

(1996) 03 AP CK 0004

Andhra Pradesh High Court

Case No: Civil Miscellaneous Petition No. 3984 of 1996

Anil Kumar Harbhajanka

APPELLANT

Vs

Arun Kumar Harbhajanka and
Others

RESPONDENT

Date of Decision: March 27, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 151
- Constitution of India, 1950 - Article 227

Citation: (1996) 2 ALT 354

Hon'ble Judges: Motilal B. Naik, J

Bench: Single Bench

Advocate: B. Narayana Reddy, for the Appellant; D. Gopal Rao, for the Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.

This is an application filed under Order 9 Rule 13 read with Section 151 CPC seeking to set aside the order passed by this Court on 22-2-1996 in C.R.P. No. 498 of 1996.

2. At the out set, it is contended by Sri Narayana Reddy, counsel for the petitioner herein alleging that the revision petitioner moved a lunch motion before this Court on 22-2-1996 and filed the CRP No. 498/96 under Article 227 of the Constitution of India. It is further alleged that though the first respondent in the revision petition, who is the petitioner herein, filed a caveat petition No. (SR) 10234/96 in the High Court sensing that the revision petitioner may move the High Court, the High Court has disposed of the C.R.P. on 22-2-1996 without hearing the present petitioner though it is normally required that whoever files a caveat in the Court has to be heard before passing any order.

3. Sri Narayana Reddy, counsel for the petitioner further contended that the revision petitioner has failed to disclose the material facts while approaching this Court under Article 227 of the Constitution of India and, therefore, the Court ought not to have entertained the C.R.P. filed by the revision petitioner under Article 227 of the Constitution of India.

4. Since the tenor of submissions made by the counsel on behalf of the present petitioner seems to be in the nature of making out a grievance against this Court for granting lunch motions and entertaining the C.R.P. under Article 227 of the constitution of India, it has become necessary for this Court to advert on this contention raised by the counsel.

5. The Hon"ble the Chief Justice, in his Lordship's wisdom distributes the work among the Judges. Granting of Lunch Motions is one such responsibility entrusted to this Court by the Hon"ble the Chief Justice reopening of Courts after Sankranti vacation, 1996. Therefore, by virtue of this nature of work entrusted to this Court by the Hon"ble the Chief Justice, this Court is competent to grant lunch motions in appropriate cases.

6. Coming to the second limb of the arguments of the counsel that the revision petitioner had filed the C.R.P. under Article 227 of the Constitution of India, it is needless to mention that the Constitution itself makes such a provision under Article 227, investing the power of superintendence over all the Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. Under this provision, if a particular party makes out certain grievances against the Courts or Tribunals subordinate to the High Court throughout the territory in relation to which it exercises jurisdiction, the High Court is competent to call for the records and examine the merits of the allegations.

7. In this case, the revision petitioner had come up before this Court by way of C.R.P. under Article 227 alleging that the second respondent i.e., the V Additional Judge, City civil Court, Hyderabad is acting in such a way which is detrimental to the interests of the revision petitioner. It was stated before this Court that the first respondent in the revision petition had filed a suit in O.S. No. 39/96 for dissolution of partnership deed dated 9-1-81 as modified on 23-8-1993. It was alleged by the revision petitioner that they filed LA, No. 1 10/96 in O.S. No. 39/96 seeking stay of all further proceedings in the suit on the ground that as per the terms of the partnership deed, any dispute as to the partnership is referable to an arbitrator. It is in this background, when the partnership deed provided that any dispute is referable to an arbitrator, filing of the suit in the Civil Court is not permissible. The revision petitioner, therefore, contended before this Court that though I.A. No. 110/96 was filed before the lower Court in O.S. No. 39/96 seeking stay of the suit, in the circumstances of the case, the lower Court dismissed the said I. A.on 19-2-1996. It was further stated that against the Order in I.A. No. 110/96, dated 19-2-1996, the revision petitioners are entitled to file an appeal before the Chief Judge, City Civil

Court, Hyderabad u/s 39 of the Arbitration Act. It was further stated that though the order was passed on 19-2-1996, in order to move an appeal against the said order, the revision petitioner sought urgent copy of the order enabling him to file the appeal but the lower Court had not provided the copy of the order.

