
(2009) 06 AP CK 0035
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5854 of 2008

T. Sarath Chandra Reddy	Vs	APPELLANT
Margadarsi Chit Funds Limited and Others		RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2009) 5 ALD 305 : (2009) 5 ALT 37 : (2009) 2 APLJ 405

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Y. Ashok Raj, for the Appellant; A.V. Sesha Sai, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court ordered notice before admission on 31-12-2008 and granted interim stay for a limited period, which is being extended from time to time.

2. The first respondent filed C.R.P.M.P. No. 2260 of 2009 praying for the relief of vacating the interim stay granted by this Court on 31-12-2008.

3. The learned Counsel representing the parties, at this stage, made a request for final disposal of the civil revision petition and hence, the same itself is heard finally by this Court.

4. This Civil Revision Petition is filed by the petitioner/defendant No. 1 against the order, dated 24-11-2008 made in I.A. No. 1388 of 2008 in O.S. No. 3 of 2008 on the file of the Principal Senior Civil Judge, Kurnool.

5. Sri Y. Ashok Raj, the learned Counsel representing the revision petitioner, would maintain that in the facts and circumstances, since it is a clear case of lack of territorial jurisdiction instead of driving the parties to let in evidence on all the issues, it would have been just and proper on the part of the learned Principal

Senior Civil Judge, Kurnool to decide the issue relating to territorial jurisdiction as a preliminary issue. The learned Counsel also had drawn the attention of this Court to Order 14 Rule 2 of the CPC Code and would maintain that in the facts and circumstances of the case, the impugned order cannot be sustained and, hence, the same is liable to be set aside and the civil revision petition is to be allowed. The learned Counsel also relied on certain decisions to substantiate his submissions.

6. Per contra, Sri A.V. Seshasai, the learned Counsel representing the vacate petitioner/respondent No. 1, would maintain that the issue relating to want of territorial jurisdiction being a mixed question of fact and law, the learned Judge arrived at the correct conclusion in dismissing the application. The learned Counsel also would maintain that the revision petitioner/1st defendant filed written statement on 24-03-2008 and the issues were settled on 25-04-2008 and the matter was posted for trial and the affidavit in lieu of chief examination was also filed and the matter was coming up for cross examination of P.W.1. The learned Counsel also would maintain that the petitioner also filed I.A. No. 1085 of 2008 under Order VI Rule 17 of the CPC virtually raising the self-same ground and the learned Judge dismissed the said application and posted the matter for cross-examination of P.W.1 on 16-10-2008. The learned Counsel also would maintain that even otherwise, in the light of the convincing reasons recorded by the learned Judge, this is not a fit matter to be interfered with. The learned Counsel also relied on certain decisions to substantiate his submissions.

7. Heard the learned Counsel on record.

8. Issue No. 2 settled by the trial Court reads as hereunder:

Whether this Court is having territorial jurisdiction to maintain this suit?

9. It is not in serious controversy that the revision petitioner filed an application I.A. No. 1085 of 2008 under Order VI Rule 17 of the CPC to amend the written statement specifically taking the selfsame ground and the learned Principal Senior Civil Judge, Kurnool, dismissed the said application by order dated 25-09-2008. The said order had not been challenged by way of civil revision petition.

10. Be that as it may, the pleadings of the respective parties had been pointed out and strong reliance was placed by the learned Counsel representing the revision petitioner on the decision of this Court reported in State of Tamil Nadu and Others Vs. B. Anandaiah and Others, wherein the learned Judge, after referring to the facts, came to the conclusion that under Sub-rule (2) of Rule 2, Order 14 of the Code of Civil Procedure, if issue touches on jurisdiction of Court or even a bar to suit created by any law, necessarily, such issue should be tried first and issue of jurisdiction has necessarily to be taken up as preliminary issue.

11. Sri Sesha Sai, the learned Counsel representing the first respondent, placed strong reliance on the decisions reported in Smt. J. Muthamma v. Smt. Bayya

Ilgamma 1990 (1) ALT 271 and Ramdayal Umraomal Vs. Pannalal Jagannathji, .

12. The learned Principal Senior Civil Judge, Kurnool, after recording reasons in detail at paragraph 7 of the impugned order, ultimately, came to the conclusion that the application is devoid of merits and accordingly, dismissed the same with costs.

13. On a careful reading of the reasons, which had been recorded by the learned Judge in detail, in the impugned order, this Court is satisfied that this is not a fit matter to be interfered with under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition shall stand dismissed. No order as to costs.