

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5749 of 2011

ORDER:

The unsuccessful defendants 1 and 2 had filed this Civil Revision Petition under Article 227 of the Constitution of India assailing the orders dated 29.11.2011 of the learned VII Additional District and Sessions Judge (Judge, Fast Track Court), Vijayawada passed in I.A.no.657 of 2011 in O.S.no.127 of 2008 filed under Order XVI Rule 14 of the Code of Civil Procedure ('the Code', for brevity) to summon Guttikonda Aruna as a court witness to give evidence in regard to exhibits A2 and B3.

2. I have heard the submissions of the learned counsel for the petitioners/defendants 1 and 2 ('the defendants 1 and 2', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The case of the defendants 1 and 2 is this: 'One Guttikonda Aruna whom they wanted to summon as a court witness is a first witness (attestor) to the receipt dated 25.02.2005 passed by the plaintiff and the 3rd defendant, i.e., exhibit B3 receipt. She is an important witness on their side. Since she is the daughter of the plaintiff, she may not support their contentions. Hence, for proper adjudication of the *lis* and ascertaining the truth, it has become necessary to request the Court to summon her as a court witness for examination in regard to the payment of balance of sale consideration to the plaintiff and the 3rd defendant. She is also one of the parties to the sale deed viz., exhibit A2 executed by 2nd defendant in her favour and therefore, her evidence is very much necessary for adjudication of the *lis*.'

3.1 The said petition was resisted by the plaintiff mainly on the ground of maintainability of the petition and it is *inter alia* contending as follows: 'A petition under Order XVI Rule 14 filed by the defendants 1 and 2 to summon a witness as a court witness is not maintainable as the Code does not confer

a right upon a party to request the Court to examine a person as a Court witness. The Court is not obliged to exercise the said power at the instance of the parties. The parties have no right to move an application under Rule 14 of Order XVI of the Code and to request the Court to summon any witness as a court witness. Hence, the petition is liable to be dismissed.'

3.2 In fact, the trial Court having accepted the submissions made on behalf of the plaintiff and having placed reliance on a decision of this Court in **Shaik Abdul Rasool v. G.Lakshmi Reddy**^[1] dismissed the petition of the defendants.

3.3 The defendants 1 and 2 having preferred this revision petition urged as follows: "The plaintiff is disputing the receipt of balance sale consideration under receipt dated 25.02.2005, which is marked as exhibit B3, inspite of the fact that his own daughter figured as a witness in the said document. Since, the said 1st witness (attestor) to exhibit B3, is no other than the daughter of the plaintiff, there is every likelihood that she may not support the case of the defendants 1 and 2. Therefore, it has become necessary to establish the truth by summoning the daughter of the plaintiff-Guttikonda Aruna as a court witness. The other witness to the said document, though examined as a witness, did not fully support the case of the defendants 1 and 2. In the said circumstances, the Court below ought to have allowed the application of the defendants 1 and 2 and ought to have summoned the said witness as a court witness instead of dismissing the said application. The Court below had failed to take note of the vital fact that the witness, who was sought to be summoned as a court witness, is no other than the daughter of the plaintiff; and therefore, the apprehensions of the defendants 1 and 2 that she may side her father and may not support the truth are well founded; and that therefore, they have a right to cross-examine her in case, she does not support the truth. The trial Court erred in dismissing the application.'

3.4 On the other hand, the learned counsel for the plaintiff would submit that the trial Court was bound to follow the precedential guidance in the

decision of this Court; that the trial Court has rightly refused the request of the defendants 1 and 2 to summon the daughter of the plaintiff as a court witness; that the provision of law under Rule 14 of Order XVI Rule of the Code does not confer a right upon any party to require the Court to summon and examine any person as a court witness; that the Court is not obliged to exercise the power under the said provision of law at the instance of the parties; since the defendants 1 and 2 have no right under law to request the Court to summon the daughter of the plaintiff as a court witness, the Court below has rightly dismissed the application of the said defendants.

4. Before considering the ratio in the decision in **Shaik Abdul Rasool v. G.Lakshmi Reddy** (1 supra), which was followed by the Court below while dismissing the application of defendants 1 and 2, it is necessary to refer to the decision in **D.K. Narasamma v. G. Renuka Devi**^[2] relied upon by the learned counsel for the defendants 1 and 2. In this cited decision the facts disclose that the defendants/petitioners filed an application under Order XVI Rule 14 of the Code to summon a Sub-Inspector of Police, who worked at relevant time at Kurnool, as a Court witness in view of the relationship of the said Inspector with the respondent/plaintiff. The trial Court dismissed the said petition. While allowing the revision petition this Court observed that since the police officer being related to the plaintiff, their relationship being that of husband and wife, when he is examined as a Court witness certain facts might be elicited by the parties for the purpose of proper adjudication of questions of controversy between the parties and that, therefore, the trial Court ought to have exercised the discretion in favour of the revision petitioners by summoning the said witness as a Court witness in the light of the peculiar facts and circumstances of the case. Though in this cited decision 2nd supra earlier decisions were referred to, ultimately the decision was rendered having regard to the facts peculiar to the case. However, in the decision in **Shaik Abdul Rasool** (1 supra) this Court having referred to the earlier decisions and the settled legal principle that when the Legislature has prescribed a mode for exercising of any power that power can be exercised only in that manner and in no other manner, [vide the decision in **Gujarat**

Electricity Board v. Girdharlal Motilal (AIR 1969 SC 267)] had finally held that the power under Rule 14 of Order XVI of the Code is to be exercised by the Court on its own accord and not at the instance of a party to the suit. In the cited decision, it was held as under:

“From the above discussion, what emerges is that, the power under Rule 14 of Order 16 Code of Civil Procedure, is to be exercised by a Court, on its own accord, and not on the insistence by a party to the suit. Though a party to the suit can place any information, which may impress upon or convince the Court to exercise its powers under that provision, an independent application for that very purpose does not lie. If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court to accede their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases, to fill up the lacuna in the evidence, which is already on record. That was never the intention of the Parliament. If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 1 and 1-A of Order 16 Code of Civil Procedure.”

4.1. Therefore, in this latter decision (1 supra), this Court had considered the text of the provision under Rule 14 of Order XVI and its purport and hence, in the well considered view of this Court, the decision in **Shaik Abdul Rasool** (1 supra) which lays down a ratio is to be considered as a precedent to be followed by the Court below.

5. Viewed thus, this Court finds that the Court below was justified in dismissing the application duly following the binding ratio in the cited decision. Having regard to the reasons this Court finds that the order impugned does not brook interference.

6. In the result, the Civil Revision Petition is dismissed. In the decision in **Shaik Abdul Rasool** (1 supra) this Court noted that an application filed by the parties requesting the court to invoke such provision can be treated as a device for passing on the information, which may help the Court in forming an opinion, whether or not to exercise its power under the provision. Therefore, it is made clear that the dismissal of this revision petition shall not come in the way of the trial court exercising the power under Rule 14 of Order XVI of the Code on its own accord irrespective of the stances which the parties had taken, if it so wishes and if the facts of the case warrant exercise of such power in the considered view of the trial Court.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

12th February 2016
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[1] 2011 (1) L.S 60

[2] ALD 2008-6-28