

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.5553 of 2016

% Dated 28.11.2016

M/s.Spectrum Power Generation Limited,
Rep. by its General Manager, Y. Venkata Rao

....Petitioner

VERSUS

\$ Mr.M.Kishna Rao
S/o.Late M.Anjaiah and two others.

... Respondents

! Counsel for Petitioner : Sri Cheque. Pushyam Kiran

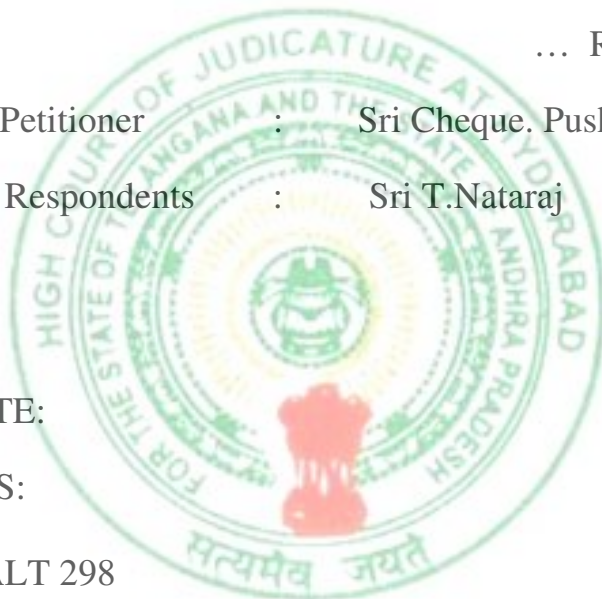
^ Counsel for Respondents : Sri T.Nataraj

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> HEAD NOTE:

? CITATIONS:

2016 (6) ALT 298



**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION No.5553 of 2016

Between :

M/s.Spectrum Power Generation Limited,
Rep. by its General Manager, Y. Venkata Rao

....Petitioner

VERSUS

Mr.M.Kishna Rao
S/o.Late M.Anjaiah and two others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.11.2016

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5553 of 2016

ORDER :

This revision is maintained by the sole defendant in O.S.No.4051 of 2004 on the file of the VIII-Additional Senior Civil Judge (Fast Track Court), City Civil Courts, Hyderabad (for short, 'the trial Court').

2. The above referred O.s.No.4051 of 2004 is filed by three plaintiffs for declaratory relief in relation to a provision of guarantee commission claimed not entitled by the defendant including to reverse as per the general body resolution dated 25.04.1994 and for consequential mandatory injunction to reflect and continue to provide for the provision relating to guarantee commission and for prohibitory injunction for writing back or reversing the provision of guarantee commission and for costs and other reliefs including to set aside the resolutions passed by the defendant Company dated 14.02.2005 reversing the provision relating to the guarantee commission and to declare the resolution as illegal and for other reliefs.

3. The defendant is contesting the suit. During the course of trial, after completion of the plaintiffs' evidence and while DW.1 examination-in-chief is taken up/in progress, defendant wanted to exhibit the copy of the order in Company Petition No.43 of 2007 and other batch matters, dated 15.10.2007, there was an objection raised by the plaintiffs on the admissibility saying not in accordance with

Section 76 of the Indian Evidence Act, 1872 (for short, 'the Act') and Rule 199 of Civil Rules of Practice and Circular Orders, 1990 and for no certification as required under the provisions to receive for upheld the objection by returning the document to the defendant for want of proper certification.

4. The contentions in the grounds of revision impugning the said order are that the trial Court erred in passing the impugned order dated 31.10.2016 returning the documents, which order passed by the High Court in C.P.No.43 of 2007 and batch on 15.10.2007 and order in O.A.No.1 of 2009 and batch dated 27.04.2010 that were furnished by the Registry of High Court, even these are the public documents, trial Court erred in holding the documents were not issued in compliance with the provisions of law despite the presumption of genuineness of the documents from the certified copies issued to draw under Section 79 of the Act apart from same complied with a combined reading of Rules 199 and 200 under the Civil Rules of Practice and Circular Order within the meaning of public documents and ought to have been accepted as evidence.

