

## Vanama Veera Bhadraiah Vs G. Venkataratnam and Another

**Court:** Andhra Pradesh High Court

**Date of Decision:** April 21, 2004

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 144

**Citation:** (2004) 3 ALD 840 : (2004) 4 ALT 274 : (2004) 2 APLJ 312

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** P. Prabhakar Rao, for the Appellant; T.P. Satyanarayana Chary, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This CRP is filed against the order dated 18-6-2002 in LA. No. 122 of 2000 in O.S. No. 667 of 1988 on the file

of the Senior Civil Judge, Miryalaguda. The order under revision came to be passed under peculiar circumstances.

2. The petitioner filed O.S. No. 809 of 1989 in the Court of the Junior Civil Judge, Miryalaguda against the 2nd respondent for recovery of a sum

of Rs. 13,760/-. The suit was decreed on 4-10-1990. Since the decree was not complied with, the petitioner filed E.P. No. 13 of 1991 against the

2nd respondent.

3. The 1st respondent filed O.S. No. 667 of 1988 in the Court of the Senior Civil Judge, Miryalaguda against the 2nd respondent for the relief of

specific performance of an agreement of sale. A sum of Rs. 8,000/- remained unpaid towards balance of consideration. The 1st respondent

volunteered to deposit that amount into the Court, obviously to establish his plea that he was ready and willing to perform his part of contract. The

suit was initially decreed ex parte. The 1st respondent also filed E.P. against the 2nd respondent. At the instance of the latter, the ex parte decree

was set aside and the suit was restored to file.

4. When O.S. No. 667 of 1988 was pending, after being restored, the petitioner came to know that an amount of Rs. 8,000/-payable to the 2nd

respondent was lying to the credit of that suit. Therefore, he filed application in the E.P.13 of 1991 to send for the said amount. The application

was ordered and the amount of Rs. 8,000/- deposited by the 1st respondent was sent to the Court of the Junior Civil Judge, Miryalaguda for

compliance with the decree in E.P. No. 13 of 1991. On the amount being sent, it was paid to the petitioner, towards the part satisfaction of the

decree.

5. Later on, O.S. No. 667 of 1988 itself was dismissed for default. Thereafter, the 1st respondent, plaintiff therein, filed I.A. No. 122 of 2000 u/s

144 read with Section 151 of the CPC for recovery of the sum of Rs. 8,000/- from the petitioner. The I.A. was allowed by the Trial Court.

6. Learned Counsel for the petitioner submits that the application u/s 144 of C.P.C. was not maintainable, once the suit itself was dismissed for

default. It is also his case that, if at all the 1st respondent, the plaintiff in O.S. No. 667 of 1988 was not serious about pursuing his remedy against

the 2nd respondent, it was open to him to take steps for recovery of the amount of Rs. 8,000/- also. He contends that the petitioner is not a party

to that suit and the question of order being passed against him u/s 144 C.P.C. does not arise.

7. Learned Counsel for the 1st respondent submits that his client deposited the amount of Rs. 8,000/- voluntarily and the 2nd respondent, the sole

defendant in that suit did not have any claim over that amount. He contends that the said amount was sent for and paid to the petitioner without

knowledge of his client. Placing reliance upon a judgment of this Court in Maddula Kasiyya Vs. Jallipalli Pullayya and Others, , the learned

Counsel submits that the amount deposited in such circumstances cannot be the subject-matter of attachment in a decree passed in another suit.

Though the 2nd respondent is also served through publication of notice in news paper, under the orders of this Court, he has not chosen to

respond.

8. The 2nd respondent figured as the sole defendant in O.S. No. 809 of 1989 filed by the petitioner in the Court of the Junior Civil Judge,

Miryalaguda for recovery of certain amount, and in O.S. No. 667 of 1988 in the Court of Senior Civil Judge, Miryalaguda filed by the 1st

respondent for specific performance of agreement of sale. The suit filed by the petitioner was decreed on 4-10-1990. The petitioner filed E.P. No.

13 of 1991. The 1st respondent deposited a sum of Rs. 8,000/- to the credit of the suit in the suit filed by him towards balance of consideration.

The petitioner came to know about such deposit and filed application for transferring the said amount. The application was ordered. The amount

was treated as the one, for which the 2nd respondent, common defendant in both the suits, is entitled to. The petitioner certified part satisfaction of

the decree, on being paid the said amount of Rs. 8,000/-.

9. O.S. No. 667 of 1988 was initially decreed ex parte and was later on restored to file. However, it was ultimately dismissed for default. The 1st

respondent appears to have decided not to proceed with the suit. He filed application u/s 144 C.P.C. for refund of Rs. 8,000/-. The objection

raised by the learned Counsel for the petitioner as regards maintainability of such application cannot be brushed aside. Section 144 has a limited

application. It enables the parties who suffer detriment, as a result of an order or decree, to be restored to the original position, in the event of such

order or decree being reversed or modified. Dismissal of a suit for default cannot bring about a situation enabling the parties to file application u/s

144. The rare instance when this provision can be invoked in the cases of dismissal for default is where costs are recovered by the defendant

consequent on dismissal of suit for default and it is restored later. However, 1st respondent has invoked the inherent powers of the Court u/s 151

C.P.C. also. Therefore, though Section 144 C.P.C. is not applicable to the facts of the case, the application can be sustained as the one u/s 151

C.P.C.

10. It is true that in Maddula Kasiyya case (supra), this Court took the view that where an amount is deposited by the plaintiff in a suit for specific

performance of agreement of sale, towards balance sale consideration, the defendant therein cannot be said to be holding any disposing power,

vis-a-vis such amount. It was also held that such amount is not available to be attached in any proceedings against defendants in such suits. In the

present case also, the 2nd respondent cannot be said to have had any disposing power vis-a-vis the amount of Rs. 8,000/- deposited by the 1st

respondent. Things would have been totally different, had it been a case that the amount still remained with the Court and the petitioner's claim for

payment of that amount was pending. The amount was paid to the petitioner long back, in part satisfaction of the decree against the 2nd

respondent. Now the question is only about refunding of the amount Rs. 8,000/- to the 1st respondent.

11. There does not exist any privity of contract between the petitioner and the 1st respondent. Both of them do not figure as parties in any

proceedings. They were plaintiffs in separate suits to which the 2nd respondent was the common defendant. The petitioner was paid amount of Rs.

8,000/- as a measure of recovery against the 2nd respondent. The 2nd respondent is very much present before the Court below. He did not

dispute his liability towards the petitioner. For all practical purposes, the amount of Rs. 8,000/- was paid to the 2nd respondent, in turn to be

transmitted to the petitioner. The primary responsibility to refund the amount, is therefore, basically with the 2nd respondent. He is the only

defendant in O.S. No. 667 of 1988, and the amount of Rs. 8,000/-deposited by the 1st respondent was capable of being recovered from him. It

was not necessary for the Trial Court to have passed an order against the petitioner herein, that too exclusively.

12. Under the circumstances, the C.R.P. is allowed and the order under revision is modified to the extent that the 2nd respondent shall refund the

amount of Rs. 8,000/- to the 1st respondent together with interest at 9% from the date on which it was paid to the petitioner. This order shall be

treated as decree for the said amount against the 2nd respondent.