

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.915 of 2011

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.02.2011 in I.A.No.1220 of 2010 in O.S.No.857 of 2007 on the file of II Additional Senior Civil Judge, R.R. District at L.B. Nagar, Hyderabad.

2. During the course of evidence of D.W.1, the petitioner/1st defendant sought to mark two documents, i.e., an agreement dt.06.01.1994 and an acknowledgment dt.26.03.1995, both of which are said to have been signed by one U.V.R. Subba Rao.

3. An application I.A.No.1220 of 2010 was filed invoking Order 8 Rule 1A (3) C.P.C. pleading that these documents had been misplaced and had now been located.

4. The Court dismissed the application on two grounds, firstly, that the document requires registration and is inadequately stamped and that there was no pleading in regard to these documents in the written statement.

5. The counsel for petitioner contended that under the Registration Act, 1908 there is no provision requiring an agreement of this nature to be registered.

6. The counsel for respondents has not been able to point out any provision in the Registration Act, 1908 requiring registration of an agreement of this nature which is in fact a service agreement.

7. As regards the objection as to inadequate stamp duty is concerned, there is no discussion in the order of trial court as to which article of the Indian Stamp Act, 1899 is attracted, and in what way is the document inadequately stamped. Even if the document is inadequately stamped, a party, if he is willing to pay the deficit stamp duty, ought to be allowed to pay the deficit stamp duty and get the document marked in evidence. Therefore, this objection of the trial court cannot be sustained and subject to the trial court determining the correct stamp duty and penalty payable by petitioner, and the petitioner paying the same within the time specified by the trial court, the document in question can be received in evidence.

8. The other ground on which the trial court dismissed the petition is that without taking any pleading in the written statement, these documents were filed by petitioner.

9. Evidence, it is settled law, need not be pleaded. Therefore, the insistence of the trial court that there must be a reference to the documentary evidence sought to be

filed by a party in the trial court, cannot be said to be a valid reason.

10. The counsel for petitioner relied on the decision in **Syed and Company and others v. State of Jammu & Kashmir and others**^[1] and contended that no evidence can be let in without a pleading. In the said case, an application under Order 41 Rule 27 C.P.C. had been filed in the first appeal pending before the High Court and it was dismissed holding that without a plea, evidence cannot be let in. The Supreme Court upheld the said finding.

11. There is no quarrel with the said proposition. According to petitioner, the reason why these two documents are required are set out in para.7 of written statement, although there is no specific reference to these documents therein.

12. Anyway, this is a matter to be gone into in the trial, and since in the present case the petitioner has not sought to file these documents in the first appeal, but in the trial court itself, the above judgment has no application.

13. Having regard to the above reasons, the impugned order cannot be sustained and it is accordingly set aside.

14. Therefore, the Civil Revision Petition is allowed

and I.A.No.1220 of 2010 is also allowed, subject to petitioner paying the deficit stamp duty and penalty payable on the documents which the petitioner seeks to mark after they are determined by the Court below. No order as to costs.

15. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.09.2015

Ndr/*

[\[1\]](#) 1995 Supp (4) SCC 422