

(1996) 06 AP CK 0018

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 988 of 1996

Ravi Traders

APPELLANT

Vs

Navneet Baid

RESPONDENT

Date of Decision: June 14, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3(5), 115

Citation: (1996) 3 ALT 210 : (1996) 2 APLJ 353 : (1996) 1 APLJ 353

Hon'ble Judges: Motilal B. Naik, J

Bench: Single Bench

Advocate: Murlinarayan Bung, for the Appellant; C. Subba Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.

In this CRP the power of the Civil Court imposing certain conditions while permitting the defendant in a suit filed under Order 37 Rule 2 of CPC to appear and prosecute the suit, is the subject matter of consideration before this Court.

2. The respondent instituted the suit O.S.No. 463/93 on the file of the II Additional Judge, City Civil Court, Hyderabad under Order 37 Rule 2 of CPC seeking to recover an amount of Rs. 6,82,360/- basing on a transaction of sale of tea leaves. After the suit being instituted by the respondent, on issuing summons for judgment, the defendant who is the petitioner in this revision, as required under Sub-rule (5) of Rule 3 of Order 37 CPC filed I.A.No. 1758/93 seeking permission to participate in the proceedings. The petitioner filed an affidavit in the Court admitting the fact of issuing a blank cheque in favour of the respondent-plaintiff in the year 1991. The petitioner also denied to have issued a cheque for an amount of Rs. 5,72,272/- on 31-3-1992 as alleged by the respondent-plaintiff and pleaded in the affidavit that the suit is misconceived and sought permission to participate in the proceedings.

3. The lower Court on consideration of the entire material, permitted the petitioner-defendant to participate in the proceedings, but however, imposed a condition directing the petitioner to furnish bank guarantee for the suit amount or alternatively to deposit the suit amount within a reasonable period. Since the condition imposed by the lower Court while permitting the petitioner to participate in the proceedings in I.A.No. 1758/93, by an order dated 14-2-1996 is not acceptable to the petitioner and therefore, he filed this CRP challenging the said order of the lower Court.

4. Sri M.N. Bung, Counsel appearing on behalf of the petitioner-defendant submitted the orders passed by the lower Court imposing condition on an application filed in I.A.No. 1758/93 under Sub-rule (5) Rule 3 of Order 37 CPC is impermissible inasmuch as the lower Court has misconstrued the provision and such an order imposing condition cannot be sustained. It is further contended that though the petitioner admitted the fact of issuing a blank cheque in the year 1991, but however, it is denied that the petitioner issued the cheque on 31-3-1992 for a sum of Rs. 5,72,272/- and therefore, contended that when a triable issue is made out by the petitioner, the lower Court ought to have permitted him to participate in the proceedings without imposing any condition. It is further contended, the documents relied on by the plaintiff in support of his case were not filed in the lower Court at the threshold which is contrary to the requirement contemplated under Order 7 Rule 14 of CPC which requires that a party who chooses to institute a suit, has to necessarily submit all the documents in original before the Court at the threshold so that the opposite party would be able to verify the genuineness of the documents and meet the contentions raised in the plaint. Counsel says, the respondent-plaintiff has failed to submit the documents basing on which the suit claim is laid at the threshold, but however during the course of hearing of the I.A.No. 1758/93, the documents have been filed. It is therefore, contended, the conduct of the party has to be taken note of by the Court and in the circumstances, the lower Court ought not to have imposed any condition. Though the suit is filed in the year 1993, the plaintiff has failed to prosecute the matter and therefore this is not a case which is to be instituted under Order 37 Rule 2 of CPC. It is also contended that the lower Court has merely verified the signatures of the petitioner defendant on the vakalat as well as on the cheque and basing on these verifications, has erroneously come to the conclusion that the suit claim is genuine and imposed a condition on the petitioner to participate in the proceedings which action is unwarranted. In support of his contentions, Sri Bung has cited the decisions reported in *Mechalec Engineers & Manufacturers v. Basic Equipment Corporation* AIR 1977 SC 557 and in [Ramalingam Vs. Basavalingam](#), .

5. To meet these contentions, Sri Subba Rao, counsel appearing on behalf of the respondent /plaintiff has stated that when the issuance of the cheque is not disputed by the petitioner, it is not open to the petitioner to dispute the contents of the cheque. The order of the Court below imposing condition on a party by

permitting a party to participate in the proceedings on an application filed under Sub-rule (5) of Rule 3 of Order 37 is justified by the counsel by contending that the Courts have power to do so in appropriate cases. In this case, it is contended, the transaction is based on invoice and a cheque was issued by the petitioner for an amount of Rs. 5,72,272 / - on 31-3-1992 in favour of the plaintiff-company. When the cheque was presented to the bank, the cheque was bounced on the ground of "insufficient funds". It is therefore, contended that the very conduct of the petitioner in issuing a cheque without there being sufficient funds available in his bank account itself is an indication of his dishonest intention and in this background, it is stated, the Court below has rightly imposed a condition on the petitioner to deposit the suit money, while granting permission to him to participate in the proceedings.

