

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3973 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 14.03.2016 in I.A. No.127 of 2015 in O.S. No.57 of 2012 passed by the Junior Civil Judge, Amadalavalasa, Srikakulam District, whereby the petition filed under Rule 1-A of Order VIII of the Code of Civil Procedure, 1908 (for short, 'CPC') to receive set of documents annexed to the petition and to mark them as exhibits alleging that those documents are very important to prove his case and for deciding the controversy between the parties, was dismissed.

In the affidavit, the son of the revision petitioner specifically contended that his mother was aged 63 years, suffering from diabetes, paralysis, not in a position speak freely about anything because of her illness due to disease, and because of her illness, she could not file the documents. Therefore, he enclosed the documents said to have been issued by the Government officials and prayed to condone the delay in filing these documents, receive and mark them as exhibits on behalf of the defendant.

The respondent herein filed counter in interlocutory application denying the material allegations of the affidavit filed along with the petition, while contending that the son of the petitioner has no locus standi to participate in the suit and that

those documents cannot be received at this stage and prayed for dismissal of the petition.

The trial court, upon hearing argument of both the counsel, dismissed the petition declined to receive documents assigning various reasons mainly on the ground that the son of the revision petitioner is a third party and filed his affidavit as examination-in-chief on behalf of his mother. There is no controversy about filing of suit by the respondent herein claiming relief of injunction simplicitor against the revision petitioner.

The son of the petitioner was not a party to the suit initially, but later the revision petitioner herein filed I.A. No.105 of 2015, sought permission to give evidence of her son on her behalf. The trial court allowed the petition on 09.10.2015 and permitted the son of revision petitioner to give evidence on her behalf.

In any view of the matter, the petitioner after obtaining permission to give evidence on behalf of defendant in the suit relying on the written statement filed by his mother. When the petitioner was relying on the contents raised by his mother in the written statement he has to confine his case to the pleas set up by his mother. In the written statement, his mother referred various documents, which are set out in the list as documents 2 to 6. In compliance of Rule 1A of Order VIII of CPC allegedly filed those documents, but again the petitioner filed the same set of documents including serial Nos.2 to 6 in the present petition

and sought leave of the court to receive them on behalf of his mother-defendant.

In the absence of referring those documents in written statement, question of receiving those documents on his behalf does not arise, however, third party on record cannot file documents as contended by the petitioner. Therefore, the court need not receive those documents again when S.Nos.2 to 6 are already on record. The other documents set out in the list are Serial Nos.1, 7 to 13 which are neither filed along with written statement nor referred in the written statement filed by the mother of the petitioner. Now the controversy is, whether the documents which are not referred in the written statement in compliance of Rule 1A (2) of Order VIII of CPC can be received after granting leave by the court.

The defendant is under obligation to file list of documents, which are relied upon, along with written statement in view of mandate under Rule 1A of Order VIII of CPC.

The defendant, mother of the petitioner, neither referred those documents nor filed along with written statement, but the reason assigned by the petitioner in the present petition is that those documents are important and necessary to decide the real issue and that his mother could not file those documents earlier, but no other explanation was given for not referring those documents in the written statement in compliance of Rule 1A of Order VIII of CPC, in fact the petitioner is incompetent person to explain the reasons for non filing those documents.

Learned counsel for the petitioner mainly relied on the Judgment of this Court reported in **RAJAH R.V.G.K. RANGA RAO AND ANOTHER v. NIZAMS SUGARS LIMITED, LATCHAYYAPETA, SEETHANAGARAM MANDAL, VIZIANAGARAM DISTRICT**¹ wherein this Court held that it is true that in certain matters there will be deliberate negligence and lack of bona fides on the parties and at belated stage, the documents would be produced before the Court. To have proper check and also safeguard, no doubt, the amending provisions had been introduced. It has to be noticed that these are all more procedural matters and on the ground of latches, there cannot be shutting of evidence provided the Court is satisfied that there is some reason for non-production of the documents as specified and contemplated by the provisions of the Code. If reasons are explained normally the Court may have to lean in favour of receiving the documents, since it is the fundamental principle that the parties should be permitted to let in all possible evidence which are relevant for the purpose of adjudicating the matters in controversy before the Court. Throwing the evidence on a technical ground and preventing a party producing the evidence, unless it is a deliberate attempt to delay the matters, normally cannot be permitted. It is a case where the certified copies of judgment and decree and the relevant C-Books had been produced. The learned Judge on the ground that a liberal view cannot be taken to grant leave, had refused the leave. This approach of the learned Judge, this Court of considered opinion,

¹ 2004(1) ALD 387

especially in the light of the facts and circumstances of the case, is totally erroneous and unsustainable.

