

(2002) 04 AP CK 0011

Andhra Pradesh High Court

Case No: Cross Objections in A.S. No's. 153 and 705 of 2000

Mutyam Agaiah

APPELLANT

Vs

Special Deputy Collector, (NTPC)
L.A. Unit

RESPONDENT

Date of Decision: April 16, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 1, Order 41 Rule 22, Order 41 Rule 22(4)
- Limitation Act, 1963 - Section 5

Citation: (2002) 2 ALT 715

Hon'ble Judges: Ramesh Madhav Bapat, J; Dalava Subrahmanyam, J

Bench: Division Bench

Advocate: S.R. Ashok, for the Appellant; G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramesh Madhav Bapat, J.

O.P. No. 244 of 1987 and O.P. No. 96 of 1998 were decided by the Senior Civil Judge, Peddapalli, Karimnagar District. Aggrieved by the said awards passed in the aforesaid O.Ps., the State of Andhra Pradesh preferred A.S. No. 153 of 2000 and A.S. No. 705 of 2000 before this Court. The Division Bench of this Court decided both the appeals on 27-12-2000. After the disposal of the appeals, the original claimant-cross-objector filed cross-objections along with the delay condonation applications. The delay was condoned and the cross-objections were placed before us for final hearing.

2. The only point arises for our consideration in the cross-objections is whether the cross-objections can be filed after the main appeals are finally disposed of?

3. The learned counsel Mr. S.R. Ashok appearing on behalf of the respondent-cross-objector submitted at the Bar that it is not necessary that the appeals must be pending and then only the cross-objections can be filed. It was further contended by the learned counsel Mr. S.R. Ashok that the period of limitation has to be calculated from the date of notice of the appeals and therefore it was submitted that the cross-objections can be heard and decided on merits. In support of his contention, the learned counsel Mr. S.R. Ashok relied upon a ruling reported in [Superintending Engineer and Others Vs. B. Subba Reddy](#), of the judgment their Lordships were pleased to hold as under:

"24. From the examination of these judgments and the provisions of Section 41 of the Act and Order 41 Rule 22 of the Code, in our view, following principles emerge:

(1) Appeal is a substantive right. It is creation of the statute. Right to appeal does not exist unless it is specifically conferred.

(2) Cross-objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the Memorandum of Appeal apply to cross-objection as well.

(3) Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

(5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection, which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order."

We have no hesitation in accepting the aforesaid proposal (sic. propositions). But we have to see as to how far the ratio laid down by their Lordships apply to the present set of facts.

4. Order 41 Rule 22 C.P.C. speaks about the cross-objections to be filed in the appeal, which reads as under:

"22. Upon hearing, respondent may object to decree as if he had preferred separate appeal:

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection) to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation: A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

(2) Form of objection and provisions applicable thereto:- Such cross-objection shall be in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the Memorandum of Appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule."

In the present case, the appeals were already decided. When the appeals were filed by the State, there was considerable delay in filing the appeals. Therefore, the State had filed the applications u/s 5 of the Limitation Act for condonation of the delay. After filing the delay condonation applications, notices were issued to the claimant-cross-objector herein. On hearing both sides, the Division Bench of this Court condoned the delay and the appeals were directed to be registered. After the appeals were registered, the appeals were heard on merits in which the respondent-cross-objector participated in the appeals. On hearing the appellant and the respondent herein, both the appeals were finally disposed of. These are the admitted facts.

5. But the learned counsel Mr. S.R. Ashok submits that after filing the delay condonation applications, notices were required to go to the respondent i.e., the cross-objector and the limitation would start for filing of the cross-objections from the date of receipt of the appeal notices. The learned counsel Mr. S.R. Ashok further submits that in the present case, no appeal notices were issued to the respondent in these appeals. Therefore, the cross-objections filed by the cross-objector are very much within the time and it is not necessary that the main appeals should be pending. We are not in agreement with the submission made by the learned counsel Mr. S.R. Ashok. It is evident from the record that the respondent-cross-objector was represented by the counsel in delay condonation petitions. The delay was condoned and the counsel for the respondent-cross-objector also argued his case in the above appeals and the above appeals were finally disposed of. These circumstances would go to show that the respondent-cross-objector had a notice of the appeals. We have to understand the issue of notices in the proper perspective. The notices are meant for giving knowledge to the other side regarding the judicial proceedings filed by the appellant. It is not every time necessary that the notices should be in writing in the prescribed form. If the knowledge of filing of the appeals can be proved, then it is sufficient notice in law. The respondent-cross-objector engaged an Advocate, who filed Vakalatnama and he defended the cause of the claimant in the Original Petition. It means that the cross-objector had sufficient knowledge regarding the appeals. Nothing prevented for the respondent-cross-objector for filing the objections. Therefore, the contention of the learned counsel Mr. S.R. Ashok has no legal force.

6. As against the arguments of the learned counsel Mr. S.R. Ashok, Mr. K.V. Subrahmanya Narsu appearing for the appellant-respondent herein pointed out a ruling reported in [Lt. Col. P.H. Choudhary Vs. Altaf Ahmed and Another](#), in which the Division Bench of this Court was pleased to hold in para (6) as under:

"6. The view pressed upon us by Sri Ramanujulu Nayudu, learned counsel for the appellant, is that with the abatement of the appeal the memorandum of cross-objections ceased to have any existence and that it could not be disposed of on merits. There is force in this argument. Order 41 Rule 22 Sub-rule (4) C.P.C. contemplates that the memorandum of cross-objections could be heard and determined where the original appeal is withdrawn or dismissed for default. It is worthy of note that this does not include abatement of appeal. It appears to us that but for the provision contained in Sub-rule (4) the memorandum of cross-objections would have to share the same fate as the appeal that has abated. It is to save the memorandum of cross-objections in certain contingencies that this rule was enacted. If really the memorandum of cross-objections stands on the-same footing as a cross-appeal and it could be heard and determined on merits ungoverned by the fate of the appeal itself. Order 41 Rule 22, Sub-rule (4) C.P.C. was unnecessary. It follows that memoranda of cross-objections not falling within the purview of this Sub-rule, such as when the appeal has abated, cannot be heard and determined. If

that were so, the memoranda of cross-objections should be dismissed in limine without further consideration."

7. In the present case, though there was no abatement in the appeals, the appeals were finally disposed of with full knowledge of the respondent-cross-objector.

8. Therefore, we are of the considered view that the respondent-cross-objector has sufficient notice and he did not prosecute the same in time. Therefore, we hold that the cross-objections are not maintainable and hence they are dismissed. No costs.