

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CIVIL REVISION PETITION No.1239 OF 2016**

**ORDER:**

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders dated 27.01.2016 of the learned Junior Civil Judge, Narayanpet, passed in I.A.no.350 of 2015 in O.S no.2 of 2004 filed by the plaintiff under Order VII Rule 14 (3) of the Code of Civil Procedure, 1908 ('the Code' for short) requesting to grant leave to file the petition listed documents and receive the same on file by condoning the delay in filing the same.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff ('the plaintiff', for short) and the learned counsel for the respondents/defendants ('the defendants', for short) and I have perused the material record.

3. The case of the plaintiff in support of the request for receiving the documents by condoning the delay in filing the same, in brief, is as follows:

The suit is posted for exhibiting the documents as per the affidavit of the plaintiff filed long time back in lieu of examination in chief. However, due to oversight, the plaintiff had failed to mention about certain documents in the said affidavit particularly, exhibit A13, which is marked in the CMA and which is a validation proceeding in regard to the suit land in the name of the plaintiff. Further, the plaintiff also has to file certified copies of pahani patrikas related to the suit land for the years 2003-04 and 2004-05, which are issued by the then Village Revenue Officer of the village. Due to non-availability of the same at the time of the filing of the suit in the office of the said officer, the copy of the same could not

be obtained and filed earlier. Further, the plaintiff also has to file certified copies of pahanies in respect of the suit land for the years 1995-96, 1996-97, 1999-00, 2000-01, 2001-02, 2002-03 and 2003-04 and the copies of the pahanies for the Fasli years 1423, 1425, 1516 and the copy of the latest Record of Right (1B Form), which show the uninterrupted possession of the plaintiff over the suit land from the date of the filing of the suit till date. The said documents show the possession of the vendor of the suit land and about the sale of the land to the plaintiff. Further, the plaintiff is also filing the copies of decree and judgment in CMA no.9 of 2004. The non-mentioning about the said documents in the affidavit filed in lieu of examination in chief is not intentional and is only accidental and due to oversight. To avoid any loss that may ensue and for proper adjudication of the case, it is necessary to file the above said documents, which are essential to substantiate the case of the plaintiff. If the same are not received on file and are not permitted to be marked, the plaintiff would suffer serious and irreparable loss.

4. The case of the contesting respondents 3 to 5, in brief, is as follows:

The petition is untenable. The chief examination affidavit is filed long time back; and, since a long time the suit is coming for exhibiting the documents on the side of the plaintiff and for his cross examination. At a belated stage, the petition to receive documents is filed. There is no reference to these documents in the chief examination affidavit. It is not explained as to why the documents were not filed at the earliest point of time. Some of the documents, which are filed by the petitioner, are not furnished to the contesting respondents. Therefore, they reserve the right to file an additional counter, if necessary. The orders passed in CMA are not relevant for adjudication of the issues involved in the main suit. Therefore, the said documents cannot be received. The petition is liable to be

dismissed.

5. On merits and by the order impugned, the Court below had dismissed the petition having referred to the provision of Order VII Rule 14 (3) of the Code and by *inter alia* observing that no reasonable explanation was given for filing the documents with a delay of more than 2½ years, which is inordinate, and that no reasonable cause is shown for granting leave and that a few of the documents which are being sought to be filed are of a period subsequent to the date of the suit.

6. At the hearing, learned counsel for the petitioner/plaintiff, while reiterating the pleaded case of the plaintiff had contended as follows:

The Court below ought to have seen that though the plaintiff had filed the copies of pahani patrikas of the years 1999-00, 2000-01 and 2001-02, the copies were not signed by the proper authority, and therefore, the copies of pahani patrikas of the said years issued by a competent authority are filed with the instant petition for receiving the documents. Further, the Court below ought to have seen that the plaintiff had obtained copies of pahani patrikas of some more years related to the periods prior to the suit and after the suit, to show his uninterrupted possession over the suit land from date of the filing of the suit and till the date of filing of the application for receiving the documents on file. Further, the Court below ought to have seen that the plaintiff had also filed the recent Record of Right (1B Form) to establish his case. Thus, though some documents are prior to the suit year, due to non-availability of the record with the office concerned, the copies could not be obtained earlier. Nonetheless, copies were granted only after the suit was instituted. Further, some of the copies of the revenue records that were applied for and granted relate to the period subsequent to the suit. They are being filed only to show the continuous possession and to avoid any comment that entire record

