

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

C.R.P.No.2219 of 2015

Order:

In this Civil Revision Petition filed under Article 227 of the Constitution, petitioner/respondent No.2 challenges the order dated 06.04.2015 in I.A.No.436 of 2015 in APSR OP No.497 of 2010 passed by learned Principal District Judge, Srikakulam whereunder learned Judge turned down the request of petitioners/respondents to frame certain additional issues on the main grounds firstly that the High Court in CRP No.4559 of 2012 already framed two issues in the matter and following which trial was conducted and secondly, the petition was a belated one inasmuch as the same was filed when the matter was in the mid way of arguments.

2) Brief facts shorn of unnecessary details are thus:

a) O.P.No.497 of 2010 was filed by Zilla Cricket Sangam, represented by its Secretary—Janab Mustak Mohammad under Section 23 of A.P.Societies Registration Act (for short “APSR Act”) against respondents 1 to 5 seeking permanent injunction restraining the first respondent from using the name of petitioner—society or its registration number and dealing with the 3rd respondent—Andhra Cricket Association or the 4th respondent—State Bank of India, Main Road, Srikakulam. Petitioner’s grievance was that Zilla Cricket Sangam was

registered under APSR Act with registration No.200/96 and petitioner's Sangam works under the umbrella of Andhra Cricket Association i.e. third respondent. While so, the respondents 1 and 2 with an ulterior motive using a translated name of petitioner's Sangam as *District Cricket Association*, Srikakulam mischievously and unauthorisedly claiming it as the original Zilla Cricket Sangam under the registration No.200/96 and claiming recognition with the third respondent. The petitioner's case is that first respondent is an unregistered association and it cannot function as an affiliated Cricket Association of Andhra Cricket Association and it is not maintaining accounts and conducting meetings and thus, the first respondent has no legal existence and it is an impostor operating under the mask of petitioner's society.

Hence the OP.

b) Second respondent filed counter denying all the material averments and contended that association to which the petitioner was the Secretary was dissolved on 22.03.2000 due to allegations against him and right from 23.03.2000 the petitioner left the association once for all and there is absolutely no association in the name of Zilla Cricket Sangam headed by petitioner as Secretary. The Executive Committee to which the petitioner was Secretary was dissolved and then Superintendent of Police and Dr.C.V.Raja Reddy became the Executive till new body was elected. The English version of the bye-laws were the outcome of the preparation made by

none other than the father of the petitioner viz. Meer Mohammed who signed the English version of bye-laws and the present respondent—society had affiliated to Andhra Cricket Association with registration No.200/96 and they are making correspondence with the third respondent. The petitioner has not at all continued the registration by paying necessary amounts and the present association got renewal of the association from 1997-1998 to 2009-2010 dated 18.03.2010 under society No.200/96. The present association has sponsored 12 clubs in Srikakulam District to conduct cricket activities in the best interest of cricketers and they conducted club matches and issued merit certificates and mementos. It also conducted school cricket matches and Junior college and Degree college matches in Srikakulam District and also produced state players. This association is also conducting tournaments in memory of Sri V.N.Panthulu former vice-President and B.S.Sashri former vice-President and social worker and gave mementos and certificates to the winners and runners in the respective tournament. The petitioner is a third party to the association since 2000 onwards and he has no right to file the present petition. The 2nd respondent further contended that as per Article—58 of Memorandum and Articles of Association, there was an arbitration clause for settlement of disputes and as such OP is not maintainable under law.

c) The third respondent also filed counter in similar lines.

3 a) While so, the petitioner in OP filed I.A.No.1157 of 2012 under Order XIV Rules 1 and 5 CPC to frame issues in the OP and submitted certain draft issues in his application. The respondents in the OP opposed the petition contending that since it is not a suit there is no need to frame any issues. The trial Court referring Section 141 CPC and observing that since the proceedings under Section 23 of APSR Act are initiated by filing a petition and enquiry but not the trial would be conducted and hence there is no need to frame issues and suffice to frame points for consideration and decide the same, dismissed the petition.

b) Aggrieved, the petitioner in OP filed C.R.P.No.4559 of 2012. The order dated 21.02.2014 would show that when the matter came up for hearing counsel for both the parties filed a memo stating that they have no objection to frame two issues as stated infra.

- (i) *Whether the petitioner society/Sangam is holding the Registration No.200 of 1996*
- (ii) *Whether the petitioner/Sangam or 1st respondent association is affiliated to the 3rd respondent—Andhra Cricket Association.*

In view of the said memo, High Court has framed two issues and directed the Principal District Judge, Srikakulam to pass appropriate orders in accordance with law in respect of above said two issues.

Be that it may, respondent No.2 in OP filed IA.No.436 of 2015 seeking to frame as many as 9 additional issues as mentioned in his

petition and the said petition was dismissed by the learned District Judge with the observation as stated in para-1.

Hence, the instant CRP.

4) Heard learned counsel for petitioner/2nd respondent and learned counsel for respondents.

