

(1957) 03 AP CK 0016

In the Andhra Pradesh High Court

Case No : A.A.O. No. 61/3 of 1955 and Civil Revision Pet No. 97/4 of 1955

The Hyderabad Import Export Co., Secunderabad	APPELLANT
Vs	
The United Trading Co., Bhag(sic)thikot, Jodhpur	RESPONDENT

Date of Decision : 27-03-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 17 Rule 3, Order 3 Rule 4,
Order 9 Rule 4, Order 9 Rule 8
Contract Act, 1872 — Section 196

Citation : AIR 1958 AP 652

Hon'ble Judges : Qamar Hasan, J;Kumarayya, J

Bench : Division Bench

Advocate : V. Venkateswarloo and Kotam Raj Janarsic Rao, for the Appellant;
Govinda Rao Ardhapurkar, Thadani and D.L. Kelkar, for the Respondent

Judgement

Qamar Hasan, J.—We have before us C.M.A. No. 61 and C.(sic) No. 97 both of 1955. The former is directed a the judgment and order dated 21-1-1954 (sic) District Judge, Secunderabad in M. P. No. 1(sic) 1954 for restoration of O. S. No. 4 of 1954, was dismissed for default on 1-12-1954. The challenges the propriety of the order of dismissed the suit for default itself.

2. The facts are that the defendant file written statement on 23-11-1954 along with miscellaneous applications. The advocate f(sic) plaintiff requested for time and the case (sic) journeyed to 1-12-1954, for filing counters. W(sic) case was called on, it was found that neither plaintiff nor his advocate was present. The (sic) District Judge, acting under Rule 8 of Order 9, Civil Procedure Code, dismissed the suit for default.

3. Mr. Janardhan Rao arrived in Court premises (sic) 10-50 a.m., on the same date and purporting to (sic)t as junior of Mr. Venkateswarlu, who had filed (sic) vakalat on behalf of the plaintiff, presented an application for restoration of the suit. To explain (sic)e cause of delay, he filed his own affidavit. Belie(sic)ng the affirmations made in the affidavit, the learned District Judge held that there was

sufficient use for the late arrival of Mr. Janardan Rao but dismissed the application on the ground that as Mr. Janardan Rao had not filed his vakalat under Order Rule 4, he was not competent to file the application for restoration.

4. It is against this order the C. M. A. 61 of 1955 is directed. It is contended on behalf of the appellant that since Mr. Janardan Rao had filed his (sic)kalat for the plaintiff on 4-1-1955 the irregularity the presentation of the restoration application (sic)st be deemed to have been cured. In this con(sic)ation, reliance is placed on Pavorayil Mamu v. (sic)nhimon, 1955 2 Mad LJ 124 (A).

In that case Mack, J., laid down that Order 3, Rule 4 CPC is primarily intended protect clients from anybody other than advocates authorised by them appearing, acting and making presentations on their behalf and it is not intended penalise clients who had in fact instructed an (sic)ocate at one stage of the litigation, and immediately ratified his authority after he reported no (sic)ructions when his failure to file a fresh vakalat (sic) brought to notice. These observations were made in a case in (sic)ch the advocate for the plaintiffs, who had filed vakalat on their behalf, had moved for an ad(sic)nment, and on its being refused, reported no (sic)ructions. The same advocate then filed an application to restore the suit to file. Objection was taken the counter to the application that it was invalidity (sic)ented as the advocate did not file a fresh vakalat. The advocate filed a fresh vakalat more than month after the filing of the application under Rule 8 of Order 9 Civil Procedure Code. On these (sic) and the principle stated above, the learned Judge held that a vakalat filed by an advocate termi(sic)s in law when he reports no instructions. Strict(sic)nd technically a fresh vakalat should be filed (sic)n a restoration application is filed.

But if a fresh vakalat is later filed before final (sic)rs are passed on the petition, the defect in the (sic)entation of the petition is not improper and ille(sic) and the jurisdiction of the Court to deal with petition is not ousted.

5. In the next place it was contended that on date the suit was dismissed for default the appellant had nothing to do except to file counters to miscellaneous applications filed by the respondent. If he had failed to do so by reason of his (sic)ce, the Court below would have been better (sic)ed to have proceeded under the latter part of Rule 2 of Order 17 CPC by raising necessary issue and posting the case for argu(sic)s or evidence. That, in the circumstances of case. would have been more in consonance with (sic)e than the outright dismissal of the suit.

6. The learned advocate for the respondent, in (sic)urged that the order appealed against was in (sic) a disposal of the case under Order 17 Rule 3 the remedy open to the appellant was by way appeal u/s 96, C. P. C. The present (sic) under Order 43 was therefore not maintained. We see no force in the objection thus raised order on its language and intendment is a dis(sic) of suit for default of appearance.

It does not touch the rights and natalities in controversy between the parties. In order to be appealable under Section 96, Civil Procedure Code, there must be a

decree, and a decree means a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. By no stretch of imagination the order appealed against can be construed as one upon which a decree could be founded. The objection is therefore overruled.

7. Order XVII, Rule 2 provides:

Where on any day to which the hearing of the suit is adjourned, the parties or any of them fails to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

It would thus appear that the Court is not bound to dismiss the suit for default in all circumstances. It depends upon the particular circumstances whether an order for dismissal is more appropriate than any order that would advance the case. It is contended on behalf of the respondent that the Court by reason of the appellant's absence had no choice but to proceed under Order IX. This contention would have us to take an extremely strict view of the rule. Procedure is after all a handmaid to justice and not a collection of penalties. Supposing the appellant or his duly appointed advocate on the date of" the impugned dismissal had appeared, the Court would have done one of the two things; either it would have fixed a date for hearing the preliminary objections raised in the miscellaneous applications or adjusted issues and fixed a date for evidence. That is why Rule 2 Order 17 gives power to the Court to pass any other order which may be appropriate in the circumstances of the case, and not necessarily to proceed under Order IX.

8. The Court below has found favourably to the appellant with respect to the sufficiency of the cause which prevented Mr. Janardan Rao from appearing when the suit was taken up by the Court. The only question to be determined therefore is whether the subsequent filing of the vakalat by Mr. Janardan Rao was sufficient to cure the defect or irregularity in the presentation of the application to set aside the order of dismissal.

As we have already stated, the learned District Judge was of the view that the defect cannot be cured by subsequent authorisation on the part of the appellant. We feel that in coming to that conclusion he appears to have ignored the nature of the relationship which exists between a pleader and his client. In the final analysis they are no more and no less than principal and agent. Section 196 of the Contract Act provides that:

Where acts are done by one person on behalf of another, but, without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them the same effects will follow as if they had been performed by his authority.

In other words, ratification means previous authority. It is no doubt true that mere ratification without compliance with the provisions of Rule 4 Order 3 would

not benefit the principal but when he ratifies it by means of a written instrument as required by the said rule the same effect will follow as if the presentation of the application had been made with proper authority.

9. For these reasons, we allow the appeal and set aside the order of the District Judge. The suit will now be admitted to its original number and dealt with in accordance with law. As we have allowed the appeal, nothing remains to be decided in the revision petition. The revision petition would, therefore, stand consigned to the record room. Having regard to the circumstances of this case, we make no order as to costs either in the appeal or in the revision petition.