

A IL AND FS ENGINEERING AND CONSTRUCTIONS  
COMPANY LTD.

v.

M/S. BHARGAVARAMA CONSTRUCTIONS & ORS.

B (Civil Appeal No. 7639 of 2021)  
DECEMBER 16, 2021

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

- Code of Civil Procedure, 1908: s.96 and Or.XLI r.31 – Suit for recovery filed by appellant-original plaintiff against respondent no.1 and 2-original defendants – Trial court decreed the suit – Respondent no.1 and 2-original defendants filed appeal before High Court – In the said appeal, respondent no.1 and 2-original defendants filed a miscellaneous application seeking impleadment of AP Transco as party respondents to the first appeal – High Court without assigning any reasons as to why the proposed respondents should be impleaded in the first appeal, allowed the said application and directed to implead A.P. Transco as party to the appeal as well as to the original suit – Not only that, while allowing the said application for impleadment, thereafter, without further entering into the merits and/or expressing anything on merits and solely on the ground that as the application for impleadment was allowed, the High Court set aside the judgment passed by the trial court and remanded the matter to the trial court with a direction to the trial court to decide the suit afresh after affording an opportunity to the impleaded party to lead evidence in the suit – On appeal, held: This is not the manner in which the High Court should deal with the first appeal arising out of the judgment and decree passed by the trial court – Nothing was observed and/or decided on merits – Even no reasoning was given why A.P. Transco was required to be impleaded as a party to the appeal – High Court not only directed to implead the A.P. Transco as party to the appeal but has also directed to implead A.P. Transco in the original suit also – The suit was filed by appellant-original plaintiff and as per the settled proposition of law, the plaintiff is the dominus litis – No issue was raised before the trial court on non-joinder of parties – Therefore, as such whether in the appeal preferred by the original defendants against the*

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*judgment and decree passed by the trial court, such an application would be maintainable or not, that itself is a question, which was required to be first considered and decided by the High Court – Order of High Court set aside and matter remitted to High Court to decide the impleadment application and first appeal in accordance with law and its own merits.*

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**Allowing the appeal and remitting the matter to High Court,  
the Court**

**HELD :** 1. Nothing has been observed and/or decided on merits. Even no reasoning has been given why the A.P. Transco was required to be impleaded as a party to the appeal. The plaintiff is the dominus litis. No issue was raised before the trial court on non-joinder of parties. Therefore, as such whether in the appeal preferred by the original defendants against the judgment and decree passed by the trial court, such an application would be maintainable or not, that itself is a question, which was required to be first considered and decided by the High Court. [Para 5][487-F-H]

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2. Even otherwise, assuming that the application to implead the A.P. Transco as a party to the appeal on an application filed by the respondent Nos.1 and 2 - original defendants was maintainable and was to be allowed is not discussed. There cannot be an automatic allowing of the appeal and quashing and setting aside the judgment and decree passed by the trial court without any further entering into the merits of the appeal and/or expressing anything on merits in the appeal on an impleadment of a party in an appeal. How to deal with and decide a first appeal under Section 96 and Order XLI Rule 31 of the CPC has been dealt with by this Court in a catena of decisions. As observed and held by this Court in the case of *K. Karuppuraj vs. M. Ganesan* “without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the First Appellate Court cannot dispose of the first appeal under Section 96 CPC and that too without raising the points for determination as provided under Order XLI Rule 31 CPC.” The order passed by the High Court impleading A.P. Transco as party to the appeal as well as to the original suit is set aside. Consequently, impugned

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- A **judgment and order passed by the High Court quashing and setting aside the judgment and decree passed by the trial court is also set aside. [Paras 6, 7][488-A-F]**

*K. Karuppuraj v. M. Ganesan* 2021(10) JT 58 – relied on

- B **Case Law Reference**

<b>2021(10) JT 58</b>	<b>relied on</b>	<b>Para 6</b>
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CIVIL APPELLATE JURISDICTION : Civil Appeal No.7639  
of 2021

- C From the Judgment and Order dated 11.09.2017 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in C.C.A. No.99 of 2017.

R. V. Yogesh, Vishnu Shankar Jain, Advs. for the Appellant.

- D Ms. Mahalakshmi Pavani, Sr. Adv., G. Balaji, Advs. for the Respondents.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

- E 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.09.2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh passed in CCCA No.99 of 2017 by which the High Court has allowed the said appeal and has quashed and set aside the judgment and decree passed by the trial court and has remanded thematter to the trial court,  
F the original plaintiff has preferred the present appeal.

