

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.159 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful respondent/plaintiff is directed against the order dated 04.12.2012 of the learned Principal Junior Civil Judge, Sathupally of Khammam District passed in I.A.no.96 of 2012 in O.S.no.7 of 2009 filed by the 1st defendant under Order 8 Rule 1(a) read with Section 151 of the Code of Civil Procedure, 1908 requesting to receive on file a document, viz., receipt dated 17.12.2008 by granting leave.

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

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

In a suit filed by the plaintiff for recovery of money against the 1st defendant and another, during the course of trial, that is, when the suit is at the stage of recording of evidence on the side of the defendants, the 1st defendant filed the aforementioned application to grant leave to file the aforementioned receipt dated 17.12.2008 and receive the same on file. The plaintiff resisted the said application. On merits and by the order impugned, the trial Court had allowed the application subject to payment of costs of Rs.400/- to the plaintiff. Aggrieved of the said orders, the plaintiff is before this Court.

4. The case of the 1st defendant in support of the above said request in the aforementioned application, in brief, is this: "The suit is filed for recovery of money against the defendants. The suit is coming for recording the evidence of the 1st defendant. The 1st defendant is filing the receipt issued

by the 2nd defendant, which is an important document. The same may be received for the purpose of marking as exhibit B1. If the document is not received, the 1st defendant suffers serious loss.”

5. The case of the plaintiff in his counter, in brief, is this:

The petition is filed by the 1st defendant with a request to receive the receipt on file for being marked as exhibit B1. The alleged receipt is forged and fabricated. Till the application is filed, the 1st defendant did not bring before the Court the said receipt at any point of time during all these years. He had admitted in his written statement and also the affidavit filed in the interlocutory application that he had never seen the 2nd defendant by name G.Savithri, who had transferred the suit promissory note in favour of the plaintiff and had contended that he did not borrow the amount on the alleged date and did not execute the suit promissory note. But, surprisingly, at this belated stage, the 1st defendant is now intending to file the receipt, which is allegedly scribed by one V.Nageswar and which is said to have been issued by G.Savithri, the 2nd defendant. The contentions of the 1st defendant at the present stage are contrary to his defence in the written statement. A perusal of the receipt shows that there is difference in ink of the various contents of the document. Having taken several adjournments and having dragged on the matter for a long time, the present petition is filed belatedly. The petition is filed only to drag on the matter. The petition may be dismissed.

6. The learned counsel for the plaintiff while reiterating the case of the plaintiff, which is extracted supra, would contend as follows:

In the written statement and in the counter filed in the interlocutory application in the suit, the 1st defendant had categorically stated that he does not know G.Savithri, the 2nd defendant, who had transferred the suit promissory note in favour of the plaintiff. The 1st defendant had thus contended that the 2nd defendant- G.Savithri is a stranger to him. Contrary to the said defence, now he wants to file a receipt that was scribed by one V.Nageswar and which shows that certain amount was paid to G.Savithri.

The receipt is forged and fabricated. Further, the petition is filed with vague allegations. It is only stated in the affidavit that he is filing an important document along with his affidavit in lieu of examination-in-chief and that it is a receipt issued by the 2nd defendant and hence, the same may be received for the purpose of marking it as exhibit B1 and that if it is not received, he would suffer serious loss. No further averment is made in the affidavit filed in support of the petition for grant of leave for filing the document. The affidavit is absolutely vague and no reasons are assigned as to why this receipt could not be filed either along with the written statement or at an earlier stage. This receipt is admittedly not confronted to PW1, the plaintiff, in his evidence. As per the present law, unless valid reasons are assigned for not filing the document earlier and unless the delay in filing the document is explained by showing sufficient cause, the document cannot be received on file. The trial Court without considering the contents of the affidavit of the 1st defendant, which are vague and laconic and without adverting to the defence of the plaintiff in the counter, had erroneously allowed the application holding that the truth or otherwise of the document can be analyzed by an expert and that the defendant cannot be prevented from introducing the receipt as his contention is that the receipt is genuine and it was passed by the 2nd defendant after receiving the amount from him. The said observations are irrelevant as at the stage of considering the application for receiving the document, the Court has to examine as to whether the defendant acted with due diligence in the matter and had shown sufficient cause for not filing the document earlier and for filing the document at a belated stage. The order is unsustainable under facts and in law.

