

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1668 of 2016

ORDER:

The revision petitioner is the 8th respondent to the S.O.P.No.569 of 2015 and I.A.No.195 of 2016. The application was filed by the 3 petitioners under Section 23 of Andhra Pradesh Societies Registration Act 2001, who are respondent Nos.1 to 3 of the revision and the petitioners in I.A.No.195 of 2016. The respondents to the main petition are 20 in number which include 9th respondent entity-Alluminium Castware Manufacturers Association, Regd.No.13/1944-45, represented by its President by name Kilaparathi Srinivas, who is no other than main petition 8th respondent, individually so also in the array of same respondents of the main petition as respondents to the I.A.No.195 of 2016.

2. Earlier, pending the main petition, the petitioners sought in I.A.No.2641 of 2015 to appoint an Advocate Commissioner to conduct inventory and to seize the records with the 9th respondent under the premises of 9th respondent and to produce before the Court. The respondents contested the matter and the counter filed by the 9th respondent, in particular on 12.07.2015 with his signature and the stamp seal of the 9th respondent entity as represented by its President and signed by the 8th respondent in that capacity as President, is that the entity is in subsistence since 1945, it will be a huge task of the registers and accounts of 9th respondent as they are from 1945, while disputing other averments in the main petition, the affidavit in support of the petition for inventory, in saying 1st petitioner was the Secretary of the

9th respondent from 1999 for several terms till 2013 and petitioner Nos.2 and 3 were also committee members respectively for some time and respondent Nos.1 to 7 of the main petition were never inducted by the 8th respondent and they were the members for more than 10 to 15 years to the 9th respondent entity and the allegation that 8th respondent is not maintaining proper registers or accounts or collecting huge amounts for construction of buildings and mis-managing is false and in saying it is from the 1st petitioner not re-elected for the next consecutive year as Secretary, the present main petition is filed with grouse and with false averments. It is also contended that the respondent Nos.1 to 7 are competent and eligible members that the 9th respondent is maintaining regularly proper accounts and registers and has been submitting the same to audit, income tax returns are also filing pursuant thereto and the 9th respondent is very much willing to produce all available books and records whenever required. It is pursuant to the counter undertaking to produce whenever required the records and after hearing both sides and by the order dated 10.12.2015, dismissed the application.

3. Practically though the petition is mentioned as dismissed instead of disposal or allow, it is only a disposal because it is by considering said undertaking given by the 9th respondent entity represented by its President, the 8th respondent, to produce the records available as and when required. No doubt that order is made final to that extent, though not operate as res judicata, the undertaking given is to say binding on the respondents 8 & 9 to say 8th respondent individually and as President of the 9th respondent entity representing the same by him undisputedly

therefrom, leave about what are the bye laws that speak as to who is competent to represent the 9th respondent. It is in fact pursuant to which order supra based on the undertaking supra, the application in I.A.No.195 of 2016 was maintained by the petitioners against the respondents in particular seeking against 8th respondent to produce the records mentioned as 1 to 7 material papers as follows:

- 1) Membership register.
- 2) Minutes book from the year 2009-2010.
- 3) Account books relating to the association from 2009-2010 to 2015-2016.
- 4) Account books relating to the old kalyanamandapam and new kalyanamandapam.
- 5) Receipt books from the year 2009-10 to 2015-16.
- 6) Circular book from the year 2009-10 to 2015-16.
- 7) Approved building plan of kalyanamandapam and relevant permissions from authorities.

4. It is after counter and hearing with the facts almost covered supra, by formulating the point as to the 8th respondent who is the president of the 9th respondent entity, whether can be directed to produce the documents; it was held in answering the same by the impugned order dated 10.03.2016 by the learned District Judge as follows:

“Though the documents and registers are in the custody of the Secretary, the 8th respondent being the President of the Society is not precluded from producing the records before the Court. In I.A.No.2641 of 2015 he gave an undertaking to produce the records as and when directed and this kind of plea has not been taken. Similarly, the contention that the 1st petitioner has not handed over the previous records was not raised in the counter in the prevision petition. Therefore, it appears that both these contentions are now raised for mere purpose to oppose the petition. Hence, there is no tenable ground to refuse the relief sought.

In the result, the petition is allowed and the 8th respondent is directed to produce the following documents before the Court on or before 21.03.2016.

- 8) Membership register.

- 9) Minutes book from the year 2009-2010.
- 10) Account books relating to the association from 2009-2010 to 2015-2016.
- 11) Account books relating to the old kalyanamandapam and new kalyanamandapam.
- 12) Receipt books from the year 2009-10 to 2015-16.
- 13) Circular book from the year 2009-10 to 2015-16.
- 14) Approved building plan of kalyanamandapam and relevant permissions from authorities.”

5. It is impugning, the present revision is filed. Heard both sides at length and perused the material on record.

6. It is one of the main contentions in the revision against the impugned order that the 1st petitioner being the Secretary of the entity from 1999 for several terms till 2013, membership register, minutes book, account books of association, receipt books, circular books up to March 2014 are with him. The other ground raised is that the 8th respondent is asked to produce the records, though he is only the President of the entity and not Secretary. The other contention is that mere apprehension of tampering with records is not a valid reason for ordering production of records. It is also one of the contentions in the course of submissions by the learned senior counsel Sri VLNGK Murthy for the revision petitioner representing Sri K.S.Murthy, that the document sought for production must be shown connected with the lis for adjudication and thereby the lower Court could not have been ordered for production without considering the same.

7. Whereas it is the submission of Sri B.Sesibushan Rao, learned counsel for respondent Nos.1 to 3, who are the petitioners in the lower Court that the order of lower court holds good and there is nothing to interfere by this Court while sitting in revision much less to accept any hair splitting contentions, without

production despite undertaking given to produce that was recorded by the lower Court in I.A.No.2641 of 2015 order dated 10.12.2015.

8. In fact there is undisputedly a clear undertaking was given to produce the available records resulting in disposal of I.A.No.2641 of 2015 dated 10.12.2015 based on the same. Thus the plea raised in the revision grounds of 1st petitioner is in custody of records till March 2014 when not found place in the counter by the 9th respondent entity to the earlier application in I.A.No.2641/2015 supra from its perusal, it cannot be believed, much less to give any credence to the contention to get over the undertaking, once there is an undertaking to produce the available records as referred supra and that was recorded in disposing the petition as per Order dated 10.12.2015 in I.A.No.2641/2015, that too representing the 9th respondent entity as its President having duly signed in the counter with verification by the 8th respondent, they are estopped even from saying 8th respondent is not the Secretary of 9th respondent and Secretary alone is in custody of records and secretary is only to sue and be sued as per the bye laws. The 9th respondent is bound, equally by the 8th respondent and even the Secretary and other members of the Executive Committee of the 9th respondent by that undertaking to produce and it is only after production pursuant to the undertaking, the Court may consider for marking from any relevancy and admissibility and by any recording of objection while marking to decide ultimately and but for that, it is even premature to go into admissibility and relevancy for ordering production.

9. Having regard to the above, the order of the lower Court holds good and for this Court while sitting in revision there is

nothing at all to interfere and what all the records available and by proof of not availability if for other records be produced before the Court below to consider by the Court below therefrom.

10. Accordingly and in the result, the revision petition is dismissed.

Consequently, miscellaneous petitions if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 07.09.2016
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