

THE HONOURABLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.6596 of 2012

ORDER:

This Revision is preferred against order dated 08-11-2012 in I.A.No.94 of 2012 in O.S.No.10 of 2006, whereunder trial Court refused to grant leave under Order VIII Rule 1 (A) (3) CPC for receiving documents. Revision petitioners herein are the defendants in the above referred suit and they filed certain documents with a request to receive them by granting leave. One of the defendant filed affidavit in support of the petition and according to affidavit, these documents are misplaced in their house and traced a couple of days prior to filing of petition and those documents are material documents to prove their defence.

Plaintiff opposed the application on the ground that no specific reasons are assigned like when they were mis-placed and on what date, they were traced, therefore, on such vague reason leave cannot be granted and the trial Court accepted the objection of the plaintiff and dismissed the application. Aggrieved by which, present Revision is preferred.

Respondent refused to receive the notice and therefore, it is treated as deemed service.

Heard arguments of Advocate for the Revision petitioners.

It is submitted that suit is filed for injunction and defendant specifically pleaded on the date of alleged cause of action, petitioner No.1 was on duty in his office and to prove that he obtained a certificate from his employer and that document he wants to prove through him and besides that some other

documents for digging borewell and estimate for LT system etc., are also filed, but the trial Court ignoring the reason stated in the affidavit dismissed the application and the same has to be set aside.

Now the point that would arise for my consideration is:

“Whether the order of the trial Court is legal, correct and proper?”

I have perused the material papers including the affidavit filed in support of I.A.No.94 of 2012. I have also perused the impugned order dated 08-11-2012. Trial Court by taking aid of judgment of this Court in **Union of India (UOI), Ministry of Finance vs. Y.S.Hi-Tech Secure Print Pvt. Ltd**^[1] dismissed the application. In that decision, the petitioner therein failed to mention any reasons as to in whose possession those documents were at the time of filing of written statement and the reasons for withholding documents from being filed into the Court along with written statement. In this case, Revision petitioners specifically stated on oath that these documents are mis-placed in their house and they are traced couple of days prior to filing of the petition and that statement of the deponent remained un-challenged. Because in counter affidavit, only objection taken is specific dates are not given and no where correctness of missing of documents or tracing of documents is disputed. Therefore, considering the reasons stated in the affidavit, I feel that the same is convincing and the Court below ought to have considered the same. These documents are filed before witness entering into box therefore no prejudice would be caused to other side, as they would have the opportunity of cross-examine

the witness with reference to these documents. Considering the same, I am of the view that trial Court committed error in not considering the reason assigned by the Revision petitioners for not filing these documents along with the written statement. Therefore, the impugned order dated 08-11-2012 is set aside.

Accordingly, the Civil Revision Petition is allowed directing the Court below to receive these documents and proceed with the trial. However, plaintiff is at liberty to cross-examine the witness with reference to these documents.

Miscellaneous petitions, if any pending, in this petition shall stand closed.

S. RAVI KUMAR, J

02-02-2015

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[\[1\]](#) 2010 (6) ALD 430