

**Kallappa Vs. Sangamma**

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**SooperKanoon Citation :** [sooperkanoon.com/428372](http://sooperkanoon.com/428372)

**Court :** Andhra Pradesh

**Decided On :** Apr-16-1965

**Reported in :** AIR1966AP181

**Judge :** Anantanarayana Ayyar, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 1 - Order 41A, Rule 1 - Order 42, Rules 1 and 2 - Order 43, Rule 1

**Appeal No. :** C.M.P. No. of 1964 and S.R. No. 39751 of 1964

**Appellant :** Kallappa

**Respondent :** Sangamma

**Advocate for Def. :** M.V. Nagaramaiah, Adv. for ;N.V.B. Sankararao, 2nd Govt. Pleader

**Advocate for Pet/Ap. :** V. Gopalakrishnayya, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Anantanarayana Ayyar, J.**

1. This petitioner filed a Second Appeal against the Judgment of the learned District Judge, Medak in A. S. No. 33 of 1961 He did not file printed copies of the judgment. He filed this petition under Section 151 C. P. C praying as follows:

'The appellant has not been able to get printed copies from lower Court. He was supplied with only typed and manuscript copies. He is too poor to bear additional expenditure. He. therefore, prays that printed copies be dispensed with and typed copies be accepted.'

The Office raised an objection saying that the High Court had no power to dispense with printed copies of the Judgment under Order 42, Rules 2 and S C. P. C. At the request of the learned advocate for the appellant the matter is posted before me for hearing.

2. The short question is whether the High Court can dispense with printed copies of the judgment and accept typed copies in their place. The total number of typed pages of the judgment of the appellate Court and of the Court of first instance is about seventeen.

3. Order 42 C. P. C. governs the present case of second appeal to High Court, Order 12 Rule 1 runs as follows;

'The Rules of Order XLI and Order XLI-A shall apply, so far as may be to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this order.'

Order 42, Rule 2 C.P.C. reads:

'1. The memorandum of appeal shall be printed or type-written and shall be accompanied by the following papers:

One certified copy of the decree of the Court of first instance and of the Appellate Court; and four printed copies of each of judgments of the said Courts, one copy of each judgment being a certified copy.

2. If any ground of Appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum

of appeal:

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Order 42, Rules 3 C.P.C. reads:

'If the appellant fails to comply with this Rule, the appeal may be dismissed.'

Order 41, Rule 1 C. P. C. runs:

1. Every appeal shall be preferred in the form of a memorandum ..... The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the Judgment on which it is founded.

The copy of the judgment shall be a printed copy in every case in which the High Court has prescribed that the judgment shall be printed when a copy is applied for, for the purpose of appeal.'

Sub-rule (1) of Rule 135 of the Civil Rules of Practice provides as follows:

'When a copy of judgment or order passed by a Civil Court is applied for by a party to the suit or proceeding for the purpose of appearing against it to the District or Subordinate Judge's Court, the copy shall be printed, provided the length of the judgment or order.....exceeds 700 words. In cases where the length of the judgment or order does not exceed 700 words the production of a printed copy is not compulsory.' Order 41-A C. P. C. relates to (first) appeals to the High Court from original decrees of Subordinate Court. Rule 1 says: 'the rules contained in Order XLI shall apply to appeals in the High Court of Judicature at Madras' with the modifications contained in this order.'

Rule 2 runs as follows:

(1) The memorandum of appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy ...'

This does not contain the following words contained in Order 41, Rule 1

'unless the Appellate Court dispenses therewith.'

4. Order 41-B C. P. C. relates to Letters Patent Appeals. Rule 1 provides 'The Rules of Order XLI-A shall apply, so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court. Provided that it shall not be necessary to file copies of the judgment and decree appealed from. This proviso specifically dispenses with filing copies of judgment and even of decree. Order 13 relates to appeals from orders. Rule 2

'The rules of Order XLI and of Order XLI-A shall apply, so far as may be, to appeals from the orders specified in Rule 1 and other orders of any Civil Court from which an appeal to the High Court is allowed under any provision of law

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Rule 3 says:

'(1) The provisions of Order XLII shall apply so far as may be to appeals from appellate Orders.

(2) A memorandum of Appeal from an appellate Court order shall be accompanied by a certified copy of the judgment and of the order of the court of first instance, and by a certified copy of the judgment and of the order of the Appellate Court.'

5. Rule 135(5) of the Civil Rules of Practice relates to Second Appeals. It says:

'When a copy of the judgment or order passed by an appellate court is applied for by a party to the suit or proceeding or appeal for the purpose of appealing against it to the High Court, such copies shall likewise be printed.

On receipt of such application, the Superintendent ..... may, unless the applicant otherwise requests, call also for the judgment or order of the Court of First instance, against which judgment or order was passed in appeal and shall collect the printing charges.....for printing both.'

Thus, it contains provision for the applicant requesting for not printing the judgment of the Court of first instance. But, it does not affect the need for filing

along with the second appeal printed copies of judgment of the Court of first instance as provided For in Order 12, Rule,2 C. P. C.

6. Shri Gopalakrishnayya contends as follows: The words 'unless the Appellate Court dispenses therewith' which are Found in Order 41, Rule 1 C. P. C. must be deemed to apply to first appeals to High Court under Order 41-A in view of Rule 1 of Order 41-A and will also apply to second appeals under Order 42, in view of the wording of Rule 1 of Order 42. Therefore, in a Second Appeal also, the appellate Court has power to dispense with printed copies of judgments of the lower Courts. After dispensing with printed copies, it can receive typed copies of those judgments.

7. The office has relied on the decision of a Division Bench of this Court in C. M. P No. 9866 of 1960, Dated 3-1-1961 (Andh-Pra) The relevant facts in that case were as follows. The petitioners filed C.M.A. No. 374 of 1957, against the order of a District Judge and contended therein that it was permissible for them to file typed copies of judgment of the learned District Judge. They relied on Rule 135(1) of the Civil Rules of Practice. The learned Judges passed an order in which they extracted Sub-rule (1) of Rule 135 of (he Civil Rules of Practice and held as follows:--

'It is manifest that this rule is applicable only to cases of appeals to the District or Subordinate Judge's Court and that this does not govern the appeals to the High Court.'

They referred to Order 43, Rule 2 C. P. C. which applied to that case and held as follows:

'It is, therefore, necessary for us to look at the terms of Order 41-A of the Code. ....It is immediately plain from Order 43. Rule 2 read with Order 41-A, Rule 2 C. P. C. that twelve printed copies of judgment should accompany the memorandum of appeal in appeals from orders. In the circumstances, the petitioner has to present twelve printed copies of judgment of the lower court.'

Shri Gopalakrislmayya tries to distinguish that decision by urging as follows: In that case, the question as to whether the appellate Court had power to dispense with printed copies of lower Courts' judgments was not raised or considered or decided. The only contention, which was urged in support of the petition, was that, under Rule 135(1) of the Civil Rules of Practice, the appellants were entitled to file typed copies on the ground that the judgment or order did not exceed 700 words. In the present case, such a question does not arise.

8. It is true that, in that case, the question as to whether the appellate Court could dispense with printed copies of the judgment altogether, as distinct from filing typed copies, was not raised and considered. The main question which was raised there was whether type-written copies of judgment could be filed and whether printed copies of judgment need not be filed in a Civil Miscellaneous Appeal. The answer to that main question was expressly that, in view of Order 43 Rule 2 read with Order 41-A Rule 2, printed copies of judgment as appearing from those orders had to be filed and impliedly that typed copies of judgment could not be allowed to be filed. Regarding the main question, the principal contention on behalf of the appellants was that printed copies, as distinct from type-written copies, need not be filed in spite of the fact that Order 43 Rule 2 read with Order 41-A Rule 2 applied to that case of a Civil Miscellaneous Appeal and that type-written copies should be filed instead. In support of that contention, they raised another contention that Rule 135(1) of the Civil Rules of Practice applied. That was only an auxiliary ground in support of the main contention. That auxiliary ground was rejected by the learned Judges in their judgment. But the fact remains that, whatever was the auxiliary ground, their finding on the main question was that printed copies of the judgment had to be filed and that typewritten copies of judgment were not sufficient to meet the requirements of law. The effective finding of the Division Bench that type-written copies cannot be filed because the relevant provision of law provides for printed copies is applicable to the present case in view of the substantial similarity of the language of Order 42, Rules 1 and 2 C.P. C, with the corresponding provisions in Order 43 C. P. C. This position is not affected by the fact that, in the present proceedings, an auxiliary ground is urged viz., that the appellate Court has power to dispense with printed copies of judgment which is different from the auxiliary ground which was urged in that case

(C. M. P. No. 7866 of 1960) (Andh. Pra.) viz., that under Rule 135(1) of the Civil Rules of Practice, type-written copies could be filed. The actual prayer of the petitioner in this petition is as follows:

He therefore prays that printed copies be dispensed with and typed copies be accepted.'

Order 42, Rule 2 C. P. C. contemplates only (four) printed copies of judgments to be filed just as Order 43 Rule 2 C. P. C. read with Order 41-A Rule 2 C. P. C. provided only that (Twelve) printed copies of judgment should be furnished. 1. therefore, hold following the above decision of the Division Bench in C. M. P. 7866 of 1960 (Andh. Pra.) that printed copies of judgments cannot be dispensed with in such a way as to allow typed copies to be filed in their place.

9. It will be observed that Sub-rule (1) of Order 42 Rule 2 C. P. C. mentions that 'the memorandum of appeal shall be printed or typewritten'. But, it also mentions that printed copies of judgment should be filed. In Sub-rule (2) of Order 42 Rule 2 C. P. C. there is provision regarding document mentioned therein to the effect that a printed or type written copy shall be presented. It will thus appear that, under Order 42 Rule 2(1), the words 'or type-written' are deliberately omitted regarding copies of judgments.

10. Order 11, C. P. C. contains the basic provisions regarding appeals. Any provision contained therein will apply to appeals coming under Order 41-A, Order 42 and Order 43 C. P, C. unless there is a definite indication to the contrary, by way of modification which is mentioned in Order 41-A Rule 1 C. P. C. or by way of any difference coming under the clause 'so far as may be' as mentioned in Order 42, Rule 1 and Order 43 Rule 2 C. P. C. Similarly, the provisions of Order 41-A are also basic additional provisions subject to the clause of 'so far as may be'. Order 41-A, Order 42 and Order 43, C. P. C. indicate the number of copies of judgment to accompany the memorandum of appeal and the fact that they should be printed. But. there is no indication in any of them to show that the words ('Unless the appellate court dispenses therewith') do not apply to appeals under Order 41-A, or Order 42 or Order 43. This portion within brackets is a basic provision which is obviously based on sound principles and practical considerations of possible

circumstances in which the appellate court may find it fit and proper to dispense with copies of judgment. The fact that the words under consideration are put within brackets and the wording of the second sentence in Order 41, Rule 1 C. P. C. suggests that the power of the Appellate Court to dispense with copies of the judgment on which the appeal is founded is not positively given by Order 41, Rule 1 but is only referred to in Order 41 Rule 1 as existent even independent of Order 41 Rule 1. So, I agree with the contention of Sri Gopalakrish-nayya to the extent that, under Order 42 C. P. C. also, the High Court has power to dispense with copies of the lower court's judgments in suitable cases. But, I do not agree with him that this is a fit case for dispensing with copies of judgment altogether or of printed copies in particular. As already pointed out, by me, in view of the decision of the Division Bench in C. M. P. No. 9866 of 1960 (Andh. Pra.) it is not possible to allow the petitioner to file typed copies instead of printed copies of Judgment.

11. In the result. I agree with the officethat the petitioner has to furnish printed copiesof judgment as required by it. I dismiss thispetition. Time granted till 6th September. 1965for compliance.

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