469 of 2009 is disposed of framing the above said additional issues.

28. The Civil Revision Petition is accordingly disposed of with a direction to the Court below to proceed further and dispose of the suit in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of this order. No costs.