

Mohammed MohinuddIn Ali Vs. Mahesh Kumar Asava and anr.

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Court : Andhra Pradesh

Decided On : Dec-24-2003

Reported in : 2004(1)ALD880; 2004(1)ALT591

Judge : P.S. Narayana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 - Order 12, Rule 6 - Order 41, Rule 1; [Constitution of India](#) - Article 227

Appeal No. : CRP No. 6082 of 2003

Appellant : Mohammed MohinuddIn Ali

Respondent : Mahesh Kumar Asava and anr.

Advocate for Def. : C. Jayashree Sarathy, Adv.

Advocate for Pet/Ap. : M.V.V. Anil Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. Respondents in C.R.P. No. 6082 of 2003 had moved C.M.P. No. 28786 of 2003 in C.M.P. No. 26985 of 2003 to vacate the interim order passed in C.M.P. No.

26985 of 2003 in C.R.P. No. 6082 of 2003 and at the stage of hearing of the vacate application, Smt. C. Jayashree Sarathy, the learned Counsel representing the vacate petitioners, had raised an objection relating to the maintainability of the Civil Revision Petition on the ground that the order impugned is an interim judgment and decree made in accordance with the provisions of Order 12, Rule 6 of Code of Civil Procedure (C.P.C.) and hence it is appealable and definitely not revisable.

2. Heard the learned Counsel on record relating to the preliminary objection raised by the learned Counsel representing respondents in the Civil Revision Petition-vacate petitioners in C.M.P. No. 28786 of 2003.

3. The present Civil Revision Petition is filed under Article 227 of the [Constitution of India](#) as against the order and decree passed by the III Additional Chief Judge, City Civil Court, Hyderabad, made in I.A. No. 1767 of 2002 in O.S. No. 203 of 2002, dated 10-12-2002. The respondents in the Civil Revision Petition moved I.A. No. 1767 of 2002 in O.S. No. 203 of 2002 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, under Order 12, Rule 6 read with Section 151 of C.P.C. for giving direction to the respondent-defendant to tender an amount of Rs. 14,45,000/- to the revision petitioners out of the suit amount as an interim measure pending disposal of the main suit. At para 5, the learned Judge had framed the following points for consideration:

(i) Whether there is any clear and unambiguous admission on the part of the defendant with regard to the part of the suit amount?

(ii) Whether the facts and circumstances of the case warrant the Court to exercise its discretion under Order 12, Rule 6 of C.P.C.?

4. The learned Judge had discussed all the aspects in detail and also had adverted to the applicability of Order 12, Rule 6 of C.P.C. and had referred to State Bank of India v. Midland Industries, : AIR1988 Delhi153 , and ultimately had arrived at a conclusion that in the light of the admissions, the petitioners-plaintiffs in the said application are entitled to the interim judgment and decree for Rs. 5,00,000/- out of the total suit amount pending disposal of the main suit by virtue of

the provisions of Order 12, Rule 6 of C.P.C. The remaining relief prayed for, no doubt, was negatived. Aggrieved by the said judgment and decree, the present Civil Revision Petition is filed under Article 227 of the [Constitution of India](#).

5. Order 12, Rule 6 of C.P.C. reads as hereunder:

Judgment on admissions :--(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.'

Section 2(2) of C.P.C. defines decree as in this Act unless there is anything repugnant in the subject or context 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include--

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation :--A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 2(9) of C.P.C. defines judgment as in this Act, unless there is anything repugnant in the subject or context-- 'judgment' means the statement given by the Judge on the grounds of a decree or order.

6. In State Bank of India's case (supra) it was held that:

'Undoubtedly Rule 6 of Order 12 has been couched in a very wide language. However, before a Court can Act under Rule 6, admission must be clear, unambiguous, unconditional and unequivocal. Furthermore a judgment on admission by the defendant under Order 12, Rule 6 is not a matter of right and rather is a matter of discretion of the Court, no doubt such discretion has to be judicially exercised. If a case involves questions which cannot be conveniently disposed of on a motion under this rule the Court is free to refuse exercising discretion in favour of the party invoking it. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff. The rule is not intended to apply where there are serious questions of law to be asked and determined. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of Order 12, Rule 6, C.P.C. without proving those issues.'

7. It is needless to say that it is an interim judgment and decree is drafted in accordance with the said judgment and the same is appealable by virtue of Section 96 C.P.C. and also Order 41, Rule 1 of C.P.C. When a specific remedy by way of appeal is provided for by the C.P.C., a party aggrieved by such interim judgment and decree cannot invoke the jurisdiction of this Court under Article 227 of the [Constitution of India](#), since such party is having an effective alternative remedy by way of an appeal. Even otherwise, in view of the limitations imposed on this Court while exercising the powers of superintendence under Article 227 of the [Constitution of India](#), the Civil Revision Petition under Article 227 cannot be definitely maintained as against such judgment and decree made by exercising powers under Order 12 Rule 6 of C.P.C. Hence, viewed from any angle, I am of the considered opinion that this remedy by way of Civil Revision Petition under Article 227 of the [Constitution of India](#) is definitely a misconceived remedy.

8. In the light of the view expressed by me supra, I am not inclined to touch the other merits and demerits of the matter. It is needless to say that the revision petitioner is at liberty to prefer an appeal, if he so advised, in this regard. Except

giving this direction, no other relief can be granted in the Civil Revision Petition.

9. The civil revision petition accordingly shall stand dismissed. No order as to costs.

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