

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ C.R.P. No. 2192 OF 2015

% 16.09.2016

M/s.Lokesh Foundaries Pvt Ltd.,
rep. by its Managing Director
Sri Bayana Venkata Rao

...PETITIONER

VERSUS

\$ M/s.Varun Motors, rep. by its Proprietor
Sri Vallurupalli Prabhu Kishore & another

...RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Appellant: Smt Ch.Laxmi Chaya

^Counsel for Respondent : M/s.Bharadwaj Associates

? Cases referred

1. (2003) 6 SCC 675
2. 2005 (6) ALT 712
3. 2011 (5) ALD 39



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.2192 OF 2015

ORDER:

The Civil Revision Petition is filed by the 1st defendant impugning the order passed on 01.06.2015 in I.A. No.252 of 2015 in O.S. No.50 of 2007 by the XIII Additional District Judge, Vijayawada, on the application of the plaintiff.

2) I.A. No.252 of 2015 was filed by the plaintiff under Rule 129 of A.P Civil Rules of Practice and Circular Orders, 1990 (which are made as per the power of the High Court under Sections 122 to 126 of C.P.C) (for short 'C.R.P'), to summon the 2nd defendant—Branch Manager, State Bank of India, Industrial Estate, Patamata, Vijayawada for production of the documents i.e., 1) OTS proposals along with backup papers relating to the M/s.Lokesh Foundaries Pvt. Limited, 2) Internal file noting's in the OTS proposals file of M/s.Lokesh Foundaries Pvt. Limited, 3) Correspondence between M/s.Lokesh Foundaries Pvt. Limited and SBI and 4) Correspondence between M/s.Varun Motors and SBI. The said petition was allowed by the trial Court on 01.06.2015 directing the 2nd defendant-bank to produce the said records and the revision is filed by the 1st defendant in impugning the same

3) Heard both sides. The contentions raised in the grounds of revision mainly are that the trial Court should not have been allowed the application and it is not sustainable on its threshold.

4) It is brought to the notice of this Court by both sides that notice to produce any document given to one by the other of the

parties to the suit under Order XII Rule 8 C.P.C as per the proforma in Form-12 in Appendix-C as prescribed in the CPC, for any non-production, remedy is to draw adverse inference from withholding of any best evidence, that too, on that notice to produce from any objections raised and Court passed any order by considering relevancy in directing the other party to produce the documents. Leave about, said notice to produce the documents is under the impression of an application answered and when sought for review certified by the trial Court within its inherent powers under Section 151 C.P.C which inheres in it to do so, and thereby the memo of notice to produce is for all purposes deemed pending before the lower Court.

5) Against the contention of the revision petitioner from Section 121 C.P.C of the Rule 129 C.R.P got the force of law as if a provision in the C.P.C to comply the requirements by any party before his seeking for production of documents, it is the reply by the learned counsel for respondent No.1 plaintiff that the application filed under Rule 129 C.R.P. is virtually an application under Order XVI Rule 1 or Rule 6 C.P.C as the case may be and thereby, for this court while sitting in revision against the impugned order, as there is no illegality or impropriety to the prejudice of the 1st defendant, there is nothing to interfere and prayed to dismiss the revision.

6) Learned counsel for respondent No.1/ plaintiff placed reliance on the expression of the Apex Court in *Surya Dev Rai vs Ramchander Rai*¹ particularly para Nos.38 and guidelines 4 & 7 which read as follows:

¹ (2003) 6 SCC 675

4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise its supervisory jurisdiction.

7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/ or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

7) Whereas learned counsel for the revision petitioner drawn attention of this Court, particularly to Sections 3 to 6 of the Bankers' Books Evidence Act, 1891 and on the expression of this Court in *D. Ram Mohan Rao vs M/s. Sridevi Hotels Pvt. Ltd., rep. by Managing*

*Director Sri Mohan Reddy*² in saying the production of records in the custody of public officer under Rule 129 of C.R.P. arises only when certified copies are obtained and if not granted, the party was to be summoned to produce and the procedure must be mandatorily followed. Same principle is reiterated in another expression of this Court in *Shaik Hussain Peera (died) LRs vs J. Suseelamma*³ particularly at para Nos.4 & 5 as under:

4. A party to a suit is conferred with a right to summon the documents, which are not in his possession, by filing an application under the relevant Rule of Order 16 CPC. Two conditions are required to be satisfied for this purpose: The first is that the documents, which are proposed to be summoned, must be shown to be relevant to the dispute in the suit. The second is that the document must be mentioned and described specifically. The petitioners filed I.A. No.49 of 2010 with a request to summon the Branch Manager and to require him to produce the “loan account”.

