

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.889 of 2016

ORDER:

This Civil Revision Petition is filed challenging the order passed by the Junior Civil Judge, Tekkali, Srikakulam District, in I.A.No.62 of 2014 in O.S.No.43 of 2002 dated 12.11.2015, whereby the petition filed under Order 16 Rule 2 & 3 read with Section 151 of Civil Procedure Code was dismissed on the ground that the petition was filed belatedly.

The case of the petitioner is that the petition under Order 16 Rule 2 and 3 CPC was filed to summon the neighbours of the petitioner to prove his claim, but the petition was dismissed on various grounds, however, the same was challenged before this Court in C.R.P.No.3974 of 2013. On 01.04.2014, a direction was given to the petitioner to review the same by way of filing a fresh application within one month from the date of receipt of the order. Accordingly, he applied for certified copy of the order and the same was made ready during the vacation i.e., on 02.05.2014. Therefore, within 30 days thereafter, the petitioner filed the I.A. on 01.07.2014 which is under challenge. Thus, the petitioner complied with the direction issued by the Court in the C.R.P.

Whereas the learned counsel for the respondents mainly contend that the suit is of the year 2002, almost 14 years old and the petitioner is adopting delaying tactics to drag on the matter for sometime by filing one petition or the other, thereby, causing obstruction to the trial Court in completion of trial of the suit.

There is no dispute about the facts on hand, but the only ground on which the trial Court dismissed the petition was that the petitioner did not file application under Order 16 Rule 2 and 3 within 30 days from the date of the receipt of the order. The petitioner's contention is that he explained the reasons for delay by filing a memo. However, it

is clear that the copy was made ready on 02.05.2014 undisputedly, whereas the present petition was filed on 01.07.2014. The only explanation for the delay is that the copy was made ready during summer vacation of 2014, but the Courts were reopened in the 1st week of June, 2014, the petition was filed on 01.07.2014. In ordinary course of events, the petitioner would have received the copy immediately when it was made ready i.e., on 02.05.2014, but obviously for different reasons the petitioner did not take delivery of the copy made ready by the Section in the High Court, however, on account of such delay, the substantial rights of the parties cannot be jeopardized and the delay that caused by the petitioner in one way or the other can be compensated by imposing costs.

Taking into consideration the facts and circumstances of the case and the substantial delay that caused by the petitioner in filing the petition and obstructing the trial of the matter, I find that it is appropriate to impose costs of Rs.2,000/- (Rupees two thousand only) to compensate the delay, payable by the petitioner to the respondents herein.

Order 16 Rule 1 of CPC deals with list of witness and summons to witness and it contemplates that on or before such date as the court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in court. Any party desirous of obtaining a summon for the attendance of any person shall file in court an application stating therein the purpose for which the witness is proposed to be summoned and the court may, for reasons to be recorded, permit a party to call, whether by summoning through court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such

witness in the said list. Subject to the provisions of sub-rule (2), summons referred to in this rule may be obtained by the parties on an application to the court or to such officer as may be appointed by the court in this behalf within five days of presenting the list of witnesses under sub-rule (1). Thus, Order 16 Rule 1 CPC permits summoning of witnesses, but subject to satisfying the Court about the reasons for summoning the witness proposed to be summoned and after recording satisfaction only, the Court has to issue the summons.

The trial Court dismissed the application only on the ground of delay and not on any other grounds. Therefore, the requirements under Order 16 Rule 1 CPC need not be examined since the application was dismissed on the ground of delay, however, the order of the trial Court i.e., dismissal of the petition on the ground of delay is set aside to meet the ends of justice and to afford sufficient opportunity to the petitioner to take summons to the witnesses and produce them as I find that there is justification in filing the petition to summon the witnesses and satisfied about the cause shown by petitioner. As the matter relates to 2002 and delay for 14 years, I find that it is a fit case to direct the petitioner/defendant to examine his witness on day to day basis, taking summons and on recording evidence of witness produced by the defendant, the trial Court is directed to dispose of the suit within a period of three (03) months from the date of receipt of a copy of this order.

In the result, the civil revision petition is allowed on payment of costs of Rs.2,000/- to the respondents/plaintiffs by the petitioner/defendant within 15 days from today and produce all the witnesses before the trial Court and examine them on day to day basis either by summoning or by producing the witnesses by the petitioner himself. In the event of failure to pay costs, the petition shall stand dismissed and in case of failure to produce witnesses as directed by this Court within the specified time, the trial Court is at liberty to

proceed with the matter in accordance with law within the stipulated time irrespective of production of witnesses by the petitioner/defendant.

Consequently, miscellaneous petitions, if any pending shall stand closed. No costs.

M. SATYANARAYANA MURTHY, J

03.06.2016

Note: Issue C.C. by 08.06.2016

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