

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

CCCA No.208 of 2008

Judgment (Oral)

(per Hon'ble Sri Justice Suresh Kumar Kait):

Vide the present appeal, the appellant has challenged the judgment and decree dated 30.06.2008 passed in O.S.No.72 of 2016 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad, whereby the aforesaid suit has been decreed for Rs.5,30,77,291/- with costs and with interest @ 12% per annum from the date of the suit till the date of realization.

2. The present appeal is filed on the ground that the Court below ought to have seen that once the leave is granted either conditional or unconditional, the suit becomes a regular suit instituted in an ordinary manner, hence, the Court below is bound to consider the suit as one instituted in an ordinary manner and the procedure for trying the regular suit including the non-compliance of the interim order is to be followed by exercising power under Rule 7 of Order XXXVII CPC.

3. Learned counsel appearing on behalf of the appellant submits that the Court below ought to have seen that the plaint does not satisfy the requirements of sub-clause (b) of Rule 2 of Order XXXVII CPC, inasmuch, there is no ascertained sum as a debt or liquidated demand in money payable by the defendant.

4. It is not in dispute that the appellant filed IA No.2342 of 2006 in the suit to grant leave to defend the suit. By an order dated 31.12.2007, the Court below granted leave to the appellant to contest the suit subject to the condition that the appellant shall deposit a sum of Rs.4,17,36,216/- with interest @ 12% per annum on or before 29.02.2008, failing which, the suit shall be decreed with costs.

5. It is pertinent to mention here that the said order of the trial Court was challenged by the appellant in CRP No.794 of 2008 before this Court and the same was disposed of by order dated 07.03.2008 granting time to the appellant till 30.06.2008 to pay 50% of the liability by way of cash and for the balance amount, the appellant shall furnish immovable security to the satisfaction of the lower Court by 15th of April, 2008. The order was passed based on the request of the counsel for petitioner based on instructions.

6. However, the appellant placed certain copies of sale deeds and valuation certificate worth Rs.15,54,300/- on 29.04.2008 to comply with the first limb of the order of this Court. Later, he filed certain documents and the total immovable security furnished was only worth Rs.86 lakhs. Subsequently, after 29.04.2008 the appellant filed certain documents and the approved valuer report and the respondent filed a valuation report issued by the District Registrar of Assurances. The Court below had observed that the valuation certificate issued by the concerned Registrar is

only relevant but not the valuation certificate or valuation given by the approved valuer.

7. Ultimately, the trial Court by order dated 06.06.2008 clarified that total amount furnished towards the security comes to Rs.86 lakhs only, whereas half of the immovable security comes to Rs.2.09 crores.

8. It is further pertinent to mention here that at that stage, the advocate for the appellant requested time to get clarification from this Court, however, this Court declined to give further clarification.

9. By non-complying the directions of this Court issued by order dated 07.03.2008, the appellant came forward to give bank guarantee instead of paying half of the amount in cash. The said option was not accepted by the trial Court.

10. As stated by the counsel for the appellant, the appellant was granted leave to defend the case, therefore, the trial Court ought to have tried the suit instead of acting as an executing Court.

11. Admittedly, the directions passed by this Court have not been fully complied with.

12. Order-XXXVII Rule 3 (6) CPC prescribes as under:

“3. Procedure for the appearance of defendant:-

- (1)
- (2)
- (3)
- (4)
- (5)

(6) At the hearing of such summons for judgment,--

- (a) if the defendant has not applied for leave to defend, or if such application has been made and is

refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7)"

13. As per the aforesaid provision, if the defendant is permitted to defend as to the whole or any part of the claim, the Court may direct him to give security within such time as may be fixed by the Court, and on failure to give such security within the time specified by the Court or to carry out such other directions as may have been given, the plaintiff shall be entitled to judgment forthwith.

14. Keeping in view the aforesaid provision, we find no perversity or illegality in the judgment and decree dated 30.06.2008 passed in O.S.No.72 of 2006.

15. Finding no merit in the present appeal, the same is accordingly dismissed. No order as to costs.

16. Miscellaneous Petitions if any pending in this appeal shall stand closed.

SURESH KUMAR KAIT, J

D.V.S.S. SOMAYAJULU, J

Date: 05.10.2017
Isn