

APHC010448612023



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3311]

TUESDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

C.R.P Nos.2284, 1677, 2506, 2531 & 2562/2023

Between:

S Anuradha

...PETITIONER

AND

Goluguri Lakshmi Narayana Reddy and Others

...RESPONDENT(S)

Counsel for the Petitioner:

- 1.UDAYA SRI MALLIDI
- 2.M RADHA KRISHNA

Counsel for the Respondent(S):

- 1.M.Radha Krishna
- 2.MANGENA SREE RAMA RAO

The Court made the following:

ORDER:

C.R.P.Nos.2284 of 2023, 2506 of 2023 and 2531 of 2023 are filed against the interlocutory orders passed in O.S.No.363 of 1998 on the file of the Court of the Principal Junior Civil Judge, Tadepalligudem.

2. Since Smt. M. Udaya Sri, the party respondent/plaintiff No.3 who is an advocate by profession is appearing for the revision petitioner/plaintiff No.2 as an advocate, a preliminary objection was taken by the other respondents that she cannot be permitted to appear as an advocate for the revision petitioner. She has not joined as a petitioner, nor has she contested the petition as a respondent. Therefore, a coordinate Bench of this Court, on 15.03.2024, passed the following order:

“The State Bar Council of Andhra Pradesh is impleaded in this matter as a party respondent to assist this Court with respect to the issue “whether the Advocate when she is a party to the suit proceedings having interest in the matter, can appear as a counsel for the other party/her sister who is also a party to the suit proceedings and can the said advocate appear as such even in the consequential proceedings of the suit like in C.R.P?

The learned counsel appearing for the respondents has a duty to bring it to the notice of the court with regard to the existing legal position on this aspect without any delicacy in these matters.

The learned counsel Mr. M. Radha Krishna is requested to act as *amicus curiae* in this matter to assist this Court with regard to the above said issue. For which, he readily accepted for the same. Hence, he is appointed as “*amicus curiae*” in this matter.

Both the counsels appearing in this C.R.P shall serve a set of papers and the other material to Mr. M. Radha Krishna-*amicus curiae*.

List on 12.04.2024.”

3. The learned *amicus curiae* as well as the counsel for the respondents argued on the same lines. It is contended that rules 9, 13 and 18 of the Bar Council of India Rules prohibit Smt. M. Udaya Sri from making appearance for the revision petitioner.

4. On the other hand, Smt. M. Udaya Sri contended that the aforesaid rules were misread and mis-represented, whereas rule 51 provides an exception to rule 9 by exempting heritable properties or business and the share therein does not fall in the scope of pecuniary interest within rule 9. It is also contended that rules 24 & 33 clearly cover the present case and that rule 13 does not apply to the present case. It is also contended that rule 18 is not relevant to the present context. She has also placed reliance on rule 51 to oppose the objection raised by the respondents. She further stated that she has no interest adverse to that of the revision petitioner as both are co-plaintiffs

and take the same stand and thus, there is no conflict of interest between them, though in the present batch of matters, the 2nd plaintiff alone is the petitioner, whereas she is shown as co-respondent.

5. *In reply*, the learned counsel for the respondents submitted that if at all Smt. M. Udaya Sri wants to make her appearance as party-in-person, this Court stipulated the procedure to grant permission for arguing her case in person, and thereby, if she wants to make her submissions in her capacity as respondent, she has to follow the said procedure and thereafter only, she can argue her case in person or else, she cannot represent the revision petitioner as an advocate in view of the submissions already made.

6. Since a preliminary objection was raised for appearance of Smt. M. Udaya Sri, advocate, who is a party/respondent and is appearing as an advocate for the petitioner, the matter is heard only on the following limited aspect:

“Whether the advocate when he is a party to the suit proceedings having interest in the matter can appear as a counsel for the other party/her sister who is also a party to the suit proceedings and/or the consequential proceedings of the suit, like revision?”

7. Before proceeding further, it is apt to reproduce the relevant provisions of the Bar Council of India Rules framed under the Advocates Act, 1961.

Rule 9:

An Advocate should not act or plead in any matter in which he is himself pecuniarily interested.

Rule 13:

An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardizing his client's interests.

Rule 18:

An Advocate shall not, at any time, be a party to fomenting of litigation.

Rule 24:

An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Rule 33:

An advocate who has at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings or acted for a party, shall not act, appear or plead for the opposite party.

Rule 51:

An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question paper and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.

