(1999) 04 AP CK 0013

Andhra Pradesh High Court

Case No: Writ Petition No. 15674 of 1986 and O.S. No. 56 of 1978 and I.A. No. 689 of 1984

M. Narasimha Rao		APPELLANT
	Vs	
Vulli Veerraju and Others		RESPONDENT

Date of Decision: April 22, 1999

Acts Referred:

- Andhra Pradesh Forest Act, 1967 - Section 65

Citation: (1999) 3 ALT 569

Hon'ble Judges: M.S. Liberhan, C.J; A.S. Bhate, J

Bench: Division Bench

Advocate: M. Bhaskara Lakshmi and T. Gopalakrishna, for the Appellant; T. Gopalakrishna, for R-2 and G.P. for Forests, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Liberhan, C.J.
It is painful to note that this is one of the instances of vexatious litigation which brings justice system itself to ridicule.

2. For the sake of convenience we refer the parties herein as they are arrayed in W.P. No. 15674/86.

3. The chequered history of the case is that the writ petitioner, while working as a Divisional Forest Officer has intercepted two lorries APN 7891 and APS 2486 on 25-4-1977 for contravening the provisions of the Forest Act and seized them as it was found that they were carrying forest produce. The lorries and the alleged forest produce were released later in compliance with an interim order dated 18-5-1977 passed by this Court in W.P. No. 1275/77 which was finally allowed on 9-12-1977. The respondent No. 2, Vulli Veera Raju, has filed a suit O.S. 56/78 for damages for a sum of Rs. 10,150.50 paise inter alia contending that he had suffered a loss of Rs. 10,150.50 paise on account of the wrongful seizure and detention of goods due to the negligent act of defendant. He gave up the claim of Rs. 150-50 paise and claimed

a total damages of Rs. 10,000/-.

4. A similar suit being O.S. No. 77/78 was filed by the Lorry owners and the Drivers against the petitioner which was dismissed by the Civil Court inter alia holding that the suit is not maintainable and the writ petitioner seized the lorries acting in good faith while discharging his official duties.

5. The suit O.S. 56/78 was proceeded against the writ petitioner ex parte and, on 11-12-1981 an ex parte decree was passed against the writ petitioner in a sum of Rs. 8,936.40 paise. The respondent thereafter took out execution of the decree and on execution being taken out the writ petitioner came to know of the decree and forthwith applied for setting aside the ex parte decree by filing LA. 689/84 inter alia contending that he was never personally served with the notice and with a view to harass and humiliate him and it was only on 23-4-1983 when his salary was attached in execution proceeding that he acquired knowledge of the suit. Consequently, he prayed that the suit is liable to be dismissed. The application was adjourned on umpteen dates on the drop of hat. On going through the order sheets we find that most of the times on the request of the decree holder the application was adjourned. Till March, 1987, the trial Court failed to take up the matter and decide the same for setting aside the decree passed as far back as 1981 involving a paltry sum of Rs. 8,000/-. We have perused the records. We find nothing on record from which it can be inferred that the writ petitioner was personally served. There is nothing on record to show that the trial Court, before proceeding against the petitioner ex parte, satisfied itself that notice was served on him and he did not attend. Be that as it is, harassment of the writ petitioner for a period of almost 17 years by itself is good enough to set aside the ex parte decree.

6. It is not disputed before us to-day that on the same facts with respect to the same cause of action another independent suit being O.S. 77/78 was filed by the Lorry Owners and the Drivers wherein the service was effected on the writ petitioner and the said suit was dismissed inter alia holding that the Civil Court has no jurisdiction to entertain the suit since the writ petitioner had acted bona fide in good faith in the due discharge of his official functions. It is patently in the abuse of the process of Court that a second suit was brought by the goods owner Vulli Veeraraju, the respondent, without bringing the fact of the first suit being dismissed, to the notice of the Court.

7. Be that as it is, even plain reading of the plaint shows that the writ petitioner had acted in due discharge of his official function. No notice on him has been served in the suit. No finding of mala fide has been recorded against him in the writ petition W.P. No. 1275/77 by the High Court while directing return of the goods and release of the lorries. No notice has been served on him in the writ petition W.P. 1275 of 1977. No compensation has been awarded. The facts in the suit are squarely covered u/s 65 of the Forest Act wherein the writ petitioner-defendant has been granted immunity from being sued. Thus, the suit, on the face of it, is not

maintainable. In spite of all these, a decree was passed, which on the face of it, appears to have been granted without jurisdiction. Thus, we are constrained to observe that the Trial Court, in passing the ex parte decree, and in not paying any heed to the application for setting aside the ex parte decree, was not discharging its duty conscientiously expected from a Court discharging its functions in ordinary course, especially, when the matter was brought to its notice on every date of hearing. Number of officers had changed during this period. None of them paid any attention to the application. Judicial restraint demands no more observations to be recorded. The State has, as usual, left its officer, acting bona fide, to his fate. For the reasons best known to the Trial Court and the decree holder, the application is still kept pending even after the retirement of the writ petitioner. All this, relates a very sad story of our justice administration system.

8. The execution having been taken out without deciding the Interlocutory Application filed by the petitioner, he was constrained to file writ petition to quash the execution proceedings.

9. From reading of the affidavits of the parties, we are satisfied that sufficient cause has been shown for setting aside the ex parte decree as we are satisfied that no service of the summons was effected on the writ petitioner-defendant before passing the ex parte decree. Consequently the ex parte order and decree dated 11-12-1981 is set aside. We may hasten to add that Counsel for the second respondent reported no instructions on 17-11-1998 and the notice has been served on the respondent No. 2, which has been returned served. On 18-2-1999, when the matter was called and taken up for hearing, neither the respondent was present nor was he represented by his Counsel. On that day, we have passed an order directing transfer of all the matters pending on the file of the Trial Court viz., suit, execution proceedings, miscellaneous applications etc., to the High Court. We have also directed the Trial Court to inform the learned Counsel representing the parties in the lower Court that the case would be taken up for hearing by the High Court on 12-4-1999. On 12-4-1999, the matter could not be taken up since the learned Government Pleader was not present and it was adjourned to this day. To-day, although, the learned Counsel for the respondent No. 2 is present, he reported no instructions in the writ petition and the suit or the miscellaneous and other applications. The Court notice has already been served on the plaintiff Vulli Veera Raju personally and both his learned Counsel in the Trial Court and before this Court are aware of the present proceedings. And in view of the amended provisions of the CP.C, service effected on the Counsel representing the party is deemed to be the sufficient service on the party.

10. The intentions of the plaintiff-respondent No. 2 are writ large and can be inferred after going through the docket orders passed in the application for setting aside the ex parte decree as well as in the suit. The sole object of the plaintiff-respondent is not to recover the damages but to harass and embarrass the

officer-writ petitioner. However, to bring a quietus to the litigation and in order to decide the issue of mala fide against the defendant-writ petitioner, finally the suit OS. 56/78 itself, not being maintainable having no notice being served on the defendant-writ petitioner, no ground for exemption made out, no ground to overcome Section 65 of the Forest Act being made out, is dismissed with costs quantified at Rs. 5,000/-. The State will be at liberty to recover back the amount from the plaintiff with 15% interest per annum from the date the amount fell due. If any amount has been recovered from the writ petitioner by the State, the State is directed to refund the amount to the writ petitioner with 12% interest per annum from the date due and recover the same from the Officer responsible who has not provided the said protection in such a case. I.A.639/84 is accordingly allowed.

11. In view of the decision in the civil suit and the application, the writ petition has become infructuous.

12. The writ petition is accordingly dismissed as infructuous. There shall be no order as to costs.