7. On the other hand, the learned counsel for the 1st defendant while reiterating the case of the 1st defendant would submit as follows: "The receipt is an important document to show that the amount was paid by the 1st defendant to the 2nd defendant, who had transferred the promissory note in favour of the plaintiff. When the trial Court had exercised its discretion and had allowed the petition, this Court, while exercising Revisional jurisdiction

under Article 226 of the Constitution of India, shall not interfere with such discretionary order. Further, since the said document is an important document for establishing the defence, the truth or otherwise of the said document has to be determined after full-fledged trial and not while considering the application for receiving the document on file. The order impugned does not warrant interference.”

8. I have bestowed my attention to the facts and the submissions. From the facts, the pleadings and the submissions made, it appears that the plaintiff having obtained a suit promissory note by way of transfer from the 2nd defendant brought the suit against the 1st defendant for recovery of money by impleading the transferor as the 2nd defendant. When the suit is at the stage of recording the evidence of the 1st defendant, the 1st defendant had filed the aforementioned application for receiving the document, viz., a receipt said to have been executed by the 2nd defendant in his favour showing receipt of certain sum, which includes the principal and interest. The plaintiff is opposing the request of the defendant mainly on the ground that the defendant in his defence has pleaded that the 2nd defendant is a stranger to him and that he has not seen her face at any time and that contrary to the said stand taken in the defence the 1st defendant is now taking a new stand by stating that the 2nd defendant passed the alleged receipt in his favour. It is also contended on behalf of the plaintiff that when the plaintiff is a *bona fide* transferee for consideration, the plea of discharge to the effect that the suit debt is already discharged by payment to the transferor is not open under facts and in law. Be that as it may.

9. The only averments in the affidavit of the defendant filed in support of the petition are as follows:

“That the respondent/plaintiff filed the above case for recovery of money against me, and it was posted today for my chief examination. I am herewith filing the important document i.e., receipt issued by the Defendant no.2 herein, the same may be received for the purpose of marking the exhibit as B1 or else I shall suffer an irreparable loss and injury which can not be

compensated.”

(Reproduced verbatim)

A plain reading of all the above averments would show that absolutely, no cause was pleaded for filing the document at a belated stage and no grounds at all are urged for granting leave. In the affidavit filed in support of the petition, undeniably, no reasons much less valid reasons are assigned for not filing the document along with the written statement. It is not even stated that the document was secured subsequently and was not in the possession of the 1st defendant at the time of filing of the written statement.

9.1 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.

As per law, the defendant has a duty to produce the documents upon which he relies upon and bases his defence and which are in possession and power when the written statement is presented by him. Therefore, the 1st defendant is expected to deliver the document with the written statement after entering the same in a list. It is not the case of the 1st defendant that the document was not in his possession and power when the written statement is filed. When the document is in the possession and power of the defendant, he ought to have produced the same in to Court along with his written statement. When a document in the possession and the power of the 1st defendant is not so produced, he shall not be permitted to produce the same at a later stage and such document cannot be received in evidence unless sufficient cause is shown for non-production of the same at the earliest

opportunity. As already noted, a plain reading of the contents of the affidavit of the 1st defendant, which are extracted supra, would show that the petition is filed in a casual manner without stating any reasons whatsoever for the belated filing of the document and the entitlement of the 1st defendant for seeking leave to file the document at a belated stage. In the peculiar facts and circumstances of the case, the delay and the absence of proper explanation for filing the document at a belated stage constitute a valid ground for dismissing the application.

10. Viewed thus, this Court finds that the order impugned, which is passed without adverting to the relevant facts and the legal position obtaining is unsustainable both under facts and in law.

s11. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.no.96 of 2012 is dismissed.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

27th June, 2016
RAR

-
-
-

-

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