
(2002) 06 AP CK 0159
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4944 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Ch. Gopalakrishnamurthy

RESPONDENT

Date of Decision : 24-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 11, Order 21 Rule 12, Order 21 Rule 13, Order 21 Rule 14

Citation : (2002) 6 ALT 474

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : C.V. Vinitha Reddy, for the Appellant; A. Ramalingeswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

V. Eshwaraiah, J.—This Civil Revision Petition is filed by the Union of India represented by the General Manager, South Central Railway and two others against the order dated 29-9-2001 made in E.P.No. 41/2001 in O.P.No.20/1997 and O.S.No.370/1996 on the file of the learned III Additional Senior Civil Judge, City Civil Court, Secunderabad.

2. The respondent is the contractor. Both the petitioner and the respondents have entered into an agreement for execution of certain works. As certain disputes arose between the respondent - contractor and the Railways, the contractor/respondent invoked the arbitration clause and the competent authority appointed the joint arbitrators and the arbitrators passed an award on 05-10-1996. The petitioners -railway authorities herein filed O.P. No.20/1997 challenging the award on various grounds to set aside the award and the contractor filed O.S. No. 370/1996 to make the award as the rule of court. The court below; by a common judgment and decree in O.S. No. 370/1996, decreed the suit in part making the award rule of the court in respect of Claim Nos.2 to 6 and counter claim Nos. 1 and 2 of the railways. The suit was dismissed in respect

of claim Nos. 1 and 7. In so far as the O.P. is concerned, it was allowed in part setting aside the award in respect of Claim No.1 and dismissed in respect of Claim No. 7. Aggrieved by the common judgment and decree passed by the III Additional Senior Civil Judge, City Civil Court, Secunderabad, the contractor alone filed CM.A. No. 464/1999 and C.R.P. No. 599/1999 and the High Court confirmed the judgment and decree of the court below so far as Claim Nos. 2 to 6 of the contractor and the counter claim Nos. 1 and 2 made by the railway and set aside the judgment and decree of the court below in part and upheld the award passed by the arbitrators in respect of Claim No.1 and rejected claim No.7 made by the contractor. Thus, as per order of the High Court in CM.A. No. 464/1999 and CR.RNo.599/1999 dated 08-05-2001 the contractor i.e., decreeholder is entitled to claim Nos. 1 to 6 and the railways is entitled to counter claim made by them and the contractor is not entitled for claim No. 7 alone.

3. It is clear from the above, the railways have not at all challenged the order dated 18-01-1999 made in O.S. No. 370/1996 and O.P. No. 20/1997 on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad and the said judgment as confirmed and modified by the High Court has become final. Whatever it may be, it appears that the contractor preferred a SLP for further relief and the railways have no grievance to say on the judgment of the High Court. It appears that the railways also paid an amount of Rs. 3,51,775/- by cheque dated 31-3-1999 and the same was received by the respondent on 6-4-1999. The respondent also received another amount of Rs. 3,130/-.

4. The respondent herein filed E.P. No. 41/2001 in O.P.No.20/1997. Realising the fact that the E.P. is not maintainable in the O.P. as executable judgment and decree is only in O.S. filed by the contractor in making the award as rule of the court, the respondent filed an application E.A. No. 135/2000 under Order 6 Rule 17 read with Section 151 C.P.C. to amend the E.P. by adding O.S.No.370/1996 in the cause title portion in the interest of justice. The said application is allowed by order dated 27-9-2001 in E.A. No. 135/2000 adding O.S.No.370/1996 in the cause title. Thus, the E.P. has been amended amending its cause title as E.P. No. 41/1991 has been filed in O.S.No370/1996 as well as O.P.No.20/1997. The grievance of the petitioners in this case is not with regard to the merits or payment of the decretal amount or in directing the attachment of the immovable property of the railways in realisation of the E.P. amount but only the objection of the railways is that E.P. is not maintainable in O.P. but it is maintainable in O.S. alone and judgment and the decree is not executable as it relates to the railways filed to set aside the award. Merely because the award is not set aside on an application filed by the railways, it cannot be said that the contractor is not entitled to file E.P. and recover the decretal amount in O.P. filed by the railways in the absence of any suit filed by the contractor to make the award as rule of the court.

