

(2004) 12 AP CK 0022

Andhra Pradesh High Court

Case No: CRP No. 6043 of 2004

National Insurance Co. Ltd. and

Others

APPELLANT

Vs

Susru Sea Foods

RESPONDENT

Date of Decision: Dec. 17, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 4

Citation: (2005) 1 ALD 464

Hon'ble Judges: B. Sudershan Reddy, J

Bench: Single Bench

Advocate: D.V. Sitharam Murthy, for the Appellant; Ramesh Ranganathan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Sudershan Reddy, J.

This civil revision petition under Article 227 of the Constitution of India is directed against the order, dated 26- 10-2004, made in I.A. No. 1523 of 2004 in O.S. No. 639 of 1997 on the file of the learned I Additional Senior Civil Judge, Visakhapatnam, whereunder the learned Judge allowed the application filed by the respondent/plaintiff to summon two witnesses viz., V. Raj Kumar and Capt. P. Jacob Rao, in the interest of justice.

2. Respondent/plaintiff got himself examined as P.W.I and another witness was examined as P.W.2. On behalf of the petitioners/defendants D.Ws. 1 and 2 were examined and their evidence was closed.

3. It is the case of the respondent/ plaintiff that the petitioners/defendants did not examine one V. Raj Kumar who dealt with the matter concerned to the suit.

Likewise, the Surveyor of IMSACO, Capt. P. Jacob Rao, when was also present through out, at the time of salvage operations, was not examined by the petitioners/defendants. Their evidence would be crucial in order to arrive at just and proper conclusions in the suit. It is also the case of the respondent/plaintiff that the petitioners/defendants who were supposed to examine them in the normal course, have purposefully avoided, in order to suppress the facts.

4. The said application has been opposed by the petitioners/defendants mainly on the ground that so far as V. Raj Kumar is concerned, he is one of the Officers of the defendants-Insurance Company and virtually defendant himself and the present application amounts to calling upon the defendant to give evidence on behalf of the respondent/plaintiff. It is unknown to law and such a practice has always been deprecated by the Courts. That so far as, Capt. Jacob Rao is concerned, the final joint report of the Surveyors has already been filed and the said Jacob Rao is a signatory to the same and since the report is already filed, the question of examining him does not arise. The sum and substance of the contention appears to be that it is for the defendants to choose as to whom they propose to examine and the plaintiff cannot call upon the defendants to be examined on his side.

5. The learned Trial Judge upon consideration of the material available on record and on the facts and circumstances of the case, found that interest of justice requires to accord permission to the respondent/plaintiff to examine the said two persons as witnesses for effective and proper adjudication of the matter. The learned Judge came to the conclusion that there are no legal impediments for summoning them as witnesses. That even if, the said V. Raj Kumar is considered to be a defendant in the suit, there are no valid or justifiable reasons as to why he cannot be summoned as a witness.

6. Sri D.V, Sitharam Murthy, learned Counsel for the petitioners/defendants, submits that the application filed by the respondent/plaintiff to summon the said two individuals to examine them as witnesses in the suit is misconceived and not maintainable in law. Summoning of V. Raj Kumar may amount to summoning the defendant to give evidence on behalf of the plaintiff, which is somewhat strange practice deprecated by the Courts time and again. Defendants cannot be summoned to substantiate the case set up by the plaintiff in a given suit.

7. Sri Ramesh Ranganathan, learned Senior Counsel appearing on behalf of the respondent/plaintiff, submitted that the Civil Court has ample power and couched with the jurisdiction to summon even a defendant as a witness if the interest of justice so requires. Learned Counsel submitted that the petition filed under Order XVI Rule 7(A) of the Code of Civil Procedure, even if, found to be not maintainable cannot be dismissed on that ground since mentioning of a wrong provision of law cannot be any ground for dismissal of application. The power and jurisdiction of the Court is traceable to Order XVI Rule 14 of the CPC under which even the defendant or a stranger, as the case may be, can be summoned as a witness for giving

evidence.

8. The case set up by the respondent/ plaintiff is already noted. That according to him, the Divisional Manager of the 3rd defendant-Insurance Company, V. Raj Kumar, is the person who dealt with the subject-matter concerning the suit which fact has been admitted by D.W.I in his cross- examination. That his evidence to a very large extent helps the Court in arriving at just and proper conclusion. The contention that a defendant cannot be called as a witness, as such, may not be strictly applicable insofar as summoning of the said V. Raj Kumar is concerned- The Company is an independent legal entity and separate from the personnel working in the Company. It appears that the said V. Raj Kumar was the Divisional Manager of the 3rd defendant- Insurance Company at the relevant time and is well acquainted with the facts containing the subject-matter of the suit. He is stated to be well acquainted with the facts and as regards the salvage operations.

9. The suit itself has been filed for recovery of amount by the plaintiff as against the petitioners/defendants. The plaintiff is the owner of a Vessel called as MFV - Arjuna, which has taken a Marine Hull Policy from the petitioners/defendants- National Insurance Company Limited. That during the coverage period of the said policy, insured Vessel met with a fire accident and capsized at Jetty No. 11, Fishing Harbour, Visakhapatnam. It is the case of the petitioners/defendants that the respondent/plaintiff is not entitled to any claim as there is no evidence to show that sinking of the hull was due to any accident caused by fire or due to any other reason covered under the Marine Hull Policy in question.

