

ANDHRA PRADESH HIGH COURT

Kasrala Raghuram

Vs.

Dr. Narasipalle Vasundhara

S.A. No. 523 of 1982

(Seetharam Reddy, J.)

06.07.1982

JUDGMENT

Sectharam Reddy, J.

1. The short but important question of law which arises in this second appeal is whether the memo., filed before the Court below, signed by both the advocates of the parties concerned without being signed by the parties, could be acted upon? The format of the case is : The tenant who is the appellant herein filed R.C.C. No. 14 of 1979 against the respondent herein for restoration of certain amenities under Section 14 of the Rent Control Act averring therein that the respondent-landlady is deliberately trying to cut-off the electricity connections and so on. That petition is still pending. Thereafter on 8th August, 1979, a quit notice under Section 106 of the Transfer of Property Act was served on the appellant and thereafter the suit was filed for eviction. The suit was decreed and the appeal was preferred which was numbered as A.S. No. 55 of 1981. The said appeal was directed originally to be posted for final hearing on 18th June, 1982. However, C.M.P. No. 27 of 1982 was filed on 25th February, 1982, for advancing the case and accordingly the case was advanced to 25th March, 1982. Be that as it may, when the case came up for hearing on 25th March, 1982, a memo. which by implication a compromise memo. signed by the advocates of both the parties concerned, was filed. The compromise memo. reads as under :-

"It is submitted that the appellant-defendant hereby agrees to vacate the decree schedule building in question and deliver possession of the same to the respondent-plaintiff on or before 30th June, 1982. Failing which the respondent can execute the decree for possession and take possession through process of Court. The appellant undertakes to pay all arrears of rent lawfully due by that date (i.e.) 30th June, 1982. Hence, the appeal may be dismissed without costs."

On the above Memo. the impugned order was made which reads as under :-

"Joint memo. filed. Appeal dismissed without costs in view of the memo. and time

granted to appellant for vacating the building till 30th June, 1982."

It is this order that is made a grievance of in this second appeal.

2. Sri T. Mohana Rangam, the learned Counsel for the appellant, contends that the compromise memo, which was filed in the appellate Court purporting to be under Order 23, rule 3 of Civil Procedure Code, requires, inter alia, the signatures of the parties as well as and unless and until the signatures of the parties are initialled, the Court cannot and should not act upon the same. Reliance is placed on a number of decisions. In *B.D.M. Rao v. Co-op. Industries Estates*¹ Ramachandra Raju, J., held :

"The recording of compromise is not purely a formal matter, but a question of substance. Under Order 23, rule 3, the Court has to find out if there is any agreement between the parties for compromise. The terms of settlement must be examined with care and caution and see that the parties understood the terms of the compromise and there is no fraud or misrepresentation. A Court making a decree by consent would be performing a judicial and not a ministerial act. If for any reason, the party cannot appear before the Court or sign in the compromise petition, the Court can give permission to the Counsel to admit the compromise in Court on behalf of the party by filing a separate vakalat (which is usually called a special vakalat) from his party, specifically authorizing him either to enter into compromise or admit compromise on his behalf in Court or both. Then after the Court is satisfied it records the compromise. That is what is meant by otherwise ordered by the Court mentioned in rule 19 of the Civil Rules of Practice."

In *G. Subba Rao v. T. Narsimhamurthi*², it is held :

"In the absence of a specific provision in the vakalat a Counsel has no implied authority to enter into a compromise on behalf of his client."

In *Durairaj v. Shanmugham*, (1980) 1 M.L.J. 291, it is held :

"The plaintiff filed a suit for a permanent injunction against the defendants restraining them from obstructing the plaintiff ploughing the land which he had purchased. The trial Court found that the plaintiff was in possession and granted the decree as prayed for. On appeal by the defendant the lower appellate Court found that the pleadings and documents showed some dispute regarding title to the property and in view of a joint endorsement made by counsel on the appeal grounds before the appellate Court ; the matter may be remanded for amending the plaint, to decide the question of title and adducing further evidence', remanded the matter to the trial Court for fresh disposal. The plaintiff filed an appeal against the order of remand and contended that the consent of the Counsel was without authority and remand order was illegal.

