

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4751, 5068 & 4763 of 2016

COMMON ORDER:

The three revisions are maintained impugning the orders of the learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, in I.A.Nos.560, 561 & 562 of 2016 dated 24.08.2016 viz., on the applications of the plaintiff/petitioner to reopen evidence and to recall PW.1 and also to receive the documents for further examination of PW.1 in exhibiting the same. The affidavit petitions were filed as can be seen from the record on 18.04.2016, those were returned and subsequently represented, notice given to other side i.e., defendants' counsel and the docket orders independently were passed on 24.08.2016. The docket order in I.A.No.560 of 2016 reads as follows:

“Heard. Perused the record considering the submissions made by the learned counsel for the petitioner and also the circumstances of the case, in order to meet the ends of justice, I am inclined to allow this petition.

Hence the petition is allowed. Plaintiff side evidence is reopened for the limited purpose of recalling PW.1 for marking of documents and cross examination thereon.”

Similarly in I.A.Nos.561 of 2016 are as follows:

“Heard. Perused the record considering the submissions made by learned counsel for the petitioner and as respondent/defendant No.1 failed to file counter and also considering the facts and circumstances of the case, order to meet the ends of justice, I am inclined to allow this petition.

Hence the petition is allowed. PW.1 is recalled for the limited purpose marking of documents and cross examination thereon on payment of costs of Rs.100/- to D.L.S.A. By next date. Call on 1-9-16 for compliance.”

Similarly in I.A.No.562 of 2016 are as follows:

“Counter not filed. Hence right to file counter forfeited. Heard. Considering the nature of the documents and submissions made by learned counsel for the petitioner, I am inclined to allow this petition.

Hence the petition is allowed. Documents are received subject to proof and relevancy.”

In fact the defendants as respondents right of filing counter as can be seen from the orders were forfeited. The docket proceedings of the respective petitions are not before the Court to discuss anything more.

The suit is for recovery of the chit fund amount due from the respondents. There was originally an exparte decree dated 18.11.2011 from the examination of PW.1 and by exhibiting Exs.A1 to A.14 of which there is no document showing rules and bye laws or registration of the firm or the authorization for the person to sign or to depose viz., the suit it appears filed on behalf of the firm by Managing Partner G. Nageswara Rao-PW.1, the petition affidavits supra in I.A.Nos.560 to 562 of 2016 were from the affidavit of the deponent L.B. Reddy mentioned as partner. No doubt any person acquainted with the facts can depose and it need not be by the person who signed the plaint even from the reading of the Civil Rules of Practice. Thereby, from that it cannot be find fault the trial Court. However as can be seen from the orders, the lower Court negated the opportunity to the defendants to oppose the petition by filing counter having forfeited their said right. Further the lower Court having stated as heard both sides, however mentioned only considered the nature of documents and submission by learned counsel for the petitioner/plaintiff and inclined to allow the petition. It did not speak what are the submissions of the respondents/defendants and why it

was not considered and the impugned orders of the lower Court thereby per se are unsustainable.

However the Court cannot ignore the factum that procedural law is hand maid and not mistress of justice. Once that is to be kept in mind, much water flown under the bridge subsequently after the orders passed on 24.08.2016 cannot be ignored.

The defendants filed applications to set aside or to recall the orders. Those applications were filed on 01.09.2016 and those were returned on maintainability on 06.09.2016, even though Court got inherent power to recall its own order when not passed properly, from the inherent power inheres from its very constitution having its roots with all elasticity to the necessity also based on maximum ***actus curiae neminem gravabit*** by ignoring the same in its return. The fact remains therefrom that the PW.1 on recall by reopening the evidence was examined further and the 3 documents to be received viz., the authorization, bye laws and firm registration, were exhibited.

The Court can recall its own order which are passed in ignoring the due procedure and for not giving opportunity to file counter and not only that, having heard not reflected what are the submissions of the respondents while allowing the application, but for saying only considered the submissions of the petitioners/plaintiffs. No doubt on that day also neither the defendants nor their counsel appears present. The self imposed hardship of them is no ground to say the further evidence recorded supra in their absence is inadmissible. It is undisputedly in an exparte proceedings even to say as per the full bench expression of this Court in **Aziz Ahmed Khan Vs. I.A. Patel**¹

¹ AIR 1974 AP 1

of such evidence cannot be used later after setting aside the decree passed exparte without consent of parties, that expression has no application herein to the facts.

Having regard to the above, once the petitions were allowed and the documents were exhibited, though there was no opportunity of filing counter or submissions and the arguments for whatever submitted not reflected in the order instead of reverting the clock back and treat the evidence on record with no value, this Court by exercising its plenary jurisdiction, under Article 227 and 215 of the Constitution of India by validating the evidence, however by observing said evidence and marking of documents must be for all purposes treated as subject to objection regarding admissibility, proof and relevancy and by disposing of the revision petitions subject to costs of Rs.6,000/- and since paid in the open Court, same is recorded.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.11.2016
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