

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.1427 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Principal Junior Civil Judge, Anakapalle in I.A. No.818 of 2014 in O.S. No.37 of 2005 dated 13.02.2015.

The petitioner herein is the plaintiff in O.S. No.37 of 2005, and the petitioner in I.A. No.818 of 2014. The said I.A. was filed under Order VII Rule 14(3) CPC to receive two documents i.e., revenue tax receipt dated 26.06.1991, and the certificate of compensation issued by the A.P. State Electricity Board. Before the Court below, the petitioner herein contended that these two documents related to his vendor, and could not be furnished earlier as they were available with his vendors. He undertook to close the evidence within one week by examining one or two witnesses on his side. A counter-affidavit was filed thereto contending that the petitioner had taken sufficient time to adduce evidence; he had later reported no further evidence on his side; thereafter the matter was posted for arguments; it was only after taking several adjournments that the petitioner had filed this petition, at a belated stage, to protract litigation; and there were no bonafides in the application.

In the order under revision, the Court below held that the documents now sought to be produced by the petitioner-plaintiff related to a period prior to the date of filing of the suit; the suit as filed was for permanent injunction; it was for the petitioner to show his possession over the schedule property; the title of the property was incidental; there was no pleading with respect to the present documents; in the absence of any reference thereto in the pleadings, the documents cannot be received at the belated stage under Order VII

Rule 14(3) CPC as held by the High Court in **Bolla Ajay Babu v. Nalla AManikyamma**^[1]; and, if the documents were received at this belated stage, it would cause prejudice to the case of the other side, as they were not given an opportunity to put forth their defence, with respect to the documents now sought to be produced, in their pleadings. The Court below found no bonafides or merits in the petition.

Sri P.V. Rama Raju, Learned Counsel for the petitioner, would place reliance on the judgments of this Court in **Bada Bodaiah v. Bada Lingaswamy**^[2]; **G.P.R. Housing (P) Ltd., Hyderabad v. C. Prithvi Raj Reddy**^[3] and **G. Sukender Reddy v. M. Pullaiah**^[4], in support of his submission that, as these documents are necessary for the effective adjudication of the suit, the Court below erred in not permitting the petitioner to have these documents marked through witnesses; the averments in the plaint cannot be read as statutes; there is no bar on an application, filed under Order VII Rule 14(3) CPC, being entertained even at a belated stage; the petitioner had handed over these documents to their Counsel who died later; as these documents were not available, they had proceeded with the matter; it was only much later, at the suggestion of the present Counsel, that they had verified in the office of the deceased Counsel, and had obtained the said documents; and the Court below had erred in not granting them an opportunity to have these documents marked through witnesses.

On the other hand, Mrs. T.V. Sridevi, Learned Counsel for the respondent, would submit that there were no bonafides in the petition; the suit related to the year 2005; after evidence on both sides had been adduced; at the stage of arguments, the petitioner has now chosen to file this application to reopen the matter; his endeavour is only to drag on proceedings before the Court below; and the Court below was justified in refusing to entertain the request for having these

documents marked.

In **Bolla Ajay Babu**, this Court held:-

“.....So far as ground No.I is concerned, it is not necessary that the petitioner should only obtain the certified copies of the documents and it is no ground at all to reject the application, but **the Court below was right in holding that the documents cannot be received in evidence by granting leave in the absence of any reference about the same in the pleadings. This Court is also of the opinion that in the absence of any reference to the documents, which are sought to be received, in the pleadings, the petitioner cannot seek leave of the Court to receive such documents, at the belated stage, when the suit is coming up for further evidence on the side of the plaintiff.** Further the judgment relied on by the learned Counsel for the petitioner is also of no help to the petitioner as in the said judgment, the documents, which were sought to be marked, were referred to in the plaint. In the said judgment, it was held that certified copies can be received when they are referred to in the plaint and their authenticity is not disputed. In any event, having regard to the findings recorded by the Court below for rejection of the applications, I do not find any illegality in the orders impugned so as to interfere with the same in exercise of powers under Article 227 of the Constitution of India.....” (emphasis supplied)

The law declared by this Court, in **Bolla Ajay Babu**¹, is that, in the absence of any plea in the plaint, no document can be received in evidence in support of a non-existent plea.

In **Bada Bodaiah**², this Court opined:-

“.....A reading of Rule 1 of Order XIII alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. The Court has no power to receive the documents produced subsequently. Further, sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. **Order XIII Rule 1 and Order VII Rule 14 (3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage.** Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect. With leave of Court, which is condition precedent under sub-rule (3) of Rule 4 of Order VII read with sub-rule (1) of Order 13 to receive the documents, documents can be produced at the time of trial. **But Order VII Rule 14(3) being an exception to the rule in Order VII Rule 14(1) as well as Order XII Rule 1(1)(2), the power to grant must be exercised in rare cases and not in a routine manner.....**” (emphasis supplied)

It is evident that, while failure to mention the documents in the plaint may not affect the power of the Court to grant leave to produce

the documents at a subsequent stage, the power under Order VII Rule 14(3) CPC, being an exception to Order VII Rule 14(1), must be exercised in rare cases, and not in routine manner. It is only if the petitioner is able to show that these documents are relevant, and necessitate being marked, can the Court exercise discretion to permit marking of these documents even if it be at a belated stage.

