

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4644 of 2016

ORDER:

1) Aggrieved by the order dated 09.08.2016 passed in I.A.No.566 of 2016 in O.S.No.24 of 2010 on the file of the Additional Senior Civil Judge, Tirupati, wherein the petition filed to receive the documents was allowed, the present Civil Revision Petition is filed.

2) For the sake of convenience the parties hereinafter be referred to as arrayed in O.S.

3) The facts in issue are as under:

4) The plaintiffs filed O.S.No.24 of 2010 seeking injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment over the schedule property. A written statement came to be filed on behalf of defendant No.1 on 10.06.2010. Defendant No.6 also filed a separate written statement in the month of July, 2016 by engaging a different lawyer. After completing the plaintiffs' evidence, defendant No.1 filed his chief affidavit as DW.1 and he was cross-examined at length by the plaintiffs. The chief affidavit of DW.1 was filed on 17.06.2015 and the matter was posted for cross-examination by the plaintiffs' counsel to 25.01.2016. On that day DW.1 was cross examined by the plaintiffs' counsel. It is

said that the answers given show that DW.1 was colluded with the plaintiffs. Thereafter, the matter was posted to 09.02.2016 for cross examination of DW.1 by defendant No.6. Since then DW.1 did not turn up before the Court for his cross-examination by defendant NO.6. On 26.02.2016 learned counsel for defendant Nos.1 to 3 represented the evidence of DW.1 may be eschewed as he did not turn up. The Court accepted the request and closed the evidence of defendant Nos.1 to 3 and posted to 03.03.2016 for the evidence of defendant No.6. The record reveals that defendant No.6 took time for filing his chief affidavit on 14.03.2016 and then 24.03.2016. On the said date defendant No.6 filed an application vide I.A.No.270 of 2016 to recall DW.1 for the purpose of his cross examination which was allowed on 14.06.2016. The matter was posted to 21.06.2016 for appearance of DW.1 and for his cross examination which got adjourned to 28.06.2016. On 08.07.2016 as DW.1 did not turn up, a request for eschewing the evidence of DW.1 came to be made. Since DW.1 failed to appear before the Court, the trial Court eschewed the evidence of DW.1 and posted to 19.07.2016 for the evidence of defendant No.6. Since the matter is posted for the evidence of defendant No.6, defendant Nos.4 to 6 filed an application to receive the documents which are relevant to prove their case. The said petition was allowed and documents were directed to be received subject to objection. Challenging the same the present Civil Revision Petition came to be filed by the plaintiff No.2.

5) The only ground raised by the learned counsel for the petitioner is that the documents are filed at a belated stage and no explanation is forthcoming explaining the delay.

6) The short question that arises for consideration is whether the trial Court is justified in receiving the documents filed by defendant No.6?

7) Under Order VIII Rule 1 A (3) of C.P.C., a document which ought to be produced in the Court by the defendants, but, is not so produced shall not, without the leave of the Court, be received in evidence. Clause (3) of Order VIII Rule 1A C.P.C. was incorporated by Act 22 of 2000 with a view to discourage the practice of the parties filing documents at a belated stage of the proceedings. The law is well settled that procedure is handmaid of justice. While procedural laws need to be adhered to in order to avoid long delays in disposal of the cases, at the same time, the Courts will have to make a delicate balance between strict adherence to these procedural laws and the substantial justice that needs to be ensured to the parties. In an anxiety to curb delays, stopping the parties from adducing relevant evidence would lead to failure of justice. However, fair amount of discretion is vested by Order VIII Rule 1A (3) C.P.C., in the Courts to permit filing the documents. No hard and fast principles can be laid down for the Courts as to how this discretion has to be exercised. While exercising such discretion, the Courts will have to consider relevant aspects such as the conduct of the parties,

the nature of the documents that are sought to be filed and whether by permitting filing of such documents, the same will help the Court to adjudicate the suit in a more effective manner etc. The Court should also consider the stage at which the documents are sought to be filed. (*M.R.Anjaneyulu v. R.Subramanyam Achary*¹)

8) In *Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others*² the Apex Court held as under:

“It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the Court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate Court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial Court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevant and effect they may have, be considered in deciding the issues arising in the controversy. The High Court also committed the same error in not considering the effect in this behalf in the right perspective.”

9) From the above, it is clear that there is no hard and fast rule that the documents which are not filed along with the written statement cannot be accepted at a later stage. The Court will have to consider certain aspects namely conduct of parties, nature of documents which are sought to be filed and as to whether those documents would help the Court to adjudicate the suit in a more effective manner etc.

¹ 2012 (5) ALD 243

² 1994 (4) SCC 659

10) A perusal of the record shows that the case is still at the stage of defendant No.6 evidence and the documents received by the trial Court are the documents with regard to transactions relating to the suit schedule property. Therefore, the argument of the learned counsel for the defendant No.6 that these documents are necessary for deciding the case on hand cannot be brushed aside at this stage.

11) Since the documents which are sought to be marked are relevant to prove the case of defendant No.6 the same cannot be shunned away at this stage, more so, when the case is at the stage of defendant No.6 evidence. Moreover the documents are sought to be brought on record before the cross examination of the defendants. The plaintiffs will be having every opportunity to cross examine the witness with regard to genuinity or otherwise of these documents. Having regard to the facts and circumstances of the case, I see no merits in the revision and the same is liable to be dismissed.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13) Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.12.2016
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