

***THE HON'BLE SHRI JUSTICE SANJAY KUMAR**

CIVIL REVISION PETITION NO.904 OF 2015

% DATED 20TH MARCH, 2015

Between:

Pujari Narsaiah

... Petitioner

Vs.

\$ Modem Sudhaker, Hasanparthy
Mandal, Warangal District, and another.

... Respondents

<GIST:

>HEAD NOTE:

! Counsel for Petitioner : Sri Venkateshwar Varanasi

^ Counsel for Respondents : --

? CASES REFERRED:

1. 2010 (4) ALD 273
2. 2011 (4) ALD 775

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.904 OF 2015

ORDER

By order dated 20.11.2014 passed in S.R.No.6227 of 2014 in un-registered O.S.No.Nil of 2014, the learned Principal District Judge, Warangal, directed the plaintiff therein to file the original cheque dated 22.09.2014 issued in his favour by the second defendant along with an authenticated copy of the agreement dated 22.07.2014 for further scrutiny, failing which the plaint stood rejected. Aggrieved, the plaintiff is before this Court under Article 227 of the Constitution.

As the order under revision was passed by the trial Court even before registration of the suit, this Court does not deem it necessary to put the respondents/defendants on notice in this case.

The subject suit was filed by the plaintiff for recovery of a sum of Rs.22,13,000/- from the defendants with interest and costs. His claim was based on an alleged agreement of sale dated 08.12.2012, whereunder he claimed to have paid them advances, and the cheque dated 22.09.2014, allegedly issued by the second defendant towards part-refund. The office appears to have raised an objection requiring the plaintiff to file the original cheque. Arguments were advanced thereon before the trial Court leading to the order under revision.

It is not in dispute that the plaintiff filed photocopies of the subject cheque and agreement dated 22.07.2014 along with the plaint. The trial Court however observed that it would have been more appropriate for the plaintiff to indicate the whereabouts of the originals of these

documents in the plaint and explain his difficulty in producing them. The trial Court concluded that return of the plaint in these circumstances could not be taken to be rejection thereof and that the objection raised by the office could not be deemed improper. The trial Court therefore held that the plaintiff should produce the original cheque dated 22.09.2014 and an authenticated copy of the agreement dated 22.07.2014, failing which the plaint was liable to be rejected.

It is clear from the order under revision that the trial Court did not treat the case on hand as one relating to rejection of the plaint under Order 7 Rule 11 CPC. The trial Court was however of the opinion that failure to comply with the office objection would still entail rejection of the plaint. The lapse of the plaintiff, according to the trial Court, was that he failed to file certain documents along with the plaint and he did not explain as to where their originals were. Reliance was placed by the trial Court on Rule 22 of the Andhra Pradesh Civil Rules of Practice and Circular Orders 1980 (for brevity, 'the Civil Rules of Practice'). However, the Civil Rules of Practice would always be subject to the Code of Civil Procedure, 1908. It is in this regard that Order 7 Rule 14 CPC and Order 13 Rule 1 CPC, which were not considered by the trial Court, would gain relevance. Order 7 Rule 14 CPC, to the extent relevant, reads as under:

**“14. Production of document on which plaintiff sues or
relies:--**

- (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.
- (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.

.....”

Thus, under Order 7 Rule 14(1) CPC, the plaintiff is only required to produce the originals of the documents which are in his possession or power at the time of presentation of the plaint. Order 7 Rule 14(2) CPC makes it clear that, wherever possible, the plaintiff shall state in his plaint as to in whose possession or power any document, which ought to have been produced by him and has not been so produced, is. The duty cast upon the plaintiff is therefore not in absolute terms. Further, Order 7 Rule 14(3) CPC makes it clear that when the plaintiff fails to produce a document which ought to have been produced by him along with the plaint or he fails to enter such document in the list annexed to the plaint, he shall not be permitted to adduce such document in evidence without the leave of the Court. This provision therefore puts it beyond doubt that neither the failure to produce a document along with the plaint nor the failure in entering the details of such document in the list annexed to the plaint would be fatal to the suit at the time of its registration and such lapse on his part would still be curable upon his obtaining the leave of the Court.

Order 13 Rule 1 CPC deals with production of original documents and, to the extent relevant, reads as under:

“1. Original documents to be produced at or before the settlement of issues:-

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement.

.....”

The above provision manifests that production of documents in original, when photocopies thereof have been filed along with the plaint, would be necessary only at or before settlement of the issues.

Significantly, in the case on hand, the plaintiff had filed photocopies of both the documents in question. Further, the office had raised an objection only as regards production of the original cheque and had not adverted to the agreement dated 22.07.2014. It appears that the trial Court, while hearing arguments on the office objection, brought up this additional issue.

Reliance on Rule 22 of the Civil Rules of Practice by the trial Court appears to be misplaced. Rule 22(2) requires the Chief Ministerial Officer of the Court to make an endorsement on the plaint, when he finds that the plaint complies with all the requirements, that he had examined the same and that it may be registered. There is no requirement prescribed in Rule 22 of the Civil Rules of Practice that all original documents relied upon must invariably be produced along with the plaint. In fact, no such requirement could have been prescribed in the said rule as it would have run *contra* to the provisions of the Code of Civil Procedure, 1908, referred to *supra*.

It may be noticed that in **MOHD. OSMAN ALI V/s. SECOND JUNIOR CIVIL JUDGE, CITY CIVIL COURT, HYDERABAD**^[1], this Court pointed out that it is no part of the duty of the trial Court to examine, at the stage of scrutiny and registration of the suit, whether the plaintiff had adduced sufficient documentary evidence in support of his prayer in the suit. This Court held that the trial Court cannot, at the scrutiny stage, insist on the plaintiff to file the documents, which, in its opinion are relevant for granting relief. Again, in **DANTALA PRAVEEN V/s. BAIRABOINA VEERAMMA**^[2], this Court observed that at the stage of presentation of the suit, the trial Court can only insist on strict compliance with the provisions of the Code and reject the plaint only if it is satisfied that one or more of the grounds mentioned in Order 7 Rule 11 of the Code are present. This Court further observed that it is not the function of the trial Court to involve itself in examination of a purported discrepancy in a minute manner and reject the plaint on such ground at

the threshold as such a procedure is not sanctioned by law.

In the light of the aforesaid legal position, the approach of the trial Court in examining the merits of the suit claim on the strength of the photocopies placed before it and requiring the plaintiff to produce the originals thereof as a condition precedent for registration of the suit was erroneous in law. The provisions of the Code of Civil Procedure, 1908, referred to hereinabove, make it clear that a plaintiff who fails to produce a document or mention it in the list of documents appended to the plaint, only runs the risk of having such documentary evidence excluded unless he obtains the leave of the Court thereafter. Further, originals of the photocopies of documents filed along with the plaint can, in any event, be produced at or before settlement of the issues.

In that view of the matter, the order under revision is unsustainable in law and is accordingly set aside. The trial Court is directed to entertain the subject suit and register the same if it is otherwise found to be in order.

The Civil Revision Petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

20TH MARCH, 2015

**Note: L.R.Copy to be marked
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[\[1\]](#) 2010 (4) ALD 273

[\[2\]](#) 2011 (4) ALD 775