8. The main grievance of the revision petitioner before this Court in this revision was that the lower Court is insisting the revision petitioner to file written statement as well as counters in other interlocutory applications filed by the first respondent who is the plaintiff in the said suit. It was stated by the revision petitioner that the insistence of the lower Court to file urgent written statement and counters in every interlocutory applications in the suit filed by the first respondent was unwarranted as the Court ought not to have insisted filing of written statements and counter. It was stated that by heeding to the direction of the lower Court, written statement and counter are filed, the revision petitioner would lose a valuable right to file an appeal against the order passed by the lower Court in I.A. No. 110/96. In support of his contention, counsel appearing on behalf of the revision petitioner placed before this Court a decision of the Supreme Court in F.C.I, v. Yadav Engineer and Contractor AIR 1982 SC 1302. According to the counsel for the revision petitioner, the said decision is to the effect that if any suit filed for dissolution of partnership, when a provision is made for any dispute to be referred to an arbitrator, notwithstanding such provision if the other party participates in the proceedings filed by the party by way of filing counters and written statements, such participation would prevent the such parties from filing an appeal against the order passed by the lower Court which was filed u/s 34 of the Arbitration Act seeking stay of all further proceedings.

9. On the basis of the submissions made by the counsel and in view of the law laid down by the Supreme Court in the decision (1) cited supra, this Court had entertained the C.R.P. as this Court felt that entertaining the revision under Article 227 is within its competence and disposed of the revision itself at the admission stage, in the following terms:

" It is none the less necessary that the lower Court shall supply a copy of the order passed in I.A. No. 110/96 dated 19-2-96 to the petitioners within a reasonable period which would enable them to file an appeal before the appropriate authority against the order passed in I.A. No. 110 of 1996 dated 19-2-1996. Till such appeal is filed by the petitioners, after receipt of the copy of the order in I.A. No. 110 of 1996, the lower Court shall refrain itself from proceeding with the case in O.S. No. 39 of 1996. The Civil Revision Petition is disposed of with the above directions."

10. As indicated above, the direction of this Court was limiting the lower Court not to proceed with the case till an appeal is filed by the revision petitioner against the order in I.A. No. 110/96 dated 19-2-1996.

11. Insofar filing of the caveat petition by the present petitioner is concerned, this Court was not informed of such filing of caveat petition by the present petitioner. In

the absence of any information being passed on to this Court as to the filing of caveat petition by the present petitioner, no fault could be found with this Court which has disposed of the C.R.P. The present petition has been filed seeking to set aside the order passed by this Court on 22-2-1996 in C.r.P. No. 498/96 by contending that the revision petitioner ought not to have approached this Court and obtained an order in the revision petition from this Court. I do not think that the revision petitioner has committed any irregularities or mis-used the judicial forum while approaching this Court under Article 227. This power under Article 227 is given to High Courts for general superintendence over the subordinate Courts including Tribunals within the territory. If it is brought to the notice of this Court, the irregularities committed by the lower Court, this Court is bound to entertain a petition filed under Article 227 and therefore I do not think such entertainment of the petition filed under Article 227 of the Constitution of India, in the circumstances, is illegal.

12. Even as on today, when the setting aside petition is taken up for hearing, counsel for the revision petitioner states in the open Court that the lower Court has not furnished the copy of the decree passed in I.A. No. 110/96 though a copy of the order has been furnished to him. It is stated that in order to file an appeal against the judgment and decree of the order passed by the lower Court in I.A. No. 110/96, a copy of the decree is necessary. In this background of the case, I do not think the present petition needs any consideration. On the contrary, I am inclined to hold that this is a frivolous petition filed before this Court and therefore, such frivolous petition is liable to be dismissed with exemplary costs. Accordingly, C.M.P. No. 3984 of 1986 is dismissed with exemplary costs of Rs.2,000/- to be paid by the petitioner to the respondents within a period of 15 days from today.