

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SRI JUSTICE N. BALAYOGI

+ WRIT PETITION No.19952 of 2018

%Date:15.06.2018

Between:

Dr. Eunice Lalnunmawii Chawngthu
D/ o.Mr.C.Dot hanga, R/ o.Banjara Hills,
Hyderabad.

...Petitioner

Vs.

\$ The XXV Additional Chief Judge,
City Civil Court, Hyderabad.

... Respondents

! For Petitioner : Party in person.

^ For Respondents : None

< Gist :

> Head Note :

? Cases Referred : AIR 1951 Raj 161
1967 AIR 1
2003 (6) SCC 675
2015 SCC Online SC 170



THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.19952 of 2018

ORDER: (per V. Ramasubramanian, J)

The petitioner, who is the plaintiff in a suit for damages, appearing as a party in person, has come up with the above writ petition seeking the following prayer:

“To issue an appropriate writ order or direction more specifically a writ of mandamus setting aside the order dated 13.12.2017 call for the records in O.S.No.39/2017 direct the respondent to explain within one week as to how the 1st and 2nd defendants were permitted to file their Written Statement on 14.9.2017 also directing the respondent to dispose the O.S.No.39/2017 on merits two months from the date of pronouncement of orders.”

2. Heard the petitioner appearing in person.

3. On the ground that both the print and electronic media, in particular, the Deccan Chronicle Holdings Private Limited, TV9 News Channel and ABN News channel, telecasted certain defamatory news items about the petitioner, the petitioner filed a suit for damages in O.S No.39 of 2017 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad. It appears that after service of summons, the defendants were allowed to file written statements after the expiry of the period of 90 days prescribed by the Civil Procedure Code, despite objections by the petitioner. Subsequently, the defendants 1 and 3 separately filed applications in I.A Nos.1721 and 1722 of 2017 seeking rejection of the plaint under order-VII Rule-11 CPC, on certain grounds including the ground of limitation. The trial Court allowed both the applications by separate orders dated 13.12.2017. Aggrieved by the said order and contending that the violation of her fundamental rights by the

print and electronic media was not taken serious note of by the trial Court, the petitioner has come up with the above writ petition.

3. At the outset, we should point out that an order rejecting the plaint under Order-VII Rule-11 CPC is a decree within the meaning of the expression under Section 2 (d) of the CPC. Therefore, a regular appeal would lie as against an order passed under Order-VII Rule-11 CPC.

4. The contention of the petitioner is that whenever the alternative remedy is not effective, it is open to a party aggrieved by an order of the trial Court to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. Reliance is placed upon a judgment of the Rajasthan High Court in *The Mewar Textile Mills Ltd. v. The Industrial Tribunal*¹.

5. There is no dispute about the fact that alternative remedy is not always a bar for entertainment of a writ petition. We do not have to go so far as 1951 and especially to Rajasthan to adjudicate on this question. There are any number of judgments of the Supreme Court on this aspect. But what is an effective remedy is the question to be addressed.

6. A regular appeal under the code of civil procedure is a more effective alternative remedy than a writ petition. In a regular appeal especially a first appeal under the CPC, the parties are even entitled to amend pleadings, adduce additional evidence etc. But in a writ petition under Article 226 CPC this Court will not even go into disputed facts.

7. The question as to whether a writ of Certiorari will lie as against the judicial orders of civil Courts, is no longer *res integra*. Way back in the year 1966, a larger Bench of the Supreme Court held in *Naresh Shridhar Mirajkar v. State of Maharashtra*², that Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction.

¹ AIR 1951 Raj 161

² 1967 AIR 1

However, in *Surya Dev Rai v. Ramchander Rai*³ a two Member Bench of the Supreme Court held that Certiorari under Article 226 of the Constitution of India will lie for correcting errors of jurisdiction, when a subordinate Court is found to have acted either without jurisdiction or in excess of jurisdiction or in flagrant disregard of law or Rules of procedure.

8. But the correctness of the view expressed in *Surya Dev Rai*'s case was doubted by another Bench of the Supreme Court and hence a reference was made to a three Member Bench. The three Member Bench, in *Radheshyam v. Chhabinath*⁴ overruled *Surya Dev Rai* and held that judicial orders of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India.

9. Moreover, one of the prayers sought for in the writ petition is to direct the trial Court to explain within one week as to how the Court permitted the defendants to file written statements. If this Court on the judicial side, starts calling upon the subordinate judicial officers to explain the rationale behind their orders or conduct, then there will be utter chaos both in the High Court and in the Courts subordinate thereto.

10. Therefore, the writ petition is dismissed as not maintainable. As a sequel thereto, the miscellaneous petitions, pending if any, shall stand dismissed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

June 15, 2018
KTL

³ 2003 (6) SCC 675

⁴ 2015 SCC Online SC 170