8. Smt. M. Udaya Sri contends that there is no such bar/prohibition expressed in any statutory provision that bounds an advocate on State Bar Council rolls to plead & argue the petitioner's case on the ground that she was shown as a respondent. Her main contention is that the present case is altogether different and unprecedented, that she is not acting in a dual role as a GPA holder and a party-in-person for the petitioner, and that normally, in such situations, an advocate ceases to be a practitioner. It is her case that while acting as an advocate for the petitioner and since being another plaintiff sailing with the petitioner, she was shown as respondent/proforma party in the cause title and that

though she is representing two distinct parties, their interest is the same in the *lis*. She further stated that the Advocates Act, 1961 is enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Council and All India Bar Council prescribes standards of professional conduct, etiquettes and exercises disciplinary jurisdiction over the advocates, and that advocates are to be the only recognized class of persons entitled to practice law and in this regard, she placed reliance on the decision of this Court in **Madupu Harinarayana vs. The Learned 1st Additional District Judge**¹ which dealt with the right of advocate to practice.

“25. Section 2(a) of the Advocates Act defines, "advocate" to mean an advocate entered in any roll under the provisions of the said Act. The State Bar Council constituted under Section 3(a) of the Advocates Act is required by Section 17 to prepare and maintain a roll of advocates in which the names of all persons, who are eligible to enter as advocates, shall be entered.

11. As per rule 9 of the Bar Council of India rules, an advocate should not act or plead in any matter in which he is himself pecuniarily interested and as per rule 13, an advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is

¹ MANU/AP/0019/2011

a witness on a material question of fact, he should not continue to appear as an advocate if he can retire without jeopardizing his client's interests. The subject matter is a boundary dispute for declaration of title over the plaint schedule site in favour of the plaintiffs. As per rule 33 of the rules, an advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party. Though rule 33 in strict senso does not apply to the case on hand, as the counsel is sailing with the petitioner, the other rules cited above would not permit her to appear for the petitioner.

12. Smt. M. Udaya Sri, learned counsel for the petitioner relied on the following decisions:

- (i) **Jagtar Singh Vs. Pargat Singh & others**²;
- (ii) **T.C. Mathai Vs. Sessions Judge**³
- (iii) **Vidya Verma Vs. Shiv Narain**⁴
- (iv) **Major K. Mathews (Rtd.) Vs. Registrar General, High Court of Judicature at Madras & Others**⁵
- (v) **M.C.S.Barna Vs. C.B. Ramamurthy**⁶
- (vi) **Salil Dutta Vs. T.M and M.C. Private Limited**⁷

² AIR ONLINE 1996 SC 41

³ (1999) 3 SCC 614

⁴ AIR 1956 SC 108

⁵ AIR 2003 Madras 411

⁶ 2002 CrI. L.J 2859

⁷ (1993) 2 SCC 165

13. The decision in **Jagtar Singh** (2nd supra) dealt with the power of the counsel under Order III, rule 4 CPC and the issue therein is whether the legal practitioner has got any implied authority to compromise a suit. In the decision in **T.C. Mathai** (3rd supra), the issue is in relation to appointment of a power of attorney holder to be preceded by the grant of permission of the Court. The decision in **Vidya Verma** (4th supra) also dealt with the locus of the power of attorney to present a petition. In **Major K. Mathews (Rtd.)** (5th supra), the petitioner therein was appearing as party-in-person and he filed a writ petition to declare that an ordinary member of the public like him who is conducting a case in the capacity of party-in-person is entitled to be seated in the Court and to make use of the table available in the Court room. In the decision in **M.C.S.Barna** (6th supra), the petitioner therein preferred to argue his own case by wearing robes and an identical question came up for consideration before the Karnataka High Court and the Court while considering the submissions made by the petitioner therein pointed out that the Lordships of the then Mysore High Court considering the provisions of the Advocates Act and by referring to the decision of the Supreme Court in **Salil Dutta Vs. T.M and M.C. Private Limited** (7 supra), held that advocate is the agent of the party and his acts and statements are to be made within the authority given to him.

14. The facts of the present case altogether stand on a different footing. They don't help to support the arguments advanced on the point involved in the present case.

15. The standards of professional conduct and etiquettes cannot allow Smt. M. Udaya Sri to play dual role, viz., to appear on behalf of the petitioner apart from she herself being a party respondent. A lawyer, being party to the proceeding can appear and defend the proceeding himself in his own capacity as party in person. As rightly contended by the learned counsel for the respondents, if at all Smt. M. Udaya Sri wishes to make her appearance as party-in-person, this Court stipulated a procedure in Chapter III A, Rule 33 of the High Court Appellate Side Rules for according permission to represent her case in person, and thereby, if she wants to make her submissions in her capacity as respondent/party-in-person, she has to follow the said procedure, and thereafter only, she can argue her case in person, however, she cannot represent the revision petitioner as an advocate appearing on behalf of the petitioner.

17. In the light of the above discussion, the objection for appearance of Smt. M. Udaya Sri, who is a party/respondent, as a counsel for the petitioner is upheld.

B. S. BHANUMATHI, J

05-11-2024
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