- G 2. That the appellant herein – original plaintiff filed a suit for recovery of Rs.47,90,088/-, along with interest of 18% from the respondent Nos. 1 and 2 herein original defendants. The said suit came to be decreed by the trial court. The judgment and decree passed by the trial court came to be challenged by the original defendants – respondent Nos. 1 and 2 before the High Court by way of CCCA No. 99 of 2017. In the said appeal, respondent Nos. 1 and 2 herein – original defendants moved a miscellaneous application seeking impleadment of A.P. Transco and MAYTAS Infra Pvt. Ltd. as party respondents to the first appeal on the ground that the subject work, which was given to the defendant No.1 by

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the appellant, was originally given by A.P. Transco to the appellant. The High Court by the impugned order without assigning any reasons as to why the proposed respondents have to be impleaded in the first appeal, allowed the said application and directed to implead A.P. Transco as party to the appeal as well as to the original suit. Not only that, while allowing the said application for impleadment, thereafter, without further entering into the merits and/or expressing anything on merits and solely on the ground that as the application for impleadment was allowed, the High Court set aside the judgment and decree passed by the trial court and remanded the matter to the trial court with a direction to the trial court to decide the suit afresh after affording an opportunity to the impleaded party to lead evidence in the suit.

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3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original plaintiff has preferred the present appeal.

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4. We have heard the learned Advocates appearing for the respective parties at length.

5. We have gone through the impugned order passed by the High Court. By the impugned judgment and order, the High Court has set aside the judgment and decree passed by the trial court, which was in favour of the appellant herein – original plaintiff, solely on the ground that the application for impleadment filed by the respondent Nos. 1 and 2 – original defendants – appellants before the High Court to implead A.P. Transco has been allowed and, therefore, the judgment and decree is set aside. This is not the manner in which the High Court was required to deal with the first appeal arising out of the judgment and decree passed by the trial court. Nothing has been observed and/or decided on merits. Even no reasoning has been given why the A.P. Transco was required to be impleaded as a party to the appeal. The High Court has not only directed to implead the A.P. Transco as party to the appeal but has also directed to implead the A.P. Transco in the original suit also. It is required to be noted that as such the suit was filed by the appellant – original plaintiff and as per the settled proposition of law, the plaintiff is the *dominus litis*. No issue was raised before the trial court on non-joinder of parties. Therefore, as such whether in the appeal preferred by the original defendants against the judgment and decree passed by the trial court, such an application would be maintainable or not, that itself is a question, which was required to be first considered and decided by the High Court.

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- A        6. Even otherwise, assuming that the application to implead the A.P. Transco as a party to the appeal on an application filed by the respondent Nos. 1 and 2 – original defendants was maintainable and was to be allowed is not discussed. There cannot be an automatic allowing of the appeal and quashing and setting aside the judgment and decree passed by the trial court without any further entering into the merits of the appeal and/or expressing anything on merits in the appeal on an impleadment of a party in an appeal. We strongly disapprove the manner in which the High Court has disposed of the appeal. How to deal with and decide a first appeal under Section 96 and Order XLI Rule 31 of the CPC has been dealt with by this Court in a catena of decisions. As observed and held by this Court in the case of **K. Karuppuraj vs. M. Ganesan, Civil Appeal Nos.6014-6015 of 2021** decided on 04.10.2021 "without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the First Appellate Court cannot dispose of the first appeal under Section 96 CPC and that too without raising the points for determination as provided under Order XLI Rule 31 CPC."

- B        7. In view of the above discussion and for the reasons stated above, the present appeal is allowed. We set aside the order passed by the High Court in CCCAMP No. 246 of 2017 impleading the A.P. Transco as party to the appeal as well as to the original suit. Consequently, we also set aside the impugned judgment and order passed by the High Court quashing and setting aside the judgment and decree passed by the trial court. We remand the matter to the High Court to decide and dispose of the CCCAMP No. 246 of 2017 and the first appeal in accordance with law and on its own merits. While deciding the CCCAMP No. 246 of 2017 filed by the original appellants – respondent Nos. 1 and 2 herein – original defendants to implead the A.P. Transco in the appeal as well as the original suit. The High Court shall consider whether such an application in the appeal preferred by the original defendants would be maintainable or not and if so under which provision of Code of Civil Procedure it would be maintainable.

- C        Present Appeal is Allowed accordingly with exemplary cost, which is quantified at Rs.25,000/- to be deposited by respondent Nos. 1 and 2 herein with the State Legal Services Authority of the concerned High Court within a period of four weeks from today.