

THE HON'BLE SRI JUSTICE A.V. SESA SAI

C.R.P.No.1108 of 2014

-

ORDER:

The plaintiff in unnumbered suit, on the file of the VI Additional District Judge, Godavarikhani, Karimnagar District is the petitioner in the present revision, filed under Article 227 of the Constitution of India. The challenge in the revision is to the docket order dated 21-03-2014, passed by the said Court.

Heard Sri Venkateshwar Varanasi, learned counsel for the plaintiff/petitioner herein, and none appears for the respondent.

The case of the plaintiff/petitioner, as per the pleadings in the plaint, is as infra:

The plaintiff and defendant are the friends and residing in the same locality, and due to the said acquaintance, the defendant approached the plaintiff for hand loan and accordingly on 10-10-2011, the plaintiff advanced an amount of Rs.4 lakhs to the defendant, and on the same day, the defendant executed a promissory note in favour of the plaintiff, in the presence of the witnesses with a promise to repay the same with interest at the rate of 12% per annum. Two months later, the defendant approached the plaintiff and stated that he was nearing retirement age in Singareni Collieries Company Limited and he would provide job to the plaintiff's son by name, Ganapathi Prashant in the said Company, in the event of the plaintiff paying a sum of Rs.8 lakhs to the defendant for the same. Accordingly

on 06-01-2012, the defendant received a sum of Rs.4 lakhs for the said transaction and executed a document and the defendant agreed that the remaining balance of Rs.4 lakhs would be paid within one-and-half year, otherwise the defendant would pay

Rs.4 lakhs along with interest @ 18% per annum to the plaintiff. After one year, when the plaintiff reminded the defendant for repayment of the borrowed amount of Rs.4 lakhs along with interest and regarding the job, the defendant and his son threatened and assaulted the plaintiff, which prompted the plaintiff to file a criminal case against them, and it is pending consideration before the Court of II Class Magistrate, Godavarikhani, and that the defendant and others also filed a false case against the plaintiff, vide Crime No.41/2013, in order to evade the payments, which is also pending before the Court of Assistant Sessions Judge, Peddapally.

The plaintiff got issued a legal notice for repayment of the borrowed amount of Rs.4 lakhs along with interest and another sum of Rs.4 lakhs received, pursuant to the document dated 06-01-2012.

In the above background, the petitioner herein instituted the present suit, seeking the following reliefs:

“It is therefore prayed that this Hon’ble Court may be pleased to pass a Decree in favour of the plaintiff as follows:

- a) Directing the defendant to pay a sum of Rs.5,16,000/- (Rupees Five lakhs and sixteen thousand only) (i.e. Rs.4,00,000/- principal amount and interest Rs.1,16,000/-).
- b) Directing the defendant to pay a sum of Rs.5,56,000/- (i.e. Rs.4,00,000/- in pursuance of the agreement dated 06-01-2012 along with interest of Rs.1,56,000/- to the plaintiff.
- c) To grant future interest from the date of filing of the suit, till realization of the amount.
- d) Directing defendant to pay cost of the suit.
- e) To pass any other relief or reliefs as the

Hon'ble Court may deems fit in the circumstances of the case".

The Court below returned the suit so instituted, raising the following objection:

"The object of the agreement dt.06-01-2012 – i.e. to provide dependant employment and the consideration thereof is unlawful; as such, the agreement is void. Hence, how the suit is maintainable (to recover the unlawful consideration)? Hence, it may be returned".

The plaintiff/petitioner herein re-submitted the same on 21-03-2014, with the following endorsement:

"Regarding the objection taken by the Hon'ble Court, it is submitted that, in area of Ramagundam Municipal Corporation, between the employees of Singareni Collieries Company Limited providing dependant jobs to others custom and tradition has been prevailing, as such, having believed the false promises of defendant, the plaintiff entered into agreement by giving consideration. Even the contract is void according to the Section 65 of Indian Contract Act 'when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or Contract is bound to restore it, or to make compensation for it, to the person from whom he received it', as such, in pursuance of the above said section, the defendant is entitled to pay amounts which has been received by him under the said agreement so that suit is maintainable. Hence the re-submission".

Subsequently, the learned VI Additional District Judge, Godavarikhani, by virtue of the impugned docket order dated 21-03-2014, returned the plaint by observing as follows:

"Heard the counsel for the plaintiff.