In **G.P.R. Housing (P) Ltd., Hyderabad**, this Court observed:-

“.....Order VII Rule 14 of the Civil Procedure Code, 1908 enjoins upon the plaintiff to enter all documents, upon which he relies in a list, and produce them in the Court when the plaint is presented. **However, Sub -Rule (3) thereof vests power in the Court to grant leave to file the documents at a later stage but such power has to be exercised only upon the party satisfying the Court that, for convincing reasons, those documents could not be filed earlier. There can be no hard and fast rule for the Court to exercise discretion while granting leave under Sub Rule (3) of Rule 14. The Courts must always exercise sound discretion while dealing with the applications for leave to file additional material. Mere delay by itself would not constitute the sole ground for rejecting the leave. If the facts and circumstances of the case justify non -filing of the documents at an earlier stage, the Court will not reject the application for leave only on the ground of delay. In the ultimate analysis, the endeavour of the Court must always be to decide the real controversy in issue. If the material sought to be produced has relevance on the issues involved in the suit and helps the Court to determine the issues properly and effectually, the Court must exercise its discretion in favour of allowing such evidence.**

In the instant case, the material sought to be filed by the petitioner as additional evidence is very much relevant for deciding the real controversy involved in the suit. Therefore, the Court below has committed a serious jurisdictional error in dismissing the applications filed by the petitioner.....” (emphasis supplied)

It is thus clear that, while mere delay may not constitute a ground for refusing to grant leave to file the documents, and the endeavour of the Court must always be to decide the real controversy in issue, it is for the person, who seeks to have the documents produced by him marked as exhibits, to show that these documents are relevant for deciding the real controversy involved in this suit.

In **G. Sukender Reddy**, this Court held:-

“On the survey of the above decisions, the following points are deduced:

- i) A list of documents should be filed along with the plaint or written statement and if the parties want to file document subsequently, they have to take leave of the Court.
- ii) The documents, which are marked, does not dispense with their proof.
- iii) There is a difference between marking of a document and admitting the same in evidence.
- iv) As held by the Supreme Court in **R.V.Venkatachala Gounder** (supra), the objection that the document which is sought to be proved is itself inadmissible in evidence can be raised even at a later stage or even in appeal or revision. When the objection relates to mode of proof alleging the same to be irregular or insufficient, the objection should be taken before the evidence is tendered and cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This later objection is an objection relating to the irregularity or insufficiency.

v) In order to avoid delay in the trial of the suit, the Court can tentatively mark a document and examine its admissibility and the objection raised to it along with the pronouncement of judgment.

At this stage, it is relevant to extract the passage from the judgment of Vivian Bose, J. in **Sangram Singh v. Election Tribunal** [18](#)] : (AIR p.429, para 16)

"16. Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

(emphasis supplied)

Since, in the instant case, the order of the trial Court speaks of receiving of the document only without passing a judicial order on its admissibility, the defendant can as well raise his objection as to its admissibility at a later stage, and the trial Court shall consider the same and pass appropriate orders thereon. The objection relating to relevancy of the document need not be decided at the time of marking the document. It relates to admissibility and can be raised by the defendant at a later stage and should be decided by the Court at the time of pronouncement of judgment. Though the plaintiff has not sought leave of the Court while filing the list of documents on 30.04.2013, subsequent to the filing of the plaint, this Court considers the said defect as an irregularity and not an illegality. Since Exs.A6 to A10 were already marked from out of the list of documents, it is assumed that the trial Court has permitted such filing of the documents. However, the trial Court, hereafter, should scrupulously follow the provisions of CPC while receiving and marking the documents....."

Marking of documents tentatively, and its admissibility being examined later, was held permissible in the aforesaid judgment.

The petitioner claims that these two documents are relevant and necessary for an effective adjudication of the dispute in the suit. The suit was filed seeking permanent injunction. The allegation, in the plaint, is that the petitioner was sought to be dispossessed from the plaint schedule property in the year 2005. It is his case that he had purchased the subject property, by way of a registered sale deed executed in his favour, on 03.08.2004 for a total extent of Ac.2.87 cts of land. In the affidavit filed in support of the I.A, the petitioner has not stated as to how these documents are relevant. All that is stated therein is that his vendor had paid revenue tax, and the APSEB had granted compensation to one of his vendors in relation to the suit schedule property. While the petitioner has sought to justify his failure to submit these two documents earlier, nothing is stated in the affidavit as to how these two documents are relevant for adjudication of the dispute in the Suit. Even before this Court, Learned Counsel for the

petitioner has not been able to show how these documents are relevant, and why marking of these documents is essential for an effective adjudication of the suit.

As the petitioner has not been able to show how these two documents are relevant for an effective adjudication, I see no reason to exercise discretion under Article 227 of the Constitution of India to interfere with the order passed by the Court below. The revision fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

Date: 17.07.2015

MRKR

[\[1\]](#) 2010(1) ALD 163

[\[2\]](#) 2003 (1) An.W.R. 131 (A.P)

[\[3\]](#) 2014 (6) ALD 291

[\[4\]](#) 2015 (3) ALT 575