10. It is unnecessary to further deal with the nature of the controversy between the parties.

11. The only question that falls for consideration is whether the said two named individuals can be summoned as witnesses for giving evidence in the suit ?

12. In my considered opinion, V. Raj Kumar against whom summons are sought for examining him as witness cannot be treated as a defendant. That at the relevant time, the said Raj Kumar was the Divisional Manager of the 3rd defendant-Insurance Company, and summoning him to examine as witness may not amount to summoning a defendant to give evidence on behalf of the plaintiff. Even otherwise, there appears to be no legal impediments for examining even a defendant as a witness in the suit at the instance of the plaintiff. However, reliance has been placed upon the judgment reported in *Mahunt Shatrujan Das v. Bawa Sham Das and Ors.*, AIR 1938 PC 59, in which the Privy Council observed, "calling of defendant by plaintiff as his witness is condemnable". However, a close reading of the judgment of the Privy Council makes it clear that even a defendant can be called as a witness of truth i.e., the Court Witness. Summoning of defendant at the instance of the plaintiff is not altogether ruled out.

13. The observations made by the Apex Court in [Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others](#), also do not support the overbroad contention urged by the learned Counsel for the petitioners/ defendants. The Supreme Court observed that "it is not open to a Court to compel a party to make a particular kind of pleading or to amend his pleading so also it is beyond its competence to "virtually oblige a party to examine any particular witness". This is not a case where the Trial Court without any reason or justification directed a party to examine any particular witness. It is nobody's case.

14. In Mallangowda and Ors. v. Gavisiddangowda AIR 1959 Mys 194 (V 46 C 80), no doubt the Mysore High Court made an observation that "the practice of calling the opposite party as a witness should not be countenanced as it is not in the interests of justice".

15. Order XVI Rule 14 of the CPC reads as follows:

"Court may of its own accord summon as witnesses strangers to suit

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document."

16. That a plain reading of the said provision makes it abundantly clear that a Civil Court is conferred with jurisdiction and power to examine any person including a party to the suit and not called as a witness by a party to the suit. This can be done on its own motion, which means and includes that its jurisdiction can even be set in motion by any of the parties to the suit. The words "to examine any person, including a party to the suit" has been substituted for "to examine any person other than a party to the suit" by Act 104 of 1976, with effect from 1-2-1977. What was otherwise implicit is now made explicit that even a party to the suit and not called as a witness by a party to the suit can be called by the Court as a witness to give evidence, or to produce any document in his possession.

17. This Court in [Kosuru Kalinga Maharaju Vs. Kosuru Kaikamma](#), while considering the scope of Order XVI Rule 14 of the Code of Civil Procedure, observed:

"A reading of Rule 14 of Order 16 would leave no doubt in the mind to say that "either party to the suit proceedings can summon a person including a party to the suit who is not called as a witness by a party to the suit, as a witness".

Legislature has felt the need for a direct provision enabling the Court to summon a party for giving evidence as a witness to help curbing the malpractice of a party not appearing as a witness and forcing the other party to call him as a witness, and

adjudicate the issues properly. What is laid down in the above provision is that if the Court is satisfied about such a necessity to cause any person to be examined as a witness, Court can summon such person as a witness. The emphasis is laid on the subjective satisfaction of the Court. However, this power is to be exercised by the Courts guardedly and not as a matter of routine."

18. In Sri Awadh Kishore Singh and Another Vs. Sri Brij Bihari Singh and Others , it is observed:

"No provision could be brought to our notice on behalf of any of the parties to show that a party is debarred from examining its adversary as a witness on his behalf. A plaintiff can examine any witness he so likes - the witness may be a stranger, may be a man of his own party or party himself or may be a defendant or his man. Therefore, if a plaintiff wants to examine a defendant as a witness on his behalf, he cannot be precluded from examining him on the ground that the said defendant has neither appeared in the suit nor upon appearance filed written statement nor prayer for filing written statement has been rejected."

19. In the instant case, it is not as if, one of the defendants is summoned to give evidence on behalf of the plaintiff - though there are no legal impediments, as such, for even summoning a defendant to be examined as a witness at the instance of the plaintiff; if not as a witness on behalf of the plaintiff. The Court, in the interest of justice, can always summon even a stranger and in a given case any of the parties to the suit to give evidence if such evidence is required for resolution of the dispute in an effective manner.

20. The petitioners/defendants is a company registered under the Companies Act; one of its officers is sought to be examined to give evidence as a witness on the ground that he is fully and completely aware of the facts which are required to be brought before the Court for an effective adjudication of the issues that arise for consideration in the suit. There are no legal impediments for summoning the officer of the defendants-company to give evidence in the suit as a witness.

21. The impugned order passed by the Trial Court, in my considered opinion, is not vitiated for any reason whatsoever. It does not suffer from any error, muchless, jurisdictional error requiring any interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

22. For the aforesaid reasons, I find no merit in this civil revision petition and the same shall accordingly stand dismissed without any order as to costs.