

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CIVIL REVISION PETITION No.204 of 2020

ORDER: (Per Sri Justice M.S.Ramachandra Rao)

This Revision is filed challenging the order dt.28-11-2019 in I.A.No.773 of 2019 in C.O.S.No.39 of 2017 of the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein had filed a civil suit O.S.No.798 of 2015, which was renumbered as C.O.S.No.39 of 2017 before the said Court, for recovery of Rs.8,82,25,000/- with interest @ 24% p.a. from the date of plaint till realization.

3. The defendant in the suit was the Jawaharlal Technological University, Anantapuram.

4. In the written statement filed by the defendant, a plea was taken that the defendant being in the State of Andhra Pradesh, the Court of Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, has no territorial jurisdiction.

5. After trial was conducted, the Court opined that it did not have jurisdiction to entertain the suit and returned the plaint for presentation in the proper Court by a judgment and decree dt.12.9.2019. Other issues raised by the parties were not decided.

6. Petitioner thereafter filed an application I.A.No.773 of 2019 under Section 151 C.P.C. for transferring the Court fee paid by it amounting to Rs.8,84,726/- to the District Court, Anantapur where the plaint was presented later by the petitioner.

7. By order dt.28-11-2019, the Court below dismissed I.A.No.773 of 2019 holding that the petitioner has consciously chosen a forum to file the suit and had paid the Court fee and such conscious payment of Court fee does not qualify either mistake or inadvertence. It also held that Section 66 of the A.P.Court Fee and Suit Valuation Act, 1956 permits refund of Court fee only on account of mistake or inadvertence and the said provision cannot be relied upon by the petitioner to seek either refund of the Court fee or transfer of Court fee or any money from the account of a Court in one State to the account of Court in other State. It also observed that statutory scheme of Telangana Court Fees and Suits Valuation Act, 1956 does not permit the Court to do so.

8. Assailing the same, this Court Revision is filed.

9. Similar issue had come up before this Court in **IVRCL V. Transmission Corporation of Andhra Pradesh and another**¹ where a plaint presented was returned on the ground that appropriate forum for grant of relief to the petitioner is the National Company Law Tribunal, Hyderabad and not the Commercial Court. In the said case also, the trial Court had rejected the petitioner's/plaintiff's request for refund of the

¹ C.R.P.No.2490 of 2019 decided on 04-12-2019

Court fee paid at the time of filing of the plaint before the Commercial Court.

10. In **IVRCL** (1 supra), this Court reviewed the law on the aspect and held that whether a party files a suit in the wrong forum, it would amount to adoption by the party of a wrong procedure and it is permissible for the Court to refund the Court Fee in exercise of the power granted to the Court under Section 151 C.P.C. It relied upon the Division Bench judgment of this Court in **Polyprint Private Limited and others Vs. Canara Bank and others², M.Dasarath Vs. K.Omprakash and another³ and Zahoorunnissa Begum Vs. T.Mohammed Ali Saheb and another⁴.**

11. The said decision was subsequently followed in **M/s Sarala project Works Ltd v. IL & FS Engineering and Construction Company Ltd⁵.**

12. The Supreme Court also in **Dr.(Col.) Subhash Chandra Talwar Vs. T.Choithram and Sons⁶** observed that even if the appeal is disposed of on merits by returning the plaint under Order VII Rule 10 C.P.C. for filing in an appropriate Court, the party would be entitled to return of the Court fee so that he can pay the Court fee in the State where he would like to file it, and the Supreme Court directed the entire Court fee to be refunded to the party.

² 1997(4) ALD 281

³ (1994) 1 An.W.R. 109 (D.B.)

⁴ 1961 (2) Mad. L.J. 331

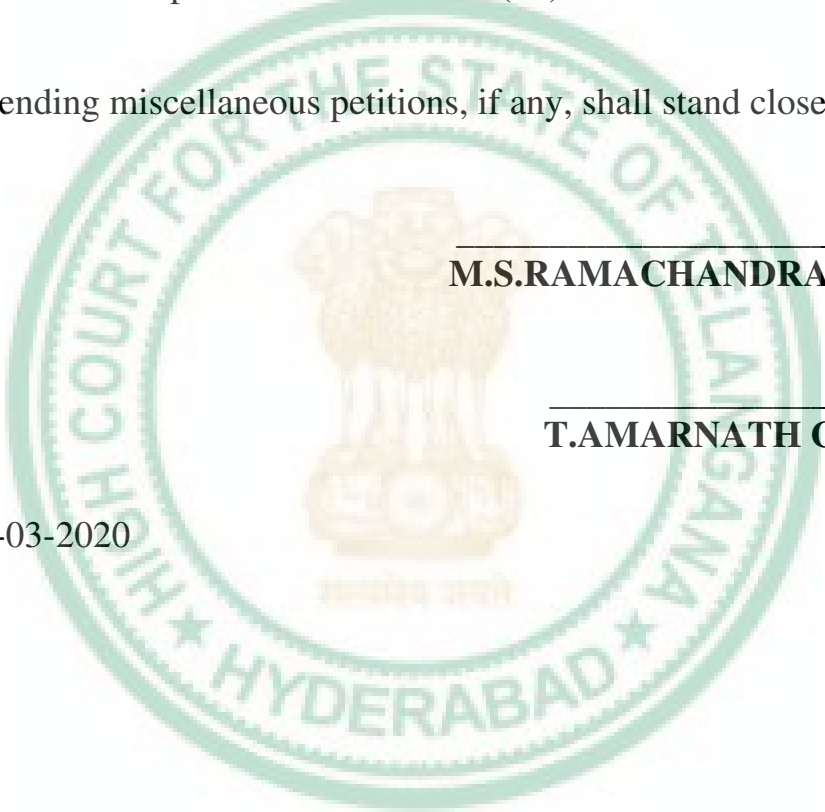
⁵ C.R.P.No.363 of 2020 decided on 17-02-2020

⁶ Special Leave to Appeal (C) No.18102/2013 decided on 25-10-2019

13. Learned Government Pleader for Appeals appearing for the State of Telangana did not dispute the above settled legal position.

14. Therefore, in this view of the matter, the Civil Revision Petition is allowed; the order dt.28-11-2019 in I.A.No.773 of 2019 in C.O.S.No.39 of 2017 of the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad is set aside; and the State of Telangana is directed to refund the Court fee of amount of Rs.8,84,726/- to the petitioner within four (04) weeks. No costs.

15. Pending miscellaneous petitions, if any, shall stand closed.


M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 04-03-2020

Vsv