

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5400 of 2011

ORDER:

The revision petitioner is the plaintiff and unsuccessful petitioner in I.A.No.2351 of 2011 in O.S(SR).No.8029 of 2011. The respondents to the revision are the defendants of the unnumbered suit supra. The suit was originally filed for the relief of permanent injunction on the file of Additional Junior Civil Judge, Ranga Reddy District, numbered as O.S.No.1362 of 2007. During pendency of the suit and from the statement of the defendants in dispute in title and possession of plaintiff, plaintiff sought the relief by amendment of the plaint for declaration and possession also by payment of deficit Court fee. The trial Court after the amendment before payment of deficit court fee returned the plaint. Once suit is validly filed, a subsequent amendment enhancing jurisdiction in fact no way takes away the power of the Court to try, for not even any request of the parties to return. No doubt it was returned and return is not objected, however, the return was not taken to represent before the District Judge having pecuniary jurisdiction pursuant to the order of return. It is subsequently, while presenting the returned plaint for the delay occurred application covered by the impugned order in I.A.No.2351 of 2011 was filed under Section 14 of the Limitation Act. It is the application having received the deficit Court fees rejected by the learned District Judge with the observation that the advocate who has given the affidavit recording the facts sworn in for the delay and not by the party and a Single Judge expression of this Court in 2003 (3) ALT 816 speaks in an application under Order IX Rule 13 CPC party did not give affidavit regarding the non service of summons, but for by the advocate who is not the competent, thereby the advocate has no right to give affidavit to consider the application and further held the explanation of the advocate in his affidavit of he is engaged in his daughter's marriage arrangements and could not have time to take

return and represent the plaintiff is hardly believable. It is said impugned order dated 05.09.2011 questioned in this revision on various grounds.

The learned counsel for the respondents/defendants supported the impugned order saying for this Court, while sitting in revision within the limited scope there is nothing to interfere.

It is important to mention that as per the Civil Rules of Practice and Circular Orders 1990 from Rules 34 to 39 speak of what is important for an affidavit that is required to be sworn, or affirm and shall be drawn up in first person and to be divided into paragraphs numbered consequently and confined to the subject either written or typed or printed or stitched book wise and the deponent shall sign at the foot of the each page of the affidavit as per the form of oath and affirmation referred in the Schedule to the Indian Oaths Act and the deponent shall subscribe his name, father's name, age, residence and occupation with full address and title of the suit or the matter in which it is filed and it shall be sufficient where there are more than one parties affidavit of one deponent and not by all others and the affidavit to be sworn, before used in any judicial proceedings, before a Magistrate or Member of Parliament or an advocate or the like. The affidavit shall further state the date, place and time of the affirmation and attestation by identifying the deponent and in case of blind or illiterate also identify in this regard including of marks and to be filed with notice to the other side supported by an application in support of which the affidavit filed. Mainly the affidavit shall state the facts as to information or belief of deponent or source or ground of information of belief or matter of opinion and the qualification of the deponent to express such opinion including as to acquaintance or experience and means of knowledge in this regard. Rule 55 of the Rules further say for each prayer of interlocutory nature there shall be a separate application supported by affidavit. From reading of these provisions, a person acquainted with facts even can give affidavit in support of an

application and there is no rule that every application must be supported by one of the parties of the suit alone and an advocate or advocate's clerk cannot give affidavit. In fact it is he the person acquainted with the facts and explaining for the delay in representation of the plaint in this particular case, particularly as advocate of the party in saying there was no information to the client and it is because of his latches or inadvertence from engaged in the arrangements of his daughter's marriage he could not have time to take return and represent the plaint. The same could have been considered by the lower Court and the decision relied on when confines to the facts of that case as in that case it was an application under Order IX Rule 13 CPC seeking to set aside the decree on the ground of there was no service of notice, however party did not give the affidavit but for advocate, and what the Court observed was an advocate cannot depose the facts within personal knowledge of a party. Thereby the decision has no application for all cases, but for confined to own facts. Thus, the order of the lower Court is liable to set aside and the revision is to be allowed subject to costs.

Accordingly and in the result, the revision is allowed subject to costs of Rs.2,000/- and since costs paid in open Court, the trial Court is directed to number the plaint if otherwise in order.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.08.2016
ska