

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CIVIL REVISION PETITION Nos. 1308 and 2125 of 2016

COMMON ORDER:

These two revisions No.1308 and 2125 of 2016 are filed by the same petitioner under Article 227 of the Constitution of India challenging the order passed in IA.Nos.424 and 425 of 2015 in OS.No.10 of 2010, dated 07.12.2015.

The petitioner filed two applications one under Order 14, Rule-1 and the other under Order 14 Rule 2 of Code of Civil Procedure for framing additional issue and to decide the additional issue regarding jurisdiction as preliminary issue, since it is a pure question of law.

Order 14 Rule-1 of CPC deals with framing of issues when a material proposition of fact or law is affirmed by one party and denied by the other, an issue has to be framed. In the present case the plaintiff/respondent herein invoked jurisdiction of the Civil Court relating to a matter of employment in a private charitable institute but, the defendant/revision petitioner herein raised a specific plea at the end of para-5 of the written statement that the Civil Court has no jurisdiction. Thus, a fact is affirmed by the plaintiff and denied by the defendant in their pleadings. But, the trial Court failed to frame an additional issue.

Rule-5 of Order 14 of CPC conferred power on the Court to amend or strikeout any issues and it further says that the Court may at any time before passing any decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. Thus, ample power is conferred on the Court to frame additional issues when the trial Court failed to frame additional

issue regarding jurisdiction following procedure under Order 14 Rule 1 of CPC.

However, during hearing the learned counsel for the respondent Sri P.V.R.Rudra Prasad representing Sri N.Bal Raj, learned counsel for the respondent/plaintiff reported that he has no objection to frame an additional issue regarding jurisdiction. Therefore, in view of no objection reported by the respondent, the following issue is framed.

“Whether the Civil Court is competent to try the suit relating dispute between the employee and employer in private charitable institution?”

The trial Court passed an elaborate order running into two pages in IA.No.424 of 2015 i.e. petition filed under Order 14, Rule 2, instead of passing an order in petitioner filed under Order 14 Rule-1. But, the revision petition in CRP.No.2125 of 2016 is filed against the order filed under Order 14, Rule 1. Thus, it is evident from the record that the trial Court did not apply its mind to the prayer in both the applications filed under Order 14 Rule 1 and 2, in IA.Nos.424 and 425 of 2015. But, passed a detailed order running into two pages in petition filed under Order 14 Rule 2. Order 14 Rule 2 mandates pronouncement of Judgment on all issues and if the Court thinks it is necessary to decide any issue of pure question of law can decide the same as preliminary issue.

Sri B.V.Subbaiah, learned Senior Counsel appearing for the petitioner/defendant contended that the Civil Court has no jurisdiction in the matters pertaining to contract of personal service and drawn the attention of this Court to several Judgments in ***M/s.Pearlite Liners Private Limited v. Manorama Sirsi***^[1];

Dr. Bool Chand v. Chancellor, Kurukshetra University^[2];
***Nandaganj Sihori Sugar Company limited Rae Bareli and
another v. Badri Nath Dixit and others***^[3]; ***S.R.Tewari v. The
District Board Agra now the Antaram Zila Parishad, Agra
Through the Secretary and another***^[4]; ***Mothey Krishna Rao v.
Grandhi Anjaneyulu and others***^[5]; and finally ***Durgapur Casual
Workers Union and others v. Food Corporation of India***^[6]. He

contended that the Civil Court has no jurisdiction since removal of a private employee would give rise to cause of action to claim damages and such contract of private employment cannot be enforced in view of the bar under Section 14 of Specific Relief Act.

There is no quarrel about the law declared by the Apex Court. But this Court while deciding scope of Order 14 Rule 2 need not go into the principles laid down in the above Judgments.

The learned counsel for the respondent/plaintiff Sri P.V.K.Rudra Prasad objected for issuing a direction to the trial Court to decide the issue of jurisdiction as a preliminary issue since the petition was filed after a lapse of 4½ years. According to Order 14 Rule 2 notwithstanding that a case may be disposed of on a preliminary issue, the Court can try and decide the preliminary issue and pronounce the Judgment on a preliminary issue. Clause-2 of Order 14 Rule 2 permits the Court where issues both of law and of fact arise in the same suit and if the Court is of the 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 the jurisdiction of the Court or 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. Thus, this Court is of opinion that it is a fit case to decide a pure question of law which relates to a jurisdiction of the Court as framed in earlier para instead of prolonging the litigation for years together to avoid ordeal of trial. But, the trial Court declined to frame an additional issue though there are sufficient pleadings affirming a fact by the plaintiff and denied by the respondent; and declined to decide the issue of jurisdiction as a preliminary issue. Though finding is not clear on this aspect, Order 14 Rule 2 did not create any interdict on the power of the Court to decide any issue of law relating to jurisdiction. However, such an issue can be decided at any stage as there is no fetter on the jurisdiction of the Court to decide such issue as preliminary issue. In those circumstances, since this Court framed an issue in CRP.No.1306 of 2016, I find that it is an appropriate case to decide the additional issue framed by this Court as preliminary issue. Hence, the trial Court is directed to decide the issue framed by this Court, exercising power under Order 14 Rule 5 of the Code of Civil Procedure and decide the same as preliminary issue before proceeding further in the trial.

In the result, both revision petitions are allowed directing the trial Court to decide the issue framed by this Court, in 2nd passage of order, as preliminary issue since it is a pure question of law and it relates to inherent jurisdiction of Civil Court, before proceeding further in trial. No order as to costs.

Miscellaneous petitions, if any, pending in the Civil Revision petitions shall stand closed.

09.08.2016
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[\[1\]](#) AIR 2004 Supreme Court 1373
[\[2\]](#) AIR 1968 Supreme Court 292
[\[3\]](#) AIR 1991 Supreme Court 1525
[\[4\]](#) AIR 1964 Supreme Court 1680
[\[5\]](#) AIR 1954 Madras 113 (Vol.41, C.N.44) (1)
[\[6\]](#) (2015) 5 Supreme Court Cases 786