

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.467 of 2011

ORDER:

The revision petitioner is the decree-holder/plaintiff in E.P. No.20 of 2007 in O.S. No.29 of 2000 on the file of I-Additional District Judge, Nizamabad, and pursuant to the decree granted, he filed E.P. No.20 of 2007, and, thereafter, filed E.A. No.366 of 2010 for issuance of a cheque for Rs.2,72,834/- deposited by the respondent towards costs of the suit. Learned I-Additional District Judge, Nizamabad, dismissed the petition, filed under Rules 230 to 235 of Civil Rules of Practice, by his order, dated 11.11.2010. That aggrieved compelling him to file the present Civil Revision Petition under Section 115 of Civil Procedure Code, 1908 (for short, 'C.P.C.')

2. Heard Sri S. Rambabu, learned counsel for the petitioner, and the learned Assistant Government Pleader for the respondents.

3. It appears when the said Cheque petition was filed by the petitioner, learned Government Pleader before the Court below resisted the request and that that was the reason the order under challenge was passed rejecting the request and dismissing the application.

4. Turning to the relevant facts, the respondent No.2 herein issued a tender notification for allotment of work of "Rehabilitation and modernisation of Distributory System from D.30 to D.61 except

D/53 & 54 of Sriramsagar Project with aid of World Bank to the petitioner. Bid amount was Rs.14,92,000/- and his tender was accepted. Terms of agreement were entered into, which contemplates that the work should be completed within 36 months i.e., by 27.8.2001. The petitioner herein, of course, completed the work, but belatedly he did so. He completed the work on 30.4.2004. That constrained the 2nd respondent to impose liquidated damages of Rs.51,76,000/- for non-completion of work allotted within stipulated time, and, thus, withheld the said amount from the work bill while paying the amounts to the decree-holder. That constrained the petitioner to file the suit in O.S. No.29 of 2000 for the aforesaid amount with interest at 12% p.a. Trial was held. By judgment, dated 28.4.2006, the suit was decreed with interest at 12% per annum from the date of recovery i.e., 12.8.2003 till the date of refund, further directing to pay Rs.1,99,799/- towards costs of the suit.

5. When the decree was not challenged, the petitioner herein filed E.P.No.20 of 2007 to enforce the decree. There was correspondence and communication between the parties. However, on the proposal of the petitioner, the 1st respondent-Government of Andhra Pradesh represented by its Secretary, I & C.A.D., forwarded the proposal with the letter of the petitioner, dated 26.9.2006, and G.O.Ms. No.238, dated 8.11.2007, was issued releasing a sum of Rs.51,76,000/- towards satisfaction of the decree subject to the petitioner filing an undertaking before the Court waiving claim for

interest. The Court below records that there was no dispute that G.O.Ms.No.238 was culminated pursuant to the proposal put forth by decree-holder in his letter dated 26.9.2006.

6. The undertaking, accordingly, was filed by the petitioner on 27.11.2007 and a Memo was issued by the Government depositing a sum of Rs.51,76,000/-. The same was withdrawn by the petitioner pursuant to the order passed on 23.4.2008 towards part satisfaction of decree by filing undertaking, as directed in the G.O.

7. The whole issue revolves around, whether the 'waiver of interest' amounted to 'waiver of suit costs'?

8. The contention of the petitioner that there was no waiver of suit costs and only interest on liquidated damages was waived, besides raising plea that the compromise was outside the Court and was not certified or recorded as per Order 21 Rule 2 C.P.C., and as such will not make the decree in-executable and will not extinguish the decree. This was resisted to by the respondents stating that the petitioner when he offered the proposal for compromise through letter dated 26.9.2006, wherein he offered to settle the dispute on release of liquidated damages by foregoing interest thereon without initiating any further legal recourse of action on the judgment and decree. The court below extracted Order 21 Rule 2 of C.P.C. Thereafter, referred

to the ruling in **Sultana Begum v. Prem Chand Jain**¹, and then formulated the points in paragraph-21, thus:

- “(i) Whether the parties to the decree intended to extinguish the decree in pursuant to the settlement or understanding outside the Court?
- (ii) Whether such settlement or understanding between the parties outside the Court has been certified and recognised by the Court in terms of Order 21 Rule 2 of C.P.C.?

9. The Court below, then extracted the relevant portions of G.O.Ms.No.238, dated 8.11.2007 which contained the words ‘requested to release liquidated amount, without initiating further legal recourse of action on the judgment and decree’ as reflected in the proposal letter of the petitioner and thereby the Court below opined that the said expression gives a clue that the parties have manifested their intention to discontinue the litigation based on judgment/decree upon release of liquidated damages, which was withheld by the judgment-debtors from the work bills of decree-holder.

