IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION Nos.3624, 3625, 4068, 4069, 4070 and 4071 of 2014; 3399 and 3401 of 2015

Between:
M/s.Lakshmi Priya Exports (India) Pvt. Ltd.,
And others.

....Petitioners

and

M/s.Ramalingam Mills Ltd.,
And another.

....Respondents

JUDGMENT PRONOUNCED ON : 15.02.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

–

+ CIVIL REVISION PETITION Nos.3624, 3625, 4068, 4069, 4070 and 4071 of 2014; 3399 and 3401 of 2015

% 15.02.2016

M/s.Lakshmi Priya Exports (India) Pvt. Ltd.,
And others.

…Petitioner

vs.

$ M/s.Ramalingam Mills Ltd.,
And another.

… Respondent

!Counsel for the Petitioners : Sri S.Subba Reddy

^Counsel for the Respondents : Senior Counsel Sri K.G.Krishna Murthy

For

Sri K.Ramamohan Mahadeva

<Gist :

>Head Note :

? Cases referred

1. (2009) 4 SCC 410
2. (2013) 14 SCC 1
3. 2003 (1) ALD 790
4. 2003 (2) ALD 558
5. (2011) 11 SCC 275
6. 2014 (2) ALD 184
7. 2006 (3) ALT 66

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.3624, 3625, 4068, 4069, 4070 and 4071 of 20 3399 and 3401 of 2015

COMMON ORDER:

These Civil Revision Petitions are being disposed of by this common order as they arise out of two suits, where the defendants were common.

O.S.No.23 of 2007 was filed by M/s.Ramalingam Mills Ltd., seeking recovery of money against the defendants and O.S.No.31 of 2007 was filed by one Velu Yarn Traders seeking recovery of money against the same defendants in O.S.No.23 of 2007. When the suits were coming up for arguments, the plaintiffs filed two sets of four interlocutory applications in both the suits for reopening the suits, for receiving certain documents, and for recalling P.W.1 and D.W.1. All the applications were allowed by the learned III Additional District Judge, Tirupati, by two common orders dated 22.09.2014, challenging which, the defendants filed the above Civil Revision Petitions, and the details are as under:

Sl. No.	C.R.P. No.	Filed against I.A.No.	I.A filed under the provisions of CPC	O.S.No.
1	3624 of 2014	999 of 2014	Section 151	23 of 2007
2	4068 of 2014	1000 of 2014	Order VII Rule 14(3) & Section 151	23 of 2007
3	3399 of 2015	1001 of 2014	Order XVIII Rule 17 & Section 151	23 of 2007
4	4069 of 2014	1002 of 2014	Order XVIII Rule 17 & Section 151	23 of 2007
5	3625 of 2014	1009 of 2014	Section 151	31 of 2007
6	4070 of 2014	1010 of 2014	Order XVIII Rule 17 & Section 151	31 of 2007
7	3401 of 2015	1011 of 2014	Order XVIII Rule 17 & Section 151	31 of 2007
8	4071 of 2014	1012 of 2014	Order VII Rule 14(3) & Section 151	31 of 2007

The affidavit filed in support of the application in I.A.No.1012 of 2014 by the plaintiff in O.S.No.31 of 2007 to receive the documents i.e., Xerox copies of the T.D.S.Certificate and Scrutiny Balance Sheet reads as follows:

> "I submit that I have filed my chief affidavit and the above suit is posted for arguments to 3-9-2014. I further submit that T.D.S.certificate which shows the payment of interest by the defendant along with scrutiny balance sheet are relevant, material and necessary to prove my case. The said documents are traced out recently. There is no willful default in filing the same and no prejudice will be caused to the defendants as the documents pertaining to defendants. I am filing separate petition to recall myself as P.W.1 to mark the said document and also to reopen the above suit."

