(1994) 07 AP CK 0001

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 1294 of 1993

Khaja Quthubullah		APPELLANT
	Vs	
Government of Andhra Pradesh and others		RESPONDENT

Date of Decision: July 8, 1994

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 1, Order 14 Rule 2(1), Order 14 Rule 2(2), Order 7 Rule 11, Order 7 Rule 13
- Limitation Act, 1963 - Article 18, 25

Citation: AIR 1995 AP 43 : (1994) 3 ALT 220

Hon'ble Judges: B.K. Somesekhara, J

Bench: Single Bench

Advocate: L. Prabhakar Reddy, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.K. Somesekhara, J.

1. In this Revision petition the order of the learned Sub Judge, Medak in O.S. No. 96/90 regarding I. A. No. 74/93 dated 19-3-1993 is challenged. Although the respondents have been notified of the petition, no representation is made on their behalf. Only Mr. L. Prabhakar Reddy, the learned Advocate for the petitioner has advanced his arguments in support of his contentions raised in the petition.

2. This revision petition arises this way : The petitioner filed suit O. S. No. 96/90 for recovery of Rs. 4,27,000/- with costs and such other reliefs as the court deems fit as against the defendants who are the respondents in this case. The suit was resisted by the respondents. The basis of the suit was the right of the plaintiff to recover the amounts towards dastband which was ultimately allowed in W.P. No. 1407/88 after a

long battle and on the plea that although the petitioner was entitled to get such amount, he was paid only Rs. 10,659/-. The amount was awarded ultimately by passing the G.O. Ms. No. 902 dated 19-7-1988 and under the circumstances, the respondents having withheld such legitimate claim of the petitioner, were liable to pay interest to the petitioner in addition to other benefits. That appears to be the gist of the plaint allegations. In para 11 of the plaint, the petitioner set up the cause of action for such a claim during the year 1959 initially when the cash grants were abolished and thereafter by virtue of the G. O. passed by the Government on 19-7-1988 after the disposal of the writ petition and therefore, he was entitled to recover the interest on such amount for the period from 1-4-1959 to 1-10-1990.

3. The respondents resisted the suit while denying the allegations made in the plaint inter alia contending that the suit had no cause of action and the cause of action set up in para 11 was not true. The trial court settled the issues, called upon the parties to take up the trial on such issues. Plaintiff''s evidence was closed on 29-7-1991 and when the case was posted for the evidence of the present respondents who are the defendants on 5-3-93, they filed I.A. No. 74/93 contending that the suit of the petitioner was barred by limitation in view of Articles 18 and 25 of the Limitation Act since the claim of the petitioner was exceeded the period of three years. This application was opposed by the petitioner. After hearing both the sides and after considering the material before him, the learned Sub Judge came to the conclusion that the suit claim for the period beyond 8 months was barred by limitation under 25 of the Limitation Act and therefore, dismissed the suit, however, directing the plaintiff to amend the relief in the plaint to restrict the claim for the period which was permissible in law and to proceed accordingly.

4. In this petition, the order of the learned Sub Judge is challenged on various grounds. Mr. Prabhakar Reddy, learned Advocate for the petitioner has formulated the following contentions in the form of postulations of law:

1) The Learned Sub Judge following a wrong procedure in dealing with the matter without recourse to the procedure contemplated under Order 14 Rule 2A of C.P.C. without first of all determining whether the issue in question was to be tried as a preliminary issue or not

2) The learned Sub Judge was wrong in dealing the question of limitation as a pure question of law to dispose it of as a preliminary issue under Order 14, Rule 2(1), C.P.C.

3) The learned Sub Judge was not legally right in dismissing the suit while the application of the respondents was for rejection of the plaint under Order 7, Rule 11(d), C.P.C.

4) The order of the learned Sub Judge is illegal, without jurisdiction and has caused great injustice to the petitioner.

