

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ CIVIL REVISION PETITION No.4210 of 2014

% 06.03.2015

Sri Payala Gopi

...Petitioner

Vs.

\$ Tiebeam Technologies India Pvt. Ltd. and others

...Respondents

! Counsel for the petitioner: Sri D.Vijaya Kumar

Counsel for respondents: Sri B.Vijayasen Reddy

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>Head Note:

? Cases referred:

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CIVIL REVISION PETITION No.4210 of 2014

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06.03.2015

Between:

Sri Payala Gopi

...Petitioner

And

Tiebeam Technologies India Pvt. Ltd. and others

...Respondents

Counsel for the petitioner: Sri D.Vijaya Kumar

Counsel for respondents: Sri B.Vijayasen Reddy

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 05.09.2014, in I.A.No.392 of 2014 in I.A.No.192 of 2014 in O.S.No.71 of 2014 on the file of learned Additional Junior Civil Judge, Cyberabad, Kukatpally at Miyapur.

I have heard Sri D.Vijaya Kumar, learned counsel for the petitioner and Sri B.Vijayasen Reddy, learned counsel for the respondents.

The petitioner filed the aforementioned suit for perpetual injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit schedule property. He also filed I.A.No.192 of 2014 for temporary injunction. In that application, the respondents have filed a counter-affidavit. The petitioner sought to file a reply to the said counter-affidavit in the name of rejoinder. Therefore, he has filed I.A.No.392 of 2014 purportedly under Order VIII Rule 9 read with Section 151 C.P.C. for permission to file rejoinder. This application was dismissed by the lower Court on the reasoning that the provisions of Order VIII Rule 9 C.P.C. are not attracted to an interlocutory application.

Sri B.Vijayasen Reddy, learned counsel for the respondents, has not

disputed that though in strict sense the provisions of Order VIII Rule 9 C.P.C. do not apply to filing of rejoinder to a written statement in a suit, nevertheless Rule 45 of the Civil Rules of Practice permits filing of reply affidavit in interlocutory applications.

This Court is surprised that the lower Court is unmindful of this basic procedural aspect and dismissed the application purportedly on the ground that wrong provision of law was quoted. The lower Court should do well to remember that procedure is handmaid of justice and that the substantive rights of the parties cannot be defeated by making hyper technical approach. Mere quoting of a wrong provision, obviously out of ignorance on the part of the counsel appearing for the parties, cannot constitute a ground for rejection of an application, if the same is otherwise permissible under any other provision of law. The approach of the lower Court in dismissing the application filed for leave to file a reply affidavit in the name of rejoinder to the counter-affidavit filed in the interlocutory application cannot, therefore, be appreciated as the petitioner has a right to file reply affidavit under Rule 45 of the Civil Rules of Practice albeit, with the permission of the Court.

On the above analysis, I.A.No.392 of 2014 in I.A.No.192 of 2014 in O.S.No.71 of 2014 is allowed by directing the lower Court to treat the rejoinder as reply affidavit.

The Civil Revision Petition is accordingly allowed.

As a sequel to allowing the Civil Revision Petition, interim order, dated 23.01.2015, is vacated and C.R.P.M.P.Nos.5754 of 2014 and 978 of 2015 shall stand disposed of.

(C.V.NAGARJUNA REDDY, J)

06th March, 2015

Note: L.R. copies to be marked.

(B/o)

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