

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6143 of 2012

ORDER:

-

The petitioner, who is defendant No.1 in O.S.No.34 of 2009, filed the present revision under Article 227 of the Constitution of India, aggrieved by the order dated 09.11.2012 passed in I.A.No.93 of 2012 in O.S.No.34 of 2009 on the file of the Senior Civil Judge, Atmakur, wherein an application filed by the petitioner under Order 14 Rule 2 read with Section 151 of C.P.C. for deciding issues Nos.1 and 2 as preliminary issues was rejected.

The facts in issue are as under:

The first respondent herein filed O.S.No.34 of 2009 against the petitioner herein and defendant Nos.2 to 6 for recovery of Rs.5,01,500/- alleging that while the petitioner was working as Project Officer, ITDA, Srisailam along with defendant Nos.2 to 5, who constituted as Committee, purchased material for excess prices from defendant No.6 and thereby committed financial irregularities leading to misappropriation of government funds. During the pendency of the suit, the petitioner herein filed an application under Order 14 Rule 2 read with Section 151 of C.P.C. requesting the Court to decide issues Nos.1 and 2 framed therein as preliminary issues.

It is stated in the petition that the I.T.D.A. ordered an enquiry by appointing an Enquiry Officer, who after examining the entire record submitted a report. After considering the report of the Enquiry Officer, the Government issued G.O.Ms.No.21 Planning (Vigilance) Department dated 31.12.2008 stating that there was no malafide intention on the part of the petitioner in any of the transactions and there was no misappropriation of Government money. However, they imposed a minor penalty of Censure. Subsequently, on the basis of the representation made by the petitioner, the Government issued G.O.Rt.No.889, dated 09.12.2009 Planning (VIG) Department dropping the penalty of censure imposed against the petitioner. Basing on the said government orders, the petitioner filed the above petition stating that as the cause for filing of the suit for recovery of money does not survive, the main suit itself can be closed.

The Assistant Government Pleader filed counter stating that on the basis of the orders of the Commissioner, Tribal Welfare, Andhra Pradesh, Hyderabad, civil suits are filed to recover the excess payments made by the petitioner and others. He further stated that suits cannot be dismissed at this stage as the orders of the government do not reflect withdrawal of the suits.

After analyzing the material on record, the trial Court dismissed the petition. Challenging the same the present revision is filed.

Reiterating the averments made in the petition filed in the lower court, the learned counsel for the petitioner mainly submits that the Senior Civil Judge at Atmakur, erred in dismissing the petition filed to decide issue Nos.1 and 2 as preliminary issues. He submits that there was no financial loss caused to the government by the petitioner and in view of the G.O.s issued, no useful purpose would be served in proceeding further with the suit.

Before proceeding further, it would be appropriate to refer to Order XIV Rule 2 of C.P.C.

2. Court to pronounce judgment on all issues:

(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

On a bare reading of the provisions of sub-rule (2) Rule 2 of Order XIV of C.P.C. it is clear that the tests laid down are stringent and their compliance is to be strictly enforced. This is because, the provisions of sub-rule (2) of Rule 2 Order XIV C.P.C. are in the nature of exception to the general procedure provided in sub-rule (1) of Rule 2 Order XIV C.P.C. From the provisions of the above said sub-rule (2) it is manifest that whether an issue is to be tried as a preliminary issue or not is the discretion of the Court and while exercising its discretion, the Court must be satisfied

that the suit or any part thereof may be disposed of as an issue of law only and it may try first if the issue relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. Therefore, in terms of the above provisions, all issues of law cannot be decided as 'preliminary issue' and only those issues of law can be decided as 'preliminary issues' which squarely fall within the ambit and scope of clauses (a) and (b) of sub-rule (2) of Rule 2 of Order XIV C.P.C. Moreover, in view of the replacement of the word 'shall' used in order XIV Rule 2 of C.P.C. by the word 'may' in the C.P.C., it is no longer obligatory for the Court to decide an issue of law as a preliminary issue. The whole purpose behind the amended provision is to restrict piecemeal decision and unnecessary multi-tier appeals at intermediate stages on preliminary issue alone and thus avoid procrastination of litigation. (***Anjini Devi and others v. V.S.T. Industries Limited***).

A perusal of the record would show that the suit was filed in the month of September, 2005. Defendant No.1 filed her written statement in the month of January, 2010. Basing on the pleadings of the parties, the learned trial Court framed the following issues on 30.09.2011.

1. Whether the suit is maintainable in law?
2. Whether the Court has no jurisdiction to entertain the suit?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff is entitled to recover the suit amount as prayed for?
5. Whether to what relief?

It is an admitted fact that after considering the report of the enquiry officer, the Government issued G.O.Ms.No.21, dated 31.12.2008 wherein it was observed that "there is lack of professionalism on the part of Smt.D.Nagamani, petitioner herein, in handling and that she has not followed the procedure. While stating that there was no mala fide intention or misappropriation of government funds, the Government imposed a minor penalty of "censure". Later the Government by issuing G.O.Rt.No.889, dated 09.12.2009, dropping the minor penalty of censure. No reasons are given by the government while dropping the minor penalty of censure imposed against the petitioner. The ground on which the petitioner is seeking trial of issue Nos.1 and 2 as preliminary issues does not fall within the parameters of clause 1 and 2 of Rule 2 of Order XIV C.P.C. Neither a bar is created by any law for the time being in force for initiation of the suit, nor the Court lack jurisdiction to try the

matter. Relying upon the government orders issued by the government from time to time, the learned counsel seeks trial of issue Nos.1 and 2 as preliminary issues. But as stated above, the grounds raised by the petitioner herein do not fall within the parameters of Rule 2 of Order XIV C.P.C. Further, no material is produced before the Court to show that I.T.D.A. was registered under the Societies Registration Act. Since the issue involves mixed questions of fact and law, which have to be gone into during trial, after marking the documents which are now sought to be relied upon by examining the relevant witnesses, the trial Court rightly rejected the contention of the petitioner as there is no illegality or irregularity in the order, under challenge, I see no reasons to interfere with the orders passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is advised to dispose of the suit within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

29.04.2015

gkv