A counter affidavit was filed in I.A.No.1012 of 2014 stating that the allegations that the plaintiff was examined as P.W.2 and after completion of the evidence of the defendants the suit was posted for arguments to 03.09.2014 were not true. It was further stated that the plaintiff took time for the purpose of adducing further evidence and when the suit was posted on 21.04.2014, it was reported that there was no further evidence. Thereafter, the suit underwent adjournments on 28.04.2014, 03.06.2014, 12.06.2014, 30.06.2014 and 07.07.2014. The plaintiff filed I.A.No.746 of 2014 for reception of documents and they were allowed on 14.07.2014. Thereafter also the suit underwent eight adjournments and it was posted to 20.08.2014 for arguments. It was further stated that, after completion of evidence of the defendants, no opportunity should be given to the plaintiff to cover up the lacunae. The documents were not related to the above case and the TDS certificate relates to M.R.Handlooms Muthaiah Palaykat Company and Ganesh Textiles, which do not relate to the suit transaction. The documents were neither true copies nor certified copies. They were not authenticated. The scrutiny balance sheet was connected with M/s.Velu Yarn Trading Company and the plaintiff in the suit was Velu Yarn Traders, a registered firm,

but not a Company.

The trial Court, having noticed that the application was filed belatedly and an opportunity was given to file documents on an earlier occasion, held that the plaintiff shall not be prevented from filing the documents even before arguments. The trial Court observed that the plaintiff was trying to place some more evidence for establishing its plea that it is entitled to claim interest from the date of default in making payments, as such a plea was taken in the plaint and was deposed by P.W.1. The trial Court held that it was not a case of filling up gaps and brushed aside the decisions cited by the learned Counsel for the respondents. It held that the present application was filed under Order VII Sub-rule (3) of Rule 14 of CPC, whereas the decisions cited by the learned Counsel for the respondents were rendered under Section 151 of CPC or under Order XVIII Rule 3 of CPC and Order XVIII Rule 17 of CPC. Accordingly, it allowed the applications by order dated 22.09.2014.

Learned Counsel for the petitioners submitted that a witness cannot be recalled for his examination and the principles underlying under Order XVIII Rule 17 of CPC were clearly spelt out in **Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate**[1] followed by the Supreme Court in another case in **Bagai Construction v. Gupta Building Material Store**[2].

Learned Senior Counsel Sri K.G.Krishna Murthy, appearing for the respondents, on the other hand, submitted that, no prejudice is caused to the defendants in the suit, as the suit was instituted by the plaintiff and it wants to file further evidence in support of the plea already taken in the plaint. He placed reliance on the decisions of this Court as well as the Supreme Court in **Bada Bodaiah v. Bada Lingaswamy**[3], **Cable Corporation of India Limited, Bombay v. Sanghi Industries Limited, Ranga Reddy District**[4], **K.K.Velusamy v. N.Palanisamy**[5] and **John Santiyago v. Clement Dass**[6].

In the light of the above facts and contentions raised by the learned

Counsel, it has to be seen whether the plaintiff can be permitted to file further documents after closure of evidence and whether such a course of action falls under Order VII Rule 14 or Order XVIII Rule 17 of CPC.

The relevant provisions of Order VII Rule 14 and Order XVIII Rule 17 of CPC read as follows:

Order VII Rule 14:

> "**14. Production of document on which plaintiff sues or relies:-** (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filled with the plaint.
>
> (2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
>
> (3) 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.
>
> (4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

Order XVIII Rule 17:

> "**17. Court may recall and examine witness:-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such question to him as the Court thinks fit."

A perusal of the above provisions makes it clear that the plaintiff shall file all the documents which are in his possession along with the plaint and by showing sufficient cause he can file it at a later point of time under Order VII Rule 14 of CPC. Order XVIII Rule 17 of CPC operates in altogether a different field and what the Court has to see is whether the party who is applying thereunder was prevented from filing those documents at the earliest point of time or not.

In the instant case, admittedly, these documents are that of the plaintiff

in whose custody they were available. The only reason assigned in the affidavit filed in support of the applications is that those documents were traced out recently. There is no justification for such a statement.

Since the learned Senior Counsel appearing for the respondents tried to sustain the order of the trial Court, I will take up the decisions on which he placed reliance.

