
(2009) 06 AP CK 0036
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3294 of 2008

T. Seethapathy and Another	Vs	APPELLANT
Principal District and Sessions Judge		RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 136, 227

Citation : (2009) 5 ALD 105 : (2009) 4 ALT 800 : (2009) 3 APLJ 96

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : P.B. Vijay Kumar, for the Appellant; M. Bhaskara Lakshmi, SC for APHC, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—This revision petition is filed by the petitioners/defendants under Article 227 of the Constitution of India against the order passed in I.A. No. 205 of 2008 in O.S. No. 300 of 2005, dated 30.06.2006 on the file of the III Additional Senior Civil Judge (FTC) Guntur, wherein and whereby the application purported to have been filed by the petitioners u/s 10 of C.P.C., seeking to stay all the proceedings in O.S. No. 300 of 2005 was dismissed.

2. Heard the learned Counsel for the petitioners Dr. P.B. Vijay Kumar and Smt. M. Bhaskara Lakshmi, learned Standing Counsel appearing on behalf of the respondent.

3. The facts of the case in brief are that the respondent herein filed a suit against the petitioners herein for recovery of an amount of Rs. 4,16,414-35 ps for alleged misappropriation of funds, while working as employees in the Court of Principal Senior Civil Judge at Guntur, during the period 1996 to 1998. Thereafter, criminal proceedings were initiated against the first petitioner and F.I.R. was lodged against him on the charge of mis-appropriation in Cr. No. 158 of 2003. In simultaneous proceedings initiated by the respondents in C.C. No.

194 of 2007 on the file of the Special Mobile Magistrate, Guntur, the wife of the first petitioner was discharged. Therefore, since they are simultaneously sought to be proceeded against, along with departmental proceedings, the first petitioner prayed to stay all further proceedings in the suit by way of filing an application in I.A. No. 205 of 2008 u/s 10 C.P.C. The said application was contested by the respondent, stating that the said application is not maintainable for the reason that there is no prior suit or any other proceedings pending in the court below and as the suit in O.S. No. 300 of 2005 is not similar to that of C.C. No. 194 of 2007, Section 10 C.P.C., has no application, apart from denying on merits.

4. The learned Counsel for the petitioners submits that having regard to the similarity in the nature of allegations both civil and criminal, witnesses being one and the same and since the civil suit is subsequent to the criminal case, in order to avoid conflicting decisions, the proceedings in the suit are liable to be stayed till the finding is given in the criminal case.

5. On the other hand, the learned Counsel for the respondent submits that since the trial in the suit has already commenced and the same is coming up for continuation of the evidence of the witnesses in chief, Section 10 C.P.C., cannot be invoked.

6. Taking into consideration the submissions made by both the learned Counsel and on perusing the material placed before this Court, the point that arises for consideration is, whether on the facts and circumstances the application filed by the petitioners u/s 10 C.P.C. is sustainable or not.

7. Admittedly, the petitioners are employees in the unit of the respondent. On the allegation of mis-appropriation of funds made by the first petitioner and others assisting him, the respondent herein filed a suit against the petitioners for recovery of an amount of Rs. 4,16,414-35ps. Simultaneously, criminal prosecution and departmental proceedings were initiated against them. To consider the scope, it is necessary to have a look at the main provision u/s 10 C.P.C., which reads as follows:

Stay of Suit:- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

8. From a bare reading of the above said provision it is seen that the issue involved in both the cases i.e., the present suit and the previously instituted suit shall be one and the same. Therefore, both cases should be of civil nature. Admittedly, in the present case, the other proceedings, i.e., C.C. No. 194 of 2007 or departmental proceedings are not of civil nature nor pending in Civil Court.

Whereas the suit in O.S. No. 300 of 2005 is filed by the respondent for recovery of Rs. 4,16,414.35ps., for civil liability in the court below. Whereas, the proceedings in C.C. No. 194 of 2007 are initiated regarding the criminal liability of the petitioners for the criminal offence in defalcation of the public funds.

9. In support of their case, the learned Counsel for the petitioners relied on a decision of the Supreme Court reported in M.S. Sheriff Vs. The State of Madras and Others, wherein the Supreme Court while considering the provisions under Sections 439 and 561 of C.P.C., held that the simultaneous prosecution of the criminal proceedings and the civil suits will embarrass the accused and that the civil suit should be stayed till the criminal proceedings have finished. The main grievance of the petitioners is only with regard to the departmental proceedings. The learned Counsel for the petitioners also relied on a decision of the Supreme Court reported in Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.) Anr. 2009 (1) DT 212 (SC). The Supreme Court while considering the similar other circumstances held as follows:

Exercise of such a jurisdiction furthermore is discretionary. As noticed by several decisions of this Court, including two Constitution Bench decisions, primacy has to be given to a criminal case. The FIR was lodged on 19.09.2002. Not only another civil suit is pending, as noticed hereinbefore, but a lis in relation to mutation is also pending. Whereas the criminal case is pending before the Delhi court, the testamentary suit has been filed before the Jharkhand High Court. Since 2003 not much progress has been made therein. The Will has not been sent to the handwriting expert for his opinion, which is essential for determination of the question in regard to the genuineness of the Will. It is alleged that the Will was registered at Hazaribagh after the death of the testatrix. For the last seven years in view of the pendency of the matters before the High Courts in different proceedings initiated by the appellant, the criminal case has not proceeded, although as noticed hereinbefore charge-sheet has been filed and cognizance of the offence has been taken. We, therefore, are of the opinion that it is not a fit case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India having regard to the facts and circumstances of the present case.

10. The pre-requisite in invoking the provision u/s 10 of C.P.C., is that both the proceedings referred therein are of civil nature. The provision clearly refers to previously instituted suit, which indicates that it must be of civil nature only. Therefore, unless and until both the proceedings referred therein are of civil nature, one cannot invoke the jurisdiction u/s 10 of C.P.C., and take advantage of it.

11. The decisions relied upon by the learned Counsel for the petitioners have no application to the facts of the present case. As already held, the intent and purport of Section 10 of C.P.C. is that the proceedings referred to in the said provision must be of civil nature. Unless both the proceedings are of civil nature, jurisdiction u/s 10 cannot be invoked. In the instant case, as already noticed,

while criminal case is instituted under the criminal jurisdiction regarding the alleged criminal acts of the petitioners in defalcating the amount, the civil suit is filed in the civil court under the civil jurisdiction for recovery of the defalcated amount. Both the cases come under different parameters. To invoke the jurisdiction u/s 10 C.P.C., it must be mandatory that both the proceedings referred to therein must be of civil jurisdiction. Therefore, this Court is of the considered view that the provisions u/s 10 C.P.C., have no application to the case of the petitioner.

12. Having regard to the facts and circumstances, the court below has rightly refused to exercise the discretion, hence, this Court does not find any valid reason or ground to interdict the same in exercise of extraordinary jurisdiction under Article 227 of the Constitution.

13. For the aforesaid reasons, there are no merits, the civil revision petition is dismissed. No order as to costs.