

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2536 of 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the orders dated 11.04.2016 in I.A.No.191 of 2016 in O.S.No.753 of 2008 on the file of the Court of Principal District Judge, Ranga Reddy District, at L.B.Nagar.

Heard the learned counsel for both parties and perused the material available on record.

The contention of the learned counsel for the petitioners is three fold:

1. Mere delay in filing the rejoinder is not a ground to dismiss the petition;
2. The trial Court failed to consider that second respondent has not supplied the document, therefore, the petitioners could not file rejoinder; and
3. Even if the petition is allowed, the same would not cause any prejudice to the respondents.

Learned counsel for the respondents submitted that the petitioners filed the present petition at a belated stage with an ulterior motive to drag on the proceedings. He further submitted that the petitioners have not assigned reasons much less cogent and valid reasons for non-filing of rejoinder for a period of seven years. He further submitted that there is no illegality or irregularity in the orders of the trial Court to set aside the same.

A perusal of the record reveals that the petitioners herein filed O.S.No.753 of 2008 on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar against the respondents for declaration and recovery

of the possession of suit schedule property. The respondents have filed the written statement opposing the claim of the plaintiffs. After completion of the evidence on both sides, the trial Court posted the matter for arguments. At that point of time, the petitioners herein filed I.A.No.191 of 2016 under Order VIII Rule 9 CPC to receive the rejoinder. To substantiate the arguments, learned counsel for the petitioners has drawn the attention of this Court to the following decisions:

1. In *MALGIREDDY VENKATA RAMANA v. THIPPANA NARSI REDDY*¹ wherein it was held at para 12 as follows:

“The primary object of subsequent pleading is to supply what has been omitted inadvertently or unintentionally or to deny or clarify the facts stated in the pleadings of the opposite party. In the rejoinder the plaintiff can be permitted to explain the additional facts, which have been incorporated in the written statement. Application under Order 8 Rule 9 CPC cannot be treated as one under Order 6 Rule 17 CPC as both are contextually different.”

2. In *S. VENKATA RAMANAIAH AND ANOTHER v. S. VENKATESWARLU GUPTA AND OTHERS*² this Court held that ‘mere delay in filing the rejoinder is not a ground to reject the same’.

Let me consider the facts of the case on hand in the light of the above legal principles.

The respondents have filed the written statement on 20.02.2009. After filing of the written statement by D2, the trial Court framed appropriate issues. Both parties adduced oral and documentary evidence to substantiate their respective stands and when the suit is coming up for arguments, the petitioners filed the rejoinder in the year 2016 denying the averments made in Para-8 of the written statement of D2, on the ground

¹ 2010(3) ALD 82

² 2009(5) ALD 211

the father of the first plaintiff filed C.C.No.469/ W/ 75 before the Land Reforms Tribunal, Hyderabad.

The petitioners are very much aware of the averments made in the written statement of D2 with effect from 20.02.2009. For the reasons best known, the petitioners did not choose to file rejoinder for a period of seven years. The learned counsel for the petitioners submitted that the second respondent has not supplied the documents, therefore, the petitioners could not file the rejoinder. Normally, the rejoinder will be filed with respect to the new facts introduced by the defendants in the written statement. Even if the argument of the petitioners is accepted, the plea taken by the second respondent in the written statement is known to the petitioners from the date of filing of the suit or even otherwise, from the date of filing of the written statement by D2.

The petitioners have not assigned reasons much less cogent and valid reasons for non-filing of the rejoinder for a period of seven years. After perusing the evidence of the respondents' witnesses, the possibility of filing of the rejoinder by the petitioners in order to overcome the lacunae cannot be ruled out completely. It is needless to say that in a suit for declaration, the plaintiff can succeed or fail basing on the strengths and weaknesses of his case. In a suit for declaration, the plaintiff is not entitled for the relief sought for basing on the lacunae or latches on the part of the defendant. If the Courts allow this type of petitions at the fag end of the matter, the same may cause prejudice to the opposite parties. As observed earlier, the petitioners have not assigned reasons much less cogent and valid reasons. The trial Court considered all these aspects in the right perspective and dismissed the petition. There is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court. The decisions

cited supra are no way helpful to the petitioners. The revision petition lacks merits and bonafides and therefore the same is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. Miscellaneous Petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

19th April 2017.
Rns