In **Bada Bodaiah**'s case (supra) it was clearly stated that, a reading of Rule 1 of Order XIII shows that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. But, it has no power to receive the documents produced subsequently. It was further held that, Order XIII Rule 1 and Order VII Rule 14(3) have to be read together harmoniously and with the leave of the Court, the documents can be produced at the time of trial. It was also held that, Order VII Rule 14(3) being an exception to the rule in Order VII Rule 14(1) as well as Order XII Rule 1(1)(2), the power to grant must be exercised in rare cases and not in a routine manner. The said ratio was followed in **G.Sanjeeva Reddy v. Indukuru Lakshmamma**[7]. In the instant case, the copies of the present documents were not filed along with the plaint and they were sought to be filed before commencement of arguments. Since those documents are with the plaintiff, the exercise of discretion by the Court cannot be held to be proper.

The case in **Cable Corporation of India Limited** (supra) is also a case arising under Order VII Rule 14 of CPC. But, since it was a case arising out of the Companies Act, 1956, the Court took a liberal view of the matter and allowed the applications.

In **K.K.Velusamy**'s case (supra), a two Judge Bench of the Supreme Court considered the scope of Order XVIII Rule 17-A. The Supreme Court in paragraphs 13, 14 and 19 explained the position as follows:

> "**13.** The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the

evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1-7-2002. The deletion of the said provision does not mean that no evidence can be received *at all,* after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

…

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

The case of **John Santiyago** (supra) was a case where the petitioners were aware of the contents of the documents and this is not such a case.

I n **Vadiraj Naggappa Vernekar**'s case (supra) the Supreme Court examined the scheme and object of Order XVIII Rule 17. The Supreme Court

held that the provision of Order XVIII Rule 17 is intended to enable the Court to clarify any doubt which it may have with regard to the evidence led by the parties and it is not intended to be used to fill up omissions in the evidence of the witness who has already been examined. The Supreme Court also observed that the power shall be sparingly exercised in appropriate cases and not on a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. The Supreme Court upheld the view of the learned Single Judge, who dismissed the applications by observing that the evidence was available at the time the witness deposed and it was not a new fact that was discovered subsequently. In those circumstances, it noticed that after cross examination of the witness the witness noticed certain lapses in evidence which occasioned him to file the application under Order XVIII Rule 17 and such a course of action does not make out a case for recall of witness after his examination has been completed.

In **Bagai Construction**'s case (supra) the Supreme Court considered the scope of Order XVIII Rule 17 of CPC once again by placing reliance on **Vadiraj Naggappa Vernekar**'s case (supra) and reiterated the principle laid down therein with the following observations:

> "After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be so far as possible avoided only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed these two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

In the instant case also it is clear that the documents, which were sought to be filed now, were available with the plaintiffs and there was no foundation made in the plaint with regard to those documents. The plaintiffs earlier availed the opportunity to file additional documents and on that occasion also they did not choose to file the present documents. Even sub-rule (3) of Rule 14 of Order VII of CPC provides for production of documents with the leave of the Court at the hearing of the suit. But, when the evidence of the parties was completed and the suit is coming up for arguments, though technically speaking, the hearing of the suit can be called as not completed, it is not the intendment of the sub-rule to grant leave to a party to file the documents before commencement of arguments. Further, the affidavits filed in support of the applications do not indicate any justifiable reason for accepting the said documents and recalling the witnesses after conclusion of trial. The amendments to the Code of Civil Procedure were made in order to speed up the process of disposal of cases and if this type of applications are allowed, it would go against the spirit of the scheme of the Code of Civil Procedure.

A perusal of the orders of the trial Court shows that it travelled much beyond the case pleaded by the petitioners in their petitions.

In the circumstances, this Court is constrained to set aside the impugned orders dated 22.09.2014 and the Civil Revision Petitions are, accordingly, allowed. The miscellaneous petitions pending in these Civil Revision Petitions, if any, shall stand closed. There shall be no order as to costs.

_____

(A.RAMALINGESWARA RAO, J)

15.02.2016
vs

---

[1] (2009) 4 SCC 410
[2] (2013) 14 SCC 1
[3] 2003 (1) ALD 790
[4] 2003 (2) ALD 558

[5] (2011) 11 SCC 275

[6] 2014 (2) ALD 184

[7] 2006 (3) ALT 66