

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2881 of 2015

ORDER:

The grievance of the plaintiff/petitioner in this civil revision petition under Article 227 of the Constitution of India is that the trial Court is not expeditiously disposing of the suit O.S.No.342 of 2012.

I have heard the submissions of the learned counsel for petitioner/plaintiff. I have perused the material record.

The relief claimed in the revision petition is – ‘allow the revision by directing the I-Additional Senior Civil Judge, Rajahmundry, East Godavari District, to forthwith dispose of the suit bearing O.S.No.342 of 2012 and pass such other order or orders as this Court deems fit and proper’.

The copy of the plaint reflects that the suit is filed by the plaintiff against the defendant for eviction from the suit schedule property and for ancillary reliefs. In the grounds of revision, it is stated that the Court below is not considering the case of the revision petitioner for expeditious disposal of the suit despite bringing to the notice of the Court the specific case of the plaintiff and the threats being given by the defendant to the plaintiff by squatting on the property under the guise that he is a tenant in the property. The learned counsel also produced internet copy of the proceeding sheet (docket sheet) of the trial Court for the period from 10.07.2012 to 09.11.2016. He also placed reliance on the following two unreported decisions in support of the contention that the civil revision petition seeking a direction to the trial Court to dispose the plaintiff's suit expeditiously is maintainable. According to the submissions of the learned counsel, in the

said cited cases, this Court, in matters where similar issues were raised, directed the Courts below to expeditiously dispose of either the main proceeding or interlocutory proceeding, which are subject matters of those cited cases. In C.R.P. No. 2658 of 2015 (Yerukonda Baburao V/s. Yerukonda Devi Prasad and six others) this Court having regard to the facts and circumstances of the said case disposed of the said civil revision on 07.08.2015 at the stage of admission directing the Court below to dispose of an appeal within a period of eight weeks from the date of the order passed in the said revision. In C.R.P. NO. 849 of 2016 (B.A.R.Rao V/s M.S. Babu), this Court allowed the said revision on 04.03.2016 at the admission stage and directed the trial Court to dispose of an interlocutory application filed for injunction within a month. The said direction was given having regard to the fact that the trial Court having granted an *ex parte* injunction long time back failed to hear and dispose of the application filed for vacating the said injunction orders despite repeated requests made to hear and dispose of the said application. Be it noted that Rule 3-A of Order XXXIX of the Code directs the Court to dispose of the application for injunction within thirty days, where an order is granted without notice to the opposite party. A plain reading of the said cited cases reflects that the directions were given in those cases having regard to the facts of those cases. In the cited cases, no principle of universal application is laid down by giving reasons and hence, the decisions are of no help to the petitioner.

I have bestowed my attention to the facts and submissions.

If the plaintiff wanted that her suit to be taken up out of order/out of turn by the Court below and desired that the hearing of her suit be advanced,

the plaintiff ought to have filed an application under Rule 109 of the Civil Rules of Practice, 1980, read with section 151 of the Code and requested the trial Court to advance the date of hearing of the suit instead of directly coming before this Court. The said Rule 109 (2) states that 'any party who desires that the hearing may be advanced, may apply therefor by Interlocutory application of which notice shall be given to the other party'. Rule (3) says to the effect that the party served with such notice may either express his consent or resistance to such advancement. Had the plaintiff filed such an application, the trial Court might have passed a speaking order allowing or dismissing the application. It is not the case of the plaintiff that any such application was filed before the trial Court and that the same was not considered by the trial Court. The plaintiff is not able to place before this Court the statistics of the Court below to show as to what are the total number of cases pending on the file of that Court and how many more other suits instituted prior to the present suit are pending for trial and how many of them are identified for expeditious disposal as per the Circulars of this Court and in how many other suits there are directions by superior Courts for expeditious disposal. In the well considered view of this Court, without those statistics being placed before this Court, it is not appropriate to direct the trial Court to dispose of every suit out of turn and allow the plaintiff therein to steal a march over the other suitors whose suits were instituted much prior to that plaintiff's suit. Be that as it may.

The internet copy of the proceeding sheet produced before this Court shows that the trial in the instant suit has already commenced and that the cross-examination of one of the witnesses on the side of the defendant is

now in progress. As the trial Court has already taken up the suit for trial and as the trial is in progress and for the reasons assigned supra, this Court finds that the civil revision petition is devoid of merit and is liable to be dismissed. There are no special or extraordinary circumstances warranting exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

The Civil Revision Petition is accordingly dismissed.

At this stage, the learned counsel for the revision petitioner/plaintiff seeks permission to reserve liberty to the plaintiff file an application for advancement of the hearing of the suit in case the part-heard suit is adjourned to a longer date by the trial Court. Needless to observe that the trial Courts will always adjourn part-heard suits only to short/nearer dates and not long dates as ideally recording of evidence must be continuous and the Courts constantly endeavour to follow a time schedule in part heard suits. However, the plaintiff is at liberty to file appropriate application to advance date of hearing of the suit, in case the trial Court adjourns the instant part-heard suit of plaintiff to a longer date. The trial Court shall consider any such application filed by the plaintiff, on its merit however, having regard to the number of part heard cases on the board of the trial Court. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

15th November 2016

ajr