

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.3800 OF 2001,
CIVIL REVISION PETITION No.759 OF 2002
CIVIL REVISION PETITION No.3339 OF 2002
CIVIL REVISION PETITION No.3340 OF 2002
AND
CIVIL REVISION PETITION No.4086 OF 2002**

COMMON ORDER: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

In Civil Revision Petition No.2092 of 2002, by order dated 13.04.2002, a learned Single Judge made a reference to a learned Division Bench of this Court, namely whether in the context of Schedule V of the Constitution of India, the open textured language of Rule 35 of the Agency Rules, 1924 and the Scheduled Districts Act, under which these rules have been made, extend to exclude jurisdiction of regular civil Courts even in respect of the parties, all of whom are not scheduled tribes, or not? Subsequently, in C.R.P.No.3800 of 2001, the learned Single Judge, by order, dated 07.07.2008, had directed that the said revision petition should be tagged with C.R.P.Nos.3339 and 3340 of 2002, which were already directed to be tagged with C.R.P.No.2092 of 2002, wherein a reference has been made to a learned Division Bench of this Court. Similarly, in C.R.P. No.759 of 2002, the learned single judge, by order dated 03.11.2003, had directed that the said revision petition should be tagged along with C.R.P.No.4086 of 2002, which was also directed to be tagged with Civil Revision Petition No.2092 of 2002 wherein a reference has been made to a learned Single Judge. Hence, all these above mentioned revision petitions are tagged with Civil Revision Petition No.2092 of 2002 wherein a reference has been made by a learned

Single Judge as mentioned hereinabove. Hence, all these revision petitions are being decided by a common order.

This issue referred by the learned Single Judge has a checkered history, which is as under:

Considering the fact that the area, which would eventually fall under the combined State of Andhra Pradesh, and considering the fact that certain areas, were dominated by the tribal population, in 1874, the Scheduled Districts Act was promulgated in order to preserve and promote the interest of the tribal population. Section 6 of the Scheduled Districts Act empowered the Governor to make the rules for the administration of Agency Tracts falling in areas which would emerge as the combined State of Andhra Pradesh. Therefore, in 1924, the Andhra Pradesh Agency Rules were promulgated by the Governor.

For the purpose of this reference, Rule 35 of the A.P. Agency Rules is relevant. It is as under:

Rule 35: . *Where it is sought to execute within the Agency tracts a decree passed by a Court in India situated outside the said tracts, the Court issuing the decree shall forward the decree and a copy of the judgment in the suit to the Agent to State Government who shall cause the decree to be executed in the manner provided by these rules for the execution of a decree passed by him :*

Provided that for reasons to be recorded, the Agent to the State Government may refuse to cause any such decree to be executed, or may at any stage of the execution order the execution of any such decree to be stayed. Provided also that such refusal or order of the agent to the State Government shall be subject to revision by the State Government.

The agent to the State Government shall furnish to the Court issuing the decree a certificate of execution or a copy of his order refusing to execute or slaying the execution of the decree."

After the formation of the combined state of Andhra Pradesh, The A.P. Civil Courts Act (for short 'the Act') was promulgated in the year 1972. According to Section 1(3) of the Act, "*the Act was to come into force in such area and on such date as the Government may, by notification, appoint, and the Government may appoint different dates for different areas and for different provisions of the Act.*" Consequently, the Government issued G.O.Ms.No.1573, dated 30.10.1972; the Governor appointed 01.11.1972 as the date on which all the provisions of the said Act would come into force in the whole combined State of Andhra Pradesh *except in the Scheduled Areas (tribal areas) of the State.*

Further, Section 9 of the Code of Civil Procedure reads as under:

"Section 9: Courts to try all civil suits unless barred:- *The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."*

Therefore, a quixotic situation had arisen before a Division Bench of this Court in the case of **Ashifaquddin v Mohd.Azizuddin**¹. While considering the vast scope of Section 9 C.P.C., but considering the restriction placed by Rule 35 of the A.P. Agency Rules, 1924, the issue arose whether the jurisdiction of the Civil Courts was ousted from the scheduled area or not? Answering this query, the learned Division Bench observed that there is nothing in the Rule 35 of the Agency Rules from which it could be inferred that the jurisdiction of the ordinary Civil Courts to entertain suits of civil nature between non-tribal is barred expressly or by necessary implication.