The recitals in the agreement dt.6-1-2012 clearly show that both parties are strangers and the defendant received

Rs.4,00,000/- to provide dependent employment. On the face of it, the agreement is against public policy and hit by Sec.23 of Contract Act.

The Advocate for the plaintiff cited a decision relying upon Sec.65 of Contract Act. Sec.65 applies only when the agreement/contract is found to be void, subsequent to the execution. The decision relied upon by the Advocate for the plaintiff to seek registration of the suit, is not relevant to the facts of the present case, in as much as, that suit was filed for recovery of money collected by the contractor who did not go through with the contract with the panchayath by executing a registered document. In that case, money collected by the contractor without there being any authorization by the panchayath, was sought to be recovered. The main point considered in that suit is scope of Sec.70 of Contract Act.

Therefore, the claim of the plaintiff for return of Rs.4,00,000/- under the agreement dt.6-1-2012 plus interest, cannot be recovered in this suit. The other part of the plaint is that the defendant executed a promissory note. If the suit claim is restricted to the promissory note amount plus interest, the suit claim does not fall within the pecuniary jurisdiction of this Court.

Hence, the plaint is returned.”

Calling in question the validity and the legal substantiality of the said docket order dated 21-03-2014, passed by the learned VI Additional District Judge, Godavarikhani, the present revision has been filed under Article 227 of the Constitution of India. It is contented by the learned counsel for the revision petitioner that the order under challenge is erroneous, contrary to law, and is opposed to the provisions of the Indian Contract Act (for short ‘the Act’). It is also submitted by the learned counsel that the Court below grossly erred in passing the docket order, without even numbering the suit. It is also the contention of the learned counsel that the Court below did not properly consider the judgment in **Village Panchayat of Jangareddigudem v. Kommireddy Narasayya**^[1]. It is also argued

by the learned counsel that the learned Judge ought not to have decided the entitlement of the petitioner herein at the threshold, without even numbering the suit.

In the above background, now the issue that emerges for consideration in the present revision is, whether the order under revision is in accordance with law, and whether the same is sustainable and tenable.

A perusal of the impugned docket order manifestly discloses that the learned Judge returned the plaint on the ground that the provisions of Section 65 of the Act are not applicable. Section 65 of the Act deals with the obligation of the person who received advantage under void agreement or contract. In clear and categorical terms, it stipulates that when an agreement is discovered as void, and the contract becomes void, any person who received advantage of such agreement or contract, is bound to restore it, or to make compensation for it, to the person from whom he received it. In the instant case, it is the case of the petitioner herein that the defendant herein executed an agreement on 06-01-2012 and received a sum of Rs.4 lakhs on the premise that he would provide employment to the plaintiff's son.

It is also the case of the plaintiff that earlier, on 10-10-2011, by executing a promissory note, the defendant/respondent herein received a sum of Rs.4 lakhs, with a promise to return the same with interest @ 12% per annum. The sum and substance of the case of the plaintiff is that the defendant did not discharge the said responsibility, which obviously prompted the plaintiff/petitioner herein to institute the suit, for recovery of a sum of Rs.10,72,000/-.

The learned VI Additional District Judge, Godavarikhani,

without even numbering the suit, returned the plaint, on the ground that the provisions of Section 65 of the Act would not come to the rescue of the petitioner herein. The learned Judge further observed that the claim of the plaintiff for return of Rs.4 lakhs under the agreement dated 06-01-2012, along with interest, cannot be recovered in the suit. This, in the considered opinion of this Court, is unwarranted, and the plaint, in such a manner, cannot be returned. In fact, the Court below ought to have numbered the suit, issued notice to the defendant and ought to have framed the relevant issue for the same, in the event of there being any objection by way of pleadings by the other side. The Court below did not undertake such an exercise in the instant case. In the definite opinion of this Court, this case does neither fall under Order VII Rule 10, nor under Order VII Rule 11 C.P.C.

For the aforesaid reasons, the revision is allowed, setting aside the docket order dated 21-03-2014 passed by the VI Additional District Judge, Godavarikhani in the unnumbered suit, in C.F.No.502 of 2014. Consequently, the Court below is directed to number the suit and proceed in accordance with law.

There shall be no order as to costs.

A.V. SETHA SAI, J.

Dt.25-02-2015.

KO

^[1] AIR 1965 AP 191