5) The main plank of argument of learned counsel for petitioner/2nd respondent is that it is no doubt earlier two issues were framed by the High Court on the joint memo of the parties but unfortunately, the issues framed do not reflect the real controversy between the parties and therefore, the additional issues need to be framed as sought for.

6) Per contra, while opposing the petition, learned counsel for respondents argued that in I.A.No.1157 of 2012 the contention of present petitioner was that there was no need of framing issues and agreeing with him, the trial Court dismissed the said petition and later in the revision carried out by the 1st respondent herein, on the consent of both parties the High Court framed two issues and so the order of the trial Court merged with the order in C.R.P.No.4559 of 2012 and basing on the two issues the trial was also completed and hence at present the petitioner/2nd respondent cannot seek for framing of additional issues and the trial Court rightly dismissed his application. However, learned counsel fairly admitted that when the issues framed do not reflect the matter in controversy, the Court has every power to recast the issues or frame the additional issues under Order XIV Rule 5 CPC.

7) In the light of above rival arguments, the point for determination is:

“Whether there is necessity to frame additional issues as sought for in the CRP”

8 a) **POINT:** An incidental and interesting question that would arise in this matter is whether it requires framing of issues in an application filed under Section 23 of APSR Act. The said section reads thus:

“ 23. Dispute regarding management— In the event of any dispute arising among the committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996 or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order it may deem it.”

So, Section 23 lays down that any member of the society may either proceed under the provisions of the Arbitration and Conciliation Act, 1996 or may file an application in the District Court concerned in the event of any dispute arising among the Committee or the members of the society in respect of any matter relating to the affairs of the society and the District Court shall after necessary inquiry pass such order as it may deem fit. Since the dispute arises is under a special enactment, the same shall be presented in the form of an application i.e. original petition (OP) before the District Court and not in the form of regular suit. It is in this context, referring Section 141 CPC, earlier the trial Judge dismissed the petition to frame issues holding that dispute under Section 23 of APSR Act shall be presented in the form of an application but not as a suit and hence there is no need to frame issues and suffice to frame points for consideration and decide the same. I am afraid that is not true import of Section 141 CPC which reads thus:

“Section 141 Miscellaneous proceedings: - *The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.”*

Explanation: In this section, the expression “proceedings” includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.

b) Section 141 CPC lays down that the procedure that is provided in CPC for the suit shall be followed as far as it can be made applicable in all the proceedings in any Court of civil jurisdiction. In the explanation the expression “proceedings” was sought to include the proceedings under Order IX but excluded the proceedings under Article 226 of the Constitution. Since the application under Section 23 of APSR Act is a civil proceeding, all the trappings of a civil suit are applicable to the said application.

c) In this regard, we have Rule 61 of A.P. Civil Rules of practice which reads thus:

“61. (47) Original Petition should state Act or authority under which it is presented:

(1) The Rules relating to suits shall mutatis mutandis apply to Original Petitions unless a contrary intention appears from the rules governing such petitions made under the Special Acts.

(2) An original petition shall, in addition to the particulars required by Rules 9, 10 and 11, also state the Act, or other authority, under which it is presented, as in Form Nos.5 and 6. If it is not intended to serve any person with notice of the petition, it shall be so stated, and the petition shall be headed, as in Form No.6, but if the court directs any person to be made a party, the Cause-title shall be amended, and shall be in Form No.1.

*(3) **Hearing:-** Original Petition shall be heard and determined in the same manner as original suits.”*

So, as per Rule 61, the Rules relating to suits shall *mutatis mutandis* apply to Original Petitions unless a contrary intention appears from the rules governing such petitions made under the Special Acts. It is in this context, when APSR Act is perused, Section 23 says that dispute has to be presented in the form of application before the District Court but it did not specifically exclude the operation of the procedure

applicable to the suits to the applications filed under Section 23 of APSR Act. It appears no Rules are framed to APSR Act. So, when all the above provisions are conjunctively studied, one can understand that the procedure applicable to the suits is also applicable to the applications filed under APSR Act including framing of issues.

9) Now, coming to the instant case, the High Court in CRP No.4559 of 2012 has framed two issues on the memo filed by the parties. When the pleadings are studied carefully, in my considered view, the second issue need a recast as follows:

“Whether the petitioner-Sangam and first and second respondents association are one and the same and if not, which one is the authorised one and affiliated to third respondent—Andhra Cricket Association?”

Apart from the above, the following additional issues need to be framed.

1. *Whether there is any cause of action to the petitioner to file the petition?*
2. *Whether the claim of the petitioner is barred by limitation?*

10) In the result, this C.R.P is allowed and the Principal District Judge, Srikakulam is directed to dispose of OP No.497 of 2010 in accordance with law with respect to the above issues after giving an opportunity to both parties to adduce any additional evidence on the issues framed as above within three (3) months from the date of receipt of this order. No costs.

As a sequel, miscellaneous petitions if any pending, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 30.06.2015

Note: L.R. copy to be marked: Yes / No
Murthy