

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4582 OF 2016

AND

CIVIL REVISION PETITION No.4358 of 2016

COMMON ORDER:

1) Since both the C.R.Ps., are filed against the orders passed in O.S.No.462 of 2015 they are heard and disposed of by this common order.

2) C.R.P. No.4582 of 2016 came to be filed under Article 227 of the Constitution of India, questioning the order dated 02.06.2016 passed in I.A.No.175 of 2016 in O.S.No.462 of 2015 on the file of the I Additional Junior Civil Judge, Madanapalle, wherein an application filed by the 7th defendant-Bank for rejection of the plaint, was allowed.

3) C.R.P. No. 4358 of 2016 came to be filed under Article 227 of the Constitution of India, questioning the order dated 02.06.2016 passed in I.A.No.174 of 2016 in O.S.No.462 of 2015 on the file of the I Additional Junior Civil Judge, Madanapalle, wherein an application filed by the plaintiff for amendment of the plaint, was dismissed.

4) The averments in the affidavit filed in support of the I.A.175 of 2016, which is filed for rejection of the plaint by the 7th defendant are that the plaintiff filed a suit for declaration of his right and title towards his entitlement for ex-gratia compensation from the defendants 2 to 6 relating to the plaint schedule property

and for permanent injunction restraining the 7th defendant-Bank from disbursing the amounts to the defendants 1 and 8 lying to the credit of their saving bank accounts in the 7th defendant's bank. For the relief of declaration, the plaintiff valued the relief at Rs.1,00,000/- and paid court fee under Section 24(b) of the A.P. Court Fee Act. The relief of permanent injunction is to restrain the 7th defendant-Bank from disbursing the amount to the credit of the savings bank accounts of defendants 1 and 8. The record shows that an amount of Rs.11,800/- was credited in the S.B. Account of the 1st defendant, who transferred the said amount to the credit of 8th defendant's S.B. Account on 02.12.2015. The amount remaining in the account of 1st defendant as on 02.12.2015 was Rs.501.91 ps. An amount of Rs.33,94,924.82 ps. was in the account of 8th defendant as on 02.12.2015. It is stated that the valuation was not done on the actual amount lying in the account of 8th defendant and it valued on the said basis, the court of Junior Civil Judge would have no pecuniary jurisdiction to entertain the suit. A counter came to be filed by the plaintiff denying the allegations made in the petition, stating that in order to avoid further complication in the matter, a petition under Order VI Rule 17 of the Code of Civil Procedure (for short "the C.P.C."), was already filed and the same is pending for consideration. It is stated by the plaintiff that since amendment petition is pending consideration, the petition for rejection of the plaint is not maintainable and liable to be dismissed.

5) One of the main objections raised by the learned counsel for the defendants is with regard to filing of C.R.P., against an order rejecting the plaint. He relied upon the Division Bench judgments of this Court in **V.Geeta Bhavani v. Nallu Narasimha Reddy and others¹** and **Molugu Ram Reddy and others v. Molugu Vittal Reddy and others²**, to show that only an appeal would lie against an order rejecting the plaint and that a C.R.P. would not lie under Article 227 of the Constitution of India. However, the learned counsel for the petitioner relied upon the judgments of this Court reported in **Kasani Narsimulu v. Sathagowni Srinivas Goud and others³** and **Pranit Projects (P) Ltd., Hyderabad and others v. Goundra Yadaiah and others⁴** to show that a C.R.P., would lie against an order rejecting the plaint.

6) In **Kasani Narsimulu's case (3rd supra)**, in which the Court was dealing with a situation where the application filed by the defendant for rejection of a plaint vide I.A.No.189 of 2013 under Order VII Rule 11 of the C.P.C., was dismissed. Similarly in **Pranit Projects' case (4th supra)** the Court was also dealing with a situation where an application to reject the plaint was rejected. Having regard to the said circumstances, the Court entertained the Revisions filed under Article 227 of the Constitution of India. But in the instant case, the application filed for rejection of the plaint by the defendant was

¹ 2012(6) ALT 540 (D.B.)

² 2011(4) ALT 418 (F.B.)

³ (2014(2) ALD 149

⁴ 2014(6) ALD 232)

allowed. Under those circumstances, the court has to see "Whether a Revision would lie against an order allowing an application filed by the defendant under Order VII Rule 11 of the C.P.C.?"

7) Issue identical to the case on hand came up for consideration before the Full Bench of this court in Molugu Ram Reddy's case (2nd supra). It was a case where fifth defendant filed an application, being LA. No. 2962 of 2001, under Order VII Rule 11 to reject the plaint, *inter alia*, as barred by res judicata. During the course of enquiry of the I.A., the 5th defendant marked Exs.A-1 to A-3 and the plaintiffs marked Exs.B-1 to B-22. After considering the documents, the Court below recorded a finding that the compromise decree in O.S.No.295 of 1984 was passed with the consent of all the shareholders, that the plaintiffs abandoned their claim in respect of other properties except the properties allotted to them in the compromise decree, and that the cause of action for filing the partition suit is barred under Order II Rule 2(3) of the C.P.C. Accordingly, the I.A., filed was allowed. Challenging the same, the C.M.A. No.3214 of 2003 came to be filed along with regular appeal under Section 96 of the C.P.C. The question was with regard to maintainability of the appeal. After considering the various provisions of the C.P.C., and also the judgments on the subject, the Full Bench on a reference held as under :-

25. In the result for the above reasons, the reference is answered as follows. On the true construction of Sections 2(2), 2(9), 2(14) and Sections 96, 104 and 105 of the CPC, the conclusion is irresistible that a judgment rejecting a plaint

is "decree" and is appealable under Section 96. A miscellaneous appeal against an order rejecting the plaint would not lie. There is a much consensus of judicial opinion that supports this conclusion. A plaintiff, who is aggrieved by rejection of the plaint for any of the reasons as contemplated under Order VII Rule 11(a) to (f), is entitled to file a regular appeal under Section 96, and a miscellaneous appeal under Section 104 read with Order XLIII Rule 1 is barred.

8) Hence, the objection raised by the respondent with regard to the maintainability of this revision against an order accepting the application filed for rejecting the plaint has to be accepted. Accordingly, C.R.P.No.4582 of 2016 is dismissed giving liberty to the petitioner to avail the remedy of appeal in view of the judgment of the Full Bench in **Molugu Ram Reddy's case (2nd supra)**.

9) Having regard to the orders passed in C.R.P.No.4582 of 2016, the issue as to jurisdiction of the court shall be considered afresh after the proceedings in appeal, with regard to the rejection of plaint, reach it's finality. Hence, it would be proper if the request of the petitioner in C.R.P.No.4358 of 2016 is considered afresh by the trial court after the disposal of the appeal.

10) Accordingly, Civil Revision Petition No.4582 of 2016 is dismissed and the validity of the impugned order in C.R.P.No.4358 of 2016 be considered afresh after disposal of the appeal, since any order passed in the said C.R.P., will not be of any use till final order is passed in the said Appeal. With the above observation C.R.P.No.4358 of 2016 is disposed of.

No costs. As a sequel to it, miscellaneous petitions pending if any in these two C.R.Ps. shall stand closed.

C. PRAVEEN KUMAR, J

Date:13.12.2016
GM

