THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.4771 & 4772 of 2011

COMMON ORDER:

Heard Sri Bankatlal Mandhani, learned counsel for the petitioner in both the Revision Petitions and Sri Muralinarayan Bung, learned counsel for the 1st respondent in both the Revision Petitions.

2. Petitioner in these Revision Petitions is the landlord of the subject premises in Nallakunta which was leased to 1st respondent. O.S.No.393 of 1988 filed by the petitioner for eviction of the respondent therefrom was decreed on 29-01-1999. Then I.A.No.775 of 1999 was filed for fixation of mesne profits by the petitioner.

3. In the said I.A., the petitioner-landlord had filed I.A.No.941 of 2011 under Order 16 Rule 1 read with Order 16 Rule 5 CPC to summon the Tax Inspector of Circle No.IX of Greater Hyderabad Municipal Corporation Act, 1955 to bring Rateable Value Register for the year 1999-2000 prepared by the Municipal Corporation of Hyderabad and also I.A.No.989 of 2011 to receive a document dt.18-08-2011 submitted by the petitioner before Greater Hyderabad Municipal Corporation (GHMC), Circle-III seeking certified copy of fixation of ratable value of Circle III (old) for the purpose of enquiry.

4. By separate orders dt.08-09-2011, both the I.As. have been dismissed.

5. Challenging the same, these Revisions are filed.

6. The Court below held in I.A.No.941 of 2011 that the

petitioner had not filed any piece of paper in support of his claims for ascertaining of mesne profits and he has filed I.A.No.941 of 2011 to summon the Tax Inspector of GHMC without filing any list of witnesses as required under Order 16 CPC. It also stated that the petitioner, without filing his tax assessment order, had filed the application to summon the Tax Inspector for vast area instead of confining himself to the suit schedule property. It therefore held that the application is frivolous and was filed only to drag on the matter and dismissed it.

7. The Court below held in I.A.No.989 of 2011 that the petitioner, in the affidavit filed in support of the said I.A., did not disclose any cause or reason for not filing the document dt.18-09-2011 submitted by him before GHMC, Circle-III, previously along with I.A.No.941 of 2011. So it is liable to be dismissed too.

8. Learned counsel for the petitioner contended that since the enquiry into mesne profits is to be conducted, it is necessary to examine the Tax Inspector of Circle-IX, GHMC, to prove his case. He further contended that under Order VII Rule 14 CPC, it is not necessary for him to give any reasons for the delay in filing the documents and that the Court below had erred in holding that the petitioner ought to have disclosed reasons for not filing the document earlier.

9. Learned counsel for 1st respondent refuted these contentions. He contended that the reasons given by the Court below for dismissing both I.As are proper and do not warrant any interference by this Court in exercise of its Revisional jurisdiction under Article 227 of the Constitution of India.

10. Admittedly, the petitioner is a landlord and he had obtained a decree for eviction against 1st respondent in the year 1999. It is stated by both sides that the decree of the trial Court has also been confirmed in an appeal, by this Court. After the decree, petitioner had filed I.A.No.775 of 1999 under Order 20 Rule 12 CPC for ascertaining mesne profits of the plaint schedule property. As observed by the trial Court in its order dt.08-09-2011 in I.A.No.941 of 2011, the petitioner had previously filed I.A.No.85 of 2011 to appoint an Advocate Commissioner for ascertaining mesne profits and the same was dismissed on 08-06-2011. He then changed his counsel who filed an application under Order 16 Rules 1 and 2 CPC to summon 18 witnesses. This was allowed on 24-06-2011, but he did not pay any process for service of summons on these witnesses. Again he filed I.A.No.628 of 2011 to issue fresh summons to two witnesses and it was allowed on 12-07-2011. Thereafter, P.Ws.2 and 3 were examined on his behalf.

11. Later, I.A.No.941 of 2011 was filed to summon the Tax Inspector of Circle IX, GHMC. Petitioner has not filed his own tax assessment order in support of the subject property. Therefore, his insistence that the Court should summon the Tax Inspector along with the ratable value register for the year 1999-2000 for Circle-IX consisting of the vast area, is clearly frivolous and is clearly intended to drag on the matter. In any event, the opinion of the Tax Inspector about the rental value could not have much bearing since it is the admitted legal position that as of now, even the agreed rental amount between the landlord and tenant is not relevant for determination of municipal tax, and that, Circle wise in the GHMC area, the Corporation has now fixed the

annual rental value to be taken into account for the purpose of property tax assessment. Therefore, I find no error in the Order dt.08-09-2011 in I.A.No.941 of 2011 in I.A.No.775 of 1998 in O.S.No.395 of 1989.

12. Coming to I.A.No.989 of 2011, I do not agree with the contention of the learned counsel for the petitioner that no reasons need be assigned for the delay for production of the document by the petitioner. Order 7 Rule 14 (3) CPC states:

> ***"Order VII Rule 14 - Production of document on which plaintiff sues or relies***
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> *(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*
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> *(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*
>
> *[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]*
>
> *(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.]"*

13. The above provision places a restriction on the right of the plaintiff/petitioner to produce a document, which was not filed by him at the time when the plaint/application is presented, in that if he had not filed it at the time when the plaint was presented or

the I.A. was filed, without obtaining leave of the Court, the same cannot be received in evidence. This provision as well as Order VIII Rule 1-A (3) which places a similar restriction on the right of the defendant/respondent to produce document are intended to restrict the right of the parties to produce documents during trial. If a document is not filed at the time when the plaint/written statement/I.A. is filed, unless a good reason is shown for not filing it, it cannot be received in evidence at a later point of time. It is not disputed that in I.A.No.989 of 2011, nothing is mentioned why it was not filed earlier at the time when I.A.No.941 of 2011 is filed.

14. Therefore, I am of the opinion that the Court below was right in dismissing I.A.No.989 of 2011 in I.A.No.775 of 1999 in O.S.No.393 of 1988.

15. Therefore, I do not find any merit in both the Revision Petitions and the same are accordingly dismissed. No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-06-2015

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