

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5382 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the respondent No.10 in the Election Petition viz., O.P.No.18 of 2015, on the file of the Co-operative Tribunal, Hyderabad, having been aggrieved of the marking of Exs.A-1 to A-5 during the examination in chief of PW-1, one of the petitioners in the OP.

2. I have heard the submissions of learned Mrs.Sesha Rajyam, senior counsel appearing for Smt.Akella Padma, for revision petitioner/respondent No.10 in the OP., and of Sri K.Lakshman, learned counsel appearing for respondents 1 to 6 herein/the petitioners in the OP.

2.1 The parties herein shall hereinafter be referred to as the 10th respondent and the petitioners as arraigned in the election OP for convenience and clarity.

3. I have perused the material record.

4. The facts as borne out by the material record and as per the submissions made by the learned Senior Counsel and the learned counsel for respondents 1 to 6 and the facts that are necessary to be stated as a prelude to this order in brief, are as follows: "The 10th respondent is resisting the Election Petition filed by the petitioners 1 to 6. During the course of enquiry before the Tribunal, one of the petitioners was examined as PW-1 and he tendered, during his examination in chief, the following documents/Exs.A-1 to A-5 for being marked:

1. Proceedings in Cr.No.439/Coop/2014, dated 24.02.2015 of the Prohibition & Excise Superintendent, Sanga Reddy.
2. Letter, dated 06.06.2016 of the members of Toddy Tappers Co-operative Society Ltd., Marepally village of Medak District, addressed to the Election Officer, Toddy Tappers Co-operative Society Ltd., Marepally.
3. Election Notice in Rc.No.16/2015/SHO SRD, dated 09.06.2015.
4. Letter, dated 15.06.2015 of the members of Toddy Tappers Co-operative Society Ltd., Marepally, addressed to the District Collector, Medak.
5. Proceedings, dated 15.07.2015 of the Election Officer, Toddy Tappers Co-operative Society Ltd., Marepally.

And, during his examination in chief, the said documents are exhibited.

5. In this setting of facts, the 10th respondent in the OP contends that in the absence of the 10th respondent and his counsel, the said documents were exhibited and that the documents are certified copies of photostat copies and that the photostat copies are inadmissible in evidence, and, therefore, the certified copies obtained from such photostat copies are also inadmissible not being either primary evidence or secondary evidence; and in any view of the matter, no foundation is laid for adducing secondary evidence, and, therefore, the Tribunal was in error in permitting PW-1 to tender the said documents in evidence and in permitting him to exhibit them. One more contentions of the 10th respondent is this: 'The petitioners filed the photostat copies of Exs.A-1 to A-5 along with their petition stating that they obtained the said copies under the provisions of the Right to Information Act; however, they had obtained certified copies of the very same photostat copies from the Tribunal and tendered such certified copies for marking and thus marked them as Exs.A-1 to A-5; if really the photostat copies were obtained by having resort

to the provisions of the Right to Information Act, the petitioners ought to have marked the said documents directly instead of obtaining certified copies and tendering such certified copies of the said documents for marking.’ Therefore, the 10th respondent contends before this Court that Exs.A-1 to A-5 shall be eschewed from consideration and the Tribunal shall be directed, if necessary, to give an opportunity to the petitioners to follow the procedure established under law for marking Exs.A-1 to A-5, if the petitioners intend so to do.

6. *Per contra*, the learned counsel for the petitioners would contend as follows: “Documents i.e., the originals of Exs.A-1, A-3 and A-5 are public documents and the copies marked as Exs.A-1, A-3 and A-5 are certified copies of the said documents. They being certified copies of public documents are admissible in evidence as secondary evidence in view of the provisions of Sections 74 and 75 read with Sections 63 and 65 of the Indian Evidence Act. He would further submit that Exs.A-2 and A-3 are office copies of representations given to public officers and that Ex.A-2 contains an acknowledgement of receipt of the same by the officer to whom it was addressed and, therefore, none of the documents as contended by the 10th respondent/petitioner herein are photostat copies but they are certified copies and they are admissible in evidence. He specifically contends that in view of the provisions of Section 63(2) and (3) of the Indian Evidence Act, the documents are admissible.

6.1 The learned Senior Counsel appearing for the 10th respondent placed reliance on the decision of the Supreme Court in **J.Yashoda v. K.Shobha Rani** [(2007) 5 SCC 730] in support of the proposition that secondary

evidence shall not be permitted unless a foundation is laid and it is proved that the original of which secondary evidence is being given, is in existence. She also placed reliance on the decision in **Datti Kameswari v. Marrapu Lakshmunaidu & others [2016 (2) CCC 288 (A.P.)]**, wherein, this Court held that copies of private documents obtained under the provisions of Right to Information Act cannot be considered as secondary evidence but copies obtained of public documents under the provisions of the said Act can be considered as secondary evidence.

6.2 In reply, the learned counsel for petitioners would contend that on receipt of notice in the OP, the Election Officer, who is a party to the Original Petition, produced into Court the entire record and that the petitioners had applied for granting certified copies of the relevant documents from the public record produced by the said officer and that certified copies as applied for were duly granted from the said public record produced by a public officer, and, therefore, the said documents are admissible, being certified copies of public documents. He therefore, further contends that no further foundation be laid as certified copies of a public documents are straight away admissible in evidence.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions. I have perused the relevant provisions of the Indian Evidence Act referred to by the learned counsel for both the sides and also the decisions cited.

8. The principal issue for consideration in this revision is as to whether the documents Exs.A-1 to A-5 are certified copies of the photostat copies

said to have been filed by the petitioners along with the OP as being contended by the 10th respondent; or in the alternative, whether they are the certified copies granted by the Court from the public record produced by the Election Officer, who is a party to the OP. Both sides are unable to produce any material before this Court to substantiate their respective contentions. The said question being a question of fact, which requires consideration of factual details and examination of the record of the Tribunal, in the well considered view of this Court, the said issue cannot be resolved by this Court. Further, though it is the contention of the 10th respondent that the documents are exhibited in the absence of the 10th respondent and his counsel before the Tribunal and that the documents are not secondary evidence and cannot be admitted without a foundation being laid, the 10th respondent instead of approaching this Court ought to have first filed an appropriate application before the Tribunal with a request for eschewing from consideration the documents exhibited by raising the contentions, which are now raised in this revision. He did not do so. However, during the course of arguments, it is stated on behalf of the 10th respondent that an application seeking such a relief was filed before the Tribunal and it was returned and later it was represented and it is pending consideration before the Tribunal. On the above analysis, this Court finds that the legal aspects cannot be considered unless the factual aspect involved in the matter is first resolved.

9. In that view of the matter and as a factual issue requires to be first resolved in the matter, this Court is of the considered view that the revision can be disposed of with appropriate directions.

10. In the result, the revision petition is disposed of directing the Tribunal to take up for hearing and disposal the interlocutory application said to have been filed by the 10th respondent in the OP for the relief of eschewing from consideration Exs.A-1 to A-5 and dispose of the said interlocutory application in strict accordance with the procedure established by law, however, after giving an opportunity to petitioners to file their counter.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

30th December 2016
ajr

M. SEETHARAMA MURTI, J

