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Court : Andhra Pradesh

Decided On : Nov-12-1991

Reported in : 1991(3)ALT632

Judge : Y. Bhaskar Rao, J.

Acts : Constitution of India - Article 226; Code of Civil Procedure (CPC) - Sections 151 - Order 20, Rule 12

Appeal No. : Writ Petition No. 9550 of 1991

Appellant : Chintapalli Atchaiah

Respondent : P. Gopala Krishna Reddy Represented by His General Power of Attorney Holder P. Suryanarayana Reddy a

Advocate for Def. : M.V. Ramana Reddy, Adv.

Advocate for Pet/Ap. : A. Panduranga Rao, Adv.

Disposition : Petition dismissed

Judgement :

Y. Bhaskar Rao, J.

1. The petitioner in these proceedings seeks issuance of a writ of prohibition declaring that the 2nd respondent- Additional Chief Judge, City Civil Court, Hyderabad, has no jurisdiction to entertain I.A.No. 203 of '88 filed by the 1st respondent.

2. The relevant facts in brief are: The 1st respondent herein filed a suit against the writ petitioner and obtained a decree (i) for possession of the suit scheduled properties in the same condition as they were entrusted to the writ petitioner, subject to reasonable wear and tear, (ii) for mesne profits and (iii) for costs. When the matter was carried in appeal, while deciding the appeal and corss-objections filed, the High Court confirmed the first clause of the trial Court's decree, viz., for possession of the schedule properties in the same condition as they were entrusted to the petitioner, and remanded the matter in so far as the 2nd clause pertaining to the mesne profits is concerned. Assailing the order of remand in so far as the mesne profits are concerned, the writ petitioner filed a Civil Appeal before the Supreme Court. The Supreme Court while setting aside the order of remand decreed mesne profits at Rs. 10,000/- per month from the date of suit till the date of decree and at Rs. 12,500/- per month from the date of decree till delivery of possession. The first clause of the decree granted by the trial Court has, thus, become final. The said first clause reads:

'1. That the plaintiff is entitled to the possession of the plaint A,B and C Schedule properties with open Air Theatre, Service Rooms and Book Stall attached in the same condition, as they were, when entrusted to the defendant subject to reasonable wear and tear.'

It is important to notice that pending the appeal before the Supreme Court the 1st respondent-plaintiff obtained delivery of the scheduled properties on 19-4-1972. After the decision of the Supreme Court, the writ petitioner filed an I.A., for refund of the excess mesne profits paid and that was also ordered by the 2nd respondent. Pending that I.A., the 1st respondent filed the impugned I.A., (I.A. 203/88) for recovery of Rs. 8,45,019-56 paise on the ground that movables valued at Rs. 1,31,384/- were not at all delivered, that the furniture and fittings, though delivered, were in a damaged condition, the value of damages having been

estimated at Rs. 4,43,616/-, unpaid telephone bills at Rs. 21,889-33 and also interest at contracted rate put at Rs. 4,87,717-23, the total of which comes to Rs. 10,87,606-56 paise. Out of this the 1st respondent deducted a sum of Rs. 2,39,587/- (Rs. 1,00,000/- being the deposit and Rs. 1,39,587/ - being the excess mesne profits paid by the writ petitioner), and made a net claim of Rs. 8,45,019-56 paise.

3. Before adverting to the respective contentions of the parties in this background of the facts, it is germane to notice the principles governing the issue of writ of prohibition as laid down by the Supreme Court. In Govinda Menon v. Union of India, : (1967)IILLJ219SC the Supreme Court observed:

' The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine Courts or tribunals of inferior or limited jurisdiction within their bounds, it is well established that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice...............But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well established that a writ of prohibition cannot be issued to a Court or an inferior tribunal for an error of law unless the error makes it go outside its jurisdiction.......................... A clear distinction must, therefore, be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction, then the matter is coram non judice and a writ of prohibition will lie to the Court of inferior tribunal forbidding it to continue proceedings therein in excess of jurisdiction.'

4. In A. V. Venkateswaran v. Wadhwani, : 1983ECR2151D(SC) , the Supreme Court while referring to the bar to entertainment of a writ petition in the presence of an alternative remedy existing, laid down:

' ....The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of apetition

under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non-est. In all other cases, he submitted, Courts should not entertain petitions under Article 226..........................The passages in the Judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive., and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the relief to the petitioner notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.'