10. Again, referring to **Konchada Ramamurthy Subudhi & another v. Gopinath Naik**² wherein the Apex Court declared that the real intention of parties is decisive test to determine whether parties intended to extinguish the decree pursuant to the settlement, arrived at

¹ AIR 1997 SC 1006

² 1968(2) SCR 559

the opinion that there is no substance in the case of the petitioner, and the petitioner did waive his claim for costs of the suit even.

11. On Point No.2 also elaborately dealt with referring to the ruling in **Sri Lakshmi Narayan v. S.S. Pandian**³ rendered in the context of Order 21 Rule 2 of C.P.C., wherein it was held by the Hon'ble Apex Court that no specific procedure or formula is prescribed for recording the adjustment in the said Rules, what is required under rule 2 is that the Court should take cognizance of the fact of the compromise and pass appropriate orders accepting or giving effect to it and thereby dismissed the petition directing refund of costs deposited by the respondent to the judgment-debtors. The said order is under challenge in the present Civil Revision Petition.

12. The submission of the learned counsel is that the Court below somehow misdirected itself and passed the order to refund the amount of Rs.2,72,834/- to the respondents, which was kept in court deposit i.e., cheque amount of Rs.2,72,834/- deposited towards costs of the suit. What was waived by the petitioner in the proposal was only interest on liquidated damages, but not suit costs and merely because it was written that further legal recourse of action on judgment and decree will not be initiated, is no ground to deprive the petitioner of his legitimate right to claim interest, more particularly, when compromise was outside the Court and not recorded or certified by the Court to attract the provisions of Order 21 Rule 2 C.P.C. It is

³ AIR 2000 SC 2757

his submission that what was not contained in the proposal was read into and thereby deprived the petitioner of costs of the suit, to which he is legitimately entitled.

13. Learned I-Additional District Judge, Nizamabad, of course, passed an elaborate order, but it appears, he was carried away by the words 'requested to release liquidated amount.....without initiating further legal recourse of action on the Judgment and Decree..' and thereby culled out the intention of the parties and rejected the request.

14. Learned Assistant Government Pleader, of course, supported the order but, however, would agree that what was waived by the petitioner was the interest on liquidated damages, but, however, insists on the expression 'without initiating further legal recourse of action on the judgment and decree'.

15. Two things are relevant for resolving the present controversy.

16. The liquidated damages of Rs.51,76,000/- was deposited by the Government by virtue of G.O.Ms.No.238, Irrigation & C.A.D. (P.W.-MAJ.IRR. VIII) Department, dated 8.11.2007 was mooted out by the petitioner agreeing to forego interest thereon, which was claimed in the suit.

17. No doubt, copy of letter is not placed in the record for perusal, but can be gathered from the material available on record that the petitioner has never given up his claim for suit costs. It is no doubt true, award of costs is the discretion of the Court, but, in the present case the matter ended in compromise outside the Court, but, however, the same was brought to the Court's notice with a view to see that the proceedings are closed. Thus, this particular aspect of the case ought to have been taken note of by the Court below, but instead elaborately dealt with the provisions of Order 21 Rule 2 C.P.C.

18. The second circumstance is that it is not as though the respondents declined to pay suit costs. Respondents, in fact, issued G.O.Rt.No.558, dated 25.7.2009, that too pursuant to the orders dated 9.9.2008 passed by the Court below in the Execution Petition. Pursuant to the said G.O., an amount of Rs.2,72,834/- was deposited towards costs. The docket order, 9.9.2008, passed by the learned I-Additional District Judge, Nizamabad in E.P. No.20 of 2007 in O.S. No.29 of 2000 reads thus:

“Heard from both sides. As per decree petitioner is entitle costs.

Hence, J.Dr. is directed to pay costs. Call on 13.10.2008 for payment.”

19. When there is already an order passed by the very same Court on 9.9.2008 for payment of costs and even pursuant to which order Government has initiated steps and deposited the suit amount and when cheque petition was filed as aforesaid, certainly, learned I-Additional District Judge, Nizamabad, cannot reject the

request and dismiss the application. In fact, if there was any grievance to the respondents 1 and 2 against the order dated 9.9.2008, certainly, they ought to have challenged it before this Court. When the said order is allowed to attain finality, certainly, it was not for the learned Government Pleader to plead and resist the cheque petition filed by the petitioner before the executing court.

20. What all required to be done by the learned I-Additional District Judge, when he was adjudicating upon E.A. No.366 of 2010 was to examine, whether the request made in the Cheque petition is in accord with the order dated 9.9.2008 passed by his predecessor in office, travelling beyond it is impermissible. Therefore, there is patent illegality in the order under challenge, which is liable to be set aside.

21. Accordingly, the Civil Revision Petition is allowed by setting aside the order under challenge. The consequence being E.A. No.366 of 2010 stands allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 16.04.2018
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