6. On hearing both the counsel, what is to be seen in this case is whether the order passed by the lower court imposing condition is in accordance with the provisions contemplated or not?

7. Order 37 Rule 3 Sub-rule (5) reads as under:

"The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious;

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court."

8. A reading of the provisions under Sub-rule (5) of Rule 3 of Order 37 makes it abundantly clear that the Court while granting leave to defend may impose certain conditions as may appear to the Court or Judge to be just. When the provisions are discretionary giving powers to the Court either to impose condition in a given set of circumstances, it cannot be said, the Court has no power to impose such condition while permitting to participate in the proceedings. The provision has to be construed to say that what all required to be seen by the Court below is whether imposing a condition is warranted in a given set of circumstances and if the Court is satisfied that permitting the petitioner to participate in the proceedings could be only on certain terms, an order passed by the Court in such circumstances cannot be said to be improper.

9. It is no doubt true that the two decisions referred to by the learned counsel for the petitioner laid certain principles governing the procedure contemplated under Sub-rule (5) of Rule 3 of Order 37 CPC. These decisions in my mind do not say that the Courts cannot impose any conditions while granting permission. As discussed above, what all required is that the Court has to use its discretion after satisfying that the defendant can be permitted to participate only on terms. That satisfaction, of course, it all (sic. if at all, is) dependent upon the facts and circumstances of each and every case. I am therefore, inclined to say when a discretionary order is passed by the Court on an application filed under Sub-rule (5) of rule 3 of Order 37 CPC, such an order shall not be interfered with unless and until the circumstances warrant interference under the order on an application filed u/s 115 of the CPC by the High Court, where in the opinion of the High Court, that the order passed if allowed to be sustained, there will be miscarriage of justice. Having regard to the facts and circumstances of the case, I do not think, the order of the lower Court could be interfered with and accordingly, the plea in this regard is rejected.

10. What could be the appropriate condition that would suffice the requirement contemplated under Sub-rule (5) of Rule 3 of Order 37 CPC. It has been stated before me that while admitting the CRP and granting stay of the suit O.S.No. 463/93, this Court directed the petitioner/defendant to deposit Rs. 2 lakhs within a reasonable period. When the order passed in the interlocutory application again came up for consideration, counsel for the petitioner submitted before my learned brother S.R. Nayak, J before whom the matter had come up, that his client is not able to deposit the moneys and therefore, has sought some more time. Brother S.R. Nayak, J satisfied with the submission and granted time to comply with the order upto 15-6-1996. However, brother S.R. Nayak, J directed the CRP itself for final disposal immediately after summer vacation.

11. Counsel for the respondent-plaintiff pointed out to the Court that the conditional order passed by this Court while staying the proceedings at the stage of admission of the CRP has not been complied with and therefore, it is contended that the CRP has to be dismissed on that ground alone for not complying with the orders of the Court. Mr. Bung, counsel for the petitioner further contended that when the matter is being disposed of on 14-6-1996 itself, the interim orders granted by this court while admitting the CRP need not be complied with as one more day is left to comply with the orders passed by the Court i.e., for depositing the money upto 15-6-1996. I do not think, such a submission could be accepted. A party who has obtained an order at the threshold on condition and seeks further time for compliance and the Court also grants some more time, having failed to discharge his obligation, it is normally not open to the party to say that since the main CRP itself is disposed of within a stipulated periods the petitioner is not bound to comply with the orders passed by the Court which he had obtained at the initial stage. If the Court is to accept this submission, probably, the Court will be falling in the trap laid by the petitioner and thereafter, I am of the view, such party cannot be allowed to

play (sic. blow) hot and cold in this fashion to circumvent the orders of this Court.

12. Considering the relevant factors and the orders passed by this Court, I am of the view, the order granted by the Court in I.A. 1758/93 could be modified while permitting the petitioner to participate in the proceedings on condition the petitioner depositing Rs. 2 lakhs by way of bank guarantee or by cash deposit within a period of six weeks from to-day. In default to comply with this order, it is open to the Court below to pass appropriate orders in the set of circumstances according to law.

13. The CRP is disposed of in the above terms. No costs.