5. When the object of the petitioners is to get a document that contains the undisputed signature of late *Subrahmanyam*, they were required to be certain about the identity of the same, and to be specific about the description. Summoning of a file, or “loan account” would in no way serve the purpose. The petitioners are not specific about any particular document, in the file. Before requesting the trial Court to summon the document, they ought to have been sure about the nature of the document. In fact, they could have obtained certified copy of the same, if there exists one. Unless the petitioners are certain about the description of the document, there does not exist an occasion to examine its relevance. The trial

² 2005 (6) ALT 712

³ 2011 (5) ALD 39

Court has taken the view that the application filed by the petitioners is vague and bereft of specific information. This Court is not inclined to interfere with the orders passed by the trial Court.

8) The suit is filed for Specific Performance of the Contract for sale. The contention of the plaintiff is that he paid entire consideration covered by the agreement to the secured creditor bank of the defendant under proposal of OTS settlement. It is the case of the defendant in the written statement impugning the suit claim that, the suit sale agreement is a false claim and he did not execute and same is not supported by consideration and there is no enforceable contract, much less to grant any relief for Specific Performance or any other alternative relief among the reliefs sought for.

9) It is in the factual scenario, the 2nd defendant bank, who was the secured creditor of the 1st defendant—owner of the plaint schedule covered under the alleged sale agreement was impleaded and filed written statement. It is now no more necessity to go into the contest of the 2nd defendant as to sailing with the plaintiff or with defendant No.1 or having its own independent stand; as it is the prerogative of the trial court to determine from the pleadings and issues arising for consideration, as the matter is pending trial.

10) In fact, during the course of trial and after evidence of PW.1, who is 1st respondent to the revision, having issued notice to produce the so-called documents in relation to the OTS settlement and correspondence between the 1st defendant and 2nd defendant (secured debtor and creditor respectively), as referred supra, objections filed on the application, the trial Court dealt with as if an interlocutory instead

of passing an order on the memo and when it finds fault, rectified the same setting aside the order to say for all purposes the notice to produce as contemplated by Order XII Rule 8 C.P.C is deemed pending and if closed by the trial Court even under any misconception, by virtue of this order to consider for all purposes as pending.

11) In this factual backdrop the plaintiff filed an application covered by the impugned order passed in I.A. No.252 of 2015 before the lower Court referring to Rule 129 C.R.P to produce the documents referred in the notice to produce under Order XII Rule 8 C.P.C with additional documents, if any. In fact, there is a procedure prescribed by said Rule, which need to be followed before seeking documents from public office to produce as laid down by the two expressions of this Court supra. The pertinent question to consider is whether the procedure contemplated by Rule 129 C.R.P is followed or not. The provisions of the Bankers' Book Evidence govern the bank to grant any certified copies of the documents, unless those are of any confidentiality saved from production under the Act or under the Right to Information Act and that also require to determine. Once the documents sought for production are with the party to the suit and not from a third party to the suit, even to summon as a witness invoking Order XVI Rule 1 or Rule 6 C.P.C does not arise. Thereby the submission of the learned counsel for the plaintiff of the application before the Court below can be treated as under Order XVI Rules 1 & 6 is not tenable. No doubt, Order XVI Rule 7 C.P.C enables the Court to call for production, on its own, anybody of any document as a court witness, which is virtually within the power of the Court contemplated by Section 165 of the Evidence Act. The trial Court did not consider any

of the above aspects while passing the order, even to treat the application as part of interrogatories contemplated by Order XI C.P.C, showing that the documents in the custody of the party to be produced and be sought for production under Order XI Rule 14 C.P.C.

12) Having regard to the above, the impugned order *per se* since unsustainable, same is set-aside and remanded to the lower Court to decide afresh and by left open the contentions raised by the parties to raise before the lower Court and the lower Court therefrom shall determine the application by considering the same as filed under correct provision from prayer in the petition is criteria to determine as to within the four corners of which of the provisions of law, the petition can be entertained to decide, from mere wrong quoting of provision is no way fatal. No order as to costs

13) Consequently, miscellaneous petitions if any pending in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.16.09.2016

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Date:16.09.2016

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