

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No.3583 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the order dated 26.04.2016 in I.A.No.181 of 2015 in O.S. No.94 of 2006 passed by the Junior Civil Judge, Narasannapeta, whereby the said application was dismissed.

02. The petitioners filed a petition under Section 35 of the Indian Stamp Act, 1899 for impounding the document i.e. unregistered settlement deed dated 21.02.1997 in a suit filed for permanent injunction. The petitioners filed I.A. No.94 of 2011 for the same relief, which was allowed on 09.06.2011, but they did not comply the direction issued by this Court for payment of stamp duty and penalty. Since the suit is for permanent injunction, unless the document is sent to the District Registrar for collection of stamp duty, it is difficult for the petitioners to prove their case and will be put to hardship and order impounding the document.

03. The second defendant filed counter denying the material allegations while contending that the earlier application in I.A. No.94 of 2011 was allowed for the same relief, but the petitioner did not comply the direction of this Court.

04. The trial court, upon hearing the argument of both the counsel, considering rival contentions, dismissed the petition only on the ground that the petitioner did not comply the earlier direction issued in I.A. No.94 of 2011 dated 09.06.2011, whereunder he was directed to pay stamp duty and penalty and dragged the matter on one pretext or the other till today even at the stage of defendant's evidence.

05. The above order is under challenge raising various contentions. The counsel for the petitioners mainly contended that

unless the order is set aside and the document is sent for impounding, it is difficult for the petitioners to prove their case atleast his possession based on unstamped settlement deed and contended that due to ill health and financial problem, the petitioners could not comply the earlier direction dated 09.06.2011 in I.A. No.94 of 2011.

06. Heard Sri T. Tejeswara Rao, learned counsel for the petitioners, at the stage of admission.

07. As seen from the impugned order, it is clear that I.A. No.94 of 2011 was filed under Section 35 of the Act and it was allowed on 09.06.2011 directing the petitioners to pay stamp duty and penalty, but it was not complied even after five years and came up with the present application for the same relief, under the same provision of law without explaining any reason in the entire affidavit, for non compliance of the earlier direction issued by the trial court. But across the Bench, the learned counsel for the petitioners contended that due to financial difficulties and ill health, the petitioners could not comply the direction, but it is not supported by any material.

08. When the trial court passed an order directing to pay stamp duty and penalty, it is the duty of the petitioner to adhere to such direction, or challenge the same in higher forum if aggrieved, and for any reason, if the petitioner was not able to comply the direction, nothing prevented him to seek extension or relaxation of time by filing a petition under Section 148 of the Code of Civil Procedure, 1908. Instead of doing so, the petitioners leisurely approached this court by filing a separate application after lapse of five years, almost when the suit was coming for defendants evidence.

09. The dismissal of the present petition by the trial court does not suffer from any illegality or irregularity. Curiously, it is to be noted that the Stamp Act is meant for collection of revenue and it is fiscal

enactment, but filed the present petition under Section 35 of the Act which says that unless the document is stamped, it is not admissible in evidence. There is a specific provision in the Code of Civil Procedure for impounding the document in different circumstances. But obviously for reasons best known to the petitioners, filing petitions successively one after the other without complying the direction, issued in the similar petition. Hence, I find no ground to interfere with the order dated 26.04.2016 in I.A. No.181 of 2015 in O.S. No.94 of 2006.

10. The jurisdiction of this Court under Article 227 of the Constitution is limited in view of the Judgment of the Apex Court reported in **HARI VISHNU KAMATH VS. SYED AHMAD ISHAQUE AND OTHERS**^[1]. Hence, I find no illegality or illegal exercise of discretion by the trial court in passing the impugned order, consequently the revision is liable to be dismissed.

11. In the result, the revision is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 22.07.2016

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^[1] 1955 1 SCR 1104