

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

-
C.R.P.Nos.1053 and 1449 of 2015
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COMMON ORDER :

Since these Revisions arise between the same parties in the same suit, they are being disposed of by this common order.

2. The petitioner in both these Revisions is the defendant in O.S.No.1866 of 2007 on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

3. The respondent/plaintiff filed the above suit for declaration of his title to the plaint schedule property, recovery of possession thereof, for a perpetual injunction and *mesne* profits.

4. Summons was received on petitioner/defendant. He engaged an Advocate and then filed a written statement on 28.01.2011 opposing the suit claim. No documents were filed along with the written statement.

5. Issues were framed and trial commenced. PW.1 was examined in chief and he was also cross-examined.

6. At that stage, the petitioner filed I.A.No.972 of 2014 to permit him to file an additional written statement, I.A.No.662 of 2014 under Order 8 Rule 1A(3) C.P.C. to grant leave to petitioner to file certain documents and I.A.No.661 of 2014 under Order 18 Rule 17 C.P.C. to re-call PW.1 for further cross-examination on the documents which had been filed along with I.A.No.662 of 2014.

7. In the affidavit filed along with I.A.No.662 of 2014, the petitioner contended that there was a Writ Petition and a Writ Appeal pending in this Court and documents in support of petitioner's case were with the counsel representing him in the Writ

Petition/Writ Appeal before the High Court; so they could not be filed along with the written statement; the delay in filing the documents is not intentional; and therefore, leave be granted to him to file those documents.

8. In the affidavit filed along with I.A.No.972 of 2014, the petitioner contended that he is filing the additional written statement by disclosing facts which were not shown in the written statement filed by him earlier and therefore the Court should allow him to file an additional written statement.

9. In I.A.Nos.661 of 2014 and 662 of 2014, common counter-affidavit was filed by respondent contending that the allegations made therein are false and misconceived. It was contended that petitioner had fabricated certain documents, that if they were really in existence, the petitioner should explain why he suppressed the same when he filed earlier written statement on 03.03.2008; the petitioner had earlier filed I.A.No.330 of 2010 in the suit to re-call PW.1 for further cross-examination; and that the said application was allowed and the petitioner had cross-examined PW.1.

10. In the counter-affidavit filed to I.A.No.972 of 2014, it was contended by the respondent that petitioner had already filed a detailed written statement, issues were framed and trial had been closed on the respondent's/plaintiff's side and the matter was posted for evidence of petitioner/defendant. Since there was no presiding officer in the Court, the matter remained there till it was transferred to the XVII Senior Civil Judge, City Civil Court, Hyderabad. It was contended that the affidavit filed by petitioner in support of the I.A.No.972 of 2014 is silent as to what facts were not shown and what are the facts now the petitioner is intending to disclose; no reason is assigned by petitioner for the delay in

bringing these facts which are within his knowledge till the time when the respondent's side evidence was closed; additional written statement is now sought to be filed taking advantage of the new set of documents fabricated by petitioner; petitioner is not entitled to file an additional written statement raising new defence or pleadings which did not arise subsequent to the institution of the suit; if the additional written statement is now filed, it would indicate that an entirely new defence is set-up by petitioner from that which was earlier taken in the written statement; and this is impermissible.

11. By separate orders dt.23.02.2015, the Court below dismissed all the three applications.

12. Challenging the order dt.23.02.2015 in I.A.No.662 of 2014, the petitioner filed CRP.No.1053 of 2015 and challenging the order dt.23.02.2015 in I.A.No.972 of 2014, the petitioner filed CRP.No.1449 of 2015. No Revision has been filed challenging the order dt.23.02.2015 in I.A.No.661 of 2014.

13. The Court below held in I.A.No.662 of 2014 that the documents which are filed along with the said application invoking Order 8 Rule 1A (3) C.P.C. were much earlier to the filing of the written statement filed by him in the main suit, but there was no whisper about them therein; that the averments in the said I.A. are contrary to the written statement filed by him in the main suit; and petitioner had not explained the reasons for the delay in filing the documents. It therefore held that petitioner is not entitled to grant of leave for filing these documents after the trial commenced and when the matter was coming up for cross-examination of PW.2.

14. Consequent to the dismissal of I.A.No.662 of 2014, I.A.No.661 of 2014 was also dismissed as infructuos.

15. In I.A.No.972 of 2014, it was contended by petitioner that his earlier counsel had not filed the written statement according to the instructions given by petitioner and had not pleaded the true facts in the original written statement, that the documents which were filed by petitioner along with the application were in the custody of the earlier counsel and the same were not filed by him, and so the facts mentioned in the proposed additional written statement were the correct facts. This contention was rejected by the trial court on the ground that no such allegation against the earlier counsel had been made in the affidavit and, in fact, no reason for seeking permission to file additional written statement is assigned by petitioner and I.A.No.972 of 2014 is filed six years after filing the original written statement. It held that in the original written statement, the defence of petitioner was that he had acquired the plaint schedule property from the husband of plaintiff by way of oral gift dt.10.06.1994, but in the proposed additional written statement he had taken a new plea that he had purchased the property from one Mohd. Ismail in the year 2000 which is totally inconsistent with the earlier written statement.