relating to the suit land is not filed. By oversight, in the chief affidavit that was already filed, the fact in regard to exhibit A13 validation proceeding in regard to the suit land in the name of the plaintiff is omitted to be mentioned, though the said document is already exhibited as exhibit A13 at an interlocutory stage. Thus, a valid explanation is given for filing the documents after the affidavit in lieu of examination in chief is filed. Even though the copies of the judgment and decree may not be received, the other documents which are all copies of pahanies and copy of Record of Right which are copies of public documents and which cannot be disputed can be received on file by granting necessary leave as sufficient cause was shown in the affidavit filed by the plaintiff in support of his request. The Court below without adverting to the contentions in the affidavit of the plaintiff had erroneously observed that sufficient cause is not shown. Though an affidavit is already filed, in view of the filing of the documents at present with valid explanation, the plaintiff can always be permitted by the Court below to file a fresh affidavit in lieu of examination in chief or an additional affidavit in lieu of additional examination in chief or the Court below may also permit the witness to give oral evidence in further chief in continuation of the affidavit evidence already filed. Therefore, mere non-mentioning of the documents in the earlier chief affidavit is no ground to reject the request for receiving the documents, which are all certified copies of public documents. The suit is for perpetual injunction. Therefore, the documents which *prima facie* establish the possession of the plaintiff over the subject land are essential and it is in the interests of justice to grant leave to the plaintiff to enable the plaintiff prove his case in the best possible manner he wishes to prove. Therefore, the application for receiving important documents ought not to have been dismissed by the Court below giving importance to technical considerations.

7. On the other hand, learned counsel for the contesting

respondents/defendants, while supporting the orders of the Court below and while reiterating the contentions of the defendants, had submitted as follows: “2½ years after the chief examination affidavit is filed, an attempt is being made to file further documents; and, as rightly held by the Court below no cause is shown for filing the documents. Indeed if the plaintiff wanted to file the documents, he ought to have filed them along with the plaint, but, not at a belated stage. Further, as rightly held by the Court below, some of the documents are of a period subsequent to the institution of the suit. Therefore, they have no probative value. When the Court below gave valid reasons while rejecting the plaintiff’s request to receive documents on file and when the plaintiff could not show and establish sufficient reasons in support of the request, this Court is not required to interfere by exercising the discretionary jurisdiction under Article 226 of the Constitution of India. There is no reason to interfere with the order impugned in this Civil Revision Petition.

**7.1** In the decision in **Gold Rock World Trade Ltd., v. Veejay Lakshmi Enginreeing Works Ltd.** [ILR (2007) Supp. (5) Delhi18 = MANU/DE/8444/2007] relied upon by the learned counsel for the defendants/respondents, the Delhi High Court having referred to the provision of law and the decision of the Supreme Court cited before it has held as follows:

**A plain reading of Order 7 Rule 14 (3) makes it clear that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. The learned Counsel for the plaintiff submits that leave of the Court ought to be granted to the plaintiff for producing the additional documents referred to in the application under Order 7 Rule 14 and as also for calling the witness for producing the documents mentioned in the other application. The learned Counsel for the plaintiff referred to the decision of the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India:**

**AIR 2005 SC 3353. With reference to paragraph 13 thereof, the**

learned Counsel submitted that the Court may permit leading of such evidence even at a later stage subject to any terms that may be imposed upon by the Court which may be just and proper.

4. I have heard counsel for the parties. The Supreme Court decision in Salem Advocate Bar Association (supra) was in the context of additional evidence. By virtue of the 1976 amendment, Rule 17-A had been introduced in Order 18. The said Rule 17-A granted discretion to the Court to permit production of evidence not previously known or which could not be produced despite due diligence. Rule 17-A of Order 18 was deleted by the Code of Civil Procedure (Amendment) Act, 1999 which took effect on 1.7.2002. While considering the effect of this deletion the Supreme Court observed:

13. In Salem Advocate Bar Assn. v. Union of India: AIR2003SC189 , it has been clarified that on deletion of Order 18 Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment i.e. 1-7-2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order 18 Rule 17-A, the court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the court may permit leading of such evidence at a later stage on such terms as may appear to be just.

Thus, the Supreme Court held that the insertion of Rule 17-A was only clarificatory of the in-built power of the Court to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. The learned Counsel for the plaintiff sought to invoke this in- built power of the court even in respect of Order 7 Rule 14(3) which relates to production of documents at a belated stage. There would be no difficulty in holding that the in-built power referred to in the said Supreme Court decision could also be invoked when the question of granting leave arises in the context of Rule 14(3) of Order 7. Consequently, before leave of the Court can be granted for receiving documents in evidence at a belated stage, the party seeking to produce the documents must satisfy the Court that the said documents were earlier not within the party's knowledge or could not be produced at the appropriate time in spite of due diligence.

**7.2** Further in the decision in **G. Sanjeeva Reddy and others v. Indukuri Lakshamma and others** this Court having referred to the following decision cited has held as follows:

Much reliance is placed by the learned Counsel for the petitioner on the judgment of a learned single judge of this Court in *Bada Bodaiah and Anr. v. Bada Lingaswamy and Ors.*: 2003(1) ALD790 . A question as to the interpretation of the provisions of Order VII Rule 14(3) of CPC directly fell for consideration in *Bada Bodaiah*. After setting out the back ground of the case and the legislative history of Order VII Rule 14(3) in meticulous detail, the learned judge reiterated that while a plaintiff is not altogether precluded from applying for producing documents to be received in evidence, subsequent to the filing of the suit, the provisions of Order VII Rule 14(3) must be read harmoniously with the provisions of Order VII Rule [1](#) and thus read the inevitable legislative signal is that the Court is required to exercise sound discretion having regard to the facts and circumstances of each case. While mere non-mention of the document in the plaint or subsequent to incidental or supplemental proceedings in the suit is not per se fatal to a plaintiff's endeavour to produce the documents later the learned single judge held, the Court to which an application for grant of leave is made must exercise discretion in rare cases and not in a routine manner. On a true and fair construction of the curial opinion in paragraph 13 of the judgment, the conclusion is irresistible that this Court reiterated a sound and well established principle. The discretion is not the discretion of the judge but the discretion of the law. It is not a subjective-satisfaction of the person sitting in the judicial office but a discretion conditioned by the legal principles applied to dynamic fact situations which fertilize the application of the discretion. Indolent, negligent or careless litigants are not to be protected at the cost of the other litigants. Some flexibility should however be recognized in the system for the varieties of human conditions such as extreme illness, poverty or some other human condition which disables the orderly pursuit of litigation. A laid back or careless attitude to disciplined pursuit of a solemn proceedings like a litigation is however not to be condoned for that would be subvert the orderly progress of the society. This has always been the principle of law and is the substantive basis of Order VII Rule [14\(3\)](#). This is the principle and that is what has been held in substance in the judgment cited by the learned Counsel for the petitioner.

**7.3.** I have gone through all the decision cited and referred to in the cited decisions. There is no dispute with the legal propositions. Ultimately the final decisions in the cited cases turned on the facts of the respective cases. It has to be so in the case on had also. Therefore, what is to be examined is as to whether or not the petitioner/plaintiff shall be granted leave to file the subject documents

by granting leave and condoning the delay in filing the same, in the facts and circumstances peculiar to the instant case.

8. Be it noted that in a suit for perpetual injunction, the plaintiff, having already filed the copies of pahani patrikas of the years 1999-00, 2000-01, 2001-02, is now seeking leave to file the properly authenticated certified copies of the pahanies for the said years and also the copies of pahani patrikas for the year 1996-97 and the subsequent years in order to establish his continuous possession from a period prior to the institution of the suit and till the later years. The plaintiff is further intending to file the copy of Record of Right (1B Form) and to exhibit the validation proceeding of the suit land in the name of the plaintiff, which is already filed before the Court below, but, which is omitted to have been mentioned while drafting his chief examination affidavit. Admittedly, except the copies of the decree and the judgment in CMA no.9 of 2004, all the other documents, now being sought to be filed are the certified copies of the public (revenue) records. In the affidavit, the plaintiff has given reasons stating as to why the distinct sets of documents are being filed at the present stage. In the well considered view of this Court, the explanation offered and the cause shown in the affidavit of the plaintiff are sufficient to come to a safe conclusion that adequate reasons are assigned and sufficient cause shown in support of the request for receiving the documents by condoning the delay and granting leave. Except stating that there is long delay and the same is not explained, no tenable objection is raised by the contesting respondents/defendants. The law is well settled that the test that is to be applied for examining the sufficiency or otherwise of the explanation for the delay in filing the documents is not as rigorous as the one that is generally applied for examining the sufficiency of the cause for condonation of the delay under Section 5 of the Limitation Act. Further, except one document, that is already filed, the other documents were not in the possession or custody of the



plaintiff; therefore, the plaintiff had obtained the certified copies from the revenue authorities and is seeking leave to produce the same.

Undoubtedly, there is a delay in production of the said documents. As already noted supra,, in the case on hand sufficient explanation is offered and a cause is shown for granting leave to file the subject documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy and when the Court feels that interests of justice require that the documents may be received, then the court would receive the documents by exercising the judicious discretion, and would consider their effect there after at a later stage. When such is the settled position and, when the documents are being sought to be produced in the trial court, before the arguments are completed, normally they may well be received and an opportunity would given to prove them and also to adduce rebuttal evidence, if any; and their relevance and effect would be considered while deciding the issues raised and involved in the *lis*. Under these circumstances, the trial court was not justified in refusing to receive all the documents [except the copies of the decree and the judgment in CMA no.9 of 2004] by condoning the delay in filing the same and in not granting leave to file the said documents.

**9.** For the aforesaid reasons, the impugned orders are accordingly set aside and the delay in filing all the documents [except the copies of the decree and the judgment in CMA no.9 of 2004] is condoned.

**10.** In the result and accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. As a consequence, I.A. no.350 of 2015 in O.S.no.2 of 2004 on the file of the Court of learned Junior Civil Judge, Narayanpet, is allowed and leave is granted to the plaintiff for filing all the documents, except the copies of the decree and the judgment in CMA no.9 of 2004. As a sequel, the Trial Court is directed to receive the above documents, subject to proof, admissibility

and relevancy; and, give opportunity to the plaintiff to prove the documents and to the respondents/defendants to adduce rebuttal evidence.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

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**M. SEETHARAMA MURTI, J**

Date: 8<sup>th</sup> July, 2016  
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