THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2202 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order under in I.A.No.731of 2016 in O.S.No.223 of 2005 dated 28.03.2016 passed by the Principal District Judge, Ranga Reddy District at L.B. Nagar, whereby, petition filed under Order VIII Rule 1-A(3) of C.P.C r/w Section 151 C.P.C, to receive the documents by condoning the delay was allowed.

The first respondent herein was the petitioner in I.A.731 of 2016 and he filed the said application under Order VIII Rule 1-A(3) of C.P.C r/w Section 151 C.P.C to receive the documents set out in the list by condoning the delay if any during the trial of the suit and mark them as exhibits. It is alleged that the petitioner herein filed O.S.No.223 of 2005 for recovery of money and after the closure of evidence of plaintiff's side, the affidavit of D.W.1 was filed under Order XVIII Rule 4 C.P.C, in lieu of examination in chief. It is the case that the respondents could not file the documents earlier as there was settlement of accounts with the petitioner by registering some plots and the respondents also could not obtain certified copies of those sale deeds registered in the names of relatives, sub contractors and other nominees of the petitioner. Hence, the respondents could not secure the particulars of those documents as the transactions were very old and in view of the defence taken up by the respondents in O.S.No.223 of 2005, it has become necessary to secure copies of those documents and file the same before the Court as exhibits and requested the Trial Court to exercise power under Order VIII Rule 1-A(3) of C.P.C r/w Section 151 C.P.C.

The petitioner herein/1st respondent before the Trial Court filed a detailed counter, more particularly, stating that the documents which are filed along with the petition were already within the knowledge of the first respondent and there is a reference in the written statement. But without complying the requirement under Order VIII Rule 1-A(3) of C.P.C, filed this petition without proper explanation and the petitioner herein/1st respondent also relied on several judgments in the counter itself and drawn attention of this Court to the law declared to exercise power under Order VIII Rule 1-A(3) of C.P.C r/w Section 151 C.P.C and prayed for dismissal of I.A.No.731 of 2016.

The Trial Court upon hearing argument of both the counsel, allowed I.A.No.731of 2016.

Aggrieved by the order passed by the Trial Court, the present revision is filed, raising several contentions, mainly on the ground that, when there is a reference about document and when it is within the knowledge of the first respondent herein/petitioner, at best the petitioner is required to comply with Order VIII Rules 1 & 2 C.P.C and they are not relevant at this stage and therefore, passing such an order is contrary to law and prayed to set-aside the order passed by the Trial Court.

During hearing, learned counsel for the petitioner herein/first respondent Dr K. Lakshmi Narasimha would contend that, when the documents were referred specifically in the written statement, the first respondent herein/petitioner has to explain whether those documents are available, in compliance of Subrule 2 of Rule 1-A of Order VIII. But, in the absence of compliance of Subrule 2 of Rule 1 of Order VIII, the first respondent herein/petitioner is not entitled to introduce new set of facts and produce documents.

Whereas, learned counsel for the respondents Sri Rajagopallavan Tayi would contend that, after the first respondent herein/petitioner has already paid costs, the petitioner herein/first respondent before the Trial Court refused to receive costs and filed a memo depositing the same to the credit of District Legal Services Authority. Therefore, first respondent herein/petitioner complied the direction issued by the Trial Court and in such case, the petitioner herein is not entitled to agitate in the present petition. Therefore, the petition was allowed, the documents were already marked.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is "***Whether the petitioner herein is entitled to file the documents at this stage. If so, the order passed by the Trial Court receiving documents by exercising power under Order VIII Rule 1-A (3) of C.P.C is in accordance with law.***"

Undoubtedly, there is a reference about the documents in paragraph 9 of the written statement and the respondent herein/petitioner before the Trial Court specially averred as follows:

> "9. ……………………This defendant being very busy with his various business activities and this defendant is never for any unwarranted and unwanted confrontation and disputes and though the work done by the plaintiff herein was not as per the Development Agreement, for the works done by the plaintiff, this defendant and the plaintiff had discussions and the issue was finally settled and the plaintiff was given 78 plots i.e. the plots bearing Nos.22, 23, 34, 35, 59, 87 and 126 in lieu of his entitlement which were registered as per the directions of the plaintiff in the name of his nominees i.e. his son, his wife, his brother-in-law (sister's husband and wife's brother) and other persons who in turn had sold the same to various vendees.