16. Challenging these orders, the present Revisions were filed.

17. Heard Sri K.G. Krishna Murthy, Senior Counsel, appearing for petitioner, and Sri Mohd. Ilyas, counsel for respondent.

18. The counsel for petitioner contended that these orders of the court below cannot be sustained since the application to receive documents was filed because the earlier counsel of petitioner had not filed them along with the written statement filed by petitioner in spite of the fact that these documents had been handed over by petitioner to the said counsel; petitioner had even filed a complaint in 2011 with the Bar Council of the State of

Andhra Pradesh under Section 35 of the Advocates Act, 1961 on the ground that the said Advocate had not filed the said documents handed over to him by petitioner till December, 2010 and that the said Advocate had cheated the petitioner and committed professional misconduct. He contended that because of the conduct of the said Advocate, the petitioner has been put to a disadvantage and has been obliged to file an application to receive these documents and also another application to permit him to file an additional written statement, apart from re-opening the evidence of respondent to further cross-examine PW.1 on these documents. He relied upon the judgments of this Court in **Setti Siddamma v. S. Ramulu and another**^[1], **Baldev Singh and others v. Manohar Singh and another**^[2], **Hazara Bibi and another v. B. Mangaraju and others**^[3], **Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others**^[4], and **Rafiq and another v. Munshilal and another**^[5].

19. On the other hand, the counsel for respondent refuted the above contentions. He pointed out that the Court below had rightly dismissed the application for grant of leave to file documents under Order 8 Rule 1A (3) C.P.C. and also the applications to re-call PW.1 for further cross-examination and for filing additional written statement. He contended that the original written statement had been filed by petitioner in the year 2008 without filing any documents in support thereof; petitioner had merely stated in the affidavit filed along with I.A.No.662 of 2011 that the documents which he sought to file were with the counsel representing him in the Writ Petition/Writ Appeal before the High Court, but a totally new argument is being raised by respondent contrary to the said affidavit that he had handed over these documents to his earlier

counsel and the said counsel did not file them along with the written statement; that if such explanations were to be accepted, the provisions of the Code of Civil Procedure, 1908 such as Order 8 Rule 1A (3) and Order 8 Rule 9 C.P.C. would be rendered totally ineffective; at the stage when the trial has commenced and the evidence of respondent's side had closed and the matter is coming up for cross-examination of PW.2, these applications have been filed only to drag on the matter without any bona fides; no reason had been assigned in the affidavit filed along with I.A.No.972 of 2014 as to why the petitioner is seeking to file an additional written statement; and in the absence of furnishing of reasons, the petitioner cannot be granted leave to file the additional written statement. He relied upon the judgments in **Shaik Asha and another v. Shaik Moulaali and others**^[6], **Madanlal Pujari v. Sharad Joshi**^[7], **S. Malla Reddy v. M/s. Future Builders Co-operative Housing Society and others**^[8], and **Future Builders Co-operative Housing Society, Secunderabad v. S. Malla Reddy and others**^[9].

20. I have noted the submissions of both sides.

21. Order 8 Rule 1A to the extent is relevant states :

"1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him : --

(1) *Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.*

.....

(3) *A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the*

leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

22. The above provision indicates that documents which the defendant seeks to rely in support of his defence in a suit are required to be produced in the Court when the written statement is filed by a defendant, and he cannot be allowed to file documents which were not produced along with the written statement at a later stage without the leave of the Court. The fact that the legislature intended that leave should be sought from the Court is to indicate that the defendant had no right to file documents at any stage he chooses taking the plaintiff by surprise. The requirement of grant of leave would ensure that if the defendant had a good reason for not being able to file these documents along with written statement, then only he would be permitted to file them at a later stage.

23. In **C.R.P.No.712 to 716 of 2009**^[10], decided on 24.02.2009, this Court has held that leave cannot be granted under Sub-Rule (3) of Rule 1A of Order 8 for the mere asking, and that the Court is not a post office to receive documents in the absence of any reasons being furnished for failure to file the documents along with the written statement.

24. In the present case, in the affidavit filed in support of I.A.No.662 of 2014 by petitioner seeking leave for filing of documents, in Para.9 it is only mentioned that these documents were with the counsel representing the Writ Petition/Writ Appeal before this Court. No allegation is made against the earlier counsel who had been engaged by petitioner receiving these documents from the petitioner and not filing the same along with the written statement. Therefore, it is not open to petitioner to now contend that the earlier counsel for petitioner, having received the documents from him, did not file the same along with the written

statement. The intention of the legislature incorporating the requirement of grant of leave is to ensure that parties are diligent in pursuing their claims or defence and suits do not get unduly delayed by negligence or deliberate inaction of the parties. If without any basis, parties are allowed to blame their counsel for the party's own negligence, provisions like Order 8 Rule 1A (3) C.P.C., Order 7 Rule 14 C.P.C. and Order 8 Rule 9 C.P.C. (after they have been amended by the C.P.C. Amendment Act 22 of 2002 w.e.f. 01.07.2002) can never be implemented.

