

THE HON'BLE SRI JUTICE M.SEETHARAMA MURTI

Civil Revision Petition No.79 of 2016

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ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/defendants 7 to 11 is directed against the orders dated 28.12.2015 of the learned II Additional Junior Civil Judge, Vijayawada of Krishna District passed in I.A.no.547 of 2015 in O.S.no.1504 of 1999 filed under Order 8 Rule 1A(3) and Section 151 of the Code of Civil Procedure, 1908 requesting to grant leave to file the petition listed documents and receive the same on file by condoning the delay in filing the same.

2. I have heard the submissions of the learned counsel for the petitioners/defendants ('the defendants', for brevity) and the learned counsel for the 2nd respondent/2nd plaintiff ('the 2nd plaintiff', for brevity). The 1st responpdent/1st plaintiff (since died). I have perused the material record.

3. The case of the petitioners/defendants in support of their request for receiving the documents on file by granting leave and condoning the delay in filing the same, in brief, is as follows:

The defendants 8, 9, 10 and 11 are brothers and the 7th defendant is their mother. They are all partners of a firm by name "Nehru Art Press" with effect from 01.04.1999. The firm is a tenant of the plaint schedule property. They had paid rents to the 2nd plaintiff continuously, i.e., before and after filing of the suit. They are contesting the suit. They are added as parties to the proceedings as legal representatives of the 1st defendant. They had filed an appeal in A.S.no.1398 of 2001 before this Court. The 2nd plaintiff is contesting the said appeal suit. After filing the written statement in the instant suit, they had obtained certified copies of the documents a day before the instant petition for receiving the same on file was filed. The said documents are essential to prove the defence of these defendants. There is neither willful negligence nor default on the part of the defendants in not filing the

documents earlier.

4. The case of the 2nd plaintiff, in the counter, in brief, is this:

The petition is not maintainable since the defendants who are added as parties have not filed their written statement and they have not taken separate pleadings. Therefore, they cannot file documents, that too, at a belated stage. The suit is filed for declaration on the basis of their identity as a firm and the same was rejected even before registration of the suit. Instead of submitting the said fact, the defendants had stated in the affidavit filed in support of the petition that an appeal is filed before this Court to give an impression that the appeal is filed against a decree granted on merits. The suit is of the year 1999. They could have filed the documents during the evidence of DWs 1 and 2. The 9th defendant is already examined as DW2 more than ten years back. He did not file any such documents. The delay is not properly explained.

5. I have bestowed my attention to the facts and the submissions. I have carefully perused the list of documents. The documents as per the list annexed appear to be certified copies, which are filed in the other suit. On immediate receipt of certified copies, the petition is filed for granting leave to file the documents and to condone the delay in filing the same. The Court below examined the probative value of the documents even at the stage of considering the application to receive the documents and recorded findings that the relief claimed in the instant suit and the relief in the suit, which is pending before this Court in A.S.no.1398 of 2001 are different and that the documents are subsequent to filing of the suit and hence, cannot be received on file.

6. The learned counsel for the petitioners/defendants while reiterating their pleaded case would contend as follows: 'The trial Court had erroneously examined the probative value and the evidentiary value of the documents even before they are filed and are permitted to be exhibited. Such a course is impermissible under law; and the approach of the trial Court is erroneous. The trial Court ought to have seen that an additional written statement was

filed on behalf of the defendants 2 to 11 and that necessary defence is pleaded in the additional written statement and that the documents, which are being sought to be filed are certified copies of the documents and that the same are obtained from the pending appeal suit in this Court and they are highly essential to prove the defence. The petitioners could not file the documents earlier as copies were granted a day before the application to receive the documents is filed. When the matter is before the trial Court and when the documents are essential and when there is no default on the part of the defendants who are subsequently added, the trial Court ought to have granted leave to file the documents. In an eviction suit, the documents pertaining to payment of rents and exchange of notices are highly essential to substantiate the defence.'

7. On the other hand, the learned counsel for the plaintiff/2nd respondent while supporting the orders of the Court below and while reiterating the contentions of the plaintiff would contend that the suit of the defendants was rejected and that therefore, they had filed appeal before this Court and that the instant suit is of the year 1999 and that DW2 was examined more than ten years back and that the defendants ought to have filed their documents much earlier and not at a belated stage and that, therefore, the documents cannot be received and that the trial Court has rightly rejected the request of the defendants.

8. It is fairly conceded that the trial Court ought not to have considered the evidentiary value or probative value of the proposed documents even before leave is granted to file the documents. Be that as it may. The suit was filed for eviction and for recovery of the premises, which is said to be in occupation of the defendants/tenants. The original suit is filed against the 1st defendant and on his death, the legal representatives were impleaded as defendants 2 to 11 as per the orders dated 06.08.2015. Therefore, though the suit is pending since a long time, defendants 2 to 11 were brought on record only in August, 2015. Their additional written statement was filed on 24.11.2015. The present application by some of the defendants, i.e., 7 to 11 was filed on

09.12.2015 requesting to grant leave to file the documents, i.e., within a short time after their impleadment and after the filing of their additional defence. The documents were filed in the other suit, which is now pending on the file of this Court as A.S.No.1398 of 2001. Therefore, the petitioners/defendants had obtained certified copies from the said appeal suit pending on the file of this Court and filed the same along with the instant petition immediately after the same were granted.

9. Viewed thus, this Court finds that there is neither default nor negligence on the part of the petitioners/defendants and that in the facts and circumstances of the case, which are peculiar, the request for grant of leave to file the documents deserves to be granted and that the impugned order of the trial Court, which is unsustainable is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.No.547 of 2015 is allowed granting leave to the defendants to file the petition listed documents and the same are accordingly received on file subject to proof, admissibility and relevancy. No costs.

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

M. SEETHARAMA MURTI, J

29th June, 2016
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