

Muddasani Rajamba Vs. Nandre Bhaskar

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Court : Andhra Pradesh

Decided On : Mar-09-2006

Reported in : 2006(3)ALD690; 2006(5)ALT258

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F - Sections 2(7), 3, 5(1), 6(1), 6(2), 8 and 9; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rules 9, 10 and 11

Appeal No. : CRP Nos. 1124 and 1126 of 2006

Appellant : Muddasani Rajamba

Respondent : Nandre Bhaskar

Advocate for Def. : S.V. Indira, Adv.

Advocate for Pet/Ap. : K Balagopal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.S. Narayana, J.

Heard Sri K. Balagopal, the learned Counsel representing the petitioner and Smt. S.V. Indira, the learned Counsel representing the respondent.

2. CRP No. 1124 of 2006 is preferred as against the order dated 28-12-2005 made in LA. No. 438 of 2005 in O.S. No. 485 of 2002 on the file of the III Additional Senior Civil Judge (Fast Track Court), Warangal.

3. CRP No. 1126 of 2006 is preferred against the order made in LA. No. 437 of 2005 in O.S. No. 483 of 2002, on the file of the III Additional Senior Civil Judge (Fast Track Court), Warangal.

4. In both the civil revision petitions the revision petitioner is the same and the defendant in both the suits. The respondent in both the civil revision petitions no doubt are plaintiffs.

5. Inasmuch as common question is involved in both the civil revision petitions, both the C.R.Ps. are disposed of by this common order.

6. The revision petitioner as petitioner-defendant moved the applications aforesaid under Order VII Rule 11 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'the Code') to reject the suits. The main ground raised is that the respondents-plaintiffs in both the suits being moneylenders, in view of Section 9 of Andhra Pradesh (Telangana Area) Money Lenders Act, 1349-F, a suit for recovery of amount of loan transactions without any money lending licence is not maintainable at all and hence the same is barred by Order VII Rule 11(d) of the Code. The applications were dismissed by the learned Judge and aggrieved by the same, the present civil revision petitions are preferred.

7. Sri Balagopal, the learned Counsel representing the petitioner in both the civil revision petitions would maintain that the suit itself is not maintainable for want of money lending licence under the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349-F, (for brevity, hereinafter referred to as 'the Act') and the said ground can be taken at any stage and the plaint is liable to be rejected on the said ground under Order 7 Rule 11 of the Code. The learned Counsel had drawn the attention of this Court to the relevant provisions and also placed strong reliance on

the decision of the Division Bench of this Court in *Sriramulu and Co. v. State of Kerala* 1971 (II) AWR 168 (DB).

8. Per contra, Smt. S.V. Indira, learned Counsel representing the respondents would contend that on the strength of certain evidentiary details, these applications were moved under Order VII Rule 11 of the Code and these are the aspects which may have to be gone into at the time of final disposal of the suits. The learned Counsel had taken this Court through the provisions of Order VII Rule 11 of the Code and would explain that the case on hand would not fall under any of the provisions and unless one such conditions are satisfied, the question of rejecting the plaint under Order VII Rule 11 of the Code would not arise. The learned Counsel also would contend that the applicability or otherwise of Section 9 of the Act, maintainability of suit, also be decided only at the appropriate stage. The learned Counsel also would maintain that this specific defence was not at least taken in the written statement, but on the strength of some admissions said to have been made by PW.1, the present applications had been thought of. Hence the learned Counsel would maintain that the impugned orders in both the civil revision petitions would not suffer from any illegality whatsoever.

9. The respondents in both the civil revision petitions, Nandre Bhaskar and Chintam Ramesh, the plaintiff in the respective suits in O.S. No. 485 of 2002 and O.S. No. 483 of 2002, on the file of III Additional Senior Civil Judge (Fast Track Court), Visakapatnam filed these suits for recovery of amounts. The revision petitioner-defendants had entered appearance and filed the written statements. The issues were settled and it appears that PW1 in cross-examination made an admission that he was possessing money lending licence. Section 9 of the Act, dealing with procedure of Court in suits for recovery of loans, reads as hereunder :

Notwithstanding anything contained in any law for the time being force, in every suit relating to a loan :

(1) the Court shall frame and decide the issues whether the money-lender is a money-lender as defined in Sub-section (7) of Section 2, and whether he has complied with the provisions of Section 3 and of clauses (a) and (b) of Sub-sections (1) and (2) of Section 6.

(2) If it is proved that the plaintiff is a moneylender as defined in Sub-section (7) of Section 2, but does not hold a licence granted under Section 3, the Court shall dismiss his suit;

(2-A) if it is proved that the money-lender has not complied with the provisions of clause (a) of Sub-section (1) of Section 5, or of Sub-section (1) of Section 6, or of Section 8 and the plaintiffs claim is established in whole or in part, the Court may, in the circumstances of the case, disallow, the whole or any portion of the interest due and may disallow the costs wholly or in part;

(3) if it is proved that the money-lender has not furnished the debtors with a statement of account in accordance with the provisions of clause (b) of Sub-section (1) of Section 5 or of Sub-section (2) of Section 6, the Court shall, in computing the amount of interest exclude the interest in respect of every period for which the moneylender has not furnished the debtor with the statement of account :

Provided that if the money-lender has, after the prescribed time, furnished the statement of account and the Court is satisfied that there was sufficient cause for not furnishing the statement earlier, the Court may in spite of such default, include such period or periods for computing the interest.