¹ AIR 1978 AP 354

On the basis of the judgment of the learned Division Bench, the Civil Courts established under the Act continued to entertain suits between non-tribals, though the cause of action arose in the Agency Area and while both the parties to the suits are non-tribals.

However, when the decree was to be executed, an objection was taken before this Court in a series of civil revision petitions that since the provisions of the Act, which were not extended to the scheduled areas, the civil Courts could not exercise the jurisdiction over the scheduled areas. Hence, all the decrees passed by the Civil Courts with respect to the matters whose cause of action had arisen in the agency area are nullity. Thus, they are non-executable.

However, in the case of **Chityala Dhanalakshmi and Another v MandrapuKamakshamma** (C.R.P.No.1418 of 1990), considering the restriction placed by Rule 35 of the Agency Rules, a learned Single Judge, by his order dated 15.10.1999, held that the Civil Court cannot execute the decree. Thus, necessarily these decrees have to be forwarded to the Agent of the State Government, for execution as provided under Rule 35 of the Agency Rules. A similar view was also held in the case of **Madakam Venkateshwara Rao and Others v Subordinate Judge, Kothagudem, Khammam District and Another²**. In this case the situation had arisen wherein the decree was passed by the Civil Court in respect of the cause of action which arose wholly in the scheduled area.

² 2000(5)ALD 32

Meanwhile, one of the revisionists in **Nagarjuna Grameena Bank and Others v Medi Narayana and others**³, who was aggrieved by the order dated 27.06.2000 in **C.R.P.No.2888 of 1998**, filed a SLP before the Hon'ble Supreme Court. By order dated 04.09.2000, the Hon'ble Supreme Court was pleased to stay the operation of the order dated 27.06.2000. Consequently, the civil decrees could be executed through civil Court.

On 13.04.2002 the present reference has been made to this Court, we shall deal with the present reference, but for the present, let us continue with the narration of the present facts.

During the pendency of the present reference, in the case of **Parika Danial Gidwin v Dharmaseva Chit Fund Private Limited and others** (Civil Revision Petition Nos.1894 of 2001 along with other civil revision petitions), a learned Singh Judge, keeping in mind that the stay order has already been granted by the Hon'ble Supreme Court, opined that the Civil Courts would have jurisdiction to execute the decree even if the decree related to a scheduled area. Similar view was also held by another learned Single Judge, by order dated 12.12.2003, in Civil Revision Petition No.3798 of 2001.

It is in these circumstances, that the reference was made to the learned Division Bench, by the learned Single Judge. However, the reference made to this Court is no longer *res integra*. For, the issue has been answered by the Hon'ble Supreme Court in the case of **Nagarjuna Grameena Bank and Others v Medi Narayana and others** [(2013) 4 SCC 362]. According to Hon'ble Supreme Court, the Civil Court(s) does not have the jurisdiction in the light

³ (2013)11 SCC 362

of Rule 35 of the Agency Rules. In fact, those persons, who have decrees, orders or judgments in their favour passed by the civil Court(s) may lay their claim before the Agency Court(s). In the event of such claims being laid before the Agency Court(s), the same shall be decided by the Agency Court(s), uninfluenced by any judgment, decree or order passed by the civil Court(s).

Therefore, the reference is answered in terms of the Hon'ble Supreme Court's decision in the above mentioned case.

The civil revision petitions stand disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(M.SATYANARAYANA MURTHY, J)

11.12.2018
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