5. After hearing the learned advocate for the petitioner and after examining the facts and circumstances of the case and the legal implications flowing therefrom, this court is convinced that the order of the learned Sub-Judge has over-stepped the powers and jurisdiction in disposing of such an application viz., I,A. No. 74/93 and in passing the order directing the plaintiff to amend the plaint while dismissing the suit partly. It is true that the contesting defendants raised the question of bar of limitation and therefore, Issue No. 6 was cast to the effect that whether the suit is barred by limitation. Admittedly, there are as many as 7 issues in the suit raising both questions of law and fact to be called as issues of fact and issues of law. Neither the petitioner nor the respondents moved the court to try issue No. 6 as a preliminary issue. The learned Sub Judge while dealing with the matter has presumed that he was disposing of Issue No. 6 as a preliminary issue. Order 14 Rule 2(1), C.P.C. mandates that notwithstanding that a case may be disposed of on a preliminary issue, the court shall subject to the provisions of sub-rule (2), pronounce judgment on all issues. In otherwords, the court is obliged to pronounce judgment on all the issues amounting thereby that there must be a decision in accordance with Order Order 20 rule 1, C.P.C. The only escape from this rule was sub-rule (2)-of Rule 2 of Order 14, C.P.C. where both issues of law and fact arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force and for that purpose, the court may postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue. The law has categorically used thei words pronouncement of judgment, decision, postponement of settlement of issues etc. In that view of the matter unless the court decides to take up an issue as a preliminary issue for determination and disposal, the whole suit cannot be disposed of without deciding the other issues of law and fact. In'' this case, the learned sub judge has totally failed to apply his mind regarding this mandatory provision. The learned Sub _ Judge, appears to have misguided himself in thinking that the bar of limitation or the question of limitation is a pure question of law. The law appears to be settled, that the question of limitation is not a pure question of law, but it is a mixed question of law and fact. In fact adverting to such situations where the rejection of the plaint is sought under Order 7 Rule ll(c), C.P.C., this court has authoritatively held in Vedapalli Suryanarayana v. Poosarla Venkata Sankara Suryanarayana (1980) 1 ALT 488 that a plaint is not liable to be rejected on the ground of bar of limitation since it would be something different from disposal of the matter on other grounds. The bar of limitation has so many ingredients. If a party to the litigation sets up a contention that the suit is barred by limitation, the court has. first of all to examine (1) the cause of action in the suit, (2) when the cause of action commences, (3) when the parties act in a particular fashion as to fix the cause of action and (4) ultimately what is the result flowing from such cause of action. Even while operating Articles 18 and 25 of the Limitation Act, the Court was

bound to examine as to when the parties stood at conditions to fulfil their obligations, and when the money became liable to be paid. These are questions of fact to be'' examined on the basis of the evidence produced by the parties in the case based on the pleadings. If we go through the pleadings in the suit, it is very clear that the parties have remained at issues on several matters. Particularly when the cause of action was specifically set up in the plaint which was challenged by the defendants in the written statement, it emanates many questions of fact which were in controversy the court was bound to decide them based upon the evidence produced. Without resorting to probe such serious matters, learned Sub Judge very lightly treated the question of limitation as if it is a pure question of fact. The learned Advocate fyr. Prabhakar Reddy putting serious efforts tq probe into the matter has taken this court through the exposition of the great author Salmond on Jurisprudence (12th Edition pages 65 to 75). The jurisprudential concept of question of fact, question of law and mixed question of law and fact are well detailed in lucidity in the said authoritative expressions of the learned author and-item that there remains no doubt that the question of limitation would be a mixed question of law and (act. Under the circumstances, the learned Sub Judge was not right in deciding the question of limitation as a preliminary issue.

6. The learned Sub Judge erred in rejecting the plaint under Order 1, Rule 11(c) C.P.C. when the law appears to be that no plaint can be rejected on the ground of bar of limitation as laid down in Vedapalli Suryanarayana''s case 1980 (1) ALT 488 supra.

7. The learned Sub Judge appears to have not applied his ''mind for the distinction between rejection of the plaint and dismissal of the suit. As rightly pointed out by the learned Advocate for the petitioner, the rejection of the plaint under Order 7 Rule 11 C.P.C. would not bar him to file a fresh suit on the same cause of action by virtue of O. 7, Rule 13, C.P.C. whereas the dismissal of the suit which should be a decision in accordance with Order 20, C.P.C. would be a finality of the matter exposing the parties to the suitio res judicata and other legal consequences. Thereby the learned Sub Judge has put the parties and in particular, the petitioner to almost the stage of causing injustice, instead of directing them to lead evidence on all the issues and ultimately deciding the question of limitation even assuming that the suit may be found to be barred by limitation. Therefore, the order of the learned Sub Judge cannot be supported.

8. In the circumstances, the order of the learned Sub Judge cannot be supported and it deserves to be set aside. Accordingly the impugned order of the learned Sub Judge is set aside. Consequently, I.A. No. 74/93 shall stand dismissed.

9. In the result, the revision petition is allowed and the matter is remitted back to the trial court for disposal according to law from the stage where it stood when the order on I.A. No. 74/93 was passed. Parties shall bear their respective costs.

10. Revision allowed.