

(1998) 06 AP CK 0016
In the Andhra Pradesh High Court
Case No : AAO No. 1292 of 1998

T. Tirumala Reddy, SE, APSEB, Cuddapah and another	APPELLANT
Vs	
APSEB Engineers Association, Hyd. and others	RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 — Section 11
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 104, 2(2)

Citation : (1998) 4 ALD 372 : (1998) 2 AnWR 602 : (1998) 2 APLJ 424

Hon'ble Judges : Ramesh Madhav Bapat, J; P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : Mr. K. Venugopal Reddy, for the Appellant; M/s. Vilas Affalpurkar for Sitharam, AG, for the Respondent

Judgement

P. Venkatarama Reddi, J

1. The civil miscellaneous appeal is preferred against the interim injunction order passed by the Chief Judge, City Civil Court in IA No.817 of 1998 in OP No.546 of 1998. The original petition was filed u/s 11 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act (hereinafter referred to as "the Act") by the respondent-association. Pending the said original petition, interlocutory application was filed seeking interim relief in the nature of injunction restraining the respondent in the original petition from proceeding with the election process for electing the office-bearers of the association for the year 1998-2000. By an elaborate order passed by the learned Chief Judge, the said application was allowed and an interim injunction was granted against the respondent from conducting the proposed election scheduled to be held on 20-6-1998. An advocate-commissioner was appointed to take possession of the movable and immovable properties, accounts books, etc., and to operate the bank account. The respondent was directed to prepare a list of voters after following the required procedure and to hold the elections and thereafter hand over the management to the elected body. This order was challenged in appeal in the

present Civil Miscellaneous Appeal. The learned Judge, after hearing both the Counsel, granted stay of operation of the order dated 18-6-1998 of the Chief Judge, City Civil Court. Against this order of interim stay granted in CMP No.1152 of 1998, LPA No.130 of 1998 has been preferred and the said LPA No.130 of 1998 is being disposed of today.

2. In the course of hearing of the Letters Patent Appeal, we thought it fit to hear the Civil Miscellaneous Appeal also and with the consent of both the Counsel, we have heard the Civil Miscellaneous Appeal.

3. We are of the view that the preliminary objection raised by the learned Counsel for the respondent that the CMA is not maintainable has to be upheld. The learned Counsel for the respondent has relied upon the Division Bench decision of this Court in Rudraraju Venkateswara Raju Vs. Court of the Subordinate Judge and Others, wherein it was held that the order passed by the Principal District Judge in the original petition u/s 11 of the Act is not a decree within the meaning of Section 2(2) CPC and, therefore, it is not appealable either u/s 96 CPC. The learned Counsel for the appellant has rightly contended that the said decision has no application here. The learned senior Counsel for the appellant, while clarifying his stand that the impugned order passed by the Chief Judge, City Civil Court is not a decree, has, nevertheless, contended that it is an appealable order under Order XLIII Rule 1 CPC. It is the contention of the learned Counsel for the appellant that the application was filed under Order XXXIX Rules 1 and 2 CPC for injunction and the said application having been allowed, an appeal lies u/s 104 read with Order XLIII Rule 1 CPC. As rightly pointed out by the learned Counsel for the appellant, the decision relied upon by the respondent's Counsel has no direct application. At the same time, we are of the view that the impugned order is not appealable under Order XLIII Rule 1 CPC either. It is true that the application was purportedly filed under Order XXXIX Rules 1 and 2 CPC. But the said provision applicable to suits and appeals, cannot be projected into the provisions of the Act unless there is an enabling provision which makes the provisions of the CPC applicable. It must be noted that the Principal District Court (in this case Chief Judge, City Civil Court) is exercising a jurisdiction conferred by a special Act and it is not the ordinary jurisdiction under the provisions of the Civil Procedure Code. The provisions of CPC including Order XXXIX Rule 1 cannot be made ipso facto applicable to the proceedings before the said Court under a special Act merely because the Court which has seisin of the matter is the Principal Civil Court of the district. This is not to say that the Act, though skeletal in nature, precludes any application for interim relief including an injunction being sought by the aggrieved party if it relates to a matter concerning the management or dissolution of the society. It is well settled that the Court or a Tribunal which has jurisdiction to try or enquire into a matter, has all incidental and ancillary powers so as to effectuate the substantive powers conferred on the Court or Tribunal. The power to enquire into and dispose of the application filed u/s 11 of the Act carries with it, in our view, the incidental or ancillary power to grant an interim order to prevent miscarriage

of justice. Such power is; in our view, an adjunct to the power of adjudication conferred on the Court u/s 11 of the Act. That being the legal, position, we cannot view the interlocutory application filed by the respondent as an application under Order XXXIX Rule 1 CPC though a wrong provision was cited, In reality and in substance, it must be deemed to be an application filed u/s 11 of the Act itself and the Court is empowered to pass appropriate orders thereon in exercise of its incidental power as clarified above. When once it is held that the application is not traceable to Order XXXIX Rule 1 CPC and the order passed thereon is not really an order felling under Order XXXTX, Rule 1 CPC. Order XLIII Rule 1 CPC cannot be invoked for preferring an appeal. We, therefore, uphold the preliminary objection and dismiss the Civil Miscellaneous Appeal as not maintainable.

4. The learned Counsel for the appellant has contended that the interlocutory application itself is beyond the scope of the original petition as it pertains to the election for the previous term and, therefore, the interlocutory application is not maintainable and the trial Court ought to have rejected the interlocutory application on that short ground. As we are holding that the Civil Miscellaneous Appeal is not maintainable, we arc not inclined to go into that question. It is always open to the appellant to take the same objection before the Chief Judge, should any occasion arise in future.

5. Before parting with the case, we must notice the events that have take place subsequent to the filing of this appeal. Pursuant to the order passed by the learned single Judge staying the operation of the order of the Chief Judge, City Civil Court in IA No.817 of 1998, elections were held as per schedule and the office-bearers have been elected. The mere fact that we are dismissing the Civil Miscellaneous Appeal as not maintainable does not mean that the election which has taken place pursuant to the order of this Court is set at naught. It is open to the respondents to raise a dispute as to the validity or otherwise of the said election by instituting appropriate proceedings before the Chief Judge, City Civil Court or by way of amendment of the earlier original petition, if it is permissible in law. In any event, as such adjudication is inextricably mixed up with the main original petition and the pendency of the original petition is giving rise to spate of litigation concerning a large number of employees, it is just and proper that the original petition is disposed of expeditiously. We, therefore, direct that the original petition shall be disposed of as far as possible within a period of three months from the date of receipt of this order.

6. The Civil Miscellaneous Appeal is dismissed subject to the above observations. No costs.