

(1965) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Case Referred No. 34 of 1962

Syed Alam

APPELLANT

Vs

Abdul Khader Qureshi

RESPONDENT

Date of Decision : 01-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 137(2), 137(3)

Citation : AIR 1967 AP 42

Hon'ble Judges : P. Satyanarayana Raju, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : G. Suryanarayana Murthy, for Government Pleader, for the Appellant;

Judgement

P. Satyanarayana Raju, C.J.

(1) This is a reference made by the Munsif-Magistrate of Vikrabad under O. XLVI, R. 1 of the Code of Civil Procedure. It reads as follows:-

"Whether after G.O. Ms. No. 1295 Home (Courts-A), dated 16-7-62, Government of Andhra Pradesh (Published in the Gazette, dated 9-8-62 at p. 2041) and G.O. Ms. No. 125, dated 6-7-62 of the Government of Andhra Pradesh the subordinate Courts can entertain pleadings and applications, etc., in English language and whether the parties can be allowed to file their pleadings, applications, etc., in English after furnishing a translation of the same to the opposite party in Telugu or Urdu if he so requires."

(2) The material portion of the Government Order referred to in the Reference reads as follows:-

"NOTIFICATION No. 1.

In exercise of the powers conferred by sub-s. (2) of S. 137 of the Code of Civil Procedure, 1908 (Central Act, V of 1908), and in supersession of all the previous notifications on the subject, the Governor of Andhra Pradesh hereby declares

that the languages mentioned in Column (2) of the Schedule below shall be the languages of the Courts subordinate to the High Court in the corresponding districts mentioned in Column (1) thereof."

(3) The question is whether after the issue of the above notification by the Government it is possible for subordinate Courts in the State of Andhra Pradesh to entertain pleadings and applications in the English language.

(4) Section 137 of the CPC deals with the language of subordinate civil Courts. While permitting the continuance of the existing Court languages until a different provision is made, it empowers a State Government to declare what shall be the language of any civil Court.

(5) Sub-section (3) of S. 137, which is the material position, reads as follows:-

"Whether this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation."

(6) This sub-section deals with writings other than the recording of evidence. Pleadings and applications may be in English subject to a translation being supplied to the other side where necessary.

(7) This provision has come up for consideration before some of the High Courts. In *L.M. Wakhare Vs. The State*, , the question arose as to whether the Madhya Pradesh Official Language Act, specifying Hindi or Marathi as the language of the Courts, was valid. The learned Judges held that the enactment did not contravene any of the Constitutional provisions, and was valid, and that English could be used in accordance with sub-s. (3).

(8) In *Dayabhai Poonambhai and Another Vs. Natwarlal Sombhai Talati and Others*, , it was held by Dixit, J. that even after the enactment of the Madhya Bharat Official Language Act and the issue of a notification thereunder, the use of English by subordinate Courts for purposes mentioned in S. 137 was not prohibited.

(9) In *Sarshwati Bai Vs. The Allahabad Bank Ltd. and Another*, , the point for consideration was whether in view of R. 15 framed by the Government under the powers conferred by Art. 227(2)(b) of the Constitution, prescribing Hindi in Devanagari script as the language of the Court, a plaint presented in English was valid. It was held that in the absence of an executive direction prohibiting the use of English, which had been the language of the Court before, the plaint was valid.

(10) The matter can be looked at from another point of view. Article 345 of the Constitution provides:

"Subject to the provisions of Arts. 346 and 347, the Legislature of a State may

by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of the State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution."

The proviso to the Article emphasises that until the Legislature of a State expressly provides by law otherwise, the English language shall continue to be used for all purposes for which that language was being used immediately before the commencement of the Constitution. Therefore, the plaintiff in the present case, having been filed in the English language, which was the language in use immediately before the commencement of the Constitution, cannot be rejected.

(11) We, therefore, answer the reference as follows:-

(12) Even after the issue of G.O. Ms. No. 1295, Home (Courts-A) Department, dated the 16th July 1962, the subordinate Courts can entertain pleadings and applications in the English language subject to a translation being supplied to the other side, where necessary.

(13) Reference answered.