
(2001) 10 AP CK 0116
In the Andhra Pradesh High Court
Case No : CRP No. 3998 of 2001

Thota Kanakadurga Varaprasad Rao	Vs	APPELLANT
Madapati Chandra Sekhara Reddi		RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Citation : (2002) 3 ALD 97 : (2002) 1 ALT 338

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : S.V.R. Subrahmanyam, for the Appellant; S.R. Sanku, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—The civil revision petition is filed against the Orders of the learned Principal Junior Civil Judge in IA No. 145 of 2000 in OS No. 323 of 1999, dated 30-4-2001.

2. Petitioner is the defendant, respondent filed a suit for recovery of certain sums and the suit was filed under Summary Trial procedure under Order 37 of Code of Civil Procedure. Petitioner filed an application in IA No. 145 of 2000 seeking leave of the Court to defend the case, the said application was dismissed by an Order dated 30-4-2001, against which the present civil revision petition has been filed.

3. The learned Counsel for the petitioner submits that the Court below has not properly appreciated the purport of Order 37, Rule 3 of the CPC and mechanically rejected the application of leave to defend the case.

4. It is the case of the petitioner-Defendant that he never executed any pronote and that he did not know the name in whose favour the persons, who attested the scribe on pronote. Therefore, in such circumstances, it becomes a triable issue. Therefore, the lower Court ought to have granted leave. He relies on the decision of the Supreme Court Reported in Santosh Kumar Vs. Bhai Mool Singh,

and also the judgment of the learned single Judge reported in Kantipudi Lalitha Lakshmi Manohar Saraswathi v. Kantipudi Ramakrishna 1998 (1) An.WR 242 and also the judgment of the Madras High Court reported in K.S. Meenakshi Ammal and Others Vs. M. Subbalakshmi Ammal, .

5. The learned Counsel for the respondent submits that the lower Court on an application filed by the petitioner found that there was no substantial defence and therefore, the application was rightly rejected. It is also stated that when a notice was issued having received the same, the petitioner failed to reply the same. Therefore, the conclusion arrived by the lower Court that it amounts admission on the part of the petitioner cannot be said to be illegal and contrary to law. He relies on the decision of the Supreme Court reported in Kiramnoyee Darsi v. Dr. J. Chatterjee AIR 1949 Cal. 479.

6. It is not in dispute that when a substantial defence leading to the triable issues arise, the Court cannot refuse leave to the defence. This was succinctly laid down by the Calcutta High Court as.

(A) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(B) If the defendant raises a triable issue indicating that he has a fair or bonafide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(C) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiffs claim the. plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(D) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(E) if the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.

(9) The case before us certainly does not fall within the class (e) set out above. It is only in that class of case that, an imposition of the condition to deposit an

amount in Court before proceeding further is justifiable.

(10) Consequently, we set aside the judgment and order of the High Court and restore that of the Additional District Judge. The parties will bear their own costs".

7. The above decision was approved by the Supreme Court in *Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation*, .

8. In the instant case, the trial Court found that the petitioner has not been able to make out any substantial defence more especially when a notice was issued, the same was not replied. It virtually amounted to admission on the part of the petitioner. Thus, the lower Court formed an opinion that the petitioner did not raise any substantial defence. Such a finding cannot be interfered with by the revisional jurisdiction of this Court.

9. The lower Court having found that the petitioner had not responded to the notice issued, it amounted to the admission, I am not prepared to accept the contention raised by the learned Counsel for the petitioner that the said finding was illegal.

10. The parameters of interference has been mentioned in Supreme Court time and again and even the judgment of the learned single Judge of this Court reported in *Lalitha Lakshmi Manohar Saraswathi's* case (supra) conforms to the principles laid down by the Supreme Court.

11. Therefore, I do not find any illegality or irregularity in the Order passed by the lower Court.

12. Accordingly, the CRP is dismissed. No costs.