As seen from the facts of the above case, a suit in O.S. No.64 of 1999 was filed before the Court of Principal Junior Civil Judge, Bobbili, Vizianagaram District, prior to amendment of CPC in the year 2002. Therefore, the amended provisions, which are procedural in nature, cannot be applied to the suits filed prior to amendment to CPC. It was came into force in the year 2002. But, this Court went on deciding the significance of Rule 1A of Order VIII of CPC to those suits though amended provisions cannot be applied.

He relied on another Judgment of this Court in **G.SUKENDER REDDY v. M. PULLAIAH**² wherein this Court held that the admissibility or the objections relating to relevancy need not be decided at the time of marking documents, it relates to admissibility, it can be raised by the defendant at any stage and should be decided by the court at the time of pronouncement of judgment.

But, here the question of admissibility and relevancy is not in dispute and the trial court refused to receive documents exercising power under Rule 1A of Order VIII of CPC without touching the relevancy and admissibility of the documents sought to be received. Therefore, this decision has no relevancy to the present facts of the case.

Learned counsel for the petitioner further drawn the attention of this Court to another Judgment in **N.PREMAIAH**

² 2015(3) ALT 575

AND OTHERS v. NARMALA DEVA RAJ AND ANOTHER³ and this Court, at paragraphs 7 and 8, held that when the petitioner wanted to file documents after filing written statement, the Court while disposing of petition for receipt of documents on the ground that no reasons were given in the affidavit for the delay, show some element of latitude in condoning the delay, having a view that the affidavits are drafted by advocates and that parties are mostly ignorant of legal formalities required to be complied and merely signed without understanding the contents.

No doubt, as per the Judgment of this Court referred to supra, this Court has to show indulgence, since the Advocates are the draftsmen of the affidavits without disclosing the contents and the parties are not concerned with the contents and statutory requirements. But no law has been laid down by this Court, except requesting the Courts to show latitude in receiving documents.

Earlier, a similar question came up before this Court in **VORUGANTI NARAYANA RAO V. BODLA RAMMURTHY AND OTHERS⁴** wherein this Court, on a liberal consideration of the requirements under Rule 1-A of Order VIII of CPC, held that literal interpretation appears to vest unlimited discretion with the Court, requires to be interpreted so as to advance the intendment of the legislation. The Court before which the defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the

³ 2015(4) ALT 729

⁴ 2011(6) ALT 299

defendant for not producing the documents along with the written statement. Unless the reasons assigned by the defendant discloses sufficient cause for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII C.P.C., the Court shall not permit the defendant to file such documents later. Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended. This Court in **RAVI SATISH V. EDALA DURGA PRASAD**⁵ (cited supra) held that grant of leave by the Court is not for the mere asking nor is the Court a mere post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.

On the other hand there is no reference about these documents in the entire written statement except the documents set out in the list as serial Nos.2 to 6 in the absence of reference and reasons for such delay, the court cannot receive the documents like post office and mark them as exhibits as held by this Court.

If this principle is applied to the present facts of the case, the Court has to look into the reason assigned by the petitioner for failure to file these documents along with written statement. The affidavit of the revision petitioner is totally silent regarding the reasons for non filing of those documents along with written statement and on the other hand, there is no reference about these documents in the entire written statement, except the

⁵ 2009(3) ALT 236

documents set out in the list as serial Nos. 2 to 6. In the absence of reference and reasons for such delay, the Court cannot receive the documents like post office and mark them as exhibits as held by this Court.

In **RAJAH R.V.G.K. RANGA RAO's** case referred to supra, the suit was filed prior to amendment to CPC, for which the amended provisions cannot be applied, since filing of documents along with written statement was not mandatory by then, and similarly in **G.SUKENDER REDDY's** case, this Court held that admissibility and relevancy cannot be decided while receiving documents along with petition filed under Rule 1A of Order VIII of CPC and in the Judgment of this Court in **N.PREMAIAH's** case, a latitude has to be shown the purpose in receiving documents. This principle is contrary to the law laid down in the earlier judgments.

In any view of the matter, it is the duty of the Court to see whether the petitioner has shown justifiable or sufficient cause for his failure to file documents set out in the list, but in the affidavit filed by the petitioner, no cause much less sufficient cause for non filing with written statement and the delay occurred in filing such documents set out in S.Nos.1, 7 to 13.

Hence, the order passed by the trial court cannot be found fault while exercising power of superintendence under Article 227 of the Constitution. Therefore, the Order to the extent of refusing to receive documents set out in S.Nos.1, 7 to 13 is in accordance with law and the order to the extent of refusing to

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receive the documents set out in the list as S.Nos.2 to 6 is set aside.

In the result, the revision petition is allowed in part. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 01.09.2016
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