From the extracted portion of the written statement mentioned above, it is clear that the respondent herein is aware about the transactions. In such case, the requirement under Order VIII Rule 1(A) is whether the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the documents and a copy thereof, is to be filed with the written statement. Subrule (2) further, mandates as to where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

Therefore, it is incumbent on the respondent herein to file those documents that he executed in favour of the persons as alleged in paragraph 9. If those documents were not available, he is required to comply Sub-rule (2). But, he made a mention about the transactions in the written statement without complying the requirement under Sub-rule (2) of Order VIII Rule 1 C.P.C. But, Sub-rule (3) permits the Court to receive documents in evidence, on his behalf, subject to satisfaction of the Court though the defendant fails to produce those documents. But, here, the explanation offered by the respondent herein is that, though he is aware about the transactions, he is not aware of the registered document etc. But that by itself is not a ground to permit the respondent to introduce the document.

In **Voruganti Narayana Rao v. Bodla Rammurthy[1],** this Court held that the respondents had leisurely filed I.A. for receiving documents. If respondents plea that documents could not be traced was correct, nothing prevented them from filing application either before or at least at time when those documents were confronted. In the said case, it was held that, the respondents failed to furnish proper and sufficient reasons for receiving documents at a far too belated stage.

In **Jai Siha v. Deewan Ranveer Singh[2]** this Court, once again reiterated the principle mentioned in **Voruganti Narayana Rao[1]** case and declined to grant permission to file documents and mark them as exhibits.

If the principles laid down in the above judgments are applied to the present facts of the case, the contention raised by the first respondent that he is not aware of the documents, but aware about the names of the executants and persons pertaining to the property as alleged in paragraph 9 of the written statement, nothing prevented him to apply for certified copy with the

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[1] 2011 (6) ALD 142
[2] C.R.P.No.5266 of 2011

Sub-Registrar when the petitioner is aware of the dates and boundaries and plot particulars. But, filed the petition after 10 years from the date of filing suit and filing written statement. Therefore, the reason assigned by the first respondent is not sufficient cause to grant leave to file such documents and the respondents did not comply the requirements under Order VIII Rule 1-A(2) C.P.C. Therefore, the order passed by the Trial Court is erroneous and contrary to the law declared by this Court in the judgments referred supra. Hence, the order passed by the Trial Court is liable to be set-aside, exercising power under Article 227 of the Constitution of India.

One of the contentions raised by Sri Rajagopallavan Tayi, learned counsel for the respondents is that the documents were already marked on 03.06.2017 as Ex.B -1 to B-7 within 21 days prior to granting stay by this Court. No doubt, the documents were already marked. But marking of documents is only subject to result of civil revision petition and marking would not become infructuous. At the same time, the respondents refused to receive costs imposed by the Trial Court and they deposited the same to the credit of District Legal Services Authority just by intimating to the Court without obtaining any permission. Such deposit is not a strict compliance of order passed by the Trial Court and when the respondents refused to receive costs, the alternative remedy open to the petitioner is to obtain an order seeking permission to deposit either to the credit of the suit or to the District Legal Services Authority. In case the costs imposed by the Court are not paid under Section 35(b)(2) and separate orders shall be drawn up indicating the amount of such costs and names of the persons for whom such costs are payable.

Here, the Trial Court imposed the costs under Section 35-b C.P.C only, but, it is not a case where the first respondent did not pay costs as directed. But, the petitioner herein/respondent before the Trial Court refused to receive the same. Therefore, deposit of costs to the credit of District Legal Services Authority would not amount to strict compliance of the directions issued by the Trial Court. Therefore, on this ground, the impugned order cannot be sustained.

Viewed from any angle, it is clear that the order of the Trial Court is contrary to the law declared by this Court in the judgments referred supra against Order VIII Rule (1)(a) & 2 C.P.C. Hence, the order in I.A.No.731of 2016 in O.S.No.223 of 2005 dated 28.03.2016 passed by the Principal District Judge, Ranga Reddy District at L.B. Nagar is liable to be set-aside.

In the result, the civil revision petition is allowed, setting aside the order in I.A.No.731of 2016 in O.S.No.223 of 2005 dated 28.03.2016 passed by the Principal District Judge, Ranga Reddy District at L.B. Nagar.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:24.07.2017

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