

(2007) 10 AP CK 0018
Andhra Pradesh High Court
Case No: CRP No. 2830 of 2006

Edulakanti Narsimha Reddy and
Others

APPELLANT

Vs

Srirama Warehouse

RESPONDENT

Date of Decision: Oct. 6, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4, Order 6 Rule 16

Citation: (2008) 1 ALD 622 : (2008) 3 ALT 30 : (2008) 4 BC 655

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Pottigari Sridhar Reddy, for the Appellant; Manjiris Ganu, for M. Papa Reddy,
for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The respondent filed O.S. No. 778 of 1992, in the Court of IV Senior Civil Judge, City Civil Court, Hyderabad, against the deceased-1st petitioner, by name E. Narasimha Reddy, for recovery of money. It was alleged that E. Narasimha Reddy offered to sell his tractor and trailer to the respondent, for a sum of Rs. 80,780/-and the respondent issued a cheque, for that amount. It is also alleged that E. Narasimha Reddy received the cheque and encashed the same, but did not deliver the tractor and trailer. A written statement was filed by E. Narasimha Reddy, denying the transaction, but admitting the receipt of the cheque and encashment thereof. During the pendency of the suit, he died. Petitioners 2 to 4 were brought on record, as legal representatives.

2. With the leave of the trial Court, petitioners 2 to 4 filed a separate written statement. They disputed even the receipt of cheque by E. Narasimha Reddy, as well

as its encashment. Several new grounds, such as, that of limitation, the one about the registration of the respondent firm, territorial jurisdiction of the Court, etc, were raised. The respondent filed I.A. No. 1012 of 2005, under Rule 16 of Order VI, read with Rule 4 of Order 22 CPC, to strike off the defence of petitioners 2 to 4, insofar as it is at variance with the one, taken by the deceased-1st petitioner. The application was opposed by the petitioners. Through its order dated 17.3.2006. The trial Court allowed the I.A.

3. Sri Pottigari Sridhar Reddy, learned Counsel for the petitioners, submits that several grounds urged by his clients are pure questions of law, which are capable of being agitated at any stage of the suit. He contends that if petitioners 2 to 4 were totally bound by the written statement filed by the deceased-1st petitioner, the very permission accorded to them, for filing a written statement, would become nugatory. Learned Counsel submits that the trial Court had taken the hyper-technical view of the matter, and the order under revision cannot be sustained.

4. Smt. Manjiri Ganu, learned Counsel for the sole respondent, on the other hand, submits that the legal representatives of a party to a suit, cannot take any stand, different from the one taken by the original party, and that the trial Court had decided the matter, according to the settled principles of law.

5. The suit was filed for the relief of recovery of certain amount, on the basis of issuance of a cheque and encashment thereof, by the sole defendant. During the pendency of the suit, the sole defendant died and his legal representatives are brought on record. The suit claim arose, out of pure contractual obligation, and no rights accrue to the parties, by operation of law. Therefore, much would depend upon the respective stands taken by the parties, as regards the existence of contract and the rights arising out of it. Admissions or denials by the concerned parties, would have a direct bearing upon the nature of relief, that may be granted.

Had it been a case, where the sole defendant did not file a written statement, and the occasion to offer defence arose, only after the legal representatives came on record, there would not have been any restriction, on the nature of defence, which the legal representatives i.e. petitioners 2 to 4, may choose to take. Where, however, the defence was delivered by the original defendant, and it related to contractual obligation, the scope of defence, that may be offered by the legal representatives, stands substantially restricted. The legal representatives cannot take any stand, which is at variance with the one, taken by the original party.

6. On his part, the deceased-1st petitioner, who was the sole defendant, admitted the receipt of cheque from the respondent, as well as the encashment, thereof. He has only denied the allegation as to the offer to sell his tractor and trailer. Further, he did not raise any objection, as to the maintainability of the suit, be it in the context of registration of the respondent firm, territorial jurisdiction, or limitation.

Petitioners 2 to 4, however, raised all these objections, apart from denying even the receipt of the cheque as well as the encashment, thereof. Once the original defendant had made his stand known to the Court, the legal representatives cannot be permitted to deviate from it. The trial Court had compared the written statement filed by deceased-1st petitioner, on the one hand, and the one filed by petitioners 2 to 3, on the other hand. It found on several aspects that the defence taken by petitioners 2 and 3 is totally at variance, and found that there is substantial variation in between them. Therefore, it had struck off the defence, on the points mentioned in the order. This Court is not inclined to interfere with the same.

The CRP is accordingly dismissed. There shall be no order as to costs.