

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No. 428 OF 2016

ORDER:

This revision petition is filed challenging the order dated 08-10-2015 passed in I.A.No. 756 of 2015 in O.S.No. 358 of 2010 on the file of the Court of Principal Junior Civil Judge, Nizamabad (for short, 'the trial Court'), which runs as follows:

"No representation for respondent. Heard, petition is allowed as pray for. Call on 03-11-2015."

The petitioners were the respondents-defendants and the respondent was the petitioner-plaintiff before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this order.

The challenge of the order in the present revision is that the order is bereft of any reason and cryptic without considering the contentions raised in the counter filed by the respondents. Hence, the order passed by the trial Court is illegal since the trial Court passed the order exceeding its jurisdiction conferred on it. Therefore, it warrants interference of this Court under Article 227 of the Constitution of India.

The petitioner filed I.A.No. 756 of 2015 in O.S.No. 358 of 2010 before the trial Court for re-opening the case and to permit the petitioner to lead further evidence for marking the listed documents raising several contentions. The petitioner filed the suit for injunction and *interim* injunction is also obtained during pendency of the suit. Along with the plaint, the petitioner filed certified copies of registered documents which are marked in A series. Ex.A9 is certified copy of registered agreement – cum – GPA executed in favour of the petitioner, wherein a reference is made about link documents. The said link documents are not produced before the trial Court but their evidence is closed. However, these documents are necessary to

prove the case of the petitioner to substantiate the contentions raised in the plaint. Therefore, the petitioner sought for re-opening and leading further evidence to mark the documents.

The respondents filed counter denying material allegations mainly contending that the petitioner is under obligation to file all the documents along with the plaint which they relied on. After examination of witnesses and closure of their evidence, the petitioner cannot be permitted to file documents, re-open evidence and to lead evidence and it is nothing but filling up *lacunae* in evidence. It is also contended that two reliefs cannot be claimed in a single petition, there are no tenable grounds to allow the application and prayed for dismissal of the petition.

The trial Court, even without hearing learned counsel for the respondents despite raising legal contentions about maintainability of the petition, passed a cryptic one sentence order. The Court is expected to pass a reasoned order and decide all the issues with some seriousness those issues deserve. On this ground alone, the order of the trial Court is liable to be set aside.

One of the contentions of learned counsel for the respondents is that seeking two reliefs in one petition is against Rule 55 of Civil Rules of Practice. According to Rule 55, there shall be separate application in respect of each distinct relief prayed for. When several reliefs are combined in one application, the Court may direct the applicant to confine the application only to one of such reliefs unless the reliefs are consequential and to file a separate application in respect of each of the others. Therefore, claiming relief of re-opening permission to lead evidence and mark documents are two distinct reliefs. However, the documents are filed along with the petition. For receiving documents after condoning delay, a separate application has to be filed under Order XIII Rule 1 of the Code of Civil Procedure (for short,

'C.P.C.'). With the leave of the Court, plaintiff may file documents to condone delay and receive those documents whereas a petition is required to be filed under Section 151 of C.P.C. for re-opening evidence. Even otherwise, to examine the petitioner himself as witness again, a petition under Order XVIII Rule 17 is required to be filed. Filing one application, without filing three different applications as required under law, is contrary to Rule 55 of Civil Rules of Practice. This Court had an occasion to deal with a similar situation in ***S.V.Krishna Reddy Vs. S.Mariam Bee and others***^[1]. In the facts of the above judgment, a suit for specific performance was filed; the plaintiff wanted to bring third parties on record by way of an application under Order I Rule 10 of C.P.C.; and sought for amendment under Order VI Rule 17 read with Rule 10 of Civil Rules of Practice but this Court held that a separate application for amendment is required to be filed since two reliefs cannot be granted in one application. The above principle is directly applicable to the present facts of the case. The trial Court, without considering various contentions raised before it and maintainability of the application in view of the bar under Rule 55 of Civil Rules of Practice, passed a cryptic order. Thereby, the order under challenge is illegal; the same is, therefore, liable to be set aside and is, accordingly, set aside.

In the result, the civil revision petition is allowed remanding the matter to the trial Court to decide afresh in accordance with law keeping in view the observations made hereinabove.

Pending miscellaneous petitions in this revision, if any, shall stand closed in consequence. No order as to costs.

Date: 05-02-2016.
MURTHY, J.

JSK

M.SATYANARAYANA

[\[1\]](#) 1993 (3) ALT 44