5. Admittedly, the award has been made in respect of claim Nos. 1 to 6 as rule of

the court in O.S.No.370/1996, and therefore, the judgment and decree made in O.S. No.370/1996 in so far as claim Nos. 1 to 6 as upheld by this Court alone is executable. If that being the case, even if O.P.No. 20/1997 is deleted from the cause title, E.P. 41/2001 filed in O.S. No. 376/1996 is maintainable. The additional description as O.P. No. 20/1997 in the cause title is of no consequence. The objection taken by the railway authorities by way of filing this revision is technical and no prejudice would be caused to the rights and claim of the railway authorities. They are not disputing the quantum of the amount and the validity of the order except taking a technical objection that E.P. is not maintainable in O.P. but it would be maintainable only in O.S. The railways have not chosen to question the order of the court below in amending the cause title by its order dated 27-9-2000 in E.A. No. 237/2001.

6. However, the learned counsel for the petitioner relied on the judgment of the Calcutta High Court in *Sabitri Bala v. Alak Ranjan Paul*¹ and submitted that the executing court is not justified in allowing the application filed by the decreeholder for amending the petition for execution by incorporating the prayer which affects the substantial interest of the judgment-debtor. In the said case, the amendment sought to be made is entirely different from that of the judgment and decree and the judgment and decree was only for the realisation of the decretal amount whereas the execution application sought to be amended is for the recovery of possession of the property, and therefore, the court held that the amendment which seeks to change the nature and the character of the execution application, cannot be allowed. In the instant case, by the said amendment, the nature and the character of the relief granted in O.S., there is no change in the nature and character in allowing such amendment for executing the judgment and decree, and therefore, the said case is not applicable to the facts of the present revision petition. 1. *Smt. Sabitri Bala Mallick and Others Vs. Alak Ranjan Paul and Others*, .

7. The learned counsel for the respondent relied on several decisions and one of such decisions is *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376 wherein the Apex Court considered Order XXI Rule 17 of C.P.C. relating to the procedure of receiving the application for execution of a decree and observed that it is the duty of the court to ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with and if they have not been complied with, the court has to reject the application or allow the defect to be remedied then and there or within a time to be fixed by it. A Division Bench of Rajasthan High Court in *Sunder Rai and Others Vs. Tarachand and Others*, held that an error in giving the number of the suit in the execution petition may at the most be considered to be an irregularity and such a defect cannot be regarded to be an illegality so as to make the execution petition invalid in the eye of law. This court in the case of *Manora Bai Vs. Sultan Bakath Begum and Others*, , while considering the Order XXI Rule 17, held that if the execution petition is not in accordance with Rules 11 to 14 of Order XXI, it is only then the executing court can ask the decreeholder to remedy such defect by fixing some

time within which the defect must be remedied and in case such defects are not remedied within the prescribed time, the executing Court can reject such a defective application. The Allahabad High Court (Lucknow Bench) in the case of Farukh and Others Vs. District Judge and Others, , held that the defect in the execution application is not showing the legal representative of the deceased party, which is a formal in nature and cannot be regarded as fatal and the mere formal defects in an execution application are not fatal.

8. Order XXI deals with the execution of the decrees and the orders. As per Order XXI Rule 11, an application may be filed either by the oral application or written application. If it is a written application for execution of the decree, it should be signed and verified by the applicant giving particulars such as; number of the suit, names of the parties, date of the decree, payment particulars, if any, made prior to the filing of the E.P., costs, name of the person against whom the execution of the decree is sought and the mode in which the assistance of the court is required etc. It is not the case of the petitioners that any of such particulars have not been furnished. The applicant has furnished all material particulars and complied with the Rules 10 to 14 of Order XXI, except stating the additional thing i.e., O.P. in addition to O.S. Even if the O.P.No. is omitted as it is unnecessary and deleted from the cause title, it cannot be said that the E.P. is not maintainable. The E.P. is maintainable and the objection taken by the petitioner is technical and without any substance. No prejudice has been caused in mere adding O.P.No. and O.S. No. in the cause title. It is not the case of the petitioners that they are not due and payable the decretal amount and they have not questioned the orders in O.S. which was made the rule of the court and confirmed by this Court.

9. This Court while admitting the Civil Revision Petition, it is stated that any payment made is subject to the result of the Civil Revision Petition. The learned counsel for the respondent submits that the entire decretal amount has been paid.

10. I do not see any merits or any substance in the contention of the learned counsel for the railways and the Civil Revision Petition is devoid of any merit and is accordingly dismissed. No costs.