

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.790 of 2016

ORDER:

This Civil Revision Petition is filed challenging the order dt.07.01.2016 in I.A.No.107 of 2012 in A.S.No.72 of 2012 of the Additional District Judge, Narsapur, West Godavari District.

2. The petitioner herein is the 3rd defendant in O.S.No.431 of 2001 on the file of Junior civil Judge, Palakol.

3. The 1st respondent filed the said suit against the petitioner and respondents 2 and 3 for specific performance of an agreement of sale dt.15.09.1997. The petitioner was subsequently impleaded as 3rd defendant in the suit.

4. The said suit was dismissed on 06.04.2009.

5. Challenging the same, the 1st respondent filed A.S.No.72 of 2012 before the Additional District Judge, Narsapur.

6. After the appeal was filed, she also filed I.A.No.107 of 2012 under Order XLI Rule 27(1)(aa)(2) CPC to file additional evidence. Along with the said application she wanted a possession certificate dt.08.11.2010 produced by her to be received in evidence.

7. Petitioner filed a counter affidavit opposing this application and contending that it is a fabricated document.

8. By order dt.07.01.2016 the Court below allowed the said application and permitted the 1st respondent to produce the possession certificate subject to admissibility, proof and relevancy, observing that the question of admissibility, proof and relevancy and also whether document is a fabricated one, can be

looked into in the main appeal.

9. Assailing the same, this Revision is filed.

10. Counsel for the petitioner relied on a decision in ***State of Rajasthan v. T.N.Sahani and others***^[1] wherein the Supreme Court has held that an application for receiving additional evidence should be decided along with appeal considering the necessity of document sought to be adduced as additional evidence, for pronouncing the judgment more satisfactorily.

11. Counsel for the 1st respondent however refuted the above contention and placed reliance on the judgment of the Supreme Court in ***Lekhraj Bansal v. State of Rajasthan and Anr***^[2].

12. In the said judgment, the Supreme Court did not consider the question 'at what stage an application under XLI Rule 27 CPC should be considered by an appellate Court before which it is filed' but it only observed that parties to appeal shall not be entitled to produce evidence in the appellate Court unless conditions set out under Order XLI Rule 27 CPC are satisfied.

13. Even in the impugned order it is nowhere stated by the lower Appellate Court that the application I.A.No.107 of 2012 filed under XLI Rule 27 CPC was being allowed by it on the ground that the conditions stipulated therein are satisfied by the 1st respondent. Therefore, the impugned order cannot be sustained.

14. Accordingly, this Civil Revision Petition is allowed; the impugned order dt.07.01.2016 in I.A.No.107 of 2012 in A.S.No.72 of 2012 of the Additional District Judge, Narsapur, West Godavari District, is set aside; and the Court of Additional District Judge,

Narsapur is directed to consider the application I.A.No.107 of 2012 along with the appeal while applying its mind to the question whether conditions stipulated under Order XLI Rule 27 CPC are strictly satisfied by the 1st respondent. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

01st July, 2016
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[\[1\]](#) 2001(10) Supreme Court Cases 619

[\[2\]](#) LAWS(SC)-2014-2-100