25. It is no doubt true that in **Rafiq** (5 supra) cited by Counsel for petitioner, the Supreme Court has held that contesting parties should not suffer for lapses on the part of their counsel. In that case, in an appeal pending in the High Court, the counsel for appellant did not appear on the date of hearing and the appeal was dismissed for default; application was made by the Advocate for re-calling the order, but the same was rejected on the ground of unexplained delay for presenting the application in the Court. The Supreme Court held that rejection of the application is not justified and that the party should not be made to suffer for the inaction, deliberate omission or misdemeanor of the Advocate. In my opinion, this decision has no application to the facts of the case, because in the affidavit filed in support of the application to grant leave to file documents, the petitioner had nowhere alleged that it was the Advocate's fault in not filing the documents along with the written statement. Also in that case it was held that the appeal was pending in the High Court and the party is not required to put in his personal appearance and he is entitled to expect that lawyer to look after his interest. Such is not the case here.

26. In **Billa Jagan Mohan Reddy** (4 supra), the Supreme Court dealt with Order 13 Rule 1 C.P.C. which requires the parties or their

counsel to produce all the documentary evidence in their possession or power along with the pleadings or before settlement of the issues. Interpreting the said provision, the Supreme Court held that delay in producing documentary evidence before settlement of issues may be condoned and that the explanation for delay need not be as vigorous as required under Section 5 of the Limitation Act, 1963. However, the said decision was rendered before the C.P.C. was amended by Act 22 of 2002 incorporating Order 8 Rule 1A (3) in the C.P.C. making it mandatory for the defendant to produce documents along with the written statement and to seek leave to file documents if he intends to file them at a later stage. Therefore, the said decision has no application to the facts of the present case.

27. In **Setti Siddamma** (1 supra), this Court held that as per the amended C.P.C. if good cause is shown to the Court's satisfaction for the non-production of documents earlier, they may be permitted to be produced at a later point of time. However, in that case the suit had been filed prior to the C.P.C. Amendment Act 22 of 2002 and therefore Order 8 Rule 1A (3) did not apply. Therefore, even the said decision has no application to the present case.

28. In this view of the matter, I am of the opinion that the petitioner had not made out any case for grant of leave to file the documents which had not been filed along with the written statement since he had given a total go-by to the plea raised by him in I.A.No.662 of 2014 and raised a new plea at the time of arguments that his counsel had been negligent in taking steps to file these documents along with the written statement.

29. Coming to the plea of petitioner regarding the correctness of the order refusing to permit him to file an additional written

statement under Order 8 Rule 9 C.P.C., even the said provision admittedly requires a party to seek leave to file an additional written statement. This indicates that the defendant had no automatic right to file an additional written statement and that he has to give a valid reason why the filing of the additional written statement is necessary and why pleas incorporated in the additional written statement could not be raised earlier.

30. In the affidavit filed in support of I.A.No.972 of 2014, no reason had been assigned by petitioner why he should be permitted to file an additional written statement. That apart, in the original written statement admittedly the defence of petitioner was that he had obtained the plaint schedule property from the husband of respondent by way of oral gift dt.10.06.1994, but in the proposed additional written statement a totally new plea has been taken stating that he had purchased the property from One Mohd. Ismail in 2000. This plea was available to petitioner at the time when the original written statement was filed by him in 2000, but he has not assigned any reason why this plea was not incorporated in the original written statement.

31. In **Shaik Asha** (6 supra) cited by counsel for respondent, this Court considered the issue as to whether an additional written statement taking an inconsistent plea with the original written statement can be permitted. It held that an additional written statement cannot be allowed to be filed taking a stand inconsistent with the original written statement. It held that although a defendant is entitled to file a written statement containing inconsistent pleas, in view of Order 6 Rule 7 C.P.C. (which states: *“no pleading shall except by way of amendment, raise any new ground or claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same”*), an

additional written statement containing pleas inconsistent with the original written statement cannot be permitted.

32. The decisions in **Madanlal Pujari** (7 supra) and **S. Malla Reddy** (8 supra), cited by counsel for respondent would not apply because those cases dealt with request by a defendant to amend a written statement resiling from an admission made in the written statement.

33. In this view of the matter, I am of the opinion that the Court below was justified in refusing to permit the petitioner to file an additional written statement taking a plea which is totally inconsistent with the plea taken in the original written statement.

34. For the foregoing reasons, CRP.No.1053 of 2015 and CRP.No.1449 of 2015 are both dismissed. No order as to costs.

35. Miscellaneous applications, pending if any in these Revisions, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 06-07-2015

Ndr/-

[\[1\]](#) 2004 (5) ALD 14

[\[2\]](#) (2006) 6 SCC 498

[\[3\]](#) 2001 (2) ALD 592

[\[4\]](#) (1994) 4 SCC 659

[\[5\]](#) (1981) 2 SCC 788

[\[6\]](#) 2005 (5) ALD 780

[\[7\]](#) 2012 (1) ALD 601

[\[8\]](#) AIR 2013 SC 3693

[\[9\]](#) 2008 (3) ALD 231

[\[10\]](#) Reported in MANU/AP/0736/2009