

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.4164 of 2015 & 4405 of 2015

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COMMON ORDER:

The C.R.P.No.4164 of 2015 under Article 227 of the Constitution of India is filed by the respondents in A.S.no.14 of 2011 assailing the orders dated 10.06.2015 of the learned Additional Senior Civil Judge, Gajuwaka passed in I.A.no.189 of 2015 filed by the appellant in the said appeal under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to receive the petition listed documents on file, as additional evidence.

The C.R.P.no.4405 of 2015 under Section 115 of the Code is filed by the said respondents in the above said appeal assailing the orders dated 31.07.2015 of the said learned Judge passed in I.A.no.310 of 2015 filed by the appellants under Order XLI Rule 27 read with Section 151 of the Code requesting to issue witness summons to the Special Deputy Collector, Land Acquisition and Rehabilitation and Resettlement for Steel Plant, Visakhapatnam to give evidence on the documents issued by the Special Deputy Collector, Steel Plant.

2. I have heard the submissions of the learned counsel for the revision petitioners/respondents in the first appeal suit ('the respondents', for brevity) and the learned counsel for the appellant in the first appeal suit, who is the respondent herein ('the appellant', for brevity). I have perused the material record.

3. Before advertng to the legal position, it is necessary to state, infra, the necessary facts:

The trial Court, disposed of the three suits viz., O.S. nos. 500 of 2003, 501 of 2003 (old O.S.no.32 of 1995) and O.S.no.499 of 2003 (old O.S.no.9 of 1995) by a common judgment dated 31.07.2015. While decreeing the suits O.S.No.500 of 2003 and 501 of 2003 filed for the reliefs of perpetual

injunctions, the trial Court had dismissed the suit O.S.no.499 of 2003 with costs. The present appellant is the 2nd defendant in both the suits, which are decreed by the trial Court. The aggrieved 2nd defendant had preferred the first appeal suit in A.S.no.14 of 2011 on the file of the Court of the learned Additional Senior Civil Judge, Gajuwaka. During the pendency of the said first appeal suit, the appellant had filed the aforementioned two interlocutory applications for permission to adduce additional evidence. The said applications were resisted by the respondents in the appeal suits, who are the revision petitioners herein. However, on merits and by the orders impugned in these revisions, the Court below had allowed both the applications.

4. In the stated background of facts, these revision petitions need not detain this Court for long, in view of the settled legal position. It is relevant to note that in the first appeal suit, the appellants filed the aforementioned two applications to adduce additional oral and documentary evidence. The trial Court had considered and allowed the said applications ahead of the final hearing of the first appeal suit and had kept the first appeal suit pending. Be that as it may.

5. The law is now well settled that any application filed for receiving additional evidence in a first appeal suit shall be heard and considered for disposal along with the first appeal suit, but shall not be decided ahead of the first appeal suit. However, the Court below keeping the first appeal suit pending and without taking up the first appeal suit for Final Hearing had taken up, for disposal, the said two interlocutory applications filed by the appellant for permission to adduce additional oral and documentary evidence and had allowed the said applications. Thus, the Court below had taken up and disposed of the two applications filed by the appellant for permission to adduce additional evidence ahead of the final hearing of the first appeal suit.

6. It is profitable to refer to the decision in **Union of India v. Ibrahim Uddin and another**^[1], wherein the observations and the ratio are as follows:

“The general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 of the Code of Civil Procedure enables the appellate Court to take additional evidence in exceptional circumstances. It is also true that the appellate Court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right to the admission of such evidence. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. Under Order XLI Rule 27, the appellate Court has power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. It is a salutary provision which operates as a check against a too easy reception of evidence at a later stage of litigation and the statement of reasons may inspire confidence and disarm objection.” In the above decision, the Supreme Court had summed up the issue as follows: ‘An application under Order XXI Rule 27 of the Code is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.

7. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on

record in order to pronounce the judgment or for any other substantial cause.

In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not remains inconsequential, or inexecutable and is liable to be ignored. Therefore, in the case on hand, the impugned order, whereby the applications for taking additional evidence on record have been considered and allowed prior to hearing of the first appeal, is a product of total and complete non-application of mind and such order, which remains inconsequential and inexecutable is liable to be set aside.

8. Accordingly, both the revisions are allowed and the orders impugned in the revisions are set aside. Since the said I.As in I.A.no.189 of 2015 and I.A.no.310 of 2015 are to be considered on merits, at the time of final hearing of the appeal, the said applications are remitted to the court below for fresh consideration on merits in accordance with the precedential guidance in the decision of the Supreme Court referred to supra. It is made clear that this Court did not express any opinion on the merits of the said applications. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

01st June, 2016
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[\[1\]](#) (2012) 8 SCC 148