5. Again in Isha Beevi v. Tax Recovery Officer, : [1975]101ITR449(SC) the Supreme Court while dealing with the existence of alternative remedy and the issue of a writ of prohibition held:

'The existence of an alternate remedy is not generally a bar to the issuance of a writ of prohibition. But in order to substantiate a right to obtain a writ of prohibition from a High Court or the Supreme Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or the authority complained against........................'

6. The Supreme Court in M.V.S. Prasada Rao v. State of A.P., 1985 Lab. I.C. 438 while explaining the scope and effect of a writ of prohibition laid down:

'Writ of prohibition is an order directing the inferior Tribunal or authority forbidding to continue the proceedings on the premise that it is in excess of the jurisdiction or

without authority of law. In other words, it is one of supervisory power to keep the authorities within the confines of law or jurisdiction.'

7. The sum and substance of the above principles laid down by the Supreme Court in the matter of issue of a writ of prohibition is that the writ lies for excess of jurisdiction, for absence of jurisdiction, for departure from the rules of natural justice, and as against the existence of an alternate remedy, the writ lies, if only the applicant successfully demonstrates total absence of jurisdiction to proceed on the part of the inferior Tribunal or Court.

8. In this background of the principles, it is now necessary to examine the contentions advanced by the learned counsel for both sides.

9. The contention of Mr. Panduranga Rao, the learned counsel for the petitioner is that the 2nd respondent (Civil Court) has no jurisdiction to entertain the impugned I.A., inasmuch as the Supreme Court has decided the quantum of mesne profits and that the amounts claimed in the impugned I.A., are not part of the decree. On the other hand, the learned counsel for the 1st respondent submitted that as per the first clause of the decree that became final, the plaintiff-Ist respondent is entitled to possession of plaint ABC schedule properties in the same condition as were entrusted to the writ petitioner/ defendant and inasmuch as they were not in that condition and some of the items were not even delivered possession, the impugned I. A., filed under Order 20 Rule 12 CPC is maintainable and that the 2nd respondent has jurisdiction to decide the I.A. Even otherwise also, the learned counsel submitted, the 2nd respondent has jurisdiction to decide the plea as regards the jurisdictional question. In other words, where the jurisdiction of a Court is questioned, that Court will be competent to decide that question and for that purpose also to determine the relative facts bearing on the question. For this settled proposition of law, the learned counsel placed reliance upon the decisions in LMP Mfg. Co. v. P.O. Labour Court, AIR 1965 Mad. 450, Ujjam Bai v. State of Uttar Pradesh, AIR 1962 SC 1621 and Bikarama Singh v. State, : AIR1970 All344 . Thus, this is not a case where there is total lack of jurisdiction nor it is the contention that there is exercise of excess jurisdiction or departure from the rules of natural justice so as to call for the issue of a writ of prohibition against the 2nd

respondent. Further against the decision of the 2nd respondent, on the question of jurisdiction, there is a remedy of appeal/revision to the superior Court.

10. The learned counsel for the petitioner, on the other hand sought to place reliance upon a decision of this Court in Sambamurthy v. Collector, 1979 (2) ALT 105 That relates to a matter where the. Civil Court, while entertaining a suit for declaration of correct date of birth, has directed the respondent not to retire the plaintiff from service, which relates to conditions of service, and therefore in relation to that direction this Court issued the writ of prohibition inasmuch as no Civil Court has jurisdiction to adjudicate matters pertaining to service. That, thus, is a case of total lack of jurisdiction. The other decision of the Assam High Court in Tansukharai v. I.T. Officer, AIR 1961 Assam 35 is one where it is held that existence of an alternative remedy is not an absolute bar to grant of a relief under Article 226 of the Constitution.

11. The case on hand is one where the impugned I.A., is already entertained and the trial also commenced, in that the evidence of one Dowlal Rai Waghray was recorded on 18-12-1989. The petitioner had even participated in the trial by cross-examining the above named witness. Therefore, it is not as though the petitioner has yet to seek the relief available before a different forum and consequently on the ground of existence of an alternate relief, this writ petition should fail. On the other hand, the 2nd respondent in this writ petition being a Civil Court and before whom the impugned I.A., filed under Order20 Rule 12 and Section 151 C.P.C., is pending, has, as per the settled proposition of law, jurisdiction to decide the question of its having or not having jurisdiction to entertain the I.A., and that is at the same time as effective and efficacious remedy, again having been open to appeal or revision, as the case may be. In these facts and circumstances, I find no merit in this writ petition to issue the writ of prohibition. It is accordingly dismissed. No costs.

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