

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3478 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the respondent/plaintiff is directed against the orders dated 28.07.2015 of the learned Junior Civil Judge, Uravakonda passed in IA.no.134 of 2015 in OS.no.46 of 2011 filed by the 2nd defendant under Order VIII Rule 1-A of the Code of Civil Procedure, 1908 to permit him to file the documents mentioned in the petition list.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel appearing for the respondent/2nd defendant ('the 2nd defendant', for brevity). I have perused the material record.

3. As per the submissions made before this Court, for the absence of the 2nd defendant before the trial Court, the evidence on his side was closed. Therefore, he had filed two applications – one for reopening the evidence on his side and the other for receiving the documents. Both the applications are allowed. The order reopening the evidence is not under challenge in this revision. This revision petition is filed by the plaintiff being aggrieved of the orders whereby the Court below while permitting the 2nd defendant to file the documents, received the same on file.

4. The case of the plaintiff and the submissions made on his behalf in support of the contention that the trial Court ought not to have received the documents filed by the 2nd defendant at a belated stage despite not assigning valid reasons for filing the documents belatedly is as follows: - 'The documents filed are house tax demand notice, ownership certificate issued by the Gram Panchayat in respect of a house property, copy of 1B register

received through Mee-seva Service Centre, copy of adangal received from Mee-seva Service Centre and notices exchanged. All these documents were available to the 2nd defendant even by the time he had filed the written statement. He ought to have filed these documents along with the written statement as a duty is cast upon him to produce the documents along with the written statement. When the documents are not produced into court by the 2nd defendant as per the provision of Order VIII Rule 1-A, he cannot produce any document without the leave of the Court. No valid reasons are assigned for filing the documents at a belated stage. It is only stated that the documents are necessary to prove his case and that the delay in filing the documents is neither intentional nor wilful and that the documents could not be filed earlier for the reasons beyond his control and that if the documents are not received, he would suffer serious and irreparable loss. There is no mention in the affidavit of the 2nd defendant as to when he had secured the documents and what are the reasons which are beyond his control and for what specific reasons he could not produce the documents earlier. The plaintiff had filed a detailed counter disputing the genuineness of the documents and their probative value and contended that the documents cannot be received. However, the trial Court by only stating that if the petition is allowed no prejudice would be caused to the plaintiff had allowed the petition on costs of Rs.100/- payable to the Bar Association, Uravakonda. No reasons much less valid reasons are assigned by the trial Court for granting leave to the 2nd defendant to file his documents. Therefore, the order is unsustainable.'

5. On the other hand, the learned counsel for the 2nd defendant would submit that the 2nd defendant is an illiterate person and that his counsel ought to have stated valid reasons in the affidavit filed in support of the petition filed for receiving the documents filed at a belated stage and that in the facts and circumstances of the case, for the fault of the advocate, the 2nd defendant cannot be penalised. He would also contend that since it is an interlocutory

application for receiving documents, the Court need not assign any reasons in its order.

6. Before proceeding further, it is necessary to state that the learned counsel for the plaintiff relied upon a decision of this Court in **R. Saraswati v. P. Rajaminkyam @ Veeran**^[1] wherein this Court having referred to the provision of Order VIII Rule 1-A and (3) of the Code had held that when the documents on which the defendant relies are not filed at the time of filing written statement, the said documents cannot be received without leave of the Court and that such leave can only be granted on the basis of the pleadings of the defendant that he had valid reasons for not filing those documents along with the written statement.

7. Having bestowed my attention to the facts and the submissions, I am of the opinion that the order impugned is unsustainable for it is not a speaking order and as no valid reasons are assigned in the order in support of the conclusion. Further, in the affidavit filed in support of the petition, admittedly, no reasons much less valid reasons are assigned for not filing the documents along with the written statement. It is not even stated that any of the documents filed were secured subsequently and were not in the possession of the defendant much prior to the filing of the instant petition. When no reasons much less valid reasons are assigned in compliance with the requirement of the Rule referred to supra, this Court is of the well considered view that the 2nd defendant is not entitled to seek leave of the Court for filing the documents.

8. Viewed thus, this Court finds that the order impugned is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. However, considering the fact that valuable immovable property is the subject matter of the *lis* and also the peculiar facts and circumstances of the case, the 2nd defendant is given liberty to file a fresh

application for leave of the Court for filing the documents supported by an affidavit stating valid reasons for not filing the documents earlier and explaining the reasons for the delay in filing the documents. It is needless to state that in case any such application comes to be filed, the trial Court shall give an opportunity to the plaintiff to file a counter and then dispose of the said application on merits and in strict accordance with the procedure established by law, however, uninfluenced by the observations, if any, made in this order as this Court did not go into the merits of the matter.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

9th June, 2016
Vjl

[\[1\]](#) 2015 (5) ALT 527