

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3079 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioners/appellants is directed against the orders dated 05.02.2015 of the learned Additional District Judge, Vikarabad of Ranga Reddy District passed in IA.no.930 of 2014 in AS.no.21 of 2012 filed under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity).

2. I have heard the submissions of the learned counsel for the revision petitioners. Though the respondents are served with the notices, none appeared. I have perused the material record.

3. The learned counsel for the revision petitioners would submit that the Court below had disposed of the interlocutory application filed for receiving additional evidence in the first appeal suit ahead of the appeal suit contrary to the settled legal position.

4. The issue involved in this revision need not detain this Court for long. As per the settled legal position, an application under Order XLI Rule 27 of the Code is to be considered at the time of hearing of the first appeal on merits so as to find out whether the documents and/or evidence sought to be adduced have any bearing on the issues involved. It is profitable to refer to the decision of the Supreme Court in **Union of India v. Ibrahimuddin and another**^[1] wherein the Supreme Court having referred to the provisions of law and the precedents had held as follows:

'Thus, from the above, it is crystal clear that an 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 the 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, the 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/inexecutable and is liable to be ignored.’

A plain reading of the ratio would indicate that an order passed in an interlocutory application for receiving additional evidence, either allowing or dismissing it ahead of the appeal, is an inconsequential and inexecutable order and such order is liable to be ignored. Therefore, in view of the precedential guidance, the order impugned, by which the application to receive additional evidence was disposed of ahead of the appeal, is unsustainable both under facts and in law. And, hence, the order impugned warrants interference.

5. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. Consequently, IA.no.930 of 2014 in AS.no.21 of 2012 is restored. The Court below is now directed to hear and dispose of the said application at the time of hearing of the first appeal suit on merits as per the precedential guidance in the decision of the Supreme Court in **Union of India** (supra). There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

16.03.2016
Vjl

[\[1\]](#) (2012) 8 SCC 148