

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5927 of 2016

ORDER:

The grievance of the petitioner/ appellant in this revision under Section 115 of the Code of Civil Procedure, 1908, ('the Code') is that the Court below disposed of, by its order dated 23.08.2016, I.A.No.1238 of 2015 in A.S.No.252 of 2010 filed under Order XLI Rule 27 of the Code ahead of the first appeal though the law ordains that such an application shall be heard and disposed of along with first appeal suit.

2. I have heard the submissions of *Sri M.Bala Subrahmanyam*, learned counsel appearing for the appellant/ petitioner at the stage of admission.

3. The learned counsel for the revision petitioner/ appellant 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 first appeal suit contrary to the settled legal position. He therefore prays for setting aside the impugned order.

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 filed for permission to adduce additional evidence in the appeal is to be heard and 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 relevance or 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*<sup>1</sup> wherein the Supreme Court having referred to the provisions of law and the precedents 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, by which the application to receive additional evidence was disposed of ahead of the first appeal, is unsustainable both under facts and in law. And, hence, the order impugned warrants interference.

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<sup>1</sup> (2012) 8 SCC 148

5. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. Consequently, I.A.No.1238 of 2015 in A.S.No.252 is restored to file. 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 v. Ibrahimuddin and another (supra).

There shall be no order as to costs.

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

09<sup>th</sup> December, 2016  
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M. SEETHARAMA MURTI, J