

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4467 OF 2017

ORDER

This civil revision petition under Article 227 of the Constitution is directed against the order dated 27.06.2017 passed by the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.549 of 2017 in O.S.No.61 of 2015. The said I.A. was filed by the plaintiffs in the suit under Order 16 Rules 1 and 2 CPC to issue summons to Patel and Company represented by Prabhulal Patel and the Deputy Commissioner, Greater Hyderabad Municipal Corporation (GHMC), Saroornagar, to produce documents available with them and to depose as witnesses. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiffs are before this Court.

Heard Sri Sameer Kumar Aitharaju, learned counsel for the petitioners/plaintiffs, and Sri M.E.Chandrasekhar, learned counsel for the respondent/defendant.

Parties shall hereinafter be referred to arrayed in the suit.

O.S.No.61 of 2015 was filed for a permanent injunction restraining the defendant from interfering with or entering upon the suit schedule property, an extent of 285 square yards in Plot No.193 in Sy.Nos.9/1 (old), 9/6 (new) Part, Ward No.11, Block No.15, Doctors Colony, Saroornagar Village and Mandal, Ranga Reddy District. The claim of the plaintiffs in the subject I.A. was that the suit schedule property was given on lease by them to Patel and Company represented by Prabhulal Patel for godown purposes in relation to its business in sanitary ware, tiles and building material, but the said lessee did not come forward to give evidence as the defendant threatened him with dire consequences if he appeared before the Court and gave evidence in the plaintiffs' favour. Before steps could be taken to call him as a witness, the

plaintiffs' evidence was closed on 04.01.2017. The plaintiffs further claimed that a layout plan was prepared in relation to an extent of Acs.25.29 guntas in the subject Survey No.9/1 (old) and Survey No.9/6 (new) and they applied under the Right to Information Act, 2005, to the Deputy Commissioner, GHMC, for a copy thereof. However, as there was no information from the said official, they wanted to call him to depose as a witness about the layout and produce a copy thereof. In his counter to the aforestated I.A., the defendant pointed out that the plaintiffs failed to give a list of witnesses at the outset. He further asserted that the so-called layout prepared in the year 1969 was at a time when the land in question was under the control of a Gram Panchayat and calling the Deputy Commissioner of GHMC was therefore an exercise in futility. Pointing out the number of adjournments that the matter had undergone at the behest of the plaintiffs, the defendant contended that the subject I.A. was neither maintainable nor was it justified and was only filed to drag on the matter.

Perusal of the order under revision reflects that the plaintiffs' evidence was closed on 04.01.2017 as there was no representation on their behalf. D.W.1 filed an affidavit in lieu of chief examination on 24.01.2017 and documents were marked through him on 27.02.2017. On 09.03.2017, the counsel for the plaintiffs was called absent. D.W.1 and his counsel waited till 1.00 PM but there was no representation. Again, on 15.03.2017 and 21.03.2017, the plaintiffs and their counsel were not present. The matter was advanced from 27.04.2017 to 18.04.2017 upon a petition filed for advancement. However, on 21.04.2017, I.A.No.362 of 2017 was filed by the plaintiffs to permit cross-examination of D.W.1. This I.A. was allowed but on 26.04.2017, the plaintiffs again failed to cross-examine D.W.1 though he was present. The defendant reported that he had no further evidence and arguments of the defendant were heard in part on 02.06.2017. The matter

was adjourned for continuance of the arguments of the defendant and also the plaintiffs. Again on 12.06.2017, the plaintiffs were not ready and the matter was adjourned to 14.06.2017. At that stage, I.As. were filed by the plaintiffs seeking to adduce further evidence. Those I.As. were allowed and documents were marked through P.W.1 on 19.06.2017. The evidence of the plaintiffs was closed. The plaintiffs then came up with the subject I.A. Opining that ample opportunity had already been given to the plaintiffs, the trial Court disallowed their plea to summon the named persons.

In ADDAGATLA NARENDAR V/ s. SOME VIJAYALAKSHMI¹, this Court pointed out that unless statutory infraction is imperative, procedural technicalities should not defeat substantial justice and permitting of all admissible evidence should be the general rule while rejecting thereof should be an exception under specified circumstances. It was observed that a liberal approach should be adopted so as to lean in favour of doing substantial justice overlooking procedural technicalities.

Exercise of power by the Court under Order 16 Rule 1(3) CPC is not as a matter of course and the party applying for the same must establish sufficient cause for the omission in mentioning the name of such witness in the list of witnesses. In the present case, the claim of the defendant that the plaintiffs initially failed to file a list of witnesses remains un rebutted. The affidavit filed in support of the I.A. does not even mention as to why the plaintiffs failed to file a list of witnesses and why they failed to include the name of the tenant, Patel and Company represented by Prabhulal Patel, therein. Further, narration of the trajectory of the case in the order under revision amply reflects the scant care and diligence shown by the plaintiffs in prosecuting their suit. Time and again, they seem to have failed to appear before the trial Court and allowed the matter to progress to the stage of

¹ 2006 (3) ALD 94

arguments. Even thereafter, the trial Court was indulgent enough to allow their plea to permit marking of further documents. The utter negligence on the part of the plaintiffs in taking steps at the appropriate stage and time therefore warranted dismissal of the I.A. The order passed by the trial Court holding to that effect does not warrant interference, be it on facts or in law.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

10th NOVEMBER, 2017

PGS

