

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2326 OF 2016

ORDER:

This revision is preferred under Article 227 of Constitution of India challenging the order dated 01.04.2016 passed by the Junior Civil Judge, Rajam in I.A.No.50 of 2016 in O.S.No.32 of 2003, whereby the request of the revision petitioner to receive documents set out in the list was rejected.

The petitioner filed the petition under Order VIII Rule 1A (3) of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") seeking leave of the Court to file certain documents alleging that those documents are important and necessary in the suit. Since those documents were mixed with other documents, they could not be traced out and traced on the date of filing the petition and requested to receive the documents, otherwise the petitioners will be put to loss.

The respondents/plaintiffs filed counter affidavit denying material allegations *inter alia* contending that the documents are in custody of the petitioners prior to the filing of the suit and defendant Nos.1 and 2 referred all the documents in the written statement long ago with all details including dates. Therefore, the allegation that the documents mixed with the other documents is false. It is further contended that the document No.2 filed along with the petition is a copy of document, but she has not filed the

original settlement deed, the petitioner has not explained what had happened to the original settlement deed and in the absence of explanation, the same cannot be received. The true copy of adangal for fasli 1416 is not a certified copy, thereby it cannot be received and the true copies of adangal and land revenue receipts cannot be received, as they pertain to the period during pendency of the suit. Therefore, none of the documents can be received by the Court at the belated stage and the reason assigned by the petitioners is not sufficient to grant leave of the Court to file the documents and receive them by the Court.

Considering the rival contentions, the trial Court based on the judgment of this Court rendered in “**R.Saraswati v. P.Rajamanikyam and Others**”¹, declined to receive the documents set out in the list, refusing leave.

Aggrieved by the order passed by the trial Court, the present revision is filed raising several contentions mostly on the ground that the documents are necessary for deciding the real controversy between the parties in the suit and if those documents are not received, the petitioners will be put to serious loss. Apart from that the trial Court allowed several similar applications and the petitioners filed the present application for the first time, but the trial Court adopted a different yardstick and thus, committed an error in dismissing the petition and prayed to set aside the same.

¹ 2015 (5) ALT 527

During hearing Sri K.Purushotham, learned counsel for the revision petitioners, mainly contended that there is a reference about certain documents in the written statement and other documents are subsequent to filing of the suit and they can be received at this stage. He further contended that the respondents also filed similar application, which was allowed, but the trial Court applied a different yardstick for the petitioners and in view of bias the revision petition is to be allowed and prayed to set aside the order of trial Court. He also placed reliance on the judgments rendered in **“K.V.Subramanyam v. Smt.K.Madhavi”²**, **“Dasuputruni Suryanarayana v. Dasuputruni Adinarayana and others”³**, **“Dugaputi Sudhakar Reddy v. Avulapati Shankar Reddy and Others”⁴**, **“Sirugudi Adinarayana v. Bodla Mariamma”⁵** and prayed to allow the revision petition.

Sri K.Sai Krishna, learned counsel for the respondents, contended that filing of the petition to receive documents under Order VIII Rule 1A (3) of C.P.C. is not a matter of routine after amendment to C.P.C. by Act 22 of 2002. The petitioners are required to comply with Order VIII Rule 1A Sub-Rules 2 and 3 of C.P.C. as amended by Act 22 of 2002, but without making any reference in whose custody the documents are available, they cannot be received at this stage. Apart from that the petitioners are guilty of laches and

² 1999 (6) ALT 47 (D.B.)

³ 2005 (3) ALT 87 (D.B.)

⁴ 2005 (2) ALT 417

⁵ 2004 (4) ALT 1

the documents cannot be received in view of the law declared by this Court in **R.Saraswati v. P.Rajamanikyam and Others** (referred supra), “**Voruganti Narayana Rao v. Bodla Rammurthy**⁶” and “**Ravi Satish v. Edala Durga Prasad**⁷” and prayed for dismissal of the revision.

The suit was filed for partition of the schedule property and other consequential reliefs in the year 2003 i.e. subsequent to amendment to C.P.C. by Act 22 of 2002. The petitioners filed written statement raising several contentions in the year 2003 itself, and also filed additional written statement. In the written statement there is a reference about the execution of settlement deed dated 19.06.1981 in paragraph No.2 of the written statement. Similarly, there is a reference about the execution of registered settlement deed dated 29.01.2002 by K.Kannamma in favour of L.Bodamma. So also registered sale deed dated 12.03.1981 executed by L.Bodamma in favour of 2nd defendant for Rs.2,400/-. Except referring to those transactions, no other transactions were mentioned in the written statement. In the additional written statement, the documents referred in the original written statement were reiterated explaining the discrepancy in the surname.

⁶ 2011 (6) ALT 299

⁷ 2009 (3) ALT 236

Order VIII Rule 1A (1) reads thus:

“Order VIII Rule 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.***
- (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.***
- (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.”***

Thus, filing of the documents, which form the basis of the defence or relied on any document in support of the defence in the written statement, they shall be filed along with the written statement. If for any reason, the documents on which the defendant based his defence or relies are not available with him, it obligated the defendant to disclose specifically in whose possession or power such documents are available. Further Sub-rule (3) of Rule 1A of Order VIII of C.P.C. enables the Court to grant leave to the defendant to file such documents and receive them in evidence at the time of hearing, in case the documents ought to be produced into the

Court by the defendant, but failed to produce those documents.

Thus, it is clear under Order VIII Rule 1A (3) of C.P.C. leave can be granted if sufficient cause is shown for failure to produce those documents along with the written statement as required under Sub-rule (1) thereof.

In the written statement and in the additional written statement, there is reference about the relinquishment deed and sale deed, but they were not filed along with the written statement as required under Order VIII Rule 1A (1) and did not even explain in whose possession they are available if they are not available with the defendant. The other documents sought to be produced are Pattadar passbooks, title deeds, voter identity card, ration card, Adhar card, and land revenue receipts issued by V.R.O. and Pahani. Since there is a reference in the written statement about the 1st document i.e. original registered sale deed dated 12.03.1981, registered settlement deed dated 13.10.1981 and registered settlement deed dated 29.01.2002, they can be received if sufficient cause is shown for their failure to produce, regarding other documents, they were neither referred in the written statement nor explained any reason for the failure of the petitioners to make a reference in the written statement nor assigned any reason for their failure to produce the documents along with the written statement when the

petitioners relying on those documents in support of their defence set out in the written statement.

The affidavit filed along with the petition was drafted in most casual manner by the person who drafted it not visualising the effect of making such allegations in paragraph No.2 of it. If really those documents are not available with the petitioners and mixed up with the other documents, how the petitioners could make reference with all details including dates of execution? If for any reason those documents are not in the custody of the petitioners, they would have made a statement about in whose custody the documents are lying as required under Order VIII Rule 1A (2) of C.P.C. Making such bald allegation that those documents were mixed with other documents and they could not be traced out on the date of filing of the written statement is not plausible for the reason that the details of certain documents mentioned in the written statement. Perhaps, such ground is invented in most casual manner to obtain leave of the Court to file them into the Court.

Learned counsel for the petitioners while contending that the documents can be filed and received at any stage with the leave of the Court and drawn the attention to the judgment rendered in ***K.V.Subramanyam v. Smt.K.Madhavi*** (referred supra), wherein the Division Bench of this Court held that Order XIII Rule 1 of C.P.C. obligates the parties to litigation to produce all the documentary evidence at or before

the settlement of issues. Order XIII Rule 2 comes in aid to the parties to produce the documents at any subsequent stage of the proceedings, if good cause is shown to the satisfaction of Court for non-production thereof either at or before the settlement of the issues and if the Court is satisfied that the reasons stated are plausible, it is entitled to receive such evidence after recording the reasons for so doing.

The law declared by the Division Bench of this Court in the aforementioned judgment is pertains to pre-amended situation.

In ***Dasuputruni Suryanarayana v. Dasuputruni Adinarayana and others*** (referred supra), this Court held that the Court has jurisdiction under Order VIII Rule 1-A (3) C.P.C. to receive documents not filed with written statement and nature of documents and their admissibility in evidence are not relevant considerations then.

In ***Dugaputi Sudhakar Reddy v. Avulapati Shankar Reddy and Others*** (referred supra) this Court held that defendants can be permitted to produce documents even after filing written statement if reason for delay is justifiable and prima facie believable for rendering justice and leave shall not be given for mere asking.

In ***Sirugudi Adinarayana v. Bodla Mariamma*** (referred supra) this Court held that Order VIII Rule 1-A (3) of C.P.C. provides that a document which ought to be produced in Court by the defendant, 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. This discretion is conferred upon the Court to receive the document in evidence even at the hearing of the suit, though such documents were required to be produced in the Court by the defendant along with the presentation of written statement and before hearing of the suit.

Thus, in view of the principles laid down by this Court in various judgments referred supra, the Court can grant leave if sufficient cause is shown for receiving such documents.

In the present case, the cause shown by the petitioners is that those documents are mixed up with the other documents, but conveniently three documents were referred in the written statement with all details including dates of execution. If really, those documents are not available with the petitioners at the time of filing the written statement, giving such minute details with dates of execution of the documents would not arise. This itself indicates that they were in possession of the documents referred in the written statement by the date of filing the written statement, but failed to file them along with the written statement as required under Order VIII Rule 1A (1) of C.P.C. and failed to explain as to whose possession those documents are available as required under Sub-rule (2) thereof.

Even if the principles laid down in the above judgments are applied leave can be granted only when the cause shown by the petitioners is plausible for non filing of the documents along with the written statement, but in the present case, the cause shown by the petitioners is not plausible and not justifiable, for non filing of the documents along with written statement.

Learned counsel for the respondents would draw the attention of this Court to a judgment in **R.Saraswati v. P.Rajamanikyam and Others** (referred supra), wherein this Court held as follows:

“Out of the documents now sought to be filed along with I.A. No. 901 of 2014 at least three of the documents particularly those mentioned at Serial Nos. 1 to 3 above have admittedly been referred in the written statement filed by the second defendant on 19.4.2010. This indicates that these documents were available at the time when that written statement was filed. This contradicts the stand of the first respondent that these documents were not in possession of the first respondent or second respondent at the time when the written statement was filed. Even the other documents sought to be filed are documents which appear to have come into existence long prior to filing of the suit. Therefore, it was incumbent that the respondent should have filed them along with written statement and their plea that they were only traced out recently, cannot be accepted. Therefore I am of the opinion that the respondents are not entitled to grant of leave under Order VIII Rule 1 A (3) CPC

Coming to the issue as to whether good reason was shown by the respondents for not filing these documents earlier or not, the Court below gave much importance as to whether these documents were registerable or not. In my opinion that consideration is an irrelevant consideration while deciding whether or not to receive documents, under Order 8 Rule 1A (1) and (3) CPC. Therefore, I am of the opinion that the order dated 12.12.2014 in I.A. No. 901 of 2014 cannot be sustained.”

The facts of the above case are almost identical to the present facts of the case because certain documents were referred in the written statement.

Similarly in ***Voruganti Narayana Rao v. Bodla Rammurthy*** it is held as follows:

“Rules 1-A and 1-A (3) of Order VIII Code of Civil Procedure, were substituted by Act 46 of 1999 with effect from 01.07.2002. The object with which those Rules were amended was to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the civil Court. The Parliament has thought it fit to stipulate time limits for the parties to file their defense and produce the documents along with the defense so that the cases can be disposed of without avoidable delays. This being the avowed object with which the above noted provisions are amended, Rule 1 – A (3) of Order VIII Code of Civil Procedure, which on a literal interpretation appears to vest unlimited discretion with the Court, requires to be interpreted so as to advance the intendment of the legislation. The Court before which the Defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the Defendant for not producing the documents along with the written statement. Unless the reasons assigned by the Defendant discloses sufficient cause for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII Code of Civil Procedure, the Court shall not permit the Defendant to file such documents later. Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended. This Court in ***Ravi Satish*** (cited supra) held that grant of leave by the Court is not for the mere asking nor is the Court a mere post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.”

Similar view was expressed by this Court in ***Ravi Satish v. Edala Durga Prasad*** (referred supra) and held as follows:

“Sub-rule (3) of Rule 1A of Order VIII permits the documents to be received only on leave being granted by the Court. Grant of leave is not for the mere asking, nor is the Court a mere Post-Office to receive documents even in the absence of any reasons being furnished for failure to file the said documents along with the written statement. Admittedly, in the case on hand, no reasons whatsoever have been furnished by the petitioner, let alone adequate cause been shown as to why the documents, which were the subject matter of the application, could not be filed earlier along with the written statement. Having chosen not to give any reasons, it is not open to the petitioner to contend that the Court below should have received the documents, since the petitioner's right could be adversely affected for failure on its part to receive the documents. While it is no doubt true that admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents, the fact, however, remains that the leave sought for can only be granted on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier. The contention that no prejudice can be said to have been caused to the respondent/plaintiff has been rejected by the Court below on the ground that their right to file rejoinder based on the said document had been denied. The Court below has not committed any jurisdictional error nor has its order resulted in such manifest injustice as to necessitate interference by this Court under Article 227 of the Constitution of India. I see no reason to interfere with the discretion exercised by the Court below.”

In view of the law declared by this Court in various judgments (referred supra), there is no interdict in receiving documents granting leave if sufficient cause was shown for failure to file those documents by the defendant along with the written statement.

Leave to file documents can be granted only sufficient cause is shown, to do complete justice to the parties. But here the bald statement in paragraph No.2 of the affidavit filed along with the petition, coupled with the allegation made

in the written statement and additional written statement would indicate that the defendants were in possession of the settlement deed and sale deed i.e. documents Nos.1 to 3, and failed to file those documents along with the written statement in compliance of Order VIII Rule 1A (3) of C.P.C. but invented a story of mixing those documents with other documents and traced out on the date of filing of the petition, such cause cannot be accepted as sufficient cause or justifiable cause to grant leave under Sub-rule 3 of Rule 1A of Order VIII of C.P.C. The cause shown by the petitioner is routine allegation made in several petitions filed, if such cause is accepted as sufficient or justifiable cause, it amounts to opening gates to the defendants to file documents at any stage. Yet, clear fallacy in the cause shown by the petitioners i.e. reason for failure to file the documents along with the written statement was due to mixing with other documents, in fact more than half of the documents set out in the list filed along with the petition are obtained subsequent to filing written statement. In such case, the question of mixing those documents with other documents does not arise and it is not a justifiable cause to grant leave as the petitioner invented the story, which is not befitting to the situation. The petitioners having failed to show cause for non filing of documents in compliance of Order VIII Rule 1A (1) of C.P.C. due to ill-drafting of affidavit, started lamenting the Presiding Officer of the Court. Therefore, the trial Court did commit no

error in declining to grant leave under Order VIII Rule 1A (3) of C.P.C.

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru**⁸, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India

⁸ 2003 (6) SCC 641

to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge.

In view of my foregoing discussion and law declared by the Courts, I find no ground to set aside the order dated 01.04.2016 passed by the Junior Civil Judge, Rajam in I.A.No.50 of 2016 in O.S.No.32 of 2003 and it does not warrant any interference by this Court.

In the result, the revision is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.09.2016
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