Explanation :-If a money-lender has maintained his account and delivered the statement of account in the prescribed form and manner, it shall, in spite of any error or omission, be presumed that he has complied with the provisions of clauses (a) and (b) of Sub-section (1) of Section 5 and of Sub-sections (1) and (2) of Section 6, if the Court is of opinion that such error or omission is accidental or immaterial and that the accounts are maintained in good faith.

10. No doubt, strong reliance was placed on a decision of Division Bench in Sriramulu 's case (supra), wherein at Paras 13 and 14 it was observed :

It was however contended that comparing the provisions of Order 7 Rule 10 and Order 7 Rule 11, Civil Procedure Code while the plaint can be returned for presentation to the proper Court at any stage of suit, the rejection of the plaint

must be done at the preliminary stage. What was pointed out was that while the words 'at any stage' appear in Order 7 Rule 10, Civil Procedure Code, those words or words to that effect do not appear in Rule 11 of Order 7, Civil Procedure Code. In support of this contention our attention was drawn to *Kalawati Devi v. Chandra Prakash* : AIR1959 All37 . We do not however think that there is any force in this contention. Merely because those words do not appear in Order 7 Rule 11, Civil Procedure Code and they appear in Rule 10 it does not necessarily lead to the conclusion that at no subsequent stage the plaint can be rejected. If the plaintiff has no cause of action at all to institute the suit, we fail to understand how such a suit can be decreed or even dismissed. It has been held that in cases where the plaintiff had no cause of action even in the suit is dismissed, it would amount to rejection of the plaint within the meaning of Order 7 Rule 11, Civil Procedure Code.

Rule 11 of Order 7, Civil Procedure Code, seems to us to be mandatory and it could be brought into operation at any stage of the suit. Merely because the defendant has entered into a defence and issues are framed, we do not think that the Court's jurisdiction to reject the plaint is taken away even if the plaint does not disclose the cause of action. The contention is that distinction must be made between cases where the plaint is rejected on the ground of deficiency in Court-fee or under valuation of the suit and cases where plaints are rejected under Order 7 Rule 11 Civil Procedure Code. We do not find any warrant or justification for any such contention. There are no words in Rule 11 which would warrant any such contention. It may be that some of the cases relate to Court-fee but that does not mean that in other cases the plaint has to be necessarily rejected only at the preliminary stage. We are fortified in our view by a decision of the Madras High Court in *Maroof Sahib v. Ayyakannu* 68 MLJ 755 : ILR 58 Mad. 1051 : AIR 1935 Mad. 569, where Venkata Subba Rao, J., observed as follows:

It has been held that the power under that provision to reject a plaint is not exhausted when it has been admitted and registered. That being so, the Court must be held to retain the power till the point is raised and it decides it, whatever the stage may be in the course of the trial. It is unnecessary to cite decisions of several other High Court which take the same view.

11. There cannot be any doubt or controversy in relation to the proposition laid down by the Division Bench referred to supra. The learned Counsel for the revision petitioner had drawn the attention of this Court to Order VII Rule 11(d) of the Code in particular. It may be appropriate to have a glance at the provision Order VII Rule 11 of the Code, which reads as hereunder :

Rejection of Complaint :

The complaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the complaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the complaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

12. It cannot be in serious controversy that Order VII Rule 11(a)(b)(c)(e) and (f) of the Code would not be attracted to the facts on hand. No doubt, reliance was placed on Order VII Rule 11(d) of the Code, which specifies that the complaint shall be rejected where the suit appears from the statement of the complaint to be barred by

any law. It is needless to say that this provision is also not attracted for the reason that there is no such statement made in the plaint as such on the strength of it, it cannot be said that the plaint is barred by any law nor it is the case of the revision petitioner that at least she had taken such stand in the written statement. On the strength of the alleged admissions said to have been made by PW.1 or some documents which are said to have been produced, these applications were thought of. On the strength of evidentiary details, normally, an application under Order VII Rule 11 of the Code cannot be entertained, unless party moving such applications is able to satisfy the Court that the plaint can be rejected on any one of the grounds specified there under. Hence, this Court is of the considered opinion that the impugned orders, especially in the light of the reasons in detail which had been recorded by the learned Judge, do not suffer any illegality or legal infirmity warranting interference by this Court. It is needless to say that the revision petitioner is at liberty to agitate these questions before the learned Judge, if she is so advised at the appropriate stage. Except making this observation nothing else can be done by this Court at this stage.

13. With the above observations, the civil revision petitions shall stand dismissed. No costs.

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