Held : The lower appellate Court has not noticed the amended provisions of the Civil Procedure

Code about the manner in which a compromise should be recorded in a pending proceeding. There is no compliance with the provisions of Order 23, rule 3 because the endorsement tantamounts only to a compromise. The endorsement having not been based on a valid compromise entered into between the parties to the proceedings it was not a consent order, and therefore, the order of remand was illegal". In *Jamia Bai v.*

1(1975) 1 An. W.R. 28 : AIR 1975 And Prad 308

2(1956) A.L.T. 16 (S.N)

*Shankarlal*³, (both the learned Counsel placed reliance) It is held :-

"A Pleader (which includes all legal practitioners as indicated in Section 2(15), Civil Procedure Code), has the actual, though implied, authority of a Pleader to act by way of compromising a case in which he is engaged even without specific consent from his client subject ; undoubtedly to two overriding considerations :-

- (i) He must act in good faith and for the benefit of his client otherwise the power fails;
- (ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fail to the ground".

Sri N.V. Ranganadham, the learned Counsel for the respondent, relied on *C.S. Nayakam v. A.N. Menon*⁴, wherein the Full Bench of the Kerala High Court was concerned with the construction of the provisions enacted under Order 3, rule 4 of Civil Procedure Code and held :-

"An advocate in India has inherent authority to enter into a compromise on behalf of his client and the compromise so entered into would be binding on him. The implied authority is an actual authority and not an appendage to his officer or dignity added by the Court to the status of the advocate. The implied authority can however always be countermanded by the client. *Sourendranath Prasad v. Tarubala Dasi*⁵, and *Sheonandan Prasad v. Hakim Abdul⁶ Govindammal v. Marimuthu*⁷, and *Jiwibai v. Ramkumar*⁸, relied on Order 3, rule 7, Civil Procedure Code, does not make difference. The only requisite it lays down is a written authority of appointment. When that is given it leaves Counsel so appointed free to 'act', and draws no distinction between various kinds of acting".

Before analyzing the arguments advanced by both the Counsel, the provisions enacted in Order 23, rule 3 be set out;

"Order 23, rule 3 :

Where it is provided to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise. Inserted by Act (CIV of 1976), Section 74 (with effect from 1st February, 1977). [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall

order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith, substituted by Section 74, *ibid*, for so far as it relates to the suit (with effect from 1st February, 1977. [so far as it relates to the parties to the suit whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit".

³(1980) 2 S.C.C. 609 : (1976) 2 S.C.J. 5 : AIR 1975 SC 2202

⁴(1968) K.L.T. 1 : (1968) K.L.J. 62 : AIR 1968 Ker 213

⁵(1930) 58 M.L.J. 551 : 57 I.A. 133 : 31 L.W. 803 : AIR 1930 PC 158

⁶(1935) 62 I.A. 196 : 42 L.W. 154 : AIR 1935 PC 119

⁸ AIR 1947 Nag 17 (F.B)

⁷(1958) 2 M.L.J. 34 : 70 L.W. 818 : AIR 1959 Mad 7

Apart from the conspectus of the case law cited above, it is quite manifest from the provisions enacted under Order 23, rule 3 and in particular the words added to rule 3 by virtue of an amendment brought in by the Act CIV of 1976 with effect from 1st February, 1977 "in writing and signed by the parties", any lawful agreement or compromise before it is given effect to by the Court by way of a recording the memo, must be initiated by the parties and thereafter decree follows. In this case it is not in dispute that the parties have not signed the compromise memo. and therefore the point raised herein should not detain long for answering as it is quite mandatory specially so when the said words were added by way of an amendment in the year 1977. Therefore, the compromise memo. cannot be given effect to and violation or breach is quite apparent from the order made under appeal. Hence, it cannot be allowed to stand.

3. In the circumstances, the impugned order which is not in compliance with the provisions enacted under Order 23, rule 3, Civil Procedure Code, is set aside and the case is remitted back to the appellate Court directing it to re-number the appeal and hear the case after giving due opportunity and notice to both the parties.

4. The second appeal is accordingly allowed, but there shall be no order as to costs.

5. The lower appellate Court is, however, directed to, disposed of the appeal as expeditiously as possible, preferably within two months from the date of receipt of this order.

Appeal allowed.