

State of A.P., Rep. by Executive Engineer, R and B Vs. Syndicate Constructions, Engineers and Constructors, Rep. by Its Managing Partner, K.V. Narayana

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Court : Andhra Pradesh

Decided On : Mar-23-2006

Reported in : 2006(4)ALD177; 2006(3)ALT231

Judge : B. Prakash Rao and ;D. Appa Rao, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11 - Order 27, Rules 1 and 2

Appeal No. : First Appeal No. 1551 of 1998

Appellant : State of A.P., Rep. by Executive Engineer, R and B

Respondent : Syndicate Constructions, Engineers and Constructors, Rep. by Its Managing Partner, K.V. Narayana

Advocate for Def. : None

Advocate for Pet/Ap. : Adv. General

Disposition : Appeal allowed

Judgement :

D. Appa Rao, J.

1. The appellant, the State of Andhra Pradesh preferred this appeal against the order of the learned Principal Subordinate Judge, Vijayawada dated 2-12-1994 in allowing LA. No. 3224/1993 filed by the respondent herein to reject the plaint under Order? Rule 11(d) of C.P.C.
2. The appellant, the State of Andhra Pradesh, represented by the Executive Engineer, Roads & Buildings, National Highway Division, Vijayawada, filed a suit O.S. No. 100/1980 against the respondent-Syndicate Constructions for recovery of an amount of Rs. 10,58,914/- towards compliance of work left out by it in regard to contract for widening and strengthening the double lane carriage way from Vijayawada towards Eluru on Madras-Calcutta Road. 13 years after filing of the suit, the defendant filed a petition LA. No. 3224/1993 under Order 7 Rule 11(d) CPC to reject the plaint on the ground that the Executive Engineer cannot represent the State of Andhra Pradesh and there was neither special order or general order appointing him to file the suit. It was in contravention under Order 27 Rule 1 CPC, consequently the suit was bad under law, liable to be rejected.
3. The State refuted the contentions by stating that Order 7 Rule 11(d) CPC does not apply to the case on hand, the suit was properly instituted and was maintainable under law.
4. The trial Court has curiously observed that the Government did not authorize specifically the Executive Engineer to sign the plaint and the suit was improperly instituted. The learned trial Judge invoked Order 7 Rule 11(d) CPC and held that it was barred under law. Reliance was placed to a decision reported in 1955 (1) An.W.R. page 109, wherein the suit was dismissed for non-payment of court fee and the Court opined that the rejection of the plaint under Order 7 Rule 11 was proper. Therefore, the learned trial Judge held that the suit was barred under law.
5. In view of the above, the point that arises for consideration is whether the plaint is liable to be rejected under Order 7 Rule 11 (d) CPC on the ground that the person who filed the suit had no authority and contravened Order 27 Rule 1 CPC?

6. At the outset we may state that the suit was filed by the Executive Engineer, Roads and Buildings, National Highway Division, Vijayawada, claiming amount towards balance of work left out by it. We may also state herein that the Superintending Engineer filed I.A. No. 2641/1994 to implead him as a party in order to get over any unnecessary technical infraction. By virtue of Order 27 Rule 1 CPC a person who is authorized to sign by general or special order and any person who is acquainted with the facts of the case can verify the plaint. At the time of arguments, it seems that a G.O.Ms. No. 816, dated 3-8-1994 was filed, wherein the Government authorized the Executive Engineer to sign the plaint. It was held that if such a suit was filed it was valid presentation of the plaint. The trial Court reasoned that the G.O. was not there by the date of filing of the suit, as such the Executive Engineer was not authorized to sign on it. It was held in AIR 1954 Ajmeer 5 that publication of gazette is not an essential ingredient of a valid authority under this rule. Such publication is only a matter of convenience. The trial Court did not consider Order 27 Rule 2 CPC, wherein there is a provision for the persons being ex officio or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agent. By virtue of the office, the Executive Engineer is entitled to protect the interests of the Government. It is not known how the learned Judge could state that the officer who signed was not authorized to sign. It is still curious that by following the said order the trial Court rejected the very plaint invoking Order 7 Rule 11 (d) CPC. It is not the case where this rejection was made, as there was no disclosure of cause of action, under valuation of relief claimed, insufficiency of court fee or claim being barred by any law. Invocation of Order 7 Rule 11 (d) CPC could be made where a suit appears to be made by the plaintiff could be barred by any law. We do not see how a suit could be held to be barred by invoking this clause.

7. Since the trial Court did not advert to all the provisions under Order 27 nor considered the fact that the person who did sign was authorized to sign, it could not have rejected the claim, that too 14 years after filing of the suit. The trial Court did not consider subsequent application filed by the Government nor the effect of G.O. At any rate the impugned order can no longer sustain nor the plaintiff would be non-suited by invoking Order 7 Rule 11(d) CPC in the instant case. Undoubtedly the order is unsustainable.

8. In the result, the appeal is allowed, setting aside the decree and judgment of the trial Court dated 2-12-1994, passed in I.A. No. 3224 of 1993. The suit is restored to file. The trial Court is directed to conduct trial and dispose of it on merits in accordance with law. However, no order as to costs.

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