5. Heard both sides.

6. A perusal of the record shows, the documents are filed with chief-examination affidavit of DW.1-sole defendant, in fact, along with that I.A.No.72 of 2016 is filed to receive four documents including these two documents as document Nos.3 and 4 and the Board Resolution and minutes of EGM dated 14.02.2005 as document

Nos.1 and 2 respectively, but for to say the filing of memo arisen from Xerox copies filed with the petition in I.A.No.72 of 2016 and the original certified copies filed with the memo later, same was not even decided by the trial Court at time of receiving documents. The only thing to be considered under Order VIII Rule 1A of amended C.P.C. is, to consider any explanation for earlier non filing, if at all still in custody. Undisputedly, these are the orders passed by the High Court and the certified copies should obtain. There is no bar for allowing the application to receive the documents. It is unknown when the petition is pending, how the Court ordered for return without deciding the petition to receive or not to receive, the said order is per se unsustainable. Further, as also laid down by this Court in a recent expression in **Janga Ranga Reddy v. Yadlapalli Jagadish Chandra Choudary**¹, any public officer or public office including for that matter of Court issued certified copies these are within the meaning of Public documents have complied the requirement under Section 76 of the Act and on information sought/documents obtained from the Public Officer under Right to Information Act also held construed as public documents.

7. Section 74 of the Act defines what are the public documents viz., the documents forming the acts, or records of the acts, of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, of any part of Indian or of

¹ 2016 (6) ALT 298

the Commonwealth, or of a foreign country, and public records kept in any State of private documents. Section 75 of the Act therefrom speaks of other documents not covered by Section 74 of the Act are private documents.

8. Section 79 of the Act gives presumption as to genuineness of certified copies, in saying, the Court shall presume to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir, who is duly authorized thereto by the Central Government. Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claimed in such paper. The presumption applies to the genuineness if it is duly certified.

9. Section 77 of the Act says such certified copies (as issued under Section 76 of the Act) may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

10. Section 76 of the Act, which is relevant herein speaks that, every public officer having the custody of a public document, which

any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. The explanation says any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section to issue certified copies.

11. Thus, if authorized by law to make use of a seal to put the seal and otherwise issue certificate by putting date and with signature of the officer authorized to certificate with his name and official title, it is then only a duly certified copy.

12. The objection raised by the trial Court from the certified copies issued by the High Court has purported to rely by the revision petitioner/defendant before the trial Court to adduce evidence relying on it in his side, no where contain the certification as required by Section 76 of the Act for what is mentioned is only the compliance of the requirements of Rule 200 of Code of Civil Procedure and Circular Order and not even Rule 199 of Code of Civil Procedure and Circular Order speaks about sealing and certificate. Unless there is a seal or certification as duly required by Section 76 of the Act, when it is not

being called as a certified copy and even the High Court Rules no way exempted the application of Section 76 of the Act for the High Court to issue certified copy, it is the duty of the Registry of the High Court to take care of in certifying that the compliance of Section 76 of the Act. Thus, to the extent of return of the memo by the trial Court to receive the documents as not duly certified as contemplated by Section 76 of the Act, there is nothing to interfere.

13. Accordingly, the revision petition is disposed of, enabling the revision petitioner/defendant to approach the Registry of the High Court, which issued certified copy, to certify the same as contemplated by Section 76 of the Act and return for its proper presentation with necessary petition before the trial Court, for that the trial Court then to receive to exhibit the same as public documents.

13(i). The Registry of the High Court is directed to cause prepare the stamp/seal in compliance of Section 76 of the Act containing the certification as true copy to the original and date of certification and the designation of the officer certifying with initial hereafter and for those certified copies, if at all required to be complied in the meantime, by handwriting endorsements so to comply. The copy may be communicated to all the Courts in the two States respective District Judges to see that such certification is mandatorily required under Section 76 of the Act from its reading with Rule 199 of the Civil Rules of Practice and Circular Orders.

13(ii).The interim stay granted by this Court shall continue for four weeks from today. In the meantime, the revision petitioner can comply with the requirement by approaching the Registry of the High Court to represent the same for the trial Court to proceed further.

14. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

28th November 2016.

Note:

L.R. Copy to be marked – Yes.

(b/o)
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