

* THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

+ Civil Revision Petition Nos.766 and 842 of 2017

% Date: 30.01.2020

C.R.P. No.766 of 2017

Between:

Ashok Kumar Agarwal. ... Petitioner

AND

B. Balraj Goud
and others

... Respondents

! Counsel for the Petitioner : Mr.J. Prabhakar

^ Counsel for the Respondent No.1 : Mr. M.A.K.Mukheed

^ Counsel for the Respondent Nos.2 to 5 : ---

C.R.P. No.842 of 2017

Between:

Ashok Kumar Agarwal. ... Petitioner

AND

B. Balraj Goud
and others

... Respondents

! Counsel for the Petitioner : Mr.J. Prabhakar

^ Counsel for the Respondent No.1 : Mr. M.A.K.Mukheed

^ Counsel for the Respondent Nos.2 to 5 : ---

< Gist:

> HEAD NOTE:

? Cases referred

- 1) 2004 (4) ALD 786
- 2) 2008 (3) ALD 311
- 3) (2018) 12 SCC 249
- 4) Unreported judgment dated 16.11.2016 passed in CRP (PD) No.1037 of 2012 and M.P.No.1 of 2012 by the Madras High Court.
- 5) AIR 1996 SC 1888

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION Nos.766 and 842 of 2017

COMMON ORDER:

Since the parties and the issue involved in both these Civil Revisions Petitions is one and the same, they are being disposed of by this common order.

2) C.R.P.No.766 of 2017 is filed under Article 227 of the Constitution of India, by the petitioner/defendant challenging the order dated 30.12.2016 passed in I.A.(SR) No.5284 of 2016 in I.A.No.193 of 2016 in O.S.No.1482 of 1984 by the IV Senior Civil Judge, City Civil Court, Hyderabad, wherein the application filed by the petitioner/defendant under Order VII Rule 11 read with Section 151 CPC to reject the petition in I.A.No.193 of 2016 in O.S.No.1482 of 1984, was rejected by the Court below, holding that the petition is not maintainable.

3) C.R.P.No.842 of 2017 is filed under Article 227 of the Constitution of India, by the petitioner/defendant, challenging the order dated 30.12.2016 passed in I.A.(SR) No.5283 of 2016 in I.A.No.194 of 2016 in O.S.No.1482 of 1984 by the IV Senior Civil Judge, City Civil Court, Hyderabad, wherein the application filed by the petitioner/defendant under Order VII Rule 11 read with Section 151 CPC to reject the petition in I.A.No.194 of 2016 in O.S.No.1482 of 1984, was rejected by the Court below, holding that the petition is not maintainable.

4) Heard Sri J.Prabhakar, learned counsel for the revision petitioner, Sri M.A.K.Mukheed, learned counsel for the

respondent No.1 and perused the record. In spite of service of notice on respondents Nos.3 and 4, none appeared on their behalf. Notice sent to respondent No.5 returned unserved with an endorsement “no such person in the address”.

5) Learned counsel for the revision petitioner would contend that the Court below, at first instance, ought to have numbered the subject Interlocutory Applications and thereafter, decided the same on merits. The finding of the Court below that the subject Interlocutory Applications are not maintainable, is erroneous. In terms of Section 141 of CPC, an application to reject the Interlocutory Application is maintainable and ultimately prayed to set aside the impugned orders and allow the civil revision petitions as prayed for. In support of his contentions, learned counsel relied upon the following decisions:

- i) *Gunnam Venkateswara Rao v. Vetcha Vanaja Kumari and others*¹
- ii) *Mothukuri Ranga Rao and another vs. Royyala Laxminarayana and others*²
- iii) *Jaswant Singh and others vs. Parkash Kaur and another*³

6) On the other hand, learned counsel for the respondent No.1 would submit that Order VII Rule 11 of CPC contemplates only rejection of plaint. The Court cannot exercise the power under Order VII Rule 11 CPC to reject an Interlocutory Application. The Court below rightly rejected the subject Interlocutory Applications holding that the applications are not maintainable under Order VII Rule 11 CPC. In support of his

¹ 2004 (4) ALD 786

² 2008 (3) ALD 311

³ (2018) 12 SCC 249

contention, learned counsel relied upon the decision reported in *K.Nandagopal and another vs. Gayathri*⁴ and ultimately prayed to dismiss the revision petitions.

7) In view of the submissions made by both sides, the point that arises for determination is:

“Whether the Court below is justified in rejecting the I.A.(SR) Nos.5283 and 5284 of 2016 as not maintainable in terms of Order VII Rule 11 read with Section 151 of CPC?”

8) POINT: As seen from the record, the respondent No.1 herein filed I.A.No.193 of 2016 in O.S.No.1482 of 1984 under Order XXVI Rule 9 read with Section 151 of CPC, seeking to appoint an Advocate Commissioner to assess the cost of construction as well as the value of land of the property of M/s.United Builders Partnership Firm for the property in premises bearing Plot Nos.33, 34, and 35 admeasuring 800 sq. yards in Sy.Nos.2, 3 and 4 situated at Sri Krishna Colony, Musheerabad, Hyderabad, with the help of Civil Engineer or other technical person, and the respondent No.1 herein also filed I.A.No.194 of 2016 under Order XXVI Rule 13 read with Section 151 of CPC, seeking to pass a final decree in terms of the report filed by the Advocate Commissioner and distribute the shares under Section 48 of Partnership Act, to him and the petitioner herein in respect of the aforesaid property. Since the subject I.A (SR) Nos.5283 of 2016 and 5284 of 2016 are filed to reject I.A.No.194 of 2016 and I.A.No.193 of 2016 respectively, the point that is required to

⁴ Unreported judgment dated 16.11.2016 passed in CRP (PD) No.1037 of 2012 and M.P.No.1 of 2012 by the Madras High Court.

be adjudicated is whether such Interlocutory Applications are maintainable and the orders dated 30.12.2016 passed in I.A.(SR) No.5283 of 2016 in I.A.No.194 of 2016 and I.A.(SR) No.5284 of 2016 in I.A.No.193 of 2016, in O.S.No.1482 of 1984 by the IV Senior Civil Judge, City Civil Court, Hyderabad, are liable to set aside.

9) The specific contention of the learned counsel for the petitioner is that in terms of Section 141 of CPC, the provisions under Order VII Rule 11 of CPC are also applicable to the Interlocutory Applications but the Court below erroneously determined that the provisions under Order VII Rule 11 of CPC has no application to the Interlocutory Applications.

10) Here, it is apt and appropriate to refer Order VII Rule 11 of CPC as well as provisions under Section 141 of CPC, which reads as follows:

“11. Rejection of plaint: The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply sub-rule (2) of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be

recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

"Section 141 - Miscellaneous proceedings: The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation.--In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

11) In *Gunnam Venkateswara Rao's* case (1 supra), the erstwhile High Court of Andhra Pradesh, Hyderabad, while dealing with the contention of the petitioners therein that when an application filed under Order XXII Rule 3 CPC is pending, another application filed under Order I Rule 10 CPC is not maintainable, observed that in view of the mandate given under Section 141 of CPC, procedure provided in relation to suits shall be made applicable to all other proceedings also.

12) In *Mothukuri Ranga Rao's* case (2 supra), the erstwhile High Court of Andhra Pradesh, Hyderabad, observed as follows:

"Para 10: xxxx... In a judgment reported in Ramchandra Agarwal and another vs. State of U.P and another⁵, the Apex Court held to the following extent:

"Though there is no discussion, this Court has acted upon the view that the expression "Civil proceeding" in Section 141 CPC is not necessarily confined to an original proceeding like a suit or an application for appointment of guardian, etc., but it applies also to a proceeding which is not an original proceeding."

From the above provision of law coupled with the judgment of the Supreme Court, it is clear that the

⁵ AIR 1996 SC 1888

procedure contemplated in the CPC with regard to the suits shall be followed in all proceedings in any Court of civil jurisdiction not only in original proceedings but also in other proceedings.

13) In *Jaswant Singh's* case (3 supra), the Hon'ble Apex Court held as follows:

"Para 28: It is relevant to note that expression "proceedings" as referred to in explanation contains only an inclusive definition. What is explained in explanation is not exhaustive rather inclusive. Dismissal of an application Under Order IX Rule 13 Code of Civil Procedure in default, is an order passed in miscellaneous proceedings, which is expressly included in Section 141 Code of Civil Procedure explanation. But whether the application dated 21.08.2002 to recall the order dated 19.10.2001 is also a miscellaneous proceeding, covered by miscellaneous 'proceedings' under Section 141 Code of Civil Procedure. The answer has to be 'yes' thus, application dated 21.08.2002 is also a miscellaneous proceeding in which proceeding, the procedure prescribed in the Code for suits is to be followed."

14) The above decisions relate to the Interlocutory Applications of other categories, whereas in the instant case, the subject I.As(SR) are filed under Order VII Rule 11 of CPC seeking to reject the I.A.Nos.193 and 194 of 2016. The provisions under Order VII Rule 11 of CPC deals with the rejection of plaint only. It does not deal with the rejection of the applications. Under Order VII Rule 11 of CPC, the Court has the power to reject the plaint in the circumstances where it does not disclose cause of action; where the relief claimed was undervalued and when the plaintiff called upon to correct the valuation within a time fixed by the Court, fails to do so; where the relief claimed is properly valued but the plaint is written upon insufficient stamp paper, and on being pointed out by the Court, when plaintiff failed to

comply requirements within fixed time; where the suit appears from the statement in the plaint to be barred by any law; and where certain requirements to present the plaint are not complied with. There is no mandate under Order VII Rule 11 CPC, anywhere to apply these circumstances to miscellaneous applications and reject those applications. Generally, Interlocutory Applications are filed for certain reliefs during the pendency of the suit. Therefore, miscellaneous applications are required to be determined on merits. The subject I.As(SR) will not fall within the ambit of Order VII Rule 11 of CPC, so as to reject the I.A.Nos.193 and 194 of 2016. The I.A.Nos.193 and 194 of 2016 are required to be determined on merits. Therefore, the decisions relied upon by the learned counsel for the petitioner are not applicable to the facts and circumstances of the case on hand.

15) In *K.Nandagopal's* case (4 supra), relied upon by the learned counsel for the respondent No.1, it was observed as follows:

"Para 9. In the impugned order, the learned Trial Judge has observed that:

"The Petitioners/Defendants has come forward with the present Application for rejection of Plaint under Order 7 Rule 11 at the fag end of the Final Decree proceedings. Let it be noted that when called upon to exercise Jurisdiction to reject a Plaint under Order 7 Rule 11 C.P.C., the Court will take into consideration the Plaint and the Plaint alone. The challenge to the Plaint and its affirmation by the Petitioners/Defendants is to be kept apart because that would not be a ground for the rejection of Plaint. All the averments stated in the Petition could only be ground of defence to the suit. The Court cannot and shall not consider the defence on the Defendants for the purpose of rejecting the Plaint. A jurisdiction to dismiss the suit

has to be distinguished from jurisdiction to reject the Pleint. The mandatory provision contained in Rule 11 are intended for cases to see that vexatious litigation are not allowed to consume the time of the Court. Having reached the stage of final decree it is not open to the Petitioners/Defendants to raise the plea of cause of action at the fag end of the Final Decree proceedings. Hence, this petition is rejected."

In the above decision, the application filed under Order VII Rule 11 of CPC was determined and dismissed on merits, assigning reasons. So the said decision has no application to the instant case on hand.

16) Admittedly, the subject suit in O.S.No.1482 of 1984 was disposed of on 08.05.2003 and at the stage of final decree proceedings, the subject I.As (SR) are filed by the petitioner/defendant in I.A.Nos.193 and 194 of 2016 to drag on the proceedings. In view of the nature of the subject Interlocutory Applications, the provisions under Section 141 of CPC have no application to the instant case. The Court below is justified in not numbering the subject Interlocutory Applications and rejecting them as not maintainable under Order VII Rule 11 r/w Section 151 CPC. There is no legal infirmity in the impugned orders. The civil revision petitions are devoid of merits and are liable to be dismissed.

17) Accordingly, both the Civil Revision